the issues involved there was strongly divided opinion among the public, politicians, governments and the courts, I should have thought that the Institute of Intergovernmental Relations at Queen's University could have obtained a wider range of comment.

*B.L. Strayer**

INTEREST ARBITRATION — MEASURING JUSTICE IN EMPLOYMENT. Edited by Joseph M. Weiler. Carswell, 1981. Pp. iv, 290. ($37.50)

Arbitration has long been the favoured method of settling labour relations disputes in Canada. Two different forms of arbitration have evolved to satisfy two separate needs. The system of rights or grievance arbitration is employed to deal with disputes which arise during the term of a collective agreement between an employer and a trade union. The imposition of discipline by the employer or a disagreement as to the interpretation of a clause in the agreement are typical subjects of a rights arbitration proceeding. Interest arbitration occurs where the parties are unsuccessful in negotiating the terms of a collective agreement and the issues on which agreement cannot be reached are referred to a third party for resolution.

The principles and procedures of rights or grievance arbitration are relatively well known. Major rights arbitration awards are published in Labour Arbitration Cases, Western Labour Arbitration Cases and *Sentences Arbitrales Grefs*. The law of rights arbitration has been comprehensively summarized in two texts.[1] However, interest arbitration awards have received far less attention,[2] even though the arbitrator's decision may involve the expenditure of substantial amounts of public funds.[3] It is in this context that the publication of a collection of papers dealing with interest arbitration is most welcome.

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* Department of Justice, Ottawa. The views expressed are, of course, those of the reviewer and not necessarily those of the Government of Canada.

[1] D. BROWN AND D. BEATTY, CANADIAN LABOUR ARBITRATION (1977); E. PALMER, COLLECTIVE AGREEMENT ARBITRATION IN CANADA (1978).

[2] The editors of *Labour Arbitration Cases* included several of the key interest awards issued in the 1960's. Space limitations have prevented this in recent years. Summaries of the awards in particular fields can be found in specialized publications, *e.g.*, LABOUR RELATIONS BULLETIN published by the Ontario Hospital Association.

[3] *See, e.g.*, the decision in Kingston General Hospital v. Ontario Nurses' Ass'n, (unreported, O.L.R.B., 12 Jun. 1979), established a settlement pattern in other hospitals throughout the province of Ontario and resulted in the expenditure of more than one half billion dollars in public funds.

Interest Arbitration does not purport to be a summary of interest arbitration law. Instead it focuses on the key public policy issues involved in the use of an interest arbitration system. As stated by its editor, Professor Joseph Weiler of the University of British Columbia, the text is designed "to provide an up-to-date survey of these issues and suggested ideas of approaches that may be adopted to make interest arbitration work".[4] The papers presented in the book were delivered at a conference held in Vancouver in April 1980 under the sponsorship of the Continuing Legal Education Society of British Columbia.[5] In addition to collecting and editing these papers, Professor Weiler has supplied an introductory commentary on each, summarizing its contents and commenting on the relationship of its subject matter to the remaining papers.

The paper delivered by Professor Charles Morris,[6] the keynote speaker at that conference, contains a discussion of interest arbitration issues which draws upon his years of studying the process in the United States. The 179 footnotes of the paper refer to much of the literature published on the subject in that country as well as the principal court decisions involving applications for review of interest arbitration awards.[7] Professor Morris suggests that a new model of dispute settlement be employed whereby a politically independent board would be authorized to require the parties to adhere to whatever dispute settlement procedure it deemed appropriate in the particular circumstances.[8] The parties would not know beforehand whether a strike or lockout would be permitted or whether binding arbitration would be ordered. Arbitration might be in conventional form, final offer form or mediation arbitration. Professor Morris posits that "the risk of the unknown should stimulate the parties to bargain harder on their efforts to achieve a mutually acceptable compromise."[9]

Professor John C. Anderson's contribution[10] is based upon his analysis of public service negotiations under the Public Service Staff Relations Act[11] during the period 1968 to 1979. His research disclosed a reduced popularity of the interest arbitration alternative during that time period. He suggests that this may have been caused by the time delays in the system, a favouring of the *status quo* by arbitrators and the fact that the arbitrators are selected from a permanent panel rather than by an *ad hoc* selection procedure.[12] The paper contains a detailed statistical

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[4] P. 4.

[5] Interest Arbitration, A Matter of Public Policy, Continuing Legal Education Society of British Columbia (Vancouver, 15 & 16 Apr. 1980).

[6] Morris, *Interest Arbitration: Panacea's Art or Pandora's Box*, in INTEREST ARBITRATION 5.

[7] *Id.* at 33-42.

[8] *Id.* at 29.

[9] *Id.* at 32.

[10] Anderson, *Arbitration in the Federal Public Service*, in INTEREST ARBITRATION 43.

[11] R.S.C. 1970, c. P-35.

[12] Anderson, *supra* note 10, at 70.

analysis of such matters as the issues considered in arbitration awards, the number of days between the request for arbitration and the issuance of the award and the individuals who have acted as chairpersons and employer or employee representatives.

The text contains two papers dealing with interest arbitration experiences in the Province of British Columbia. Professor Mark Thompson analyzes[13] the system of arbitrating teachers' salaries which has been in place since 1937. Professor Joseph Weiler reviews[14] the legislative and political history of the Essential Services Disputes Act.[15] Like Morris, Weiler suggests that more extensive use should be made of the alternatives to conventional arbitration such as final offer selection and mediation arbitration or fact finding prior to arbitration.[16]

George Adams, current Chairman of the Ontario Labour Relations Board, reviews Ontario's experience with interest arbitration.[17] His paper is particularly useful to practitioners in the field for its discussion of the criteria which have been employed by arbitrators in establishing wage rates for public sector employees. Mr. Adams observes that "no arbitration award has been able to do much more than reorder or qualify the criteria"[18] set out originally by Professor Harry Arthurs in his 1965 award involving the Welland County General Hospital.[19] Mr. Adams concludes with the observation that interest arbitration is a "blunt and conservative instrument"[20] not suited to the solution of complex problems.

Paul Cavalluzzo comments in his paper[21] on the interest arbitration process from the viewpoint of labour relations counsel. He concludes with the reservation that lawyers may lack the required expertise to deal with the "polycentric and complex fiscal problems"[22] involved in interest arbitration disputes. This echoes a similar concern voiced by Paul Weiler in his recent text[23] that persons who act as interest arbitrators may lack the array of skills required for the task. Mr. Cavalluzzo offers several suggestions for reform of the system, including a de-emphasis on the use of lawyers and legalisms.

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[13] Thompson, *Evaluation of Interest Arbitration: The Case of British Columbia Teachers*, in INTEREST ARBITRATION 79.

[14] Weiler, *Interest Arbitration in British Columbia: The Essential Services Disputes Act*, in INTEREST ARBITRATION 99.

[15] R.S.B.C. 1979, c. 113.

[16] Pp. 119-25.

[17] Adams, *The Ontario Experience with Interest Arbitration: Problems in Detecting Policy*, in INTEREST ARBITRATION 133.

[18] *Id.* at 158.

[19] *Re* Building Serv. Employees, Local 204, and Welland County Gen. Hosp., 16 L.A.C. 1 (1965).

[20] Adams, *supra* note 17, at 171.

[21] Cavalluzzo, *Interest Arbitration in Ontario: A Practitioner's View*, in INTEREST ARBITRATION 175.

[22] *Id.* at 178.

[23] P. WEILER, RECONCILABLE DIFFERENCES — NEW DIRECTIONS IN CANADIAN LABOUR LAW (1980).

The text includes two papers which contain analyses of English and Australian experiences with interest arbitration. The former, written by Professor Kenneth Swan,[24] is of particular interest for its discussion of the approach taken by the British Comparability Commission which involves itself at the early stages of the parties' bargaining by conducting studies with its own consultants and providing them to the parties to assist in the negotiations. Professor Swan comments:

> The accommodative nature of this contact with the parties cannot help but ensure that the Commission is intimately acquainted with the dispute and with the real concerns of the parties, while the fundamentally arithmetic nature of the methods used ensures that the award may be still seen to be soundly based. Thus the acceptability of the outcome both to the parties and to the wider community should be enhanced, since the effective negotiations will take place over the principles of salary determination and the evidence appropriate for consideration, rather than over sums of money. Do the adjudicative awards used in Canadian arbitration, based on private analysis of adversarially presented evidence and supported by written reasons that are more often a rationalization of the result than a clear description of the method used to reach it, as adequately serve these important interests?[25]

Professor Swan's comments may disclose the key weakness of the traditional interest arbitration proceeding in Canada. The adversarial approach which is the cornerstone of rights arbitration may have been improperly transposed on interest arbitration proceedings.[26]

In sum, *Interest Arbitration* will be of particular value to those studying and teaching the interest arbitration process. Lawyers who are retained to represent clients in interest arbitration proceedings will find it a valuable reference text for preparation of briefs. It will not impart the knowledge of "polycentric and complex fiscal problems" which Mr. Cavalluzzo suggests is essential,[27] but it will ensure that counsel are aware of the underlying policy concerns which may affect the arbitrator's approach to the issues in dispute.

*Lynn H. Harnden**

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[24] Swan, *Apples and Oranges: Comparability as a Criterion of Interest Arbitration*, in INTEREST ARBITRATION 268.

[25] *Id.* at 281-82.

[26] *See* Harnden, *Role of Arbitration in Health Sector Dispute Settlement: Canada, USA and UK*, in INDUSTRIAL RELATIONS AND HEALTH SERVICES 287 (S. Dimmock & A. Sethi eds. 1982).

[27] *Supra* note 21, at 178.

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