

Publisher's Note

An Update has Arrived in Your Library for:

| |
|---|
| Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

EVIDENCE AND PROCEDURE IN CANADIAN LABOUR ARBITRATION

Gorsky

Release No. 5, December 2024

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 Chapter 9 (Problems of Proof), Chapter 10 (The Presentation of Evidence), Chapter 11 (The Rules of Evidence), Chapter 12 (Ending the Case), and Chapter 13 (Arguing the Case).

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights

- **The Presentation of Evidence — Real Evidence — Electronic Evidence** — *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2024 ONSC 1900, 358 L.A.C. (4th) 335 (Div. Ct.) held that employees who made offensive comments about another employee on personal devices during non-work hours were subject to discipline after the comments became known in the workplace.
- **The Presentation of Evidence — Examination of the witness by the arbitrator** — *R v. John*, 2023 SKCA 116, 431 C.C.C. (3d) 309 held that questioning that gives the impression of taking on an adversarial — or even quasi-adversarial role - undermines the appearance of fairness and may lead to the quashing of the decision.
- **The Rules of Evidence — Hearsay Exceptions — Admissions — By a Party** — *R. v. Bagherzadeh*, 2023 ONCA 706, 168 O.R. (3d) 780 at paras. 43-50, leave to appeal refused *His Majesty the King v. Nick Bagherzadeh*, 2024 CanLII 37795 (S.C.C.) held that, even if the declarant testifies, the favourable parts (normally inadmissible as a prior consistent statement) of an out-of-court statement entered by the opposite party will be admissible for the truth of their contents.
- **The Rules of Evidence — Opinion Evidence — Experts** — *Humber River Hospital*, 2024 CarswellOnt 8790 (Tremayne) held that a witness did not qualify to give expert evidence because his activities and espousal of fringe views raised doubts about whether he could provide fair and impartial evidence.
- **The Rules of Evidence — Privilege — Solicitor-Client** — *Ontario (Metrolinx) (Policy Grievance)*, 2024 CarswellOnt 731, 357 L.A.C. (4th) 431, [2024] O.G.S.B.A. No. 9 (Nairn) held that communications from in-house counsel regarding contemplated company policy matters constituted her acting in a legal capacity and were privileged.
- **Arguing the Case — Assessing the Evidence — The Rule in Hodge’s Case** — *Fujitec Canada Inc (Gregor)*, 2024 CarswellAlta 158, 357 L.A.C. (4th) 186, [2024] A.G.A.A. No. 6 (Casey) reiterated that the rule is a restatement of the reasonable doubt principle and not applicable to arbitration hearings.