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CANADIAN LABOUR ARBITRATION, FIFTH EDITION

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What's New in this Update

This release includes new cases and commentary in Chapter 1 (Arbitration of Grievances in Context), Chapter 2 (Jurisdiction of the Arbitrator), Chapter 3 (The Arbitration Process), Chapter 4 (The Collective Agreement), Chapter 5 (Organization and Direction of the Workplace), Chapter 6 (Seniority), Chapter 7 (Discipline), Chapter 8 (Compensation) and Chapter 9 (Union Rights and Liabilities).

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Highlights

- In *Metrolinx v. Amalgamated Transit Union, Local 1587* (2025), 373 L.A.C. (4th) 225 (Ont. C.A.), the Ontario Court Appeal dismissed an appeal of the decision of the Divisional Court. The Divisional Court had granted Metrolinx's application for judicial review from the arbitrator. The arbitrator had upheld a number of grievances filed by employees following their termination for sexual harassment. In upholding the Divisional Court's decision, the Court of Appeal noted that on appeal from a decision of the Divisional Court it was required to step into the shoes of the Divisional Court and conduct its own analysis. The Court of Appeal also noted that the Divisional Court's decision did not contain any errors in law or principle or any palpable and overriding errors of fact. On the merits of the arbitrator's decision, the Court found that the Employer had a statutory duty to investigate incidents and complaints of workplace harassment under the *Occupational Health and Safety Act*. The Court also concluded that the arbitrator erred in finding that the grievor's conduct did not have a negative workplace impact and that the employer overstepped the limits of management's authority during the workplace investigation leading to the grievor's termination.
- In *University Health Network* (2025), 373 L.A.C. (4th) 117 ((Gedalof) the arbitrator found that the termination of long-term disability benefits at age 65 was saved by section 1 of the *Charter*. The parties noted that both the *Human Rights Code* and the *Employment Standards Act* permit age-based differential treatment in the provision of benefits. The parties agreed that, on its face, these legislative carve outs breached section 15 of the *Charter*. However, the Arbitrator concluded that the legislative carve outs also met the minimal impairment test under section 1. The grievances were dismissed on that basis.
- In *Royal Victoria Hospital* (2025), 373 L.A.C. (4th) 268 (Jesin), the arbitrator allowed a grievance regarding the termination of a nurse for forcibly administering medication orally to a uncooperative patient. The arbitrator found that the employer had no established any clear rules, policies, or standards for how a nurse was expected to administer medicine to minor where the minor was resistant to taking it. The arbitrator also noted that at no time was the patient in any danger as a result of the grievor's conduct. Finally, the arbitrator concluded that the discipline imposed by the Employer was not tainted by bad faith or discrimination. As such, aggravated damages were not appropriate.
- In *Frankovic v. Treasury Board (Department of Transport)* (2025), 371 L.A.C. (4th) 374 (Can. F.P.S.L.R.E.B.), the arbitrator denied a grievance challenging the application of a COVID-19 policy. In this case, the employer denied the grievor's request for an exemption from the COVID-19 policy. The grievor alleged that the employer's denial of his request constituted discrimination on the basis of his creed. The grievor claimed he followed "earth based spirituality." In denying the grievance, the arbitrator found that the term "creed" in the collective agreement was synonymous with "religion" and that the grievor's earth based spirituality did not constitute a creed.