JUDICIAL REVIEW OF ARBITRATION DECISIONS

Working Paper 2003-03

by

Erika L. Ringseis and Allen Ponak[*]

[*] Erika Ringseis(Ph.D., L.L.B.) is an articling student at Fraser Milner Casgrain LLP in Calgary. Allen Ponak (Ph.D.) is Professor of Industrial Relations in the Haskayne School of Business, University of Calgary. An earlier version of this paper was presented at the University of Calgary's 20th Annual Labour Arbitration and Policy Conference, June 2002.

Grievance arbitration is one of the fundamental cornerstones of the North American industrial relations system. Through a hearing process less formal than a court proceeding, an arbitrator interprets an existing collective agreement and applies its provisions to a particular set of facts to resolve differences between the union and the employer. Enshrined in Canadian labour law as a requirement in all collective agreements (and included almost universally by practice in the United States), a grievance arbitration decision is intended to be final and binding, providing the parties with a timely interpretation of their contract.

The same labour relations statutes that establish arbitration as "final and binding", may expressly permit either the union or the employer to challenge the arbitration outcome by applying for court review. The court may uphold the arbitration decision, amend or overturn it, or refer it back to the arbitrator. Clearly, therefore, grievance arbitration is not final and binding if the arbitrator's decision is subject to another level of review. Judicial review can add months and significant costs to the entire grievance resolution process. Court decisions can also have a significant impact on the specific collective agreement that is the subject of the court's scrutiny and may have ramifications in the wider labour relations community.

The possibility of judicial review of an arbitration award tells us very little about its probability or the likelihood that the arbitrator's decision will be overturned. How often do the parties challenge an arbitrator's decision in court? How frequently do such challenges succeed? Are there discernible patterns in the challenges and their

outcomes? Given the potential impact of judicial reviews on the grievance arbitration process and outcomes, there are surprisingly few answers to these questions. Previous research has focused on the development of the law surrounding judicial review of arbitration decisions, in particular analysing important new cases (see, for example, Carter, 2002). With the exception of some American studies (LeRoy and Feuille, 2001; Feuille and LeRoy, 1990) we are unaware of any research on the proportion of successful challenges. This paper rectifies some of the omissions. It begins by summarizing the role of arbitration as a dispute resolution mechanism in unionized settings. The role of the courts in the judicial review process is presented next, with a comparison between two standards of review: correctness and patent unreasonableness. The experience with judicial review of labour grievance arbitrations in Alberta from 1997 to 2001 inclusive is then analysed, followed by a brief comparison with Saskatchewan. The paper concludes with a discussion of the implications of the findings.

I. The Labour Arbitration Process

In the context of labour disputes, Canadian public policy has long favoured arbitration, mediation, and expert administrative tribunals over an adversarial court process (Pirie, 2000). Arbitrations are designed to be faster, less formal, less expensive and less confrontational than the courts (Adams, 1991), though in practice the process does not always fulfill these criteria (Ponak and Olson, 1992). The Supreme Court of Canada has granted exclusive jurisdiction to arbitration to deal with those disputes

arising out of the collective agreement.[1] Although arbitration is still an adjudicative process, the parties agree to forgo many of the strict rules found in a court.[2]

The labour relations act of each province governs the relationship between unions and most provincially-regulated employers while the *Canada Labour Code* performs the same function for employees in federally regulated industries (e.g. telecommunications). The *Alberta Labour Relations Code*[3] and *Saskatchewan Trade Union Act*[4] (hereafter referred to as the *Code* and *Act*, respectively) are fairly typical. The *Code* addresses the formation and certification of unions, the process of collective bargaining and strikes, lockouts and picketing. Of most importance to the present study is Division 22 of the *Code*: Collective Agreement Arbitration. Division 22 contains the rules governing the grievance process for issues arising out of the collective agreement. Section 135 of the *Code* requires that every collective agreement contain a method for the settlement of differences arising due to the interpretation, application or contravention of the agreement. If a collective agreement does not contain some form of dispute resolution clause, section 136 of the *Code* deems arbitration as the default method for resolving collective agreement disputes and provides a detailed model clause that that can be incorporated in whole or in part into the contract. Sections 137 and 138 of Alberta's *Code* describe the appointment of an arbitrator by the Director of

---

[1] *Weber* v. *Ontario Hydro,* [1995] 2 S.C.R. 929.

[2] *Supra* note 1.

[3] R.S.A. 2000 c. L-1; Note that some provincially-regulated employers are governed by other legislation, such as the *Public Service Employee Relations Act,* R.S.A. 2000 c. P-43 and the *Police Officers Collective Bargaining Act,* R.S.A. 2000 c. P-18, but the guiding principles of the *Code* are generally found within the other legislation.

[4] R.S.S. 1978 c. T-17, as amended by the Statutes of Saskatchewan, 1980-81, c.43; 1983, c.81; 1983-84, c.54; 1984-85-86, c.16; 1988-89, c.42; 1989-90, c.54; 1992, c.A-24.1; 1994, c.47; and 2000, c.69, (hereinafter "Saskatchewan Act").

Mediation Services if the parties are unable to agree to one. Similarly, sections 25 through 26.6 of the Saskatchewan *Act* govern labour arbitrations in that province. Either party may request that the Minister of Labour appoint an arbitrator if the parties are unable to agree on an arbitrator.[5] In both provinces either a single arbitrator is chosen to render a decision, or a tripartite panel is used.

Arbitrators are not bound by the strict rules of evidence imposed in court, as specified in subsection 143(2) of Alberta's *Code* and paragraph 25(1.2)(c) of Saskatchewan's *Act*. In disciplinary matters, subsection 136(j) of the *Code* permits the arbitrator to substitute a different penalty in place of the penalty imposed by the employer if the arbitrator deems it just and reasonable to do so. A similar provision exists in Saskatchewan.[6] Thus, arbitrators enjoy a wide scope of discretion in the arbitration process and ultimate decision and this discretion is explicitly set out in the governing legislation. However, the arbitrator is precluded from altering, amending or changing the collective agreement.[7]

In Alberta, an arbitral decision is filed with the Director of Mediation services and served on all parties pursuant to section 141 of the *Code.* A labour arbitration decision has the same force and effect as an order of court. If a party fails to comply with an order or acts in a manner in contempt of the proceedings, the arbitrator or arbitration board may apply for a court order directing compliance with the arbitration order or restraining contemptuous conduct (subsection 143(3) of the *Code*). Similarly, in

[5] Saskatchewan Act, *supra* note 6, s. 26(4.1).

[6] Saskatchewan Act, *supra* note 6, s. 25(1.2)(3).

[7] Alberta *Code, supra* note 5, s. 142(1).

Saskatchewan the finding of an arbitrator or an arbitration board is binding on all parties and enforceable as would be any order of the Labour Board.[8] Thus, arbitration is intended to represent the final word in a labour dispute.

II. The Judicial Review Process for Labour Arbitrations

Despite the clear policy preference that arbitration be final and binding, the parties have a right to challenge the arbitration decision by asking for a court review.[9] When faced with a request for a judicial review of a labour arbitration award, the court must balance conflicting objectives. On the one hand, the arbitration process was developed in order to create an efficient process: faster, less expensive and less time-consuming than court. On the other hand, courts have a constitutional supervisory role over administrative tribunals that cannot be waived. Through the delicate balancing of these competing interests over the years, the courts have developed a standard process of judicial review in the context of labour arbitrations.

A party to a labour arbitration award may request a judicial review on the basis of one or more of three possible errors: an error of jurisdiction, an error of fact, or an error of law. Once the application is received, the presiding judge must first determine the appropriate standard of review and the degree of deference, if any, that the arbitrator should be accorded. The court takes a pragmatic and functional approach to this question by considering four categories of factors: the expertise of the arbitration board,

[8] Saskatchewan Act, *supra* note 6, s. 25(1.2) (b) and (c).

[9] See, *Crevier* v. *Attorney General of Québec* [1981] 2 S.C.R. 220 (Qué), (hereinafter "*Crevier*"), where the Supreme Court of Canada indicated that it is beyond the constitutional competence of provinces to remove the right of courts to exercise their supervisory jurisdiction.

the existence of a privative clause in the labour relations statute,[10] the purpose of the labour relations act as a whole, and its arbitration provisions in particular, and the nature of the question being reviewed.[11] The expertise of the board is the most important consideration for the court.[12] In the context of labour arbitrations, the board or sole arbitrator is generally considered to have high expertise, which supports a deferential, non-intrusive attitude toward arbitral decisions.

A strongly worded privative clause purports to remove the possibility of judicial review. Although a privative clause cannot oust the jurisdiction of the court completely,[13] it does indicate to the court that a deferential approach is appropriate. The absence of a privative clause or a statutory right of appeal, on the other hand, suggests that a lower level of deference is appropriate. Section 145 of Alberta's *Code*[14] reads:

> (1) Subject to subsection (2), no award or proceeding of an arbitrator, arbitration board or other body shall be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the arbitrator, arbitration board or other body in any of the arbitrator's or its proceedings.
>
> (2) A decision, order, directive, declaration, ruling or proceeding of an arbitrator, arbitration board or other body may be questioned or reviewed by way of an application for judicial review seeking an order

[10] A privative clause is a provision in legislation that purports to make the decision of an arbitrator final and binding, ousting the jurisdiction of the court. The Supreme Court of Canada has held, however, that the right to appear before a court cannot be completely removed (see case citation *infra* note 9*).*

[11] *Pushpanathan* v. *Canada (Minister of Citizenship and Immigration),* [1998] 1 S.C.R. 982 (hereinafter "*Pushpanathan")*.

[12] *Canada (Director of Investigation and Research)* v. *Southam Inc.* (1997), 144 D.L.R. (4th) 1 S.C.C.

[13] *Crevier, supra* note 9.

[14] *Supra* note 3.

> in the nature of certiorari or mandamus if the originating notice is filed with the Court no later than 30 days after the date of the proceeding, decision, order, directive, declaration or ruling or reasons in respect of it, whichever is later.

Subsection (1) appears to restrict access to court review for all decisions, whereas subsection (2) allows judicial review within 30 days of the decision. The Alberta legislation, therefore, does not contain a true privative clause, but the wording of the *Code* carries a privative "gloss".[15] As stated by Justice Sopinka of the Supreme Court of Canada in reference to a similar clause, "[a]lthough their preclusive effect may be less obvious than that of the true privative clause, other forms of clauses purporting to restrict review may also have privative effect."[16] Thus, the labour legislation in Alberta indicates that a high degree of deference should be given to arbitrators or arbitration boards.[17]

Saskatchewan's legislation does not contain a clear privative clause. When referring to the decisions of an arbitrator or arbitration board, the legislation states:

> 25 (1.2) The finding of an arbitrator or an arbitration board is:
> (a) final and conclusive;
> (b) binding on the parties with respect to all matters within the legislative jurisdiction of the Government of Saskatchewan; and
> (c) enforceable in the same manner as an order of the board made pursuant to this Act.

[15] *Foothills Provincial General Hospital v. United Nurses of Alberta, Local 115,* [1998] A.J. No. 1261 (Q.B.), online: QL (AJ).

[16] *United Brotherhood of Carpenters and Joiners of America, Local 579* v. *Bradco Construction Ltd.,* [1993] 2 S.C.R. 316 (S.C.C.) at 366.

[17] It is worth nothing that the legislation is similar with regard to federally-regulated employees; see *Canada Labour Code,* R.S. 1985, c. L-2, ss. 57 – 67.

Saskatchewan's legislation is clear that the arbitrator's decision is final, but it does not purport to oust the jurisdiction of the courts. Similar to Alberta, the parties in Saskatchewan are entitled to seek judicial review,[18] but an arbitration decision will receive a high degree of deference from the courts.

Additionally, collective agreements may specify that the parties agree to a binding arbitration with no opportunity for judicial review, although the availability of judicial review is never completely removed.[19] The standard of review takes into consideration the wording of the privative clause in the legislation as well as any privative clause in the collective agreement.

The third factor considered by the court in determining the degree of deference to give an arbitral award is the purpose of the legislation as a whole and the provision in question in particular. If legislation establishes rights and is therefore legislation of entitlement, the degree of deference accorded to the arbitrator is reduced. However, legislation that engages in a delicate balancing between interests of different constituencies is accorded a high level of deference from the courts.[20] Labour relations codes throughout Canada balance the competing interests of unionized employees and their employers. This suggests a high level of deference ought to be accorded to labour arbitrators.

The final consideration of the court is the nature of the question at issue. The court must consider if the issue before them was within the expertise of the arbitration

[18] *Supra* note 9.

[19] *Supra* note 9.

[20] *Pushpanathan, supra* note 11.

board, if it is a question of fact or law and if there is only one correct answer or a variety of interpretations.[21] Therefore, whether the court should accord the arbitral decision a high degree of deference will vary to a certain extent with the nature of the problem before it. In the labour context, this suggests that questions of jurisdiction are to be accorded less deference than questions of fact decided by the arbitrator. Deference will be accorded to labour arbitrators on questions of fact, and when interpreting the collective agreement and its home legislation, the labour relations act.[22] Additionally, greater deference is appropriate for polycentric issues involving complicated and interacting labour interests and considerations.[23] On questions of jurisdiction[24] or where the arbitrator is interpreting legislation where the arbitrators do not necessarily have special expertise, such as human rights statutes or the *Criminal Code*, the court need not show deference. Thus, the nature of the case before the court will influence the level of deference.[25]

Consideration of the above four factors leads results in a balance that is heavily weighted in favour of high judicial deference to labour arbitration decisions. The expertise of the board or arbitrator is great, the relevant statutes contain language of a privative nature, and the legislative purpose of labour relations acts is to delicately balance rights between different constituencies. It is possible in situations of

---

[21] *Ibid.*

[22] See, e.g., *McLeod* v. *Egan,* [1975] 1 S.C.R. 517; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union* v. *MacDonalds Consolidated,* (1985), 43 Sask. R. 260 (C.A.): *A.T.A.* v. *Edmonton School District No. 7,* (1992) 5 Alta. L. R. (3d) 97 (C.A.).

[23] *Pushpanathan, supra* note 11.

[24] *Canadian Broadcasting Corp.* v. *Canada (Labour Relations Board),* [1995] 1 S.C.R. 157, at 187 (hereinafter "*CBC*").

[25] *CBC, supra* note 24.

jurisdictional questions or questions of general law that the standard of review used by the courts will be more intrusive, but courts have exercised caution in classifying questions as jurisdictional and then intruding on an arbitral decision. Addressing the deference that should be accorded a labour relations board (which is analogous), the Alberta Court of Appeal concluded:[26]

> It has often been very properly recognized that labour relations boards exemplify a highly specialized type of administrative tribunal. Their members are experts in administrating comprehensive labour statutes, which regulate the difficult and often volatile field of labour relations. Through their constant work in this sensitive area, labour boards develop the special experience, skill and understanding needed to resolve the complex problems of labour relations. There were very sound reasons for the establishment of labour boards and the protection of their decisions by broad privative clauses. Parliament and provincial legislatures have clearly indicated that decisions of these boards on matters within their jurisdiction should be final and binding. The courts could all too easily usurp the role of these boards by characterizing the empowering legislation according them authority as jurisdiction limiting provisions which would require their decisions to be correct in the opinion of the court. Quite simply, courts should exercise deferential caution in their assessment of the jurisdiction of labour boards and be slow to find an absence or excess of jurisdiction.[27]

A highly deferential court attitude toward an arbitral decision places the court at the end of the intrusion continuum labelled "patently unreasonable." At this end of the spectrum, a court will only interfere with the decision of the arbitrator or board if the decision was patently unreasonable.[28] Decisions have been held to be patently unreasonable where arbitrators act in bad faith,[29] base their decisions on extraneous or

---

[26] *Alberta* v. *Alberta (Labour Relations Board),* [2002] A.J. No. 4 (C.A.), online: QL (AJ) at para. 55.

[27] *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514* v. *Prince Rupert Grain*, [1996] 2 S.C.R. 432 at 446-47.

[28] *Canadian Union of Public Employees, Local 963* v. *New Brunswick Liquor Corporation* [1979] 2 S.C.R. 227 (NB).

[29] *Re Sheehan and Criminal Injuries Compensation Board* (1973) 37 DLR (3d) 336 (Ont. Div. Ct.); rev'd. (1975) 52 DLR (3d) 728 (Ont. CA).

irrelevant matters,[30] use legislation for an improper purpose,[31] or fail to take relevant matters into account.[32] Essentially, the courts will require an irrational decision before they will intervene on this standard.[33] For instance, complicated or vague wording in collective agreements can result in multiple possible interpretations. As long as the interpretation made by the arbitrator or arbitration board is reasonable the court will not intervene, even if the court believes the arbitral decision was wrong and that a different interpretation would have been preferable. Judicial review of labour arbitrations will most often fall into the "patently unreasonable" standard of review.

The standard of patent unreasonableness is clearly illustrated by the results of judicial reviews of two arbitration decisions that interpreted the exact same clause in an Alberta provincial health care agreement.[34] The disputed clause dealt with payment during absence for workplace injury – the union argued that employees were entitled to gross pay, the employer argued net pay. In the first arbitration decision, the arbitrator interpreted the clause to mean gross pay.[35] The decision was judicially challenged and the court determined that the arbitrator's decision was not patently unreasonable – therefore the decision stood.[36] Two years later, the exact same issue was placed before a different arbitrator who was made aware of the previous arbitration and the

---

[30] *Shell Canada Products Ltd.* v. *Vancouver (City)* [1994] 1 S.C.R. 231 (BC).

[31] *Roncarelli* v. *Duplessis* [1959] S.C.R. 122 (Qué).

[32] *Baker* v. *Canada (Minister of Citizenship and Immigration),* [1999] 1 S.C.R. 982.

[33] *Canadian Pacific Railway Co.* v. *Picher,* [1998] A.J. No. 326 (Q.B.), online: QL (AJ).

[34] From a legal perspective, each hospital was a separate signatory to the contract, avoiding *res judicata*.

[35] *Capital Care Group and United Nurses of Alberta, Local 118* (1993) 33 C.L.A.S. 572 (Ponak).

[36] *Capital Care Group v. United Nurses of Alberta, Local 118* [1994] Action No. 9303 23427 (Q.B.)

court's decision. The second arbitrator came to an opposite conclusion – he interpreted the contract to mean net pay.[37] Again the case was submitted to judicial review and again the court upheld the decision on the grounds that it too was not patently unreasonable.[38] Thus, two arbitrators may come to opposite conclusions on the basis of similar facts and collective agreements, and yet neither decision may be considered patently unreasonable. What is critical is that the decision be plausible. There may be two or three or more possible interpretations of a collective agreement; as long as the interpretation adopted by the arbitrator is supported by facts and is not unreasonable, it is of no consequence that alternative interpretations exist, even interpretations the court might consider to be better.

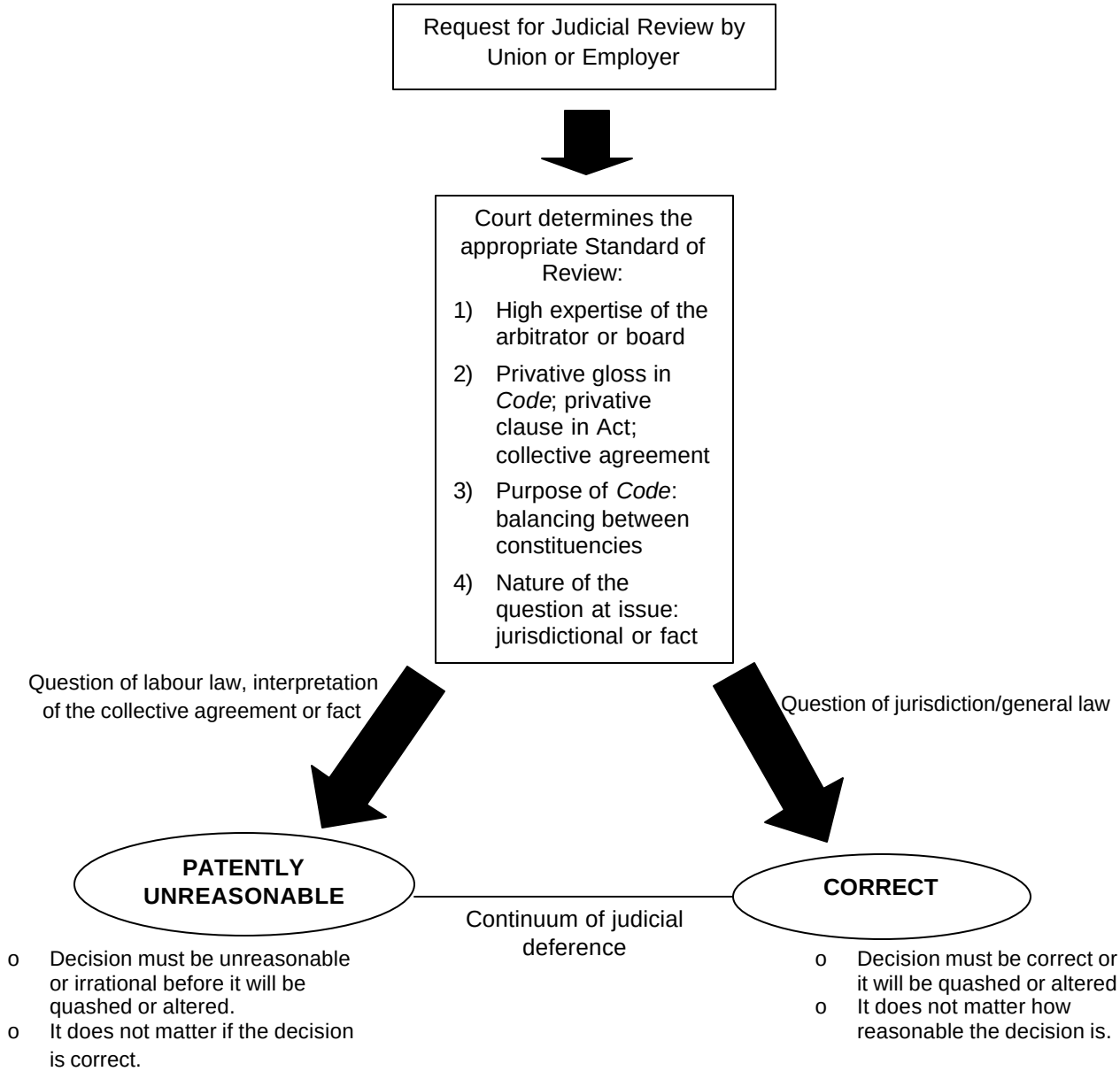
The standard of "correctness" represents the opposite end of the continuum with respect to judicial analysis. Here, the court will examine the substance of the decision and will set it aside if, in the court's view, the decision is not correct. Unlike the patently unreasonable standard, the arbitrator's decision must be more than plausible or logical, it must be the correct interpretation in the opinion of the court. This is a much less deferential standard of review. In labour relations, only where the arbitrator has made an error of jurisdiction, or has erred in a question of law, is the matter reviewed on a

[37] *Royal Alexandra Hospital and United Nurses of Alberta, Local 33* (1995) 45 L.A.C. (4th) 401 (Jones).

[38] *Royal Alexandra Hospital v. United Nurses of Alberta, Local 33* [1995] Action No. 9503 – 03632 (Q.B.)

standard of correctness.[39] The structure of the judicial standard of review in labour arbitrations is summarized in the diagram below.[40]

Diagram: A Summary of the Judicial Review Process for Labour Arbitrations



[39] *CBC, supra* note 24.

[40] The authors wish to thank Ivan Bernardo for his assistance with an earlier version of the diagram.

Once a court determines the appropriate standard of review, the discretion for remedy is broad. As specified in rule 753.04 of Alberta's Rules of Court,[41] in a judicial review the court may make a declaration as to the arbitral decision's invalidity, and the court may set aside the decision.[42] The court may choose to remit the decision to the original arbitrator for reconsideration and re-determination if the decision was set aside.[43] In short, the court has the ultimate power to quash an arbitration decision if it is patently unreasonable or incorrect.

III. Analysis of Alberta Judicial Reviews

An analysis of labour arbitration judicial reviews was conducted for a five-year period from 1997 to 2001 in Alberta. Cases were searched in a Quicklaw electronic database using the search terms "judicial" and "review" and "arbitration" and "labour" for the time period of interest.[44] As a further check, an additional search of Quicklaw databases was conducted using the search term "arbitrator" only. The searches yielded fifty-four cases, which were further reviewed. Only those cases dealing directly with grievance arbitration in a labour dispute were retained. Four of the arbitration cases were Alberta cases that fell under federal jurisdiction, the remainder were provincial. The federal cases were retained because they took place in Alberta and were reviewed by an Alberta court. Decisions of the Alberta Labour Relations Board that touched on

[41] *Supra* note 3.

[42] r. 753.05.

[43] r. 753.06.

[44] The database of Alberta Judgments was used within the electronic database Quicklaw. This database should contain all Alberta court decisions in the time period reviewed; however, it is possible that the database is not complete. We contacted several labour lawyers to determine if there were any additional cases we had missed; none were found. Cases not reported in the Quicklaw database or that did not contain any of the search terms were not be included in the analyses.

arbitration matters (such as duty of fair representation complaints) were excluded; rather the focus was on the decisions of grievance arbitrators.

The search criteria produced a total of 47 judicial reviews of arbitration cases in Alberta between 1997 and 2001. Three of the 47 court decisions, however, involved the same arbitration case decided at two levels of court (Court of Queen's Bench and Court of Appeal). For these three cases, the highest court decision only was included and the lower court case was excluded to avoid double counting. This left a total of 44 arbitration cases subject to judicial review that were used in the analysis. These cases are listed in Appendix I, which also provides details of the case and the outcome.

The 44 arbitration cases subject to judicial review represented close to 7 percent of the approximately 650 Alberta labour arbitration awards in the relevant time period[45]. Further analysis showed that unions and employers sought judicial review almost an equal number of times: 22 judicial reviews were undertaken at the union's initiative and employers initiated 20. In one case the union and employer both asked for judicial review of the same arbitration award,[46] and in the remaining case the judicial review was launched by a third party affected by the outcome of the arbitration.[47] The equal

[45] Alberta Human Resources & Employment reports that 626 grievance arbitration awards were filed with the department between 1996 and 2000, which would be the approximate time frame to yield judicial reviews between 1997 and 2001. Until 1999 the totals included all arbitrations under federal as well as provincial jurisdiction. Our estimate of 650 assumes some federal awards in 2000 that were no longer part of Alberta files. The authors gratefully thank Bernadette Wohlmuth for her assistance in obtaining this data (Electronic Communications from B. Wohlmuth, 15 May 2002).

[46] Canada Safeway Ltd. v. United Food and Commercial Workers, Local 401, [1997] A.J. No. 52 (Q.B.), online: QL (AJ).

[47] *International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 720 v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers,* [2000] A.J. No. 1000 (Q.B.); [2000] A.J. No. 1246 (Q.B.), online: QL (AJ).

number of union and employer applications is in sharp contrast to U.S. data that showed employers initiate six times more court challenges than unions (LeRoy and Feuille, 2002).

Although the total number of court cases filed by unions and employers are very similar, we cannot tell from our current data the relative propensity of the parties to seek judicial review. Only detailed analysis of the outcome of all arbitration decisions in the time period under review (an analysis which is beyond the scope of this paper) to determine the proportion of cases in which each party was successful would provide the necessary data. If employers were successful in a much higher percentage of grievance arbitration outcomes, then the fact that employers sought judicial review an equal number of times as unions would suggest a lower propensity to challenge decisions. The same would be true of union propensity to seek judicial review.

Table 1 summarizes the outcome of the 44 grievance arbitration judicial reviews.

Table 1: Summary of Judicial Review Outcomes in Alberta, 1997 – 2001

	# AWARDS SUBJECT TO JUDICIAL REVIEW	# AWARDS UPHELD	# AWARDS QUASHED
1997	10	5	5
1998	11	9	2
1999	7	5	2
2000	6	4	2
2001	10	6	4
TOTAL	44	29	15

The data show that arbitration decisions were upheld by courts 65.9 percent of the time and quashed 34.1 percent of the time, a ratio of 2 to 1 in favour of upholding the arbitration award. More importantly, the 15 awards that were overturned represent only 2.5 percent of the 650 arbitration awards in the five year time period. In other words, 97.5 percent of all Alberta arbitration decisions were indeed final and binding. As well it can be noted that there is considerable variation within the five year period with respect to the number of awards challenged in any given year and the proportion of awards quashed. There are no obvious time trends to suggest that more or less awards are being challenged or quashed as time passes.

Table 2 provides a breakdown of the relative success of unions and employers in overturning arbitration decisions. Unions have been much more likely than employers to succeed in quashing arbitration awards in Alberta. Employers overturned awards only 20 percent of the time, while unions succeeded in overturning awards 41 percent of the time, a substantial difference.

TABLE 2 Alberta Judicial Review Outcomes By Initiating Party, 1997 – 2001

Party Initiating Judicial Review	Number of Cases	Arbitration Award Upheld	Arbitration Award Quashed
Employer	20	16	4
Union	22	13	9

A further analysis was conducted to examine the relationship between the standard of review applied by the court and the end result. The party requesting the

judicial review usually suggested that the standard of correctness was appropriate. The party defending the arbitral decision, not surprisingly, usually argued for a patently unreasonable standard. Table 3 sets out the results. Because in some cases the court examined more than one issue, and applied different standards of review for different issues, the total in Table 3 exceeds 44, even though two cases were excluded for failing to specify what standard of review was used.

Table 3: Alberta Judicial Review Outcomes By Standard of Review, 1997 – 2001

	STANDARD OF CORRECTNESS	STANDARD OF PATENTLY UNREASONABLE
ARBITRATION DECISION UPHELD	4	28
ARBITRATION DECISION QUASHED	5	9

As can be seen in Table 3, the patently unreasonable standard was applied four times more often by the courts (37 to 9) than the standard of correctness. In the small number of cases where the court chose to adopt the correctness standard the likelihood of the award being overturned rose dramatically. Under a correctness standard, more than half the arbitration cases were quashed. By comparison, when a patently unreasonable standard is used, the arbitration decisions were overturned only 24 percent of the time. These findings reinforce the view that the patently unreasonable standard of review accords a great deal of judicial deference to the arbitral decision-

making process whereas the correctness standard provides little deference. If the party applying for the judicial review can convince the court that the standard to be applied is the correctness standard, the chances of the decision being overturned are more than doubled.

In the majority of cases where the arbitral decision was quashed, the court remitted the matter back to the same arbitrator or panel with specific instructions as to how to proceed. For example, in one case the arbitration board used an incorrect test for discrimination in its analysis of the facts so the Court laid out the correct test before remitting the matter back to the board for reconsideration.[48] In another case, the arbitrator reinstated an employee without compensation but did not discuss what would have been appropriate discipline. After determining that the arbitration board had therefore made a patently unreasonable decision, the court referred the matter back to the arbitration board to determine the entitlement if any of the grievor to lost wages and benefits.[49] In four instances where the award was quashed, the case was remitted to a different panel or arbitrator and in several cases the court failed to specify whether the matter was remitted to arbitration.

All nine Court of Appeal decisions were analyzed in further detail.[50] Four of the appeals were launched by the union and five by the employer. Table 4 shows that in a high proportion of cases, the Court of Appeal reversed the decision of the lower court

[48] *United Nurses of Alberta, Local 33 v. Capital Health Authority,* [1999] A.J. No. 1556 (Q.B.); [2001] A.J. No. 865 (C.A.), online: QL (AJ).

[49] *Civic Service Union 52 v. Edmonton (City),* [1997] A.J. No. 1200 (Q.B.), online: QL (AJ).

[50] Some Court of Appeal decisions are included in Appendix I without the original chambers decision, because the original decision occurred before 1997; in total 9 decisions from the Court of Appeal contained the necessary information to be used in the following analysis.

(the Court of Queen's Bench). In only three of the nine cases was the decision of the Court of Queen's Bench left intact; on two occasions the lower court and the Court of Appeal both upheld the arbitration decision, and in one case both courts quashed the arbitration decision. In the remaining six cases, the Court of Appeal disagreed with the decision reached by the Queen's Bench judge. This resulted in three arbitration cases quashed by the Court of Queen's Bench being restored by the Court of Appeal and three arbitration cases upheld by the lower court judge being quashed by the Court of Appeal.

TABLE 4: Outcome of Cases in Alberta Court of Appeal, 1997 - 2001

Number of Cases Appealed to Court of Appeal	Number of Cases in which Court of Appeal Upheld Court of Queen's Bench	Number of Cases in which Court of Appeal Reversed Court of Queen's Bench
9	3	6

Our reading of the Court of Appeal decisions suggested that the most common reason the Court of Appeal overturned lower court decisions was that the higher court simply disagreed with the decision of the lower court.[51] For example, in one case the Court of Appeal noted that the Chambers Judge had "gone awry" in deeming certain evidence to be beyond the scope of the arbitrator's inquiry.[52] The conduct of the employee in question was ongoing and could not be confined to one day as stated by

[51] For example, see *Canada Safeway Ltd. v. United Food and Commercial Workers Local 401,* [1998] A.J. No. 1326 (C.A.), online: QL (AJ); *United Food and Commercial Workers Union Local 280 P v. Pride of Alberta Meat Processors Co. (c.o.b. Gainers),* [1998] A.J. No. 466 (C.A.), online: QL (AJ).

[52] *Canada Safeway Ltd. v. Unified Food and Commercial Workers, Local 401,* [1997] A.J. No. 52 (Q.B.), online: QL (AJ) at para 2.

the Chambers Judge. On two occasions the Court of Appeal found that the wrong standard had been used. In one of the cases the Queen's Bench judge had quashed the arbitration decision on the basis of correctness. The Court of Appeal concluded that the proper standard to apply was that of patently unreasonable, found that the arbitration decision was not patently unreasonable, and restored the arbitration award.[53] Similarly, in another case the lower court upheld the decision as not patently unreasonable, but the Court of Appeal quashed the arbitral decision using the standard of correctness.[54]

Whatever the basis for the Court of Appeal's decisions, the important finding is that the higher court more frequently overturned than upheld the decisions of the Court of Queen's Bench. Notwithstanding the high legal cost of going to court and delays in final grievance resolution caused by pursuing a higher court appeal, the success rate of these appeals serves as an incentive to seek judicial review beyond the Court of Queen's Bench. In only one case did any party attempt to appeal the decision of the Alberta Court of Appeal to the Supreme Court of Canada, but the Supreme Court declined to consider the case (i.e. leave to appeal was denied). In other provinces, such as Saskatchewan, arbitration decisions have been successfully pursued to the Supreme Court of Canada.

[53] *Calgary (City)* v. *Calgary Police Assn.,* [1997] A.J. No. 246 (C.A.), online: QL (AJ).

[54] *United Nurses of Alberta, Local 33 v. Capital Health Authority,* [1999] A.J. No. 1556 (Q.B.); [2001] A.J. No. 865 (C.A.), online: QL (AJ).

IV. Comparison With Saskatchewan

In an attempt to place the Alberta findings in context, a comparison was conducted with Saskatchewan. Using the database "SJ" (i.e., "Saskatchewan Judgments") within QuickLaw and the same search parameters as those described earlier for Alberta, 23 judicial reviews of labour arbitration cases were found for the 1997 – 2001 period. Of the twenty-three judicial reviews of labour arbitrations, eight represented appeals to a higher court, leaving 15 cases for analysis (i.e., only the higher court decision was used). Because there is no requirement that labour arbitrations be filed with the Saskatchewan labour department, no information was available as to the approximate number of arbitrations occurring within the five-year period[55], making it impossible to determine the proportion of arbitration cases subject to judicial review. The Saskatchewan cases are set out in Appendix II.

Table 5 summarizes the outcome of the Saskatchewan judicial reviews. The arbitral decision was upheld in 11.5 cases (76.7%) and quashed in 3.5 cases (23.3%). The ½ case represents the case where the remedy, but not the actual decision, was quashed. Comparing the Saskatchewan and Alberta data indicates that the percentage of arbitral decisions upheld was higher in Saskatchewan than in Alberta (77% versus 66%).

[55] Interview with D. Forseth of Labour Relations and Mediation Division of the Saskatchewan Department of Labour (14 May 2002).

Table 5: Summary of Judicial Review Outcomes in Saskatchewan, 1997 –2001

	# AWARDS SUBJECT TO JUDICIAL REVIEW	# AWARDS UPHELD	# AWARDS QUASHED
1997	1	0	1
1998	6	3.5	2.5
1999	2	2	0
2000	2	2	0
2001	4	4	0
TOTAL	15	11.5	3.5

Further analysis was undertaken to determine which party was more likely to initiate the judicial challenge and whether there were substantial differences in success, as had been the case in Alberta. The findings are presented in Table 6. They show that consistent with Alberta patterns, unions and employers in Saskatchewan sought judicial review of arbitration decisions approximately an equal amount of times. Unlike Alberta, where the union was much more likely to succeed in having awards quashed, in Saskatchewan it was employers who encountered more success. More than one-third of arbitration decisions challenged by employers were quashed compared to just over 10 percent of the awards challenged by unions.

TABLE 6: Saskatchewan Judicial Review Outcomes By Initiating Party, 1997 - 2001

Party Initiating Judicial Review	Number of Cases	Arbitration Award Upheld	Arbitration Award Quashed
Employer	7	4.5	2.5
Union	8	7	1

We then examined the standard of review that was applied by the court. As illustrated in Table 7, Saskatchewan's judiciary most frequently employed the patently unreasonable standard. Indeed, no judicial review specifically indicated that a standard of correctness was used. However, two decisions were made without specifying the standard of review. As both of these decisions involved questions of jurisdiction, the decisions were likely judged on a correctness standard. Though the small number of "correctness" cases dictates caution, applying the patently unreasonable standard resulted in a much lower likelihood of quashing the arbitration award, a finding that was true in the Alberta cases.

TABLE 7: Saskatchewan Judicial Review Outcomes By Standard of Review, 1997 - 2001

	STANDARD OF CORRECTNESS	STANDARD OF PATENTLY UNREASONABLE
DECISION UPHELD	1	10
DECISION QUASHED	1	3

Proportionally far more cases were appealed to a higher court in Saskatchewan than in Alberta -- nine cases out of 44 in Alberta versus ten out of 15 in Saskatchewan, one of which was subsequently appealed to the Supreme Court of Canada. Thus, in Saskatchewan, once an arbitration case is judicially challenged, there is a high probability that it will be challenged at more than one level of court, greatly extending

the time period for the final resolution of the dispute. The results of the Court of Appeal decisions are presented in Table 8.

TABLE 8: Outcome of Cases in Saskatchewan Court of Appeal, 1997 – 2001

Number of Cases Appealed to the Court of Appeal	Number of Cases in Which Court of Appeal Upheld Court of Queen's Bench	Number of Cases in Which Court of Appeal Reversed Court of Queen's Bench
10	6	4

In a slight majority of cases, the Saskatchewan Court of Appeal agreed with the conclusions of the lower court, in contrast to Alberta where the Court of Appeal reversed the Court of Queen's Bench in two-thirds of the cases. In the majority of cases appealed to the Court of Appeal, the chambers judge and the Court of Appeal both upheld the arbitration decision (five cases out of eight, although in one case both courts agreed that the decision should be quashed with respect to remedy). In two instances the arbitral decision was quashed by the chambers judge and then restored by the Court of Appeal, and in one case both the chambers judge and the Court of Appeal quashed the arbitral decision. There were no examples of a chambers judge upholding an arbitration decision that was later quashed by the Court of Appeal. In the one case appealed to the Supreme Court of Canada,[56] the Court of Queen's Bench judge upheld the arbitration decision, the Court of Appeal quashed it, and the Supreme Court ultimately restored the arbitration decision, agreeing with the Court of Queen's Bench.

[56] *Canadian Union of Public Employees* v. *Prince Albert (City)*, [2000] S.J. No. 50 (CA) online: QL (SJ); [2000] S.C.C.A. No. 138 (SCC) online: QL (SJ).

V. Discussion

Under Canadian law, unions and management retain the right to pursue judicial review of arbitration decisions with which they are not satisfied. Our study showed that the standard of patent unreasonableness that is applied to such challenges means that the great majority of these judicial challenges were unsuccessful – the decision of the arbitrator remained intact. At the same time, however, the findings revealed that arbitration awards were overturned often enough – one-third of the time in Alberta and one-quarter of the time in Saskatchewan – to provide sufficient incentive to an unhappy party to seek judicial review. Even though taken as a whole the total number of overturned arbitration awards is very small, under three percent in Alberta, it is clear that arbitration is not final and binding. Judicial challenge occurs with some frequency. Seven percent of all arbitration awards in Alberta were judicially reviewed, and often at more than one level of court.

The results of our analysis also showed that while the courts accord decisions made by expert labour arbitrators a high degree of deference, judicial deference is affected by the standard used in judicial review. The standard of correctness, whereby the court will quash a decision it considers incorrect, is reserved for those cases questioning the arbitrator's jurisdiction or ruling on a question of general law. Few, if any, cases in Saskatchewan were reviewed on a standard of correctness. In Alberta, where the standard of correctness is used more frequently, arbitration decisions are more often quashed. Thus, the standard of review matters greatly – there is a much greater chance of arbitration awards remaining intact when the more deferential standard of patent unreasonableness is applied by the courts.

The findings in this study raise a number of questions that can be usefully explored through further research. The current paper is based on only two Canadian provinces, Alberta and Saskatchewan, and this fact alone indicates that the results must be viewed with caution. The analysis should be extended to other provinces to determine if the findings in this study are consistent with national patterns. Indeed, our paper revealed some important differences between Alberta and Saskatchewan that demand explanation, such as the proportion of cases taken to the provincial court of appeal. Labour legislation differs from province to province, particularly with respect to wording designed to protect the finality of grievance arbitration and these differences may well affect the frequency of judicial challenges and the outcome of such reviews. The composition of the judiciary and the cultural and legal traditions of a province also may have an impact on how courts respond to judicial challenges of arbitration awards. With a larger, more national sample variables associated with the extent and outcome of judicial review could be explored in more depth.

Several specific questions arose from this study that should be of particular interest. First, in Alberta the percentage of arbitration awards that was judicially challenged was seven percent. Because Saskatchewan arbitration decisions are not routinely filed with the labour department, it was not possible to compare the proportion of judicial challenges between the two provinces to determine whether a seven percent challenge rate might be considered high or low. The frequency of judicial challenges as a proportion of arbitration decisions is a variable of interest that should be ascertained across different provinces along with explanations for variation that may be found.

Second, our finding showed that employers and unions sought judicial review with approximately the same degree of frequency. It was beyond the scope of the paper, however, to investigate if there were any differences in the relative propensity of labour and management to seek judicial review. Such an analysis can only be undertaken by examining the results of arbitration awards to establish which side "loses" and compare this number against the number of judicial reviews sought by the losing party. This type of analysis should be informed by the question of why a particular party seeks judicial review in the first place, a subject on which we very little research exists.[57]

Third, we found large differences, especially in Alberta, in the relative success rate of unions and employers in the outcome of judicial reviews. In Alberta, unions succeeded in having awards quashed more than 40 percent of the time; in Saskatchewan, unions succeeded only 13 percent of the time. Employers by contrast succeeded in overturning arbitration awards 20 percent of the time in Alberta but more than one-third of the time in Saskatchewan. The extent to which courts of appeal were willing to agree or disagree with the conclusions of the lower courts also differed markedly in the two provinces. Are these differences, and the inter-provincial variation, idiosyncratic or do sound theoretical reasons exist to explain these outcomes. This is another fruitful area for further research.

[57] See, for example, R. Garden (2002) "Why Employers Seek Judicial Review of Arbitration Board Awards" and P. Marsden (2002) "Judicial Review: A Union Perspective", both in A. Ponak (ed.) Proceedings of 20th Annual University of Calgary Labour Arbitration and Policy Conference (Calgary: Industrial Relations Research Group).

VI. Conclusion

Our study is the first that we are aware of that systematically examined the extent and outcome of judicial review of grievance arbitration decision from both legal and industrial relations perspectives. Carried out in two provinces over a five-year period, our analysis showed that judicial review of arbitration awards occurs with some frequency. In most cases the arbitration award is upheld by courts, which generally show deference to the arbitrator's expertise. The reference of grievances to courts has the capacity to further slow an arbitration system already criticized for its excessive delay. Judicial review removes the final decision from the arbitrator (or board) selected by the parties; however, the courts have established some of the most important precedents in grievance arbitration. For all these reasons, the research undertaken in this study should be extended to a national sample with attention given to the questions raised in this paper.

BIBLIOGRAPHY

LEGISLATION

Alberta, *Rules of Court.*

Canada Labour Code, R.S. 1985, c. L-2.

Labour Relations Code, R.S.A. 2000 c. L-1.

Saskatchewan, *Rules of Court.*

Trade Union Act, R.S.S. 1978 c. T-17.

JURISPRUDENCE

Alberta Teachers' Assn. v. Moreau, [1997] A.J. No. 540 (Q.B.); [1999] A.J. No. 435 (C.A.), online: QL (AJ).

Alberta Union of Provincial Employees v. Lethbridge Community College, [2000] A.J. No. 1583 (Q.B.), online: QL (AJ).

Alberta Union of Provincial Employees, Local 103 v. Versa Services Ltd., [1999] A.J. No. 102 (Q.B.), online: QL (AJ).

Alberta v. Alberta Union of Provincial Employees, [1997] A.J. No. 233 (Q.B.), online: QL (AJ).

Alberta v. Alberta Union of Provincial Employees, [1998] A.J. No. 1026 (Q.B.), online: QL (AJ).

Alberta v. Alberta Union of Provincial Employees, [1998] A.J. No. 83 (Q.B.), online: QL (AJ).

Alberta v. Alberta Union of Provincial Employees, [1998] A.J. No. 1045 (Q.B.), online: QL (AJ).

Assn. Of the Academic Staff of the U of A v. Governors of the U of A, [2001] A.J. No. 406 (Q.B.), online: QL (AJ).

AUPE, Local 58/001 v. Alberta (Mental Health Board), [2001] A.J. No. 1405 (Q.B.), online: QL (AJ).

Baker v. *Canada (Minister of Citizenship and Immigration),* [1999] 1 S.C.R. 982.

Calgary (City) v. Calgary Police Assn., [1997] A.J. No. 246 (C.A.), online: QL (AJ).

Calgary Regional Health Authority v. Health Sciences Assn. of Alberta, [1999] A.J. No. 684 (Q.B.), online: QL (AJ).

Calgary Regional Health Authority v. United Nurses of Alberta, Local No. 115, [2000] A.J. No. 1120 (Q.B.), online: QL (AJ).

Canada (Director of Investigation and Research) v. *Southam Inc.* (1997), 144 D.L.R. (4th) 1 S.C.C.

Canada Post Corp v. Canadian Union of Postal Workers, [2001] A.J. No. 38 (Q.B.), online: QL (AJ).

Canada Safeway Ltd. v. Unified Food and Commercial Workers, Local 401, [1997] A.J. No. 52 (Q.B.), online: QL (AJ).

Canada Safeway Ltd. v. United Food and Commercial Workers Local 401, [1997] A.J. No. 969 (Q.B.), online: QL (AJ).

Canada Safeway Ltd. v. United Food and Commercial Workers Local 401, [1998] A.J. No. 1326 (C.A.), online: QL (AJ).

Canada Safeway Ltd. v. United Food and Commercial Workers, Local 312A, [2001] A.J. No. 1209 (Q.B.), online: QL (AJ).

Canada Safeway Ltd. v. *United Food and Commercial Workers, Locals 312A, 373A and 401,* [2000] A.J. No. 781 (Q.B.), online: QL (AJ).

Canada Safeway Ltd. v. United Food and Commercial Workers, Locals 312A, 373A and 401, [2001] A.J. No. 204 (Q.B.), online: QL (AJ).

Canadian Broadcasting Corp. v. *Canada (Labour Relations Board),* [1995] 1 S.C.R. 157.

Canadian Broadcasting Corp. v. Newspaper Guild, Local 213 (Canadian Media Guild), [1998] A.J. No. 886 (Q.B.), online: QL (AJ).

Canadian Health Care Guild v. Glenrose Rehabilitation Hospital, [2001] A.J. No. 2 (Q.B.), online: QL (AJ).

Canadian Health Care Guild v. Palliser Health Authority, [1999] A.J. No. 169 (Q.B.), online: QL (AJ).

Canadian Pacific Railway Co. v. Picher, [1998] A.J. No. 326 (Q.B.), online: QL (AJ).

Canadian Union of Public Employees v. *Prince Albert (City*), [2000] S.J. No. 50 (CA) online: QL (SJ); [2000] S.C.C.A. No. 138 (SCC) online: QL (SJ).

Canadian Union of Public Employees, Local 3421 v. Calgary (City), [2000] A.J. No. 1312 (Q.B.), online: QL (AJ).

Canadian Union of Public Employees, Local 59 v. *Saskatoon (City),* [2000] S.J. No. 736 (QB), online: QL (SJ); [2001] S.J. No. 327 (CA), online: QL (SJ).

Canadian Union of Public Employees, Local 963 v. *New Brunswick Liquor Corporation* [1979] 2 S.C.R. 227 (NB).

Caritas Health Group v. United Nurses of Alberta, Local 79, [2001] A.J. No. 49 (Q.B.), online: QL (AJ).

CFRN-TV, a division of Baton Broadcasting Inc. v. Communications, Energy and Paperworkers Union of Canada CEP-CLC, [1998] A.J. No. 1404 (Q.B.), online: QL (AJ).

Civic Service Union 52 v. Edmonton (City), [1997] A.J. No. 1200 (Q.B.), online: QL (AJ).

Civic Service Union, Local #52 v. Edmonton (City), [1997] A.J. No. 454 (Q.B.), online: QL (AJ).

Crevier v. *Attorney General of Québec* [1981] 2 S.C.R. 220 (Qué).

Foothills Provincial General Hospital v. United Nurses of Alberta, Local 115, [1998] A.J. No. 1261 (Q.B.), online: QL (AJ).

International Alliance of Theatrical Stage Employees Moving Picture Technicians, Artists and Allied Crafts of US and Canada, Local 212 v. Plymouth, [1999] A.J. No. 498 (Q.B.); [2002] A.J. No. 12 (C.A.), online: QL (AJ).

International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 720 v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, [2000] A.J. No. 1000 (Q.B.); [2000] A.J. No. 1246 (Q.B.), online: QL (AJ).

International Assn. of Machinists and Aerospace Workers, Local Lodge 2583 v. Field Aviation Co., [1997] A.J. No. 35 (C.A.), online: QL (AJ).

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local D331 v. Lafarge Canada Inc., [1998] A.J. No. 1038 (Q.B.); [1999] A.J. No. 1453 (C.A.), online: QL (AJ).

International Brotherhood of Electrical Workers, Local 348 v. AGT Ltd. (1997) 199 A.R. 74; A.J. No. 1004 (Q.B.), online: QL (AJ).

International Brotherhood of Electrical Workers, Local 348 v. AGT Ltd., [1998] A.J. No. 1032 (C.A.), online: QL (AJ).

International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. *Prince Rupert Grain*, [1996] 2 S.C.R. 432.

McLeod v. *Egan,* [1975] 1 S.C.R. 517.

Ponak v. Souther [sic] *Alberta Institute of Technology,* [1997] A.J. No. 62 (C.A.), online: QL (AJ).

Pushpanathan v. *Canada (Minister of Citizenship and Immigration),* [1998] 1 S.C.R. 982.

Quality Control Council of Canada v. Canspec Group Inc., [1999] A.J. No. 1056 (Q.B.), online: QL (AJ).

Re Sheehan and Criminal Injuries Compensation Board (1973) 37 DLR (3d) 336 (Ont. Div. Ct.); rev'd. (1975) 52 DLR (3d) 728 (Ont. CA).

Regina Police Assn. Inc. v. *Regina (City) Board of Police Commissioners*, [1998] S.J. No. 5 (CA) online: QL (SJ); [2000] S.C.J. No. 15 (SCC) online: QL (SJ).

Regina Police Assn. v. *Regina (City) Police Commissioners,* [1998] S.J. No. 79 (QB), online: QL (SJ).

Roncarelli v. *Duplessis* [1959] S.C.R. 122 (Qué).

Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. *MacDonalds Consolidated,* (1985), 43 Sask. R. 260 (C.A.).

*Saskatchewan Wheat Poo*l v. *Grain Services Union (International Longshore and Warehouse Union-Canadian Area)*, [1997] S.J. No. 429 (QB), online: QL (SJ); [1998] S.J. No. 154 (CA), online: QL (SJ).

Shell Canada Products Ltd. v. *Vancouver (City)* [1994] 1 S.C.R. 231 (BC).

Sherbrooke Community Centre v*. Service Employees' International Union,* [2002] S.J. No. 161 (QB), online: QL (SJ).

Southam Inc. v. *Graphic Communications International Union, Local 34M*, [2000] A.J. No. 858 (Q.B.), online: QL (AJ).

SPI Marketing Group v. *Saskatchewan Government Employees Union*, [1997] S.J. No. 274 (QB) online: QL (SJ); [1998] S.J. No. 78 (CA), online: QL (SJ).

Sterling Pulp Chemicals (Sask) Ltd. v. *Communications, Energy & Paperworkers Union, Local 609*, [2001] S.J. No. 178 (QB) online: QL (SJ).

United Brotherhood of Carpenters and Joiners of America, Local 579 v. *Bradco Construction Ltd.,* [1993] 2 S.C.R. 316 (S.C.C.).

United Food & Commercial Workers, Local 1400 v. *Westfair Foods Ltd. (Superstore)*, [1998] S.J. No. 822 (QB) online: QL (SJ); [1999] S.J. No. 362 (CA) online: QL (SJ).

United Food and Commercial Workers Union Local 280 P v. Pride of Alberta Meat Processors Co. (c.o.b. Gainers), [1998] A.J. No. 466 (C.A.), online: QL (AJ).

United Food and Commercial Workers Union, Local 401 v. Westfair Foods Ltd., [1998] A.J. No. 395 (Q.B.), online: QL (AJ).

United Food and Commercial Workers, Local 1400 v. *Western Grocers, a division of Westfair Foods Ltd.,*[1998] S.J. No. 531 (QB), online: QL (SJ), [1998] S.J. No. 777 (CA), online: QL (SJ).

United Food and Commercial Workers, Local 1400 v. *Western Grocers*, [1998] S.J. No. 778 (CA), online: QL (SJ).

United Food and Commercial Workers, Local 1400 v. *Westfair Foods Ltd.,* [1999] S.J. No. 604 (QB), online: QL (SJ).

United Nurses of Alberta, Local 160 v. Chinook Regional Health Authority, [2001] A.J. No. 660 (Q.B.), online: QL (AJ).

United Nurses of Alberta, Local 33 v. Capital Health Authority, [1999] A.J. No. 1556 (Q.B.); [2001] A.J. No. 865 (C.A.), online: QL (AJ).

United Nurses of Alberta, Local 37 v. Alberta (Provincial Health Authorities), [1999] A.J. No. 1257 (Q.B.), online: QL (AJ).

United Nurses of Alberta, Local No. 2 v. Red Deer Regional Hospital, [1998] A.J. No. 135 (Q.B.), online: QL (AJ).

University of Alberta Non-Academic Staff Assn. v. University of Alberta, [1997] A.J. No. 803 (Q.B.), online: QL (AJ).

University of Regina v. *Canadian Union of Public Employees, Local 1975*, [1997] S.J. No. 24, online: QL (SJ).

University of Saskatchewan v. *Canadian Union of Public Employees, Local 1975, CUPE* [1997] S.J. No. 24 (QB), online: QL (SJ); [1998] S.J. No. 164 (CA), online: QL (SJ).

University of Saskatchewan v. *Professional Association of Internes and Residents of Saskatchewan*, [2000] S.J. No. 262 (QB), online: QL (SJ).

Voice Construction Ltd. v. Construction & General Workers' Union, Local 92, [2001] A.J. No. 488 (Q.B.), online: QL (AJ).

Weber v. *Ontario Hydro,* [1995] 2 S.C.R. 929.

Westfair Foods Ltd. v. *United Food & Commercial Workers, Local 1400*, [2000] S.J. No. 735 (QB) online: QL (SJ); [2001] S.J. No. 344 (CA), online: QL (SJ).*A.T.A.* v. *Edmonton School District No. 7,* (1992) 5 Alta. L. R. (3d) 97 (C.A.).

REFERENCES

G. W. Adams (1991) "Towards a New Vitality: Reflections on 20 Years of Collective Bargaining Regulation" 23 *Ottawa L. Rev.* 139.

D. Beatty (1980) "Labour is Not a Commodity" in B. Reiter & J. Swan, Eds. *Studies in Contract Law* Toronto: Butterworths, at 324.

D. Carter (2002) "The Arbitrator as Human Rights Adjudicator: Has *Meiorin* Made a Difference" in K. Whitaker, J. Sack, M. Gunderson, and R. Filion (eds.) *Labour Arbitration Yearbook 2001-2002*: Toronto: Lancaster House.

R. J. Charney & T. E. F. Brady (1999) *Judicial Review in Labour Law,* Aurora, Ontario: Canada Law Book Inc.

J. M. Evans, H.N. Janisch, D.J. Mullan and R.C.B. Risk (1995) *Administrative Law: Cases, Text and Materials,* 4th ed, Toronto: Emond Montgomery Publications Limited.

P. Feuille and M. LeRoy (1990) "Grievance Arbitration Appeals in the Federal Courts: Facts and Figures" *Arbitration Journal,* Vol 45.

R. Garden (2002) "Why Employers Seek Judicial Review of Arbitration Board Awards" in A. Ponak (ed.) *Proceedings of the 20th Annual University of Calgary Labour Arbitration and Policy Conference* (Calgary: Industrial relations Research Group).

M. LeRoy and P. Feuille (2001) "Final and Binding, But Appealable to Courts: Empirical Evidence of Judicial; Review of Labor and Employment Arbitration Awards" in J. Grenig and S. Briggs (eds.) *Arbitration 2001: Arbitrating in an Evolving Environment* (Proceedings of the 54th Annual Meeting, National Academy of Arbitrators, Washington: Bureau of National Affairs.

P. Marsden (2002) "Judicial Review: A Union Perspective" in A. Ponak (ed.) *Proceedings of the 20th Annual University of Calgary Labour Arbitration and Policy Conference* (Calgary: Industrial relations Research Group).

A. J. Pirie (2000) *Alternative Dispute Resolution: Skills, Science and the Law.* (Toronto: Irwin.

A. Ponak and C. Olson (1992) "Time Delays in Grievance Arbitration", *Relations industrielles*, Vol. 47, No. 4, pp. 690-708.

APPENDIX I

CHART OF LABOUR GRIEVANCE JUDICIAL REVIEWS IN ALBERTA, 1997 - 2002[58]

Abbreviations:

Arb - Arbitrator/arbitration
Brd - Board
Crt - Court
CA - Court of Appeal
QB - Court of Queen's Bench
Eee - Employee
Eer - Employer
WCB - Worker's Compensation Board

NAME OF CASE	**DATE & CRT**	**SUMMARY OF CASE**	**DECISION OF COURT**
International Assn. of Machinists and Aerospace Workers, Local Lodge 2583 v. Field Aviation Co.	1997 CA	▪ Arb held that Eee had no right to grieve for dismissal under the collective agreement after her seniority had been terminated because the loss of seniority did not automatically lead to loss of employment. ▪ Union appealed the arbitrator's decision.	▪ **Quash** the Arb decision. **Remit** back to Arb to hear the grievance. ▪ Arb's interpretation of the collective agreement was patently unreasonable. ▪ It was unreasonable to interpret the collective agreement so as to deny a specific right to grieve by applying a provision, which might or might not result in dismissal.
Ponak v. Souther [sic] *Alberta Institute of Technology*	1997 CA	▪ Arb held that he had jurisdiction to hear the grievance but after the grievance the Eer again raised the issue of the Arb's jurisdiction at the remedies state. ▪ Chambers judge quashed Arb decision.	▪ **Uphold** Arb decision, **restore** decision. ▪ Allowing the Eer to re-litigate the issues already decided against the Eer is unfair.
Calgary (City) v. Calgary Police Assn.	1997 CA	▪ Police officer was injured in a motor vehicle accident and was awarded supplemental compensation	▪ **Uphold** Arb Brd decision, **restore** decision. ▪ Chambers judge used a standard of correctness instead of patently unreasonable

[58] Note: The chart is current to March 31, 2002.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
		▪ Arb Brd held that the sum received from WCB did not have to be deducted from the supplemental compensation ▪ Eer appealed and chambers judge quashed	▪ Although the decision of the Brd may have been incorrect, it was not patently unreasonable and it ought to be restored. ▪ Application to the Supreme Court was dismissed with costs, without reasons
Alberta v. Alberta Union of Provincial Employees	1997 QB	▪ Issue whether grievor was entitled to severance benefits when his position was transferred to the Federal government ▪ Arb allowed the grievance and found that a successor Eer referred to a provincial Eer only	▪ **Uphold** Arb decision ▪ Arb decision regarding the definition of "successor employer" was not patently unreasonable.
Civic Service Union, Local #52 v. Edmonton (City)	1997 QB	▪ Arb agreed with grievances filed on behalf of union mbrs who had unsuccessfully applied for a position offered by the city ▪ Arb Brd looked at external factors in addition to required qualifications and skills contained in job posting	▪ **Uphold** Arb Brd decision. ▪ Decision was not patently unreasonable ▪ There was ample evidence during the Arb hearing to support the findings of the Brd; therefore curial deference was required to be maintained.
Civic Service Union 52 v. Edmonton (City)	1997 QB	▪ Eee was dismissed after accepting U.S. money as a tax clerk without paying exchange to the customer ▪ Arb Brd concluded that discipline was warranted but termination was too harsh. ▪ Brd declined to award any compensation although 20 months had passed since Eee's termination.	▪ **Quash** Arb Brd decision. ▪ By refusing to grant compensation the Brd failed to make any determination of what was an appropriate penalty for the Eee's misconduct, which was patently unreasonable. ▪ Brd therefore failed to fulfill its mandate. ▪ **Remit** matter to Brd for finding on compensation.
International Brotherhood of Electrical Workers, Local 348 v. AGT Ltd.	1997 QB	▪ Arb Brd allowed Eer's motion for a nonsuit with respect to a grievance, because there was no evidence ▪ Union requested judicial review.	▪ **Uphold** Arb Brd decision. ▪ Arb Brd correctly applied the "no evidence" test.
Alberta Teachers' Assn. v. Moreau	1997 QB	▪ See 1999 CA decision	▪ **Uphold** Arb Brd decision ▪ Not patently unreasonable.
Canada Safeway Ltd. v. United Food and Commercial Workers Local 401	1997 QB	▪ Eee grieved his dismissal, based on allegations that he consumed products of the Eer without paying for them. ▪ Arb ordered a 3-day suspension in substitution for termination. ▪ Eer requested a judicial review.	▪ **Quash** Arb decision. ▪ It was patently unreasonable for Arb to uphold the grievance because there was a finding of taking of the items without payment. ▪ **Remit** matter to Arb.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Canada Safeway Ltd. v. Unified Food and Commercial Workers, Local 401	1997 QB	▪ Two applications for judicial review of an award of Arb. ▪ Eee was convicted of sexually assaulting a co-worker, resulting in his termination ▪ Arb held that Eer was justified in disciplining Eee but ordered choice of reinstatement or 3 months severance in lieu ▪ Eer sought judicial review because the Arb used post-termination evidence ▪ Union sought judicial review because Arb declined to exercise jurisdiction by allowing Eer to chose whether to reinstate	▪ **Quash** Arb decision ▪ Decision was patently unreasonable. ▪ Arb erred by considering post-termination evidence in determining whether dismissal warranted. ▪ Arb also declined to exercise his jurisdiction; giving Eer the choice of reinstatement was a delegation of the Arb's authority to Eer. ▪ **Remit** matter to the Arb for reconsideration of reinstatement.
University of Alberta Non-Academic Staff Assn. v. University of Alberta	1997 QB	▪ Eee was laid off during restructuring, but was pregnant at the time ▪ Collective agreement contained no restrictions concerning abolishing positions at the University ▪ When the restructuring was not effective, the pharmacy advertised for a new Eee. ▪ Arb Brd concluded that the layoff was done in accordance with the collective agreement and the administrator acted in good faith. ▪ Union sought judicial review.	▪ **Quash** Arb Brd decision. ▪ Standard of correctness is applicable because the Brd was applying and interpreting a question of general law in determining that the pregnancy was not motivation for the layoff. ▪ Because the Eer's intention was not a necessary element for discrimination, the Brd committed a clear error of law. ▪ **Remit** matter for reconsideration
Canada Safeway Ltd. v. United Food and Commercial Workers Local 401	1998 CA	▪ Eee lied to Eer about his state of incapacity, as evidenced by video evidence ▪ Arb refused to accept the medical evidence that Eee was not capable of physical work in the face of the video ▪ Chambers judge found Arb was patently unreasonable and quashed his decision.	▪ **Uphold** Arb decision ▪ Reinstated decision that was quashed by chambers judge; there was no jurisdictional error and no patently unreasonable error of law.
International Brotherhood of Electrical Workers, Local 348 v. AGT Ltd.	1998 CA	▪ Eer excluded laid-off Eees from benefits that would otherwise have been available during the lay-off period ▪ Arb found Eer violated collective agreement, but did not complete its job by directing an appropriate remedy for the breach	▪ **Uphold** Arb decision, but **remit** back to Arb for determining quantum. ▪ Arb's decision was not patently unreasonable; it was just incomplete.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Foothills Provincial General Hospital v. United Nurses of Alberta, Local 115	1998 CA	▪ Eer made extensive lay-offs with more than 14 days notice, which was required by the collective agreement ▪ Arb Brd held that the literal interpretation was that exactly 14 days notice was required, therefore Eer was in breach of agreement ▪ QB Judge upheld the Arb decision	▪ **Quash** Arb Brd decision. ▪ It was patently unreasonable for the Brd state that there was one literal translation when the Brd had already stated that there were two possible interpretations. ▪ The Brd also looked at irrelevant factors and failed to consider the intention of the parties or the practical consequences of their decision. ▪ Application for leave to appeal to the Supreme Court was dismissed without reasons.
Alberta v. Alberta Union of Provincial Employees	1998 CA	▪ Severance pay was not available for Eees where Eer arranged continuing employment with a successor Eer ▪ Arb held a successor Eer was one within the provincial public sector and ordered severance pay to former Eees ▪ Original application for judicial review was dismissed by Chambers Judge ▪ Crown appealed	▪ **Uphold** Arb decision ▪ Arb was not unreasonable in determining that the words "successor employer" had a unique meaning in the field of labour relations and the parties were familiar with that meaning
United Food and Commercial Workers Union Local 280 P v. Pride of Alberta Meat Processors Co. (c.o.b. Gainers)	1998 CA	▪ Eer was willing to refund overpayments for life insurance premiums improperly deducted but only from the date when the union discovered the error ▪ Arb Brd refused to order recovery beyond the date of discovery because the Brd found the grievance was stale ▪ QB upheld Arb decision	▪ **Quash** Arb Brd decision. ▪ Even if it was not patently unreasonable for the Board to conclude that the union had knowledge of increased premiums, the Brd failed to consider the relevant factors in determining whether there had been an unreasonable delay by the union. ▪ Remit to new arbitration panel.
United Nurses of Alberta, Local No. 2 v. Red Deer Regional Hospital	1998 QB	▪ Eee was placed on sick leave when it was discovered she was addicted to narcotics ▪ Eer dismissed Eee when she was found stealing narcotics and admitted to altering hospital records and working while impaired ▪ Arb Brd upheld the Eer's decision	▪ **Uphold** Arb Brd decision. ▪ The Brd's decision was neither a jurisdictional error nor patently unreasonable. ▪ Brd correctly weighed the factors of addiction and the confidence and trust required in the employment relationship.
United Food and Commercial Workers Union, Local 401 v.	1998 QB	▪ Eee dismissed after four suspensions because he could not meet the competency standards ▪ Arb concluded that Eer had made reasonable	▪ **Uphold** Arb decision. ▪ Arb's decision was not patently unreasonable and was based on sufficient evidence.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Westfair Foods Ltd.		efforts to find alternative employment for Eee and dismissal was appropriate ▪ Union applied for judicial review	
Alberta v. Alberta Union of Provincial Employees	1998 QB	▪ Eee negligently contributed to the escape of two prisoners ▪ Arb board substituted Eer's termination of Eee with a 2-day suspension ▪ Eer requested judicial review because Arb Brd had insufficient evidence for its findings of fact.	▪ **Uphold** Arb Brd decision ▪ The decision of the tribunal was not patently unreasonable because it made no finding of fact without sufficient evidence.
Alberta v. Alberta Union of Provincial Employees	1998 QB	▪ Eee was terminated from her employment and union grieved ▪ Arb Brd held that the grievance was allowed, but she did not have the ability to perform the job and should not be reinstated; damages granted instead ▪ Eer requested judicial review	▪ **Uphold** Arb Brd decision. ▪ Decision was not patently unreasonable ▪ Matter remitted to Brd to assess damages
Canadian Broadcasting Corp. v. Newspaper Guild, Local 213 (Canadian Media Guild)	1998 QB	▪ CBC refused to extend benefits to same sex spouses although the collective agreement prohibited discrimination against sexual orientation ▪ Arb upheld grievance of Eees with same-sex spouses ▪ *Egan* decision was released shortly after and Eer asked Arb to determine whether *Egan* affected the original decision ▪ Arb concluded *Egan* had no effect on the decision ▪ Eer brought application for judicial review more than 6 months after the original decision	▪ **Dismissed** application. ▪ Judicial review of the decision was barred by the time limitation. ▪ The second decision by the Arb did not restart the limitation period because Arb did not reserve any substantive issues. ▪ Additionally, Arb was correct that *Egan* was not applicable because it was determined on the basis of section 1 of the *Charter*, which was not mirrored by a provision in this collective agreement.
CFRN-TV, a division of Baton Broadcasting Inc. v. Communications, Energy and Paperworkers Union of Canada CEP-CLC	1998 QB	▪ Eee grieved violation of collective agreement providing that Eees with six or more months of continuous employment were to be granted maternity leave and reinstated in the same position as per the *Canada Labour Code* ▪ Arb found Eee was not reinstated into the same position within the meaning of the *Code* and	▪ **Uphold** Arb decision. ▪ Arb's application of s. 209.1(1) regarding "position" and s. 209.1(2) regarding "valid reason" were not patently unreasonable.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
		ordered reinstatement	
Canadian Pacific Railway Co. v. Picher	1998 QB	▪ CPR decided to close its Angus Shop and negotiated a job security agreement with the union, which was later renegotiated ▪ Eees grieved when, although their group was not mentioned by the renegotiated agreement, they were treated in accordance with it instead of the original agreement ▪ Arb held that the Eees should be treated according to the original agreement	▪ **Uphold** Arb decision. ▪ Arb answered the essential question put to him by the CPR and the union and his decision was not irrational or unreasonable.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local D331 v. Lafarge Canada Inc.	1998 QB	▪ See 1999 CA decision.	▪ **Quash** Arb Brd decision. ▪ Patently unreasonable.
Alberta Teachers' Assn. v. Moreau	1999 CA	▪ Chamber's judge dismissed application by ATA for judicial review of Arb Brd decision ▪ Decision was appealed on the basis that the Arb Brd misinterpreted the *School Act* and the definition of "school year," resulting in an increase in teaching time, contrary to the obvious bargaining objectives	▪ **Uphold** Arb Brd decision. ▪ Not patently unreasonable ▪ Obligation of Arb Brd was to interpret the language of the collective agreement itself and not the bargaining objectives of the parties during past negotiations
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local D331 v. Lafarge Canada Inc.	1999 CA	▪ Union grieved that the Eer was keeping certain unemployment insurance premium reductions ▪ Arb Brd heard the matter 4 years after the bargaining session but allowed evidence of what was said during bargaining (all oral evidence)	▪ **Quash** Arb Brd decision ▪ Agree with Chamber's judge. ▪ An Arb Brd must give effect to an "entire agreement" clause ▪ Using evidence of all previous negotiations slows and hampers the expeditious arbitration of grievances and would make reliance on the wording of a collective agreement futile
International Alliance of Theatrical Stage Employees Moving Picture Technicians,	1999 QB	▪ Issue of whether Eees were entitled to holiday pay ▪ Chambers judge overturned arbitrator's decision for the following reasons:	▪ **Quash** Arb Brd decision ▪ Decision of Arb was patently unreasonable. ▪ Remit decision to arbitrator.

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Artists and Allied Crafts of US and Canada, Local 212 v. Plymouth		▪ Arb's reasoning was wrong In the absence of analysis of the wording of an article in the collective agreement, the arbitrator rendered his decision patently unreasonable.	
United Nurses of Alberta, Local 33 v. Capital Health Authority	1999 QB	▪ See 2001 CA decision.	▪ **Uphold** Arb Brd decision. ▪ Standard of correctness used ▪ Arb Brd decision was correct because there was no discrimination
United Nurses of Alberta, Local 37 v. Alberta (Provincial Health Authorities)	1999 QB	▪ Eee was pregnant and wanted to start maternity leave at the latest possible date before delivery ▪ Eee was on sick leave when Eer compelled her to commence her maternity leave ▪ Arb Brd upheld decision of Eer.	▪ **Quash** decision of the Arb Brd. ▪ Standard of correctness ▪ **Remit** matter to a differently-constituted arbitration panel ▪ Error of fact existed because pursuant to the collective agreement Eee had an absolute right to determine the start date
Calgary Regional Health Authority v. Health Sciences Assn. of Alberta	1999 QB	▪ Arb Brd gave award entitled Eee to additional sick pay prior to starting maternity leave ▪ Eer seeking order of certiorari because Brd considered documents extrinsic to the collective agreement ▪ Brd considered the Eer's Administration Manual for the maternity EI top-up plan when making its decision	▪ **Uphold** Arb Brd decision. ▪ Brd decision was not patently unreasonable. ▪ No jurisdictional errors were made ▪ Even where a document does not form part of the collective agreement, it m ay nevertheless be relevant to its interpretation or its application
Alberta Union of Provincial Employees, Local 103 v. Versa Services Ltd.	1999 QB	▪ >100 grievances filed by former Eees of Versa whose positions were abolished when Gov't of AB did not renew contract with Eer for certain services ▪ Arb Brd dismissed the grievance because the union did not meet the onus of establishing that their interpretation of the collective agreement articles was correct	▪ **Uphold** Arb Brd decision ▪ Arb Brd was acting within its jurisdiction and reached a decision which is not patently unreasonable
Canadian Health Care Guild v. Palliser Health Authority	1999 QB	▪ Eee, a nursing attendant on disability leave, alleged breach of the "no discrimination" clause in the collective agreement ▪ Eee sought remedy of accommodation within a different bargaining unit	▪ **Uphold** Arb Brd decision ▪ Standard of review of correctness ▪ Arb Brd was correct that it did not have jurisdiction to make an order binding on another union, and under these circumstances it is not

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
		▪ Arb Brd held it had no jurisdiction to grant the remedies requested in the grievance by the Eee	appropriate for Arb Brd to consider the case at all
Quality Control Council of Canada v. Canspec Group Inc.	1999 QB	▪ Arb award denied a grievance by Eees that they should have been paid the higher of two wage rates stipulated in the collective agreement ▪ Definition of "work" used by Arb allowed him to come to this conclusion	▪ **Uphold** Arb decision ▪ Definition of "work" used by Arb was not patently unreasonable
Calgary Regional Health Authority v. United Nurses of Alberta, Local No. 115	2000 QB	▪ Arb award that CRHA breached collective agreement by agreeing to modify hours of work for part-time employees ▪ CHRA appealed on the basis of jurisdictional error	▪ **Uphold** Board decision ▪ Was not patently unreasonable
Canadian Union of Public Employees, Local 3421 v. Calgary (City)	2000 QB	▪ Arb Brd held that the Eer's actions in setting a pay rate to a group of City Eees were not arbitrary, unfair or done in bad faith, therefore grievance was dismissed.	▪ **Quash** Arb Brd decision; **Remit** matter back to Board ▪ Brd made a patently unreasonable error in its interpretation of the collective agreement.
International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 720 v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers	2000 QB	▪ There was a work assignment dispute between the two unions. ▪ Arb held that the work should have been assigned to the Boilermakers union. ▪ Other union sought judicial review of decision. ▪ Court dealt with whether it has jurisdiction to deal with the matter, and whether the parties were out of time.	▪ Court has jurisdiction. ▪ Regardless of whether their status is statutory or consensual, the decisions of the Canadian Plan and the Arb are subject to judicial review. ▪ The union was not out of time to file a complaint; therefore the Court will hear the substantive issues in this case (see below).
See above for parties	2000 QB	▪ Substantive decision of case above ▪ Was the assigned work, the installation of an intake air filter house, dampers, and power rigging, within the Boilermakers' or the Iron Workers' jurisdiction?	▪ **Uphold** Arb decision. ▪ Decision was not patently unreasonable.
Canada Safeway Ltd. v. *United Food and Commercial Workers, Locals 312A, 373A and 401*	2000 QB	▪ Arb found Eer liable for violating collective agreements by increasing wages for those Eees who crossed the picket line during strike and lockout ▪ Eer wanted judicial review	▪ **Made in time.** ▪ S. 143(2) of the *Labour Relations Code* requires application for judicial review be made within 30 days of the decision, union argued the 30 days started after the liability decision whereas

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
		▪ Arb made decision as to liability, but there was more than a year's delay before his decision on remedy ▪ Delay was to provide parties an opportunity to negotiate their own remedy, but when this failed Arb gave remedy ruling	Safeway argued it started after the remedy decision ▪ Court held Safeway did apply for judicial review in time ▪ See 2001 for substantive decision.
Southam Inc. v. *Graphic Communications International Union, Local 34M*	2000 QB	▪ Brd heard grievance filed by union because Eees were required to work a statutory holiday and not given a paid day off in lieu ▪ After the ruling in their favour, union called extrinsic evidence about past practice ▪ Brd wrote to parties to allow them an additional opportunity to address the issue, but Eer argued union could not raise new arguments at that point ▪ Eer seeks judicial review of Brd's decision	▪ **Uphold** Arb Brd decision. ▪ Patently unreasonable standard ▪ The use by the Brd of extrinsic evidence was appropriate ▪ Brd's decision was not patently unreasonable.
Alberta Union of Provincial Employees v. Lethbridge Community College	2000 QB	▪ Eee grieved a reprimand letter and dismissal ▪ Arb Brd agreed Eer had failed to comply with certain requirements for dismissal, but granted damages equal to 4 months salary instead of reinstatement ▪ Union submitted that the Arb Brd erred in determining that it had jurisdiction to order damages instead of reinstatement	▪ **Uphold** Arb Brd decision ▪ It was not patently unreasonable for the Brd to determine that the employment relationship between Eee and Eer was no longer viable
Canada Post Corp v. Canadian Union of Postal Workers	2001 QB	▪ Grievor was injured, wanted to go back to work but Can Post delayed, ended up in grievance; ▪ Arb made award that included compensation for wages, sick leave, and vacation pay	▪ **Uphold** Arb decision ▪ Arb did not err in deciding Eer had not shown that grievor failed to mitigate losses; also Arb did not exceed jurisdiction by directing Eer to credit the grievor with sick leave
Caritas Health Group v. United Nurses of Alberta, Local 79	2001 QB	▪ Eee leaves position "temporarily" to take new position with Eer ▪ Eer argues just a temporary position, union not happy with how the hiring took place	▪ **Uphold** Arb Brd decision ▪ Arb Brd found Eee was not on leave because was no longer an Eee (temporary position change)…crt agreed using correctness standard ▪ Arb held vacancy created was a permanent one, not temp…crt agreed using patently unreasonable

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
			standard
AUPE, Local 58/001 v. Alberta (Mental Health Board)	2001 QB	▪ Eees laid off and grieve ▪ Brd makes decision against Eer but union brings application for judicial review forward based on part of Arb Brd's reasoning and remedy	▪ **Uphold** Arb Brd decision ▪ Not patently unreasonable
United Nurses of Alberta, Local 33 v. Capital Health Authority	2001 CA	▪ Arbitration board held that the grievor had not been discriminated against ▪ Chamber judge dismissed an application to quash the arbitration board's interpretation	▪ **Quash** decision of Brd ▪ Error in law for Board to use the two-pronged approach to discrimination and for chamber's judge to uphold the decision (Judge did not use the *Merion* case appropriately) ▪ **Remit** matter to Brd to reconsider the grievance
Canada Safeway Ltd. v. United Food and Commercial Workers, Local 312A	2001 QB	▪ Eer hired a meat manager from outside the bargaining unit ▪ Arb concluded that the grievance was well founded because the Eer had to find specific power in the collective agreement to hire a manager from outside the unit.	▪ **Quash** Arb decision. ▪ Interpretation of the clause was not one the wording of the clause could rationally bear; therefore his decision is patently unreasonable. ▪ The collective agreement provides the Eer with a specific right to hire outside the bargaining unit.
Canadian Health Care Guild v. Glenrose Rehabilitation Hospital	2001 QB	▪ Grievor dismissed for patient abuse ▪ Arb Brd upheld dismissal and Grievor appealed to crt	▪ **Uphold** arbitration decision ▪ Arb Brd made decision within its jurisdiction, not patently unreasonable conclusion
Canada Safeway Ltd. v. United Food and Commercial Workers, Locals 312A, 373A and 401	2001 QB	▪ Union alleged Eer breached the Collective and Return to Work Agreements by crediting Eees with hours worked during a dispute ▪ Arb found in favour of the union	▪ **Uphold** Arb finding ▪ All of Arb's decisions, including remedy, were not patently unreasonable
Assn. Of the Academic Staff of the U of A v. Governors of the U of A	2001 QB	▪ Professor was offered a job and then later the offer was revoked ▪ Issue was whether this professor fell under the collective agreement or had recourse only to court ▪ Arb held professor could only go to court	▪ **Quash** Arb decision ▪ Dispute is governed by the collective agreement ▪ Correctness ground used, although crt said failed patently unreasonable as well ▪ **Remit** matter to another arbitrator for determination of the merits of the dispute
United Nurses of Alberta, Local 160 v. Chinook Regional Health Authority	2001 QB	▪ Issue before arbitrator was method used by Eer to calculate vacation entitlement for part-time Eees ▪ Arb found that Eer did not violate the terms of the collective agreement	▪ **Uphold** Arbitrator's decision ▪ Not patently unreasonable interpretation of collective agreement

NAME OF CASE	**DATE & CRT**	**SUMMARY OF CASE**	**DECISION OF COURT**
Voice Construction Ltd. v. Construction & General Workers' Union, Local 92	2001 QB	▪ Eer argued it had the right to select and hire Eees ▪ Union argued management rights were restricted by collective agreement ▪ Arbitrator held that Eer was bound to hire qualified person put forward by union as per collective agreement and Eer sought judicial review	▪ **Quash** Arb decision ▪ Interpretation of collective agreement went beyond the express language TF jurisdictional error (standard of correctness) ▪ **Remit** matter to a differently constituted arbitration board

APPENDIX II:
CHART OF LABOUR GRIEVANCE JUDICIAL REVIEWS IN SASKATCHEWAN, 1997 - 2001

Abbreviations:

Arb - Arbitrator/arbitration
Brd - Board
Crt - Court
CA - Court of Appeal
QB - Court of Queen's Bench
SCC - Supreme Court of Canada
Eee - Employee
Eer - Employer

NAME OF CASE	**DATE & CRT**	**SUMMARY OF CASE**	**DECISION OF COURT**
University of Saskatchewan v. Canadian Union of Public Employees, Local 1975, CUPE	1997 QB	▪ See 1998 CA decision.	▪ **Quash** Arb Brd decision. ▪ Decision of the Brd was incorrect in law ▪ Brd improperly placed the onus of proving a breach of the collective bargaining agreement on the Eer
Saskatchewan Wheat Pool v. Grain Services Union (International Longshore and Warehouse Union-Canadian Area)	1997 QB	▪ See 1998 CA decision.	▪ **Quash** Arb Brd decision. ▪ Chambers judge held Brd did not exceed jurisdiction, but decision was patently unreasonable. ▪ On a plain reading of the agreement, not every employee was entitled to severance; in this case the Eee did not qualify
SPI Marketing Group v. Saskatchewan Government Employees Union	1997 QB	▪ See 1998 CA decision.	▪ **Quash** Arb Brd decision **only** with respect to order for remedy. ▪ Ordering compensation to be paid to the Union was patently unreasonable and completely beyond Arb's powers under the collective agreement.
University of Regina v.	1997 QB	▪ Collective bargaining agreement provided for a	▪ **Quash** Arb Brd decision

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Canadian Union of Public Employees, Local 1975		final and binding review of an employee's classification by a committee ▪ Eees submitted a request for reclassification and change in remuneration ▪ Request was rejected by the committee ▪ Union filed a grievance ▪ Brd held that the grievance was not a classification issue but an issue of duties and rates of pay and was thus arbitrable.	▪ Decision was patently unreasonable because it sought to convert a matter that was not arbitrable into an arbitrable issue by simply restating the nature of the grievance in order to acquire jurisdiction ▪ Any question relating to a classification issue was not arbitrable and the Brd had no jurisdiction over it.
Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners	1998 CA	▪ See 2000 SCC decision.	▪ **Quash** Arb decision. ▪ **Appeal allowed.** Reverse decision of QB. ▪ Arb did have jurisdiction to decide the issue, which was revoking of resignation not disciplinary. ▪ Standard of correctness.
Saskatchewan Wheat Pool v. Grain Services Union (International Longshore and Warehouse Union-Canadian Area)	1998 CA	▪ Eee lost his job when position was eliminated and union claimed Eer violated collective agreement by not offering a severance allowance. ▪ Arb Brd found for Eee. ▪ Eer argued the Board exceeded its jurisdiction with the decision, and also that the interpretation of the collective agreement was patently unreasonable. ▪ Chambers judge held Brd did not exceed jurisdiction, but decision was patently unreasonable	▪ **Quash** Arb decision. ▪ Agree with chambers judge. ▪ Arb decision was patently unreasonable because it rested upon an interpretation of the collective agreement that the words of the agreement could not reasonably bear
SPI Marketing Group v. Saskatchewan Government Employees Union	1998 CA	▪ Eee grieved her dismissal. ▪ Eer made a preliminary objection to the jurisdiction of the Arb Brd. ▪ Arb Brd ruled against Eer on its preliminary objection and on the substantive issue.	▪ **Quash** Arb Brd decision **only** with respect to order for remedy. ▪ Uphold decision of chambers judge. ▪ Decision of Arb Brd was patently unreasonable with respect to remedy.
University of Saskatchewan v. Canadian Union of Public Employees, Local 1975,	1998 CA	▪ Three grievances pertaining to the alleged improper elimination of earned day off arrangements ▪ Arbitration board upheld grievances ▪ Eer requested a judicial review	▪ **Uphold** Arb Brd decision. ▪ **Restore** Arb Brd decision. ▪ Disagree with chambers judge. ▪ Chambers judge misinterpreted the decision ▪ Brd properly placed the onus of proving a breach

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
CUPE		▪ Chambers judge quashed and set aside the award because In determining that the burden of proof was on the Eer, rather than the Union, the Arbitration Board committed an error of law	of the collective bargaining agreement on the grievors ▪ Decision of the Brd was not patently unreasonable; it was not clearly irrational
United Food and Commercial Workers, Local 1400 v. Western Grocers, a division of Westfair Foods Ltd.	1998 QB	▪ See 1998 CA decision.	▪ **Uphold** Arb Brd decision. ▪ Decision of Arb Brd was not patently unreasonable.
United Food and Commercial Workers, Local 1400 v. Western Grocers, a division of Westfair Foods Ltd.	1998 CA	▪ Arb agreed with Eer that a note found in a warehouse file, which the Eer had agreed would not be used to determine whether disciplinary action would be taken, was not disciplinary in nature ▪ Union requested judicial review ▪ Chambers judge upheld Arb Brd decision	▪ **Uphold** Arb Brd decision. ▪ Agree with chambers judge. ▪ Decision of Arb Brd was not patently unreasonable.
United Food and Commercial Workers, Local 1400 v. Western Grocers	1998 CA	▪ Arb Brd determined the amount of holiday pay payable according to the collective agreement ▪ Union wanted judicial review of the decision. ▪ Chambers judge upheld Arb Brd decision.	▪ **Uphold** Arb Brd decision. ▪ Agree with chambers judge. ▪ Decision was not patently unreasonable.
Regina Police Assn. v. Regina (City) Police Commissioners	1998 QB	▪ Eee's position was eliminated and Eee was terminated instead of bumping ▪ Arb made decision in favour of Eee ▪ In supplementary decision Arb made additional comments which Union argued represented a variation of the award, not a clarification	▪ **Quash** Arb's supplementary decision. ▪ Arb didn't just clarify the decision; he varied it. ▪ Therefore, Arb exceeded jurisdiction.
Westfair Foods Ltd. (Superstore) v. United Food and Commercial Workers, Local 1400	1998 QB	▪ See 1999 CA decision.	▪ **Quash** Arb Brd decision on two grounds: 1. Brd erred in law re: standard of proof required for shoplifting. 2. Brd decision was patently unreasonable based on the evidence available to it.
United Food & Commercial Workers, Local 1400 v. Westfair Foods Ltd. (Superstore)	1999 CA	▪ Eee accused of shoplifting, which would maker her no longer bondable, was terminated by Eer ▪ Arb Brd ordered Eee be reinstated with payment if it was not satisfied that Eer had proven Eee had necessary intention to steal	▪ **Uphold** Arb Brd decision. ▪ **Reinstate** Arb Brd decision. ▪ Standard of proof was correct. ▪ Although agree the Brd decision may not be the correct interpretation, the decision based on the

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
		▪ Chambers judge quashed Arb Brd decision	evidence was not patently unreasonable. ▪ Chambers judge substituted his view of the evidence, which he is not entitled to do.
United Food and Commercial Workers, Local 1400 v. Westfair Foods Ltd.	1999 QB	▪ Arb Brd dismissed a grievance alleging that Eer had breached seniority clauses in the collective agreement by transferring work, but not employees, to a different location ▪ Preliminary decision of Brd refused a union application to amend the grievance document to include constructive layoff	▪ **Uphold** Arb Brd decision. ▪ Decision was not patently unreasonable.
Canadian Union of Public Employees v. Prince Albert (City)	2000 CA	▪ No details given as to nature of grievance. ▪ Note: Although the Union appealed to the Supreme Court of Canada, a notice of discontinuance of application for leave to appeal was filed.	▪ **Uphold** Arb decision. ▪ Agree with chambers judge. ▪ Not patently unreasonable.
Canadian Union of Public Employees, Local 59 v. Saskatoon (City)	2000 QB	▪ See 2001 CA decision.	▪ **Uphold** Arb decision. ▪ Not patently unreasonable. ▪ Not clearly irrational" or "a fraud on the law
Westfair Foods Ltd. v. United Food & Commercial Worker's Local 14	2000 QB	▪ See 2001 CA decision.	▪ **Quash** Arb decision. ▪ Patently unreasonable.
Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners	2000 SCC	▪ Eee resigned rather than face disciplinary action. Eee later withdrew his resignation but Eer refused to accept withdrawal. ▪ Union filed grievance. ▪ Arb held she did not have jurisdiction to decide the dispute because matters of police discipline and dismissal were governed by Saskatchewan *Police Act, 1990*. ▪ QB dismissed Union's application to quash the decision. ▪ CA reversed QB decision.	▪ **Uphold** Arb decision. ▪ **Appeal allowed.** ▪ Reverse decision of CA, agree with QB. ▪ Arb did not have jurisdiction to decide the issue.
Canadian Union of Public Employees,	2001 CA	▪ Eee was terminated for threatening other workers with serious bodily harm	▪ **Uphold** Arb decision. ▪ Eee does not have standing to bring forward the

NAME OF CASE	DATE & CRT	SUMMARY OF CASE	DECISION OF COURT
Local 59 v. Saskatoon (City)		▪ Arb upheld termination ▪ Union requested judicial review, which upheld the Arb decision. ▪ Union refused to appeal judicial review, therefore Eee appealed on his own.	application for appeal. ▪ Even if Eee did have standing, there is nothing to suggest decision was not patently unreasonable.
Westfair Foods Ltd. v. United Food & Commercial Worker's Local 14	2001 CA	▪ Issue of calculation of vacation pay and interpretation of "after one year of service" in collective agreement ▪ Chambers judge quashed Arb Brd decision	▪ **Uphold** Arb decision. ▪ **Restore** Arb decision; disagree with chambers judge. ▪ Decision was not patently unreasonable; was a logical interpretation of collective agreement
Sterling Pulp Chemicals (Sask) Ltd. v. Communications, Energy & Paperworkers Union, Local 609	2001 QB	▪ Union alleged that reducing the operating group was contrary to the collective agreement. ▪ Arb Brd upheld Eer's actions and Union applied for a judicial review.	▪ **Uphold** Arb Brd decision. ▪ Decision was within the jurisdiction of the Arb Brd and was not patently unreasonable.
University of Saskatchewan v. Professional Association of Internes and Residents of Saskatchewan	2001 QB	▪ Parties differed as to whether or not the Arb Brd had jurisdiction to hear a particular issue (different process available for work-related grievance or academic for internes) ▪ Arb Brd held that they did have jurisdiction ▪ University requested judicial review	▪ **Uphold** Arb Brd decision. ▪ Patently unreasonable standard used because interpretation of collective agreement, not the law, was at issue. ▪ Decision of Arb Brd was not patently unreasonable (also note Crt suggests it was also a correct decision).
Sherbrooke Community Centre v. Service Employees' International Union	2002 QB	▪ Eer unilaterally implemented a ½ hour unpaid meal break into a shift, requiring Eees to stay ½ hour longer than in the past. ▪ Union challenged the change. ▪ Arb upheld grievance. ▪ Eer applied for judicial review.	▪ **Quash** Arb decision. ▪ Arb award was patently unreasonable because of three errors, all of which were patently unreasonable. ▪ Arb decision attributed a substantive effect to the preamble, gave meaning to a clause, which could not be supported and relied upon a clause to supersede another article.