Collective Agreement Arbitration in Canada, Earl Edward Palmer, (Butterworths: Toronto, 1983) Pages *xcvi*, 805. $85.00.

When in the mid-19th century Sir Henry Sumner Maine wrote that "the movement of the progressive societies has hitherto been a movement from status to contract"[1], there was much historical support for his position. But, as others have noted, developments since that time could certainly be used to defend the opposite thesis. Nowhere is this more evident than in the field of employment. As Laskin C.J. has indicated, individual employment contracts operating in a collective bargaining environment have been almost wholly displaced by collective agreements[2].

The particular status of an employee is, therefore, governed by the collective agreement negotiated by his bargaining unit, but there are, of course, many common clauses in collective agreements. The interpretation of the rights and duties flowing from that status, as well as the interrelationship of bargaining units to employers under a collective agreement, have been largely left to arbitrators, who have thus played a very significant role in shaping the law in this field. The role of the courts has been narrowed to ensuring, at least outside public sector employment, that arbitrators act within their jurisdiction and (what is akin to jurisdiction) that they do not interpret the terms of the collective agreement so unreasonably as to amount to an amendment of it.

The enormous number and variety of issues that come before labour arbitrators is evident from the fact that within five years of the original publication of the work under review it was necessary to issue a supplement and now a second edition. This edition, the author tells us, has necessitated weaving literally thousands of new awards and cases into the fabric of the book. And this must be read in light of the fact that the author has confined himself largely to awards published in the two major reports of labour awards. Not only are there other reports,[3] vast numbers of awards are not published. Given the fact that arbitrators are generally picked by the parties to a dispute, considerable variation in the interpretation of collective agreements is to be expected.

Consistency in the work of arbitrators is made possible by the fact that the same persons are often chosen to act in many arbitrations; arbitrating labour disputes is a lucrative side-line for a number of law professors. Moreover, arbitrators tend to rely on one another's decisions, a task made easier by the publication of arbitral awards, notably in *Labour Arbitration Cases* and *Canadian Labour Law Cases*. Equally important in maintaining

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[1] *Ancient Law*, Pollock (ed.) (1924), at 174.

[2] See *McGavin Toastmaster Ltd.* v. *Ainscough et al.* (1975), 54 D.L.R. (3d) 1, at 6.

[3] One of the criticisms made of the first edition in the generally favourable review by Professor J. MacIntyre in (1979), 57 Can. Bar Rev. 162 is that there was insufficient reference to cases in these other reports.

coherence in the law has been the existence of excellent texts in the field, in particular, *Brown and Beatty*[1] and the publication under review. The praises of this book (well deserved) have already been sung—when the first edition was published five years ago. Since this edition merely purports to interweave new cases, it would be inappropriate to attempt a complete review. Suffice it to say that the addition of the new material has in no way interfered with the clarity and excellent organization of the work. And the index still makes it possible to find what one is seeking with ease. I would only add that the book is never far from my grasp whenever I am called upon to deal with a case relating to collective bargaining.

To prevent the work from becoming too voluminous, the author has found it necessary to avoid undertaking an examination of new topics. For the same reasons, he confines himself largely to the arbitral process; he does not purport to deal with curial review, though he does, of course, deal with cases decided by the courts whenever these impinge on a subject under discussion. It is to be hoped that the author finds the energy to undertake the separate volumes he feels would be necessary for the task. He is not likely to get help from some of the usual sources available to authors; at the conclusion of his Introduction to the first edition he says:

> Finally, I should note that the book is unique. To my knowledge neither my family nor, more particularly, my wife did anything to make this book possible. They are, however, wonderful people with whom to live and, occasionally, fight.[2]

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[1] *Canadian Labour Arbitration* (Agincourt, Ont.: Canada Law Book, 1977)

[2] p. xxiv.

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