

THE NAA AT THE SUPREME COURT OF CANADA

The program included a viewing of a video of oral argument before the Canadian Supreme Court October 8, 2002, and the Court's announcement of its subsequent decision on May 16, 2003.¹ Michel Picher commented on the case. The National Academy of Arbitrators (Canadian Region) was an Intervener in the case and Michel Picher participated in the oral argument as its solicitor.

The litigation involved the requirement in section 6(5) of the Hospital Labour Disputes Arbitration Act² (HLDAA) that disputes over collective agreements in hospitals and nursing homes be resolved by compulsory arbitration. A Canadian union challenged the practice of the Minister of Labour to appoint retired judges to chair the arbitration boards concerned. Issues involved:

- Whether the Minister was required to select arbitrators qualified by expertise and acceptance in the labor relations community
- Whether retired judges, as a class, were biased against labor
- Whether the appointment process for selecting chairs of arbitration boards violated natural justice or infringed institutional independence and impartiality of arbitration boards
- Whether the appointment process breached legitimate expectations of unions
- Whether the appointments caused reasonable apprehension of bias
- Whether the Minister was disqualified from, or required to delegate the task of, making appointments because of an interest in the arbitrations
- Whether the Minister's appointments were patently unreasonable

¹C.U.P.E. v. Minister of Labour for Ontario, [2003] 1 S.C.R. 539 (neutral citation, 2003 SCC 29). C.U.P.E. is the abbreviation for the Canadian Union of Public Employees and Service Employees International Union.

²R.S.O. 1990, c. H.14, s. 6(5)

The Court held that the Minister of Labour is required, in the exercise of his power of appointment under HLDAA, to be satisfied that prospective chairpersons are not only independent and impartial but possess appropriate labor relations expertise and are recognized in the labor relations community as generally acceptable to both management and labor.

APPENDIX A

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