- my clients have had a fair-minded hearing;
- my clients and I have been treated in a respectful fashion;
- the arbitrator has understood the dynamics of the parties, and perhaps some of their internal politics;
- the arbitrator has tried to mediate, where appropriate, and stopped when no longer appropriate; and
- the arbitrator has heard the matter in an efficient and businesslike way and, most of all, has been a helpful, positive force.

These are the qualities I look for.

## IV. LEGISLATION AND COURT DEVELOPMENTS IN CANADIAN ARBITRATION

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### Introduction

This paper addresses recent developments concerning judicial standards of review of arbitrators' awards in Canada and provides an update regarding the involvement of the National Academy of Arbitrators (NAA) in a recent decision made by the Supreme Court of Canada.

### Judicial Standards of Review of Arbitrators' Awards

Our examination of judicial review begins in 1993, when the Ontario government introduced the Social Contract Act, 1993,[1] which, among other things, imposed wage freezes in the public sector for a 3-year period. Each sector was guided in implementing this mandate by procedures contained in the "Framework Agreement." In the case of public education, virtually every one of the hundreds of locally bargained teacher/school board collective agreements contained a salary grid composed of years of education on one axis and years of teaching experience on the other. The

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[1]S.O. 1993, c.5.

annual salary increment based on the experience factor had to be addressed, and was, at section 7.2 of the Framework Agreement, which essentially provided: (1) no increases to compensation for the period June 14, 1993, to March 31, 1996; and (2) no experience increments for the period June 14, 1993, to March 31, 1996, unless by agreement of the parties. Absent such an agreement, there was to be no entitlement to an experience increase during this period because of movement on the grid.

Controversy arose between the parties as to whether or not years of experience gained by a teacher during the 1993–1996 period in another provincial or out-of-province school board who was hired during that same period would be recognized for salary purposes by the hiring school board. (The same issue arose in the case of a teacher who changed classification from "occasional" to "probationary" or "permanent" status, and hence bargaining units, while employed by the same school board during that period of time.) For example, would the 1994–1995 one-year teaching experience gained by a teacher in a Toronto, Ontario, board or a Hull, Quebec, school board be recognized by an Ottawa, Ontario, board for salary purposes when he or she was hired to teach in the 1995–1996 school year?

Apparently, seven arbitration awards found that the proper interpretation of this part of the Act was that the increment freeze did not apply to newly hired (or reclassified) teachers prior to an award by NAA member Pamela Cooper Picher. Arbitrator Picher, however, decided that when this proviso was properly interpreted, the increment wage freeze did apply to those sorts of teachers. Her award was quashed by the divisional court in *Re Ontario English Catholic Teachers' Ass'n v. Lanark, Leeds & Grenville County Roman Catholic Separate School Board (1996).*[2] The divisional court's decision was reversed by the Ontario Court of Appeal in *Re "Lanark" (1998).*[3] In holding that the appropriate standard of review was that of "patently unreasonable," the Court found the Picher award was not patently unreasonable:

> [T}he decision of the arbitrator is not patently unreasonable, or even unreasonable. Article 7.2 (d), in its opening sentence under the title, "Wage Freeze" provides that teachers will receive "no experience increments" for the period June 14, 1993 to March 31, 1996. It seems to me to have been entirely reasonable for the arbitrator to have

[2]136 D.L.R. (4th) 660 (Ont. Div. Ct.).
[3]164 D.L.R. (4th) 429 (Ont. C.A.).

> concluded, from the plain language of the first sentence of Article 7.2 (d), that the experience increment freeze applied to a teacher . . . coming into the bargaining unit just as it was acknowledged it applied to a teacher in the bargaining unit. [4]

This was the state of affairs when NAA member Howard Brown chaired an arbitration board that dealt with a grievance concerning the same issue arising under the same framework agreement. This arbitration board had adjourned its proceedings at the specific request of the parties until the court of appeal decision in the *Lanark* case had been issued. In *Re Essex County Roman Catholic School Board v. Ontario English Catholic Teachers' Ass'n (2001),* [5] arbitrator Brown rejected arbitrator Picher's interpretation and was of the view that the 1998 court of appeal decision in *Lanark* simply held that her interpretation was "not unreasonable" but did not say, in going further, that it was "correct." Rather, arbitrator Brown's decision on the merits of the complaint was in line with the awards that had been decided pre-*Lanark*. As concerns section 7.2(d) of the Framework Agreement, he states:

> In our opinion, the intent of the Act is to have a restrictive effect on the wage cost of current employees. There is no specific application in the Act to the compensation deemed package to be entered into by an employer with a new hired employee but rather it is when that relationship is established, the restrictions as set out in Section 7.2 apply. Before that, the terms of the collective agreement with regard to salary calculation for teachers who are hired from other School Boards is [sic] not a prohibited part of compensation. [6]

The employer applied for judicial review and the divisional court set this award aside. The divisional court held:

> In *Lanark Leeds,* Osborne J.A. . . . specifically determined the meaning to be ascribed to Article 7.2 (d) of the framework agreement made pursuant to the provisions of the Social Contract Act. . . .
>
> . . . [W]e hold that it is patently unreasonable for an arbitrator or a judge to disagree with a specific holding of the Court of Appeal. Arbitrator Brown was bound by that decision in accordance with the law of precedent. It is patently unreasonable for any arbitrator, or any judge, to refuse to follow precedent. [7]

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[4] *Id.* at 441.
[5] 56 O.R. (3d) 85, 92 para. 21 (Ont. C.A.).
[6] *Id.* para. 22.
[7] *Id.* para. 23.

To sum, when the court of appeal was faced with the *Essex County* teachers' appeal, the circumstances were such that:

- Seven arbitration awards had interpreted section 7.2(d) of the Framework Agreement as not to apply to newly hired teachers;
- The opposing interpretation of an eighth arbitrator had been upheld by the court of appeal as being "not patently unreasonable" and "even reasonable";
- A ninth arbitrator had rejected the eighth's opinion and interpreted the impugned section as had the first seven arbitrators; and
- A divisional court ruling that held that the ninth arbitrator's decision was "patently unreasonable" on the grounds that it had refused to follow "a specific holding of the Court of Appeal" viewed as a precedent for arbitrators.

In *Essex County Roman Catholic School Board*, the court of appeal fashioned the conundrum before it as involving two issues:

(1) Did the Divisional Court err by concluding that this Court's decision in *Lanark* was determinative with respect to the interpretation of article 7.2(d) of the Framework Agreement and was, therefore, binding on the arbitrator?

(2) If the answer to the question in (1) is "yes," then was the arbitrator's award patently unreasonable? [8]

In response to the first question, the court of appeal noted that the standard of review applicable in the *Lanark* case was stated correctly by it as that of "patent unreasonableness." However, the court of appeal found that the divisional court's conclusion, that arbitrator Brown erred when he failed to follow "precedent" interpretation, "evinces a misapprehension of both the role of a superior court in judicial review proceedings and the implications of this court's reasoning in *Lanark*." [9]

The court of appeal noted that there is a "fundamental" difference between the "correctness" and "patently unreasonable" standards of review and that where the former applies, ("i.e., the *only* interpretation"), the implication is that of "looking backward, the resolution of any conflicts among previous decisions of arbitrators and, looking forward, the existence of a clear binding precedent to

[8] *Id.* at 93 para. 25.
[9] *Id.* para. 28.

be followed by all arbitrators in future cases."[10] In the case of the latter, though, there is a different effect of the court's decision:

> {T}he court does not decide whether the award was the only possible award or the best possible [with the implication that] it does not follow that, looking back, conflicts are necessarily resolved or, looking forward, arbitrators will be bound to apply the interpretation of the arbitrator whose decision was affirmed by the court . . . . [S]ince this court's decision in *Lanark* determined only that arbitrator Picher's award was not patently unreasonable, it remained open for a different arbitrator to make a different award. . . . It follows that the Divisional Court erred by concluding that it was patently unreasonable for arbitrator Brown to interpret article 7.2 (d) in a fashion different from the interpretation of arbitrator Picher. [11]

On the second issue, that of whether or not arbitrator Brown's interpretation was patently unreasonable, the court of appeal cited with approval the Supreme Court of Canada's view in *Re Canada (Attorney General) v. Public Service Alliance of Canada*, [12] that the term "patently unreasonable" ought to be viewed in the ordinary meaning of those two words such that, "based on the dictionary definition . . . it is apparent that if the decision the Board reached, acting within its jurisdiction, is not clearly irrational, that is to say evidently not in accordance with reason, then it cannot be said that there was a loss of jurisdiction. This is clearly a very strict test." [13] On that standard, the court of appeal found that arbitrator Brown's conclusion as to the meaning of the language of section 7.2(d) was "another reasonable interpretation" and allowed the appeal.

In similar fashion, NAA member Jean-Pierre Tremblay was faced with the requirement to determine the proper interpretation of a collective agreement provision regarding a program for voluntary termination of employment (PVTE) and concluded that it meant something different from what had been found to be its proper interpretation by another arbitrator, one Morin. In the 2001 Quebec Superior Court decision, Judge Pidgeon states, relevant to this issue, as follows:

> The matter in dispute goes as follows: Is it possible to have two different interpretations of the same provision and that none of them could be revised according to the standard of intervention [of] patently unreasonable mistake? As a reminder, the Court insisted in being particular

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[10] *Id.* para. 29.
[11] *Id.* at 94 para. 30, 95 para. 34.
[12] [1993] 1 S.C.R. 941, 101 D.L.R. (4th) 673.

about four legal imperatives: 1) the Legislator forbids any appeal of an arbitral award; 2) a judicial review is possible only when the award is patently unreasonable; 3) "patently unreasonable" means: "clearly irrational," "blatantly unreasonable," "contrary to common sense"; 4) it is not because two interpretations are diverging that one of them is nonsensical.

In the cases at hand, it is impossible to find the interpretation of Arbitrator Morin or Arbitrator Tremblay to be . . . illogical, irrational or even nonsensical. Indeed, the case as put by the parties demonstrates that the Employer was not sure as how to apply the provision in contention. It must also be taken into consideration that when the collective agreement took effect in April 1996 the PVTE—which was adopted in March 1997—was not effective. It was not unreasonable for Arbitrator Morin to not stick to the literal interpretation of the wording of the Agreement. As for the reason set forth by the Superior Court, as to say that it is perilous to swim against the stream of what is prevailing in labour case law, it cannot be upheld. Indeed, in the judgement *Domtar inc. vs. Comission d'appel en matière de lésions professionelles du Quebec*, (1993) 2 R.C.S. 756 and (1993) C.A.L.P.613 (D.T.E. 93T-776 AND J.E. 93-1309), the Supreme Court decided that a case law dispute was no reason for judicial review. Finally, in respect to the sharing of the termination premium among workers, it is not unreasonable and does not warrant a Court intervention. [14]

In allowing opposing arbitral interpretation of employment-related legislation to stand, the Ontario Court of Appeal and the Quebec Superior Court appear to emphasize that the courts will be guided by the standard of "patent unreasonableness" rather than "correctness" in their review function of labor/management arbitration awards. This approach also seems to suggest that the original legislative intent for collective agreement matters to be decided through the arbitration process is a paramount consideration for the courts, notwithstanding the uncertainty created in labor relations through lack of definitive interpretation of employment-related statutes by way of judicial proceedings. While the Ontario and Quebec courts may be criticized for not providing employers and unions with a degree of certainty for creating collective agreement language that accords with applicable legislative mandates, the Ontario Court of Appeal decision in *Essex County* reinforces the expectation that collective agreement parties ought to translate legislation into contract wording and then, if a dispute arises between them over their expressed intention, look to arbitra-

[13] *Id.* at 963–64.
[14] Case No. 2001T-583 (Quebec Superior Ct. 2001).

tors, who are more sensitive to their affairs than are the courts, to resolve their disputes. That said, do the courts of appeal decisions mean that the test of "correctness" will never routinely apply in judicial review proceedings concerning arbitrators' interpretations of statute? That question is partially answered by the Ontario Court of Appeal in *Re Toronto Catholic District School Board v. Ontario English Catholic Teachers' Ass'n (Toronto Elementary Unit) (2001),*[15] where the more permanent Education Act rather than the temporary Social Contract Act was the subject of arbitral interpretation.

In a March 29, 2000, award, *Re Toronto Catholic District School Board and Toronto Elementary Catholic Teachers of the Ontario English Catholic Teachers' Ass'n,*[16] NAA member William Marcotte dealt with a dispute between the parties over the interpretation of a collective agreement provision that included a reference to legislation: "5.02(a) Each teacher shall have not less than 40 consecutive minutes for a lunch break in accordance with Regulation 298 under the Education Act."[17] Section 3(5) of Regulation 298 under the Act states: "3.(5)—A scheduled interval between classes for the lunch break for pupils and teachers shall not be less than forty consecutive minutes." (It should be noted that article 5.02(a) was in dispute subsequent to a 1998 divisional court ruling that upheld an award of NAA member Ken Swan, in which he had interpreted section 3(5) of Regulation 298 as providing no guarantee whatsoever, absent collective agreement language, of any time for a teacher's lunch break, either consecutive or nonconsecutive 40 minutes, but only guaranteed a 40-minute "scheduled interval between classes for the lunch break.")

Arbitrator Marcotte interpreted article 5.02(a) to mean that "each teacher's lunch break of no less than 40 minutes must occur within any scheduled interval between classes for the lunch break for pupils and teachers, also of no less than forty consecutive minutes."[18] While he found that the lunch breaks for pupils and for teachers did not have to begin or end at the same time, or be of the same duration, he found that the employer breached the collective agreement when it scheduled the lunch break for some teachers to either begin or end beyond the 11:30 a.m.—12:30 p.m. scheduled

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[15]55 O.R. (3d) 737 (Ont. C.A.).
[16]88 L.A.C. (4th) 47 (2000).
[17]*Id.* at 50.
[18]*Id.* at 73.

interval between classes for the lunch break. In a second award dated June 22, 2000, he ruled that the employer had improperly implemented his award when it broadened the teachers' scheduled interval to 11:10 a.m. to 12:50 p.m. while the students' lunch break remained unchanged, from 11:30 a.m. to 12:30 p.m.

When the employer applied for judicial review of the two awards, the divisional court concluded that the appropriate standard of review for purposes of interpreting the Education Act, which it described as "outside" legislation, was that of "correctness" and against that standard, the arbitrator's interpretation of section 3(5) of Regulation 298 under the Education Act was not found to be correct in that his interpretation "would necessarily have read into Reg. 298, s.3(5) the words 'at the same time.' . . . In our view, it was not necessary that the lunch breaks for all students and all teachers should be concurrent."[19] The Divisional Court relied on a decision of the Supreme Court of Canada, *Re Toronto (City) Board of Education v. O.S.S.T.F., District 15*,[20] described by the Ontario Court of Appeal as "a leading case dealing with arbitrators in Ontario called upon to interpret both the Education Act and a collective agreement between a school board and teachers."[21] In particular, the Supreme Court of Canada stated:

> It has been held on several occasions that the expert skill and knowledge which an arbitration board exercises in interpreting a collective agreement does not usually extend to the interpretation of "outside" legislation. The findings of a board pertaining to the interpretation of a statute or the common law are generally reviewable on a correctness standard.[22]

That is, the divisional court found that because the Education Act was "outside" legislation, the awards were subject to review on a correctness standard. On appeal of the divisional court's decision by the teachers, the Ontario Court of Appeal fashioned the issues before it as follows:

(1) Did the Divisional Court err by reviewing the arbitrator's awards on a correctness standard?

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[19] *Toronto Catholic Dist. Sch. Bd.*, 55 O.R. (3d) at 741 para. 18.
[20] [1997] 1 S.C.R. 487, 144 D.L.R. (4th) 385.
[21] *Toronto Catholic Dist. Sch. Bd.*, 55 O.R. (3d) at 742 para. 21.
[22] *Toronto (City) Bd. of Educ.*, [1997] 1 S.C.R. at 506.

(2) If the answer to the question in (1) is 'yes,' then were the arbitrator's awards patently unreasonable? [23]

As concerns whether "patent unreasonableness" or "correctness" is the appropriate standard of review in the case of arbitral interpretation of "outside" legislation, the Court of appeal dealt with the above passage from the Supreme Court's *City of Toronto* case as follows:

> [I}t is important to recognize that in the quoted passage the Supreme Court of Canada did not enunciate an absolute linking arbitral interpretation of a public statute or the common law and judicial review on a correctness standard. Cory J. used the word "generally" in the quoted passage. Moreover, he continued in the same paragraph [at 506 S.C.R.] in this vein: "An exception to this rule may occur where the external statute is intimately connected with the mandate of the tribunal and is encountered frequently as a result." [24]

That is, the Ontario Court of Appeal suggests that the standard of correctness will apply in the case of arbitral interpretation of external law but that an exception may arise such that the standard of patent unreasonableness might apply if the external statute is "frequently encountered" in the arbitration process. In the *Toronto Catholic* case before it, the court of appeal concluded that the exception applied and relied upon the *Lanark* and *Essex County* cases in reaching the conclusion that interpretation of the Education Act was a task involving "frequently encountered" legislation in arbitral proceedings under public education sector collective agreements. The court stated:

> In *Lanark* and in *Essex*, the "outside" statute which the arbitrator was required to interpret was the *SCA* [i.e., Social Contract Act], a temporary law with a transient connection to the LRA [Labour Relations Act] and collective agreements between school boards and teachers. In the present case, the "outside" statute is the Education Act itself or, more precisely a regulation made under that statute. There is nothing transient about the Education Act or its longstanding relationship with the LRA and collective agreements. Indeed, the relationship among those three sources, is, and has been for years, the core of labour relations in the public education sector. Moreover, the centrepiece of dispute resolution in that longstanding relationship has been grievance arbitration. [25]

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[23] *Toronto Catholic Dist. Sch. Bd.*, 55 O.R. (3d) at 741–42 para. 20.
[24] *Id.* at 742 para. 22.
[25] *Id.* at 743 para. 28.

Further, the court of appeal noted the factors enumerated by the Supreme Court of Canada in *Re City of Toronto* in considering which of the two approaches is the appropriate standard of review: "The absence or presence (and wording) of a privative clause, the expertise of the decision-maker, the purpose of the provision in issue, and of the statute as a whole, and the nature of the problem facing the decision-maker." [26] On consideration, the court of appeal determined that the circumstances in the *Toronto Catholic* case were such that the appropriate standard of review was that of patent unreasonableness and, hence, concluded that the divisional court had erred in finding that the correctness standard applied.

On the second issue, the court of appeal concluded that arbitrator Marcotte's finding, that the teachers' 40-consecutive-minute lunch break could occur only within the 11:30 a.m. to 12:30 p.m. scheduled interval for the lunch break for pupils and teachers was "a reasonable interpretation of the two provisions"—that is, section 3(5) of Regulation 298 and article 5.02(a) of the collective agreement. As concerns the divisional court's finding that the words "at the same time" had been read into section 3(5) by the arbitrator, the court of appeal stated at paragraph 37:

> With respect, I do not agree with this interpretation. In my view, the existing words of s.3 (5) clearly suggest a common scheduled interval for lunch breaks for students and teachers. All the arbitrator did was take this interpretation of s.3 (5) and inject it into article 5.02 (a) of the collective agreement. This strikes me as a reasonable step, especially since article 5.02 (a) contains wording . . . that expressly links it with the regulation. [27]

As to the June 22, 2000, award finding that the employer had improperly implemented the March 17, 2000, award, the appeal court concluded that the school board interpretation was reasonable. It addressed this matter as follows:

> However—and this is the important point—*the school board's interpretation is just another reasonable interpretation*. It is not the only, or the only reasonable, interpretation. Indeed, the arbitrator's interpretation is probably more attuned to the actual wording of the provisions than the school board's interpretation. Accordingly, it simply cannot be said that the arbitrator's awards are patently unreasonable. [28]

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[26] *Id.* at 744 para. 29.
[27] *Id.* at 746 para. 37.
[28] *Id.* at 747 para. 41 (emphasis added).

It would appear that the courts make a distinction applicable to statutes, other than the one that governs the collective agreement from which an arbitrator derives her or his authority, on the basis of whether or not they are "frequently encountered," so that they can determine if the "correctness" or "patent unreasonableness" standard of judicial review of an arbitrator's award ought to be applied. Obviously, the notion of "frequently encountered" is fraught with uncertainty made hardly less so when the factors employed to make this determination themselves are examined. For example, how does one measure the "expertise of the decision-maker [i.e., arbitrator]" or gauge the "nature of the problem facing the decision-maker," the latter factor itself having been stated in problematic language by the Supreme Court of Canada in *Re Weber v. Ontario Hydro.*[29] In that case, in addressing the issue as to whether the courts or arbitration is the proper forum for dealing with a dispute, the supreme court identified, at paragraph 51, "[t]wo elements [that] must be considered: the dispute and the ambit of the collective agreement."[30] As to the "dispute," paragraph 52 provides for the decisionmaker "to define its 'essential character,' "[31] and, at paragraph 54, the court observed, "Only disputes which expressly or *inferentially* arise out of the collective agreement are foreclosed to the courts."[32]

The debate surrounding the appropriate stand of judicial review of arbitrators' awards vis-à-vis "outside" legislation appears to be alive to both the "correctness" and "patent unreasonableness" tests for want of clear direction from the courts. This controversy may, however, soon be resolved in that at the time of this report, the appellant school board in the *Toronto Catholic District School Board*[33] case heard by the Ontario Court of Appeal is awaiting a decision granting leave to have the matter of the proper standard of review of an arbitrator's award dealt with by the Supreme Court of Canada. (It should be noted that as a result of arbitrator Marcotte's arbitrations awards, section 3(5) of Regulation 298 under the Ontario Education Act has been changed in order to make clear when teachers eat lunch.)

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[29][1995] 2 S.C.R. 929.
[30]*Id.* para. 51.
[31]*Id.* para. 52.
[32]*Id.* para. 54 (emphasis added).
[33]*Re Toronto Catholic Dist. Sch. Bd. v. Ontario English Catholic Teachers' Ass'n (Toronto Elementary Unit) (2001)*, 55 O.R. (3d) 737 (Ont. C.A.).

## NAA Intervention in a Supreme Court of Canada Case

Re *Canadian Union of Public Employees and Service Employees International Union v. The Minister of Labour for Ontario (2000) (a.k.a., "The Retired Judges' Case")* [34]

In his Region VII report to the NAA Committee on Legislative Developments, Arbitrator Allen Ponak indicated that the *CUPE/SEIU* case involves a challenge to the decision of the Ontario Minister of Labour in February, 1998, to sidestep the Labour Ministry's own longstanding roster of arbitrators and appoint, without any consultation, four retired provincial judges who were not on the roster to arbitrate hospital sector interest disputes (there being no right to strike in that public sector, and others, in Ontario). The application to overturn the appointments was dismissed by the divisional court on the grounds that "the actions of the Minister fell squarely within the authority given to him . . . . [I]t is not open to the court . . . to negate the statutory authority of the Minister." [35] The November 21, 2000, decision of the Ontario court of appeal overturned the lower court decision. Significantly, the Court of Appeal addressed the critical issues of labor-management arbitrators' expertise and neutrality.

In regard to the former, the court found that "interest disputes are not essentially legal but practical and require familiarity of and expertise of a labour arbitrator rather than the skills of a lawyer or a judge." [36] As to the connection between the appointment process of the retired judges and the "substantial financial interest" of the government in the outcome of the interest arbitration awards, Allen Ponak states, "The Court concluded that abandoning the established practice of selecting chairpersons from the roster and the unilateral selection of retired judges to replace them, 'gives rise to a reasonable apprehension of bias and gives the appearance of interference with the institutional independence and the institutional impartiality of boards of arbitration.'" [37] The court of appeal further found that the decision of the Minister of Labour was "contrary to the principles and requirements of fairness and natural justice." [38]

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[34] 51 O.R. (3d) 417 (Ont. C.A.).
[35] *Id.* at 436 para. 48.
[36] *Id.* at 446 para. 75.
[37] *Id.* at 450 para. 99.
[38] *Id.* at 451 para. 102.

On September 6, 2001, the Ontario government was granted leave to appeal to the Supreme Count of Canada the November 21, 2000, decision of the Ontario Court of Appeal that overturned the divisional court's decision. At the time of last year's report, the NAA was seeking intervenor status in the *SCC* case with the support of the British Columbia, Ontario, and Quebec provincial labor-management arbitrators' associations. (The remaining jurisdictions in Canada do not have arbitrators' organizations.) On January 11, 2002, the NAA, as well as the Canadian Bar Association, was granted intervenor status. Michel Picher, who represented the NAA in this matter, submitted the Academy's factum in early May, 2002. On May 16, 2003, the Supreme Court upheld the decision of the Ontario Court of Appeal. Of note, and as indicated at the San Juan NAA Conference, the court relied on the NAA submission presented by Michel Picher in making its determination. In the Judgment sent to the parties, the ratio decidendi of the court's decision is succinctly stated as follows:

1) The Court declares that the Minister is required, in the exercise of his power of appointment under s.6 (5) of the Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c.H.14, to be satisfied that prospective chairpersons are not only independent and impartial but possess appropriate labour relations expertise and are recognized in the labour relations community as generally acceptable to both management and labour. [39]

[39] *Canadian Union of Pub. Employees v. Ontario (Minister of Labour) (2003)*, 304 N.R. 76, 189 para. 208 (S.C.C.).