A PRACTICAL GUIDE TO LABOUR ARBITRATION PROCEDURE, by J.F.W. Weatherill,. Aurora, Ontario: Canada Law Book Inc., 1998. Pp. 129.

Before the rise in popularity of labour arbitration, the labour law section of a well-stocked legal library would very likely have boasted a single shelf, occupied by one wine-coloured volume of monolithic proportion: *Canadian Labour Arbitration*.[1] Brown and Beatty (as it is known in the labour sphere) is every labour lawyer's reference, every arbitrator's guide, and the security blanket of every articling student at a labour and employment law firm. However, as arbitration becomes increasingly a staple of labour law practice, the number of "how to" books with their origins in Brown and Beatty have flooded the labour arena. Among these, Arbitrator Weatherill's text stands out from the crowd — not because of its size, which is insignificant in comparison to Brown and Beatty (in fact it is its compact size that once made the first edition of Arbitrator Weatherill's work a standard feature of any labour lawyer's "What to Bring for an Arbitration Hearing" list) nor because of the reputation Arbitrator Weatherill has garnered as a result of his colourful tenure as Chairman of the Canada Labour Relations Board from 1989-1998 — but rather because of his longevity and the remarkable name he has created for himself in labour circles.

As is stated in the preface, the text is not meant to be a textbook of law. Rather, as stated in the title, it is meant to be a practical guide to procedural problems that arise before, during and after an arbitration hearing. The author draws from his vast experience and countless awards to provide a solid base for practitioners, students, and arbitrators alike. The text is set up to mirror the structure of an arbitration with chapter divisions taking the form of steps in the arbitration process, which guide the reader from the arrangements prior to the hearing through to the ultimate award. In this way it is very much like Peter Simon's Anatomy of a Lawsuit[2] which takes the reader from the occurrence of an accident right through to the Appeal of the initial ruling in the civil courts. Simon, like Weatherill, states in the preface that the book is not meant to be an authoritative text, but rather a blueprint for the process that must be followed.

Thus, Chapter I deals with the arrangements to be made prior to the hearing, touching on such topics as the role of nominees, notice, subpoenas and production of documents. With respect to the role of nominees, it would have been useful to elaborate more on how far nominees can extend the latitude granted to them without crossing the line and becoming advocates themselves.

Chapter II deals with the commencement of the hearing. Arbitrator Weatherill makes the following statement about the style of a hearing and what it should endeavour to accomplish:

> [t]he hearing should embody something between the formality of a trial in court and the informality of a round-table discussion. The test of a successfully conducted hearing is whether or not, at the end of the day, the parties — and where there is an individual grievor, the grievor — leave feeling that they have been fairly heard, even

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1 *Brown and Beatty, Canadian Labour Arbitration* (Canada Law Book Inc. looseleaf).

2 P.N. Simon, *Anatomy of a Lawsuit* (The Michie Company, 1984: Charlottesville, Virginia).

> where they may not have said all that they had wanted to say.[3]

This is an important observation, because for many first-time participants at arbitration hearings, whether they are lawyers whose practice is mostly in the courts or grievors who have never experienced the process, the informality can often be very distracting and discouraging. Frequent stops and starts and parties breaking away to further discuss their position privately leads to an inordinate lengthening of the process which creates the impression of wasted time (and money) in the minds of both parties, and leads to a lack of conviction in the process. That is why Arbitrator Weatherill emphasizes that the Arbitrator should take the time to present the setting of the hearing, and despite the motivation towards informality, imbue the process with a sense of legitimacy.[4]

With the current growth in popularity of Alternate Dispute Resolution, mediation or "med-arb" (a hybrid form of mediation combined with arbitration) has become such a cornerstone of arbitration that some arbitrators will quite openly profess to participants at a hearing that his / her preference is to proceed by way of mediation. Weatherill cautions against this by stating:

> [w]hile it may be that arbitrators are increasingly asked to play a mediative role, there is a real risk that in acting as a mediator, an arbitrator may become aware of facts which the parties would not put forward at arbitration. There is thus a risk of compromising the arbitral role in attempting the mediative one.[5]

Chapter III takes the form of a "crash course" in evidence. Perhaps the most important aspect of evidence covered in this section is the issue of estoppel, and its function in the face of provisions of a collective agreement, a nuance that is unique to arbitral jurisprudence. Arbitrator Weatherill flags the danger in Arbitrators' using the doctrine of estoppel too often:

> [i]t should be borne in mind, however, that the procedure means the non-enforcement of the parties' negotiated and written bargain, by reason of the exercise of arbitral wisdom, and that frequent exercise of that faculty leads to inflation of the arbitral ego.[6]

Chapter IV deals with the course of events following the hearing, including the aspects of relief and retained jurisdiction. Unfortunately, the book ends abruptly, and, lacking any meaningful conclusion, strikes a rather apathetic note by referring the reader to Brown and Beatty.

Arbitrator Weatherill is indeed the embodiment of the "arbitral ego" he describes, and we have his text as proof. The second edition, unfortunately, is nothing more than a reprinting of the first, with barely any new arbitral jurisprudence or commentary, save

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3 Weatherill at 27.
4 *Ibid.*
5 *Ibid.* at 28.
6 *Ibid.* at 95.

the preface to the second alongside the preface to the first, as if the former would not be able to stand on its own. The only purpose of this preface is to state, "the nature and purpose of this book are set out in the preface to the first edition, and they remain the same." Granted there is still no concrete elaboration of principles in the field of labour arbitration. However, one would presume in reading this text that, as nearly all the awards canvassed are written by Arbitrator Weatherill himself, he and he alone is responsible for the changing face of labour arbitration. The fact that we are given only one arbitrator's treatment of an issue gives the text limited value. Furthermore, the quotations from the awards often run on for more than a page, and given the slenderness of the text to begin with, such lengthy excerpts appear to give no more insight to the reader than perhaps to showcase Arbitrator Weatherill's writing style. Furthermore, they detract from the flow of the text.

However, since Arbitrator Weatherill has returned to full-time arbitration practice, his book should be required reading for anyone who has to appear before him, for here is a compendium of one arbitrator's rulings on the most common issues that arise in labour law, and, if we are to take the preface to the second edition at face value, one whose point of view has not changed in the last eleven years.

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