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Book Review: Canadian Labour Arbitration, by D. J. M. Brown and D. M. Beatty; Collective Agreement Arbitration in Canada, by E. E. Palmer

CANADIAN LABOUR ARBITRATION, D. J. M. BROWN AND D. M. BEATTY, Toronto: Canada Law Book, 1977. Pp. 551.

COLLECTIVE AGREEMENT ARBITRATION IN CANADA, E. E. PALMER, Toronto: Butterworths, 1978. Pp. 635.

The foreword to Brown and Beatty's *Canadian Labour Arbitration*, written by Paul Weiler, one of Canada's most prominent labour lawyers, cites the publication as a "landmark event," for the book was the first significant and systematic treatise on grievance arbitration in Canada. Several months later, the world of labour law was blessed with a further landmark, in the guise of Professor Palmer's treatise on *Collective Agreement Arbitration in Canada*. We now have the benefit of two significant attempts to organize systematically the "common law of the shop," or the industrial jurisprudence that has evolved through arbitral decisions in Canada over the last thirty years.

Grievance arbitration is an important institution in Canadian labour relations law. It is either a compulsory mechanism for resolving disputes during the life of a collective agreement,¹ or an institution optional in theory but compulsory in fact.² Arbitrators are selected by the parties to interpret the agreement that they have made, and thus they play an integral role in industrial self-government. Much has been written on the role of arbitrators, examining whether they should be adjudicators or policy-makers,³ and what methods should be utilized. Yet neither Brown and Beatty nor Palmer have chosen to enter that debate.

Their aim is to study the awards arbitrators have made and to try to organize these decisions in a framework that, to quote Brown and Beatty's Preface, gives "a 'snapshot' of all the jurisprudence as it appeared to us at this point in time." The result is a description of the trends in decisions in various areas of grievance arbitration, rather than a philosophical treatment of what arbitration should be.

Since there is no hierarchy of decisions in grievance arbitration, an arbitrator is not bound to follow the awards of other arbitrators. Rather, principles developed in any given award must gain acceptance in the "marketplace of ideas," with arbitrators choosing to follow decisions of other arbitrators because they feel that the result is correct. These books try to identify the predominant view on given problems, if it exists, or to indicate the various schools of arbitral approach if none is predominant.

The organization of the books is similar, each starting with a discussion of procedural matters (jurisdiction of the arbitrator, the arbitration process,

¹ *Labour Relations Act*, R.S.O. 1970, c. 232, as am. S.O. 1975, c. 76; S.O. 1977, c. 31, s. 37(1).

² *Canada Labour Code, Part V*, R.S.C. 1970, c. L-1 as am. S.C. 1972, c. 18; S.C. 1977-78, c. 27.

³ P. Weiler, *The Role of the Labour Arbitrator: Alternative Versions* (1969), 19 U. of T. L.J. 16; A. Cox, *Reflections Upon Labour Arbitration* (1959), 72 Harv. L. Rev. 1482; G. Adams, *Grievance Arbitration and Judicial Review in North America* (1971), 9 Osgoode Hall L.J. 443; Shulman, *Reason, Contract and Law in Labour Relations* (1955), 58 Harv. L. Rev. 999.

the collective agreement) and then moving to substantive areas (discharge and discipline, seniority, promotion and classification, union rights and liabilities). Brown and Beatty give a more comprehensive treatment of procedural matters than does Palmer, by use of an initial chapter entitled "Arbitration of Grievances in Context." This chapter sets out the legislative framework of grievance arbitration, the development of arbitration, concurrent jurisdiction with courts and administrative agencies, and judicial review of grievance arbitration. Professor Palmer does not set out this background, saving a discussion of judicial review of arbitral awards for a latter edition of the book. This omission detracts somewhat from the usefulness of Palmer's book for the inexperienced entrant to grievance arbitration or as a teaching tool for students.

In substantive matters, both books deal with the major types of problems that arbitrators face. The framework employed differs slightly, with Brown and Beatty studying organization and direction of the workplace, seniority, discipline, compensation and union rights and liabilities. Palmer has twelve chapters on substantive matters, dealing with discipline (four chapters), the bargaining unit, job creation, seniority, work scheduling, absences from work, and union rights.

Evaluation of these particular books requires identification of the uses to which they will be put. Clearly, the books are designed as research tools, to aid in the search for awards by those preparing for arbitrations and by those writing awards. Furthermore, they can be valuable teaching tools, for law students, lawyers or lay people interested in the arbitral process.

Groups putting these books to either use may find themselves frustrated, at times, by the style adopted in the two volumes. The Brown and Beatty "snapshot" approach is just that. It tells the reader that one group of arbitrators feels this way about an issue, for example, review of the termination of a probationary employee, while another feels this way. They do not conclude which group is predominant, nor do they indicate the view they think is correct.⁴ The authors' avowed purpose was not to do so, yet at various times in the book, a conclusion would have been welcomed. Professor Palmer, in contrast, does provide some conclusions and recommendations as to which is the "better" or predominant line of decisions, for example, with regard to adjournments (at 20).

While the researcher may lament the lack of conclusions in Brown and Beatty, he or she will welcome the format. The paragraphs of the book are numbered to key to the awards reported in *Labour Arbitration Cases*. In the front of each volume of the L.A.C.s is found a page entitled "Table of Paragraph Numbers in *Canadian Labour Arbitration* referred to in this volume." This key system allows the researcher easily to update the awards found in Brown and Beatty. In addition to this tool, Brown and Beatty have a very good index to the book's contents. Palmer's book suffers in comparison by not allowing easy up-dating and by providing an index that sometimes fails to guide the reader to relevant material.

⁴ Although one may find some indication of the view preferred by Professor Beatty by examining the awards that he has made as an arbitrator.

A further problem with the Palmer book is the writing style. A plethora of quotations from awards are found in the text. In some cases, these quotations go on for several pages (for example, from pp. 81 to 85) and sometimes contain quotations within quotations (at 40). The author defends this practice with the following rationale:

It is not to 'pad' the size of the book: it has been so that the reader may have a compendium of the leading statements in various areas of arbitration (at xi).

While this goal may be laudable, the result often irritates the reader, who must wade through much extraneous material to discover the desired statement of principle. This statement could have been paraphrased by the author in a few sentences. Further irritation derives from the style of quotation. Quotations are introduced by "as has been stated" or "as one arbitrator has stated." The name of the particular arbitrator and the award from which the quotation is drawn are invariably found in the footnotes rather than the text, requiring constant reference to the footnotes by the reader and thus a continual interruption in the flow of thought while reading.

One would be at a loss to try to indicate which of these two books on Canadian grievance arbitration is definitive. As Professor Palmer indicates in his introduction, "Brown and Beatty may be a Rubens, but there is still room (and followers) for a Van Gogh." I hesitate to say that the two books are complementary if Professor Palmer perceives himself as a painter in a different school, yet they are indeed complementary. While Brown and Beatty is an easier research tool because of the writing style and format, it can usefully be read in conjunction with Palmer in the study of particular problems, since Palmer does elaborate and provide conclusions where Brown and Beatty do not.

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