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EVIDENCE AND PROCEDURE IN CANADIAN LABOUR ARBITRATION

Gorsky

Release No. 5, December 2023

Evidence and Procedure in Canadian Labour Arbitration provides thorough coverage of all the procedural and evidentiary issues pertaining to labour arbitration in Canada. It is written to be used by labour and employment law lawyers representing both unions and management, union officers involved in arbitration, and human rights professionals.

What's New in this Update

This release features updates to Chapters 10, 11, 12, and 13.

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Highlights

- **The Presentation of Evidence — Cross-Examination — Failure to Cross-Examine** — *R. v. R.J.M.*, 2023 MBCA 28, 2023 CarswellMan 96 held it improper for the adjudicator to use a perceived breach of *Browne v Dunn* unless counsel has raised the issue or been given an opportunity to address it.
- **The Rules of Evidence — Hearsay Exceptions – Principled Approach** — *R. v. MacKinnon*, 2022 ONCA 811, 2022 CarswellOnt 17155, leave to appeal refused 2023 CarswellOnt 9635, 2023 CarswellOnt 9636 (S.C.C.) reiterated that a traditional hearsay exception, in contrast to a principled exception, is presumptively admissible.
- **The Rules of Evidence — Privilege — Confidential Information** — *BC Safety Authority*, [2023] B.C.C.A.A.A. No.15, 2023 CarswellBC 474 (Dorsey) held that company-union discussions at a Joint Consultation Committee were covered by “labour relations privilege”.
- **The Rules of Evidence — Privilege — Litigation Privilege** — *Owen Sound (City)*, [2023] O.L.A.A. No. 6, 2023 CarswellOnt 278 (Jesin) held that even though a document was prepared for litigation, it lost its privilege if it was used by a witness during or before his testifying.
- **Ending the Case — Motion for Non-Suit — Election** — *Toronto (City) (Stockley)*, 2023 CanLII 999, 2023 CarswellOnt 519 (Price) endorsed the approach that whether the mover of a non-suit motion will be put to an election is a matter of arbitral discretion.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

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- The Table of Contents now has internal links to every chapter and section of the book within ProView
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