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EVIDENCE AND PROCEDURE IN CANADIAN LABOUR ARBITRATION

Gorsky

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

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Case Law Highlights

- **Problems of Proof – Standard of Proof; Order of Proceeding – Order of proceeding** – *Canada Post Corp. (Janicki)*, 2025 CarswellNat 3970 (Can. Arb.) (Clarke) required the employer to proceed first because it alone knew why it transferred the grievor to a different unwanted company location.
- **The Presentation of Evidence – Cross-examination – General Suggestions** – *SSP Canada Food Services Inc. (Yesuf)*, [2025] B.C.C.A.A. No. 86 [KK1.1](Love) dismissed the employer’s case in part because it “failed to cross-examine the grievor on key issues that might have impacted on her credibility”.
- **The Rules of Evidence – Opinion Evidence – Judicial Findings** – *Deputy Head (Department of Veterans Affairs) (Beaulieu)*, 2025 CarswellNat 4248 (Can. F.P.S.L.R.E.B.) (Jaworski) held that a Canadian Human Rights Commission decision in a case filed by the grievor on the same matter did not support issue estoppel because the Commission was not a judicial body.
- **The Rules of Evidence – Privilege – Settlement or Grievance Procedure Privilege** – *Ontario (Treasury Board Secretariat)*, 2025 CarswellOnt 14228 (Ont. Grievance S.B.) (Stephens) held that disclosure of the settlement document served a public interest purpose outweighing confidentiality and thus the “justice of the case” required an exception to the privilege.
- **Arguing the Case – Assessing the Evidence – Failure to Testify or Explain** – *Ontario (Treasury Board Secretariat) (McDonald)*, 2025 CarswellOnt 16658 (Ont. Grievance S.B.) (Atkinson) did not draw an adverse inference because there were valid reasons for not calling the witness: she was on parental leave, the opposing party could have called her, and there was documentary evidence in lieu of her testimony.
- **Arguing the Case – Assessing the Evidence – Credibility** – *Tek Steel Ltd. v. IABSRI, Local 842*, 2025 CarswellNB 537 (N.B. C.K.B.) noted that there is no rule that uncontradicted evidence must be accepted and the arbitrator can reject a witness’s uncontradicted testimony.