Expedited Arbitration: Is it Expeditious? Evidence from Canada

By

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Abstract

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The objective of my research is to explore expedited arbitration in Canada. Labour arbitration remains an expensive and time-consuming process to resolve unionized workplace disputes.

In the first of my three studies, I asked counsel to respond to a quantitative internet-based survey which focused on perceptions of organizational justice. The findings revealed that the opinions of participants were similar based on whether the participants adopted an expedited or traditional arbitration process.

In my second study, I conducted interviews with union and management-side counsel located across Canada. By interviewing counsel located in various jurisdictions it allowed me to gather rich data from multiple perspectives. Further, interviewing both union and management-side counsel allowed my study to gain valuable information from parties with both conflicting and overlapping goals.

In my third and final study, I adopted a content analysis framework to study over five hundred and fifty labour arbitration decisions. I found that there was less of a delay in obtaining the first day of hearing in the expedited arbitration process. However, there was no statistical difference in the delay in receiving the arbitration award. The study also revealed that there was not a difference in the outcome of the expedited and traditional arbitration decisions.

My dissertation enabled me to develop valuable information on expedited labour arbitration in Canada. Adopting a multi-method approach allowed the development of rich data and information. Further, it provided the thoughtful insight of practitioners who utilize the process regularly. These findings lead me to provide suggestions for policy makers in Canada on issues with the current process and possibilities for improving expedited arbitration.

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your first colouring pages. I also hope your love of learning and curiosity has, in some way, been influenced and encouraged by our completion of this degree.

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Chapter 1: Introduction

My interest in the area of expedited arbitration was evoked by my experiences as a labour and employment lawyer where labour arbitrations were costly (Thornicroft, 2008) and time consuming (Ponak & Olson, 1992; Thornicroft, 1993, 1995b) for employers and unions. Delays in grievance resolution through the labour arbitration hearings negatively impacted workers (Rose, 1986; Ross, 1958) and organizations (Brett & Goldberg, 1979; Rose, 1986). Most jurisdictions in Canada have adopted legislation that provides the parties with an opportunity to apply to their respective Minister to expedite the arbitration process. Initially, my inspiration for the study came out of the use, or lack of use, of the process in Nova Scotia. There are certain provisions of the legislation that I believed dissuaded the parties from participating in the expedited process. However, I wanted to confirm my instincts.

It is important to note from the outset that this study does not address expedited arbitration provisions pursuant to individual collective agreements between the parties; instead, the study is restricted to the legislative process. To this point, the expedited process is not utilized in Nova Scotia, as neither unions nor employers have engaged in the process. This is despite the Nova Scotia legal/labour relations communities' expressed interest in invoking expedited processes and alternative dispute resolution methods to resolve grievance arbitrations. In Nova Scotia, the Minister of Labour has received only two applications for the process since its inception and an expedited hearing has not been conducted in the province.

When I investigated and compared expedited arbitration provisions in provincial jurisdictions across the country I found that the issue would benefit from a national perspective because parties consistently struggle to find arbitrators that they find suitable to hear and render a decision in a timely manner. Regardless of jurisdiction, the expedited processes are being utilized less in recent years. For instance, in 2001/2002 there were 2,015 expedited applications in Ontario; more recently, in 2012/2013, there were 919 applications (Dispute Resolution - Ontario Ministry of Labour, 2013). Therefore, I wanted to investigate the issue in the national context.

Purpose of the Research

The primary objective of the research is to understand, more clearly, the nuances of the expedited arbitration process. I address counsels' perceptions and experiences, study any significant differences found between the outcome of the expedited and non-expedited decisions, and determine whether perceptions of justice impact counsels' perceptions of the expedited process. Further, I provide recommendations for processes that will serve the parties more efficiently. It is expected that the findings may assist in developing policies, legislation, and best practices in numerous Canadian jurisdictions.

Research Questions

The study examined the following broad research questions:

1. Does the expedited arbitration process provide fewer days of delay for the parties?

2. Are there significant differences in the outcome of arbitration cases, where the issue is discharge, between those that adopt an expedited process as opposed to the traditional process?
3. What factors influence the use (or failure to use) of the expedited arbitration process?
4. Do perceptions of justice impact the choice of arbitration process?

Survey of Literature

Research (Gandz, 1985) and commentaries (Winkler, 2010) have focused on labour arbitration's lengthy and expensive process. The time delay in the resolution of grievances appears to be lengthening (Ponak & Olson, 1992) and delay remains a concern amongst the academic and practitioner communities (Ponak & Olson, 1992; Winkler, 2010). This sentiment has made for a greater discussion of methods to ensure that grievances are settled prior to the arbitration process.

Ponak and Olsen (1992) suggest that parties reduce delays by lessening the time spent selecting an arbitrator and scheduling the hearing. In fact, they advocate that the expedited process in Ontario speaks to these issues (Ponak & Olson, 1992), given that the arbitrator is assigned which addresses a primary source of delay. Thornicroft (2008) suggests that expedited arbitration is an effective means to resolve workplace disputes more efficiently when he argues that the process offers cost and time advantages. Early research indicated that a delay in the arbitration outcomes resulted in a disadvantage to the grievor, who was less likely to win reinstatement (Adams, 1978). However Adams'

(1978) findings were not replicated in subsequent studies (Barnacle, 1991; Ponak, 1987; Ponak & Olson, 1992).

There is an absence of research that quantitatively or qualitatively examines and compares the use of the expedited arbitration process as well as literature which focuses on the Nova Scotia jurisdiction. De Berdt Romilly (1994) conducted a related study, prior to the amendment of the *Trade Union Act*, which examined: i) the differences in arbitration cases that were proceeded by way of expedited as opposed to conventional arbitration, and ii) union and management perceptions regarding the use of conventional and expedited arbitration in Nova Scotia. My study will address the gap in the literature by providing meaningful research to address current shortcoming in the literature available to the labour relations community.

My proposed research also addresses a gap in the procedural and distributive justice literature. Specifically, I applied the justice dimensions as a foundation for studying the expedited arbitration process. To my knowledge, the field lacks studies that apply the organizational justice literature to examine and compare the expedited and traditional arbitration processes. The organizational justice literature explores four dimensions of justice: distributive, procedural, informational, and interpersonal justice. My dissertation focuses primarily on distributive and procedural justice.

Distributive justice emphasizes perceived outcome fairness (Cropanzano & Ambrose, 2001; Folger, 1977; Folger & Konovsky, 1989; Lind & Tyler, 1988; McFarlin & Sweeney, 1992; Sweeney & McFarlin, 1993). In the legal context, if a decision

outcome, (for instance the decision of an arbitrator), coincides with a counsel's belief in a just result, the dimension is cultivated. Procedural justice focuses on the arbitration process's fairness and system evaluation (Folger, 1977). Early research on procedural justice found that litigants' assessment of the court procedures' fairness was correlated with the reported outcome satisfaction and authoritative evaluations (Casper, Tyler, & Fisher, 1988; Melton & Lind, 1982; Tyler, 1984). Further, retaining control, an element of procedural fairness, was argued by Thibault and Walker (1975) to be important to individuals. The authors asserted that participants would relinquish control over the decision based upon maintaining control over the decision-making process. Enabling participants "voice" during the decision-making process cultivates procedural justice (Tyler, 1987). These concepts provide a foundation to apply to the arbitration literature.

Paper Organization

I adopted a multi-method approach with the aim that the combination of the research methods will provide rich data for studying the issues. I hope that policy makers, in a number of jurisdictions, may adopt measures to address information acquired in the research which may increase the use of expedited arbitration and result in quicker resolution of workplace disputes.

Chapter 2 provides a comprehensive literature review of research regarding labour arbitration and organizational justice, with an emphasis on procedural justice. The research pertaining to arbitration lacks any recent emphasis on the expedited process. However, research has established that arbitration is a lengthy, costly process which is

increasing in its legalistic nature (Thornicroft, 2008). Not surprisingly, the current commentary acknowledges that the modern arbitration system has many shortcomings (Winkler, 2010). There is extensive literature on procedural justice which has established that perceptions of treatment influence participants' opinions. These opinions reflect the legal process rather than the decision outcome (Ohbuchi, Sugawara, Teshigahara, & Kei-ichiro, 2005).

Chapter 3 explores the results of a numerative study of counsel practicing labour law in Canada. The participants responded to the quantitative and qualitative questions using a web-based survey. Although, given low response rates, the results were not suitable for statistical analysis, the study did reveal that most parties expressed similar beliefs in the level of distributive, procedural, informational, and interpersonal justice when examining the expedited and traditional arbitration processes.

Chapter 4 details the qualitative aspect of my dissertation. In order to establish a breadth of knowledge on legal opinions regarding expedited arbitration, I interviewed counsel across Canada. Specifically, twenty-four telephone interviews were conducted with management and union-side counsel as well as two government officials. I explored valuable information regarding the counsels' opinions regarding the importance of a consensual arbitrator appointment, cost, appropriate issues for expedited arbitration, and procedural justice concerns. This aspect of the study was aimed at establishing factors that influence any reluctance on the part of counsel to utilize the expedited arbitration process.

Chapter 5 reviews the outcomes of a comprehensive content analysis which compares the results of 555 expedited and traditional arbitration cases. My analysis was conducted to investigate the effect of the choice of arbitration procedure on the delay in resolving the issue. I also examined whether the use of expedited or traditional arbitration process impacted the number of days of hearing and the length of the suspension awarded.

Chapter 6 concludes the dissertation with a discussion of the potential implications of the research. The research adds to the current literature by focusing on expedited arbitration, an arguably under-studied area. Further, my work is particularly helpful to Canadian academics and practitioners given that Canadian labour relations are distinct from the United States (Sack, 2010) and the majority of the industrial relations literature is focused on the United States. It is timely to conduct research that may assist unionized workplaces in dispute resolution. The results may be relevant to workplaces at a time when the Canadian labour environment is challenged by factors such as economic troubles (E.g. Atkins & Grant, 2013). Further, my research findings, are consistent with suggestions made by prominent members of the labour law community who recognize the short-comings of the current labour arbitration system (Winkler, 2010).

Chapter 2: Literature Review Focusing on Arbitration and Organizational Justice

In the following chapter I outline the relevant literature regarding labour arbitration and organizational justice. My research requires a thorough canvas of both fields given the subjects are explored throughout this dissertation. The first portion of this chapter provides information on labour arbitration including the evolution of labour arbitration, its processes, criticisms, and suggested methods to overcome weaknesses inherent in the current labour arbitration system. The second half of the chapter provides a detailed review of the research on organizational justice with an emphasis on distributive and procedural justice-focused research related to court proceedings. This literature review allows for the development of a theoretical basis for studying expedited arbitration in Canada.

The literature review refers to Canadian and American-based literature. The intermingling of research sources is partially due to the limited literature available in Canada. It is noteworthy that there are differences in the Canadian and American arbitral practice and jurisprudence. First, the Canadian labour relations environment is provincially focused with frequent changes to legislation based upon changing governments. This contrasts with the American environment which is primarily federally regulated with few changes (Weiler, 1990). Further, labour arbitrators are engaged in looking broader at the public interests in Canadian arbitrations and workplace disputes (2003). Arbitrators in Canada also have expansive jurisdiction where they decide matters

that arise out of the collective agreement (Weber v. Ontario Hydro, 1995). Despite the differences in the Canadian and American labour relations framework and environment, the economic and cultural influence of the United States on Canada is substantial and "the pressure for convergence of [the] two societies remains very strong"(Sack, 2010, p. 257).

Labour Arbitration

An overview of labour arbitration. This dissertation is focused on grievance arbitration. However, it is important to distinguish grievance arbitration from interest arbitration. Interest arbitration focuses on a third-party process utilized by the employer and the union when they cannot successfully negotiate a collective agreement. The decision of the arbitrator becomes the collective agreement. Grievance arbitration, referred to as labour arbitration throughout the dissertation, refers to a third-party resolution, of a grievance, that employers and unions are unable to resolve.

Labour arbitrations occur regularly in unionized workplace environments where the parties use the process to resolve workplace disputes. Arbitrations began in order to minimize the use of formal litigation processes in the unionized workplace. The process uses a single arbitrator or a tripartite board to resolve conflicts. Expedited arbitration was touted as a time and cost-efficient method of informally resolving workplace conflicts by using knowledgeable labour relations experts to address these issues (Sethi, 1989). Early arbitration processes were non-adversarial and quick; where the processes involved

written submissions, few, if any, witnesses were used, and no cross examinations were conducted (Winkler, 2010). In the "golden era", defined by former Chief Justice Winkler as a period from approximately 1944–1967, courts were regarded as inappropriate for labour relations matters and the disputes were determined in the arbitral process absent an opportunity for an appeal (Winkler, 2010).

The Supreme Court of Canada has increased the breadth of an arbitrator's authority and jurisdiction (Atlantic Paper Stock Ltd. v. St. Anne-Nackawic Pulp and Paper Company Limited, 1976; Bisaillon v. Concordia University, 2006; Douglas/Kwantlen Faculty Assn. v. Douglas College, 1990; McLeod v. Egan, 1975; Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, 2000; Weber v. Ontario Hydro, 1995). For instance, now, when there are multiple avenues to pursue a grievance those that can be related to the collective agreement must be filed via arbitration rather than a provincial administrative tribunal. Once an arbitration decision is awarded the parties may apply to the courts for a judicial review. A judicial review in a labour context is a process where the employer or union may appeal a labour arbitrator's decision to the court. Although it is an option for parties who disagree with an arbitral award the courts remain reluctant to overturn labour arbitrators' decisions where case law recognizes arbitrators' specialized expertise (Dunsmuir v. New Brunswick, 2008).

There is diverse research regarding the arbitration process including studies that examine gender (Oswald & Caudill, 1991), factors that influence a decision to uphold

discipline (Scott & Taylor, 1983), jurisdictional comparisons, and the success of reinstatements (Ponak, 1987). First, research has addressed such issues as whether gender impacts the labour arbitration outcome where earlier research indicated that women were reinstated more often (Ponak, 1987). However, more recently research has indicated that gender was found to be a non-significant factor (Oswald & Caudill, 1991).

Bemmels studied gender as a factor in arbitration decisions when he considered the gender of the arbitrator and the grievors. In his various research studies he found some conflicting results; one study indicated that arbitrator characteristics, including gender, age, education, and occupation, did not impact the arbitrators' decisions (Bemmels, 1990a). However, multiple studies revealed that female grievors were more likely to receive favourable treatment, than male grievors, before a male arbitrator (Bemmels, 1988, 1990b, 1991). Both male and female grievors received similar outcome from female arbitrators (Bemmels, 1988, 1990b, 1991).

Factors that were found to impact an arbitral decision on dismissal for absenteeism included: the i) reason given by the employer for the discharge (where leading factors included excessive absenteeism, failure to report to work, and failure to "call in"), ii) existence of a formal absenteeism policy, iii) consistent application of the policy, iv) employee knowledge of the policy, v) management adhering to the policy, vi) use of progressive discipline, vii) the employees' length of service, and viii) an impartial investigation (Scott & Taylor, 1983). Surprisingly, Ponak (1987) found that the seniority or past record of the griever was not a statistically significant influence. However,

Simpson and Martocchio (1997) found that work history and due process issues were influential factors on arbitral awards. Jurisdictional differences in outcomes have also been studied where reinstatement rates are similar across jurisdictions including Alberta (Ponak, 1987) and Ontario (Adams, 1978).

Arbitrators. Arbitrators are unregulated professionals who resolve workplace disputes (Thornicroft, 2008). The ability to establish a career as an arbitrator is generally based on a well-developed reputation in law and labour relations as there are no formal or standard educational credentials required to establish an arbitration practice (Thornicroft, 2008). Instead, reputation and experience are essential to obtaining a practice where most jurisdictions have a select number of busy arbitrators and a much larger number of infrequently employed arbitrators (Thornicroft, 2008). Former Chief Justice Winkler (2010) attributed the emphasis on the importance of the arbitrator as linked to the parties' focus on the outcome rather than the relationship between union and management. Regardless of the cause, it is long established that both union and management spend considerable time attempting to choose the arbitrator most favourable for their case (Dworkin, 1974).

There is not a definitive list of factors that lead to the popularity of some arbitrators; however, Allen and Jennings (1998) surveyed more than 300 members of the American Arbitration Association and found the most important characteristics of arbitrators, as reported by the members, included: i) personal integrity, ii) experience (within labour relations and as a practicing arbitrator), and iii) perceived neutrality.

Hebdon and Brown (2008) contend that arbitrators can be "outsiders" where the parties have developed mutual understanding of the contract language and the arbitrator lacked first-hand experience. Academics have also studied the characteristics of arbitrators, including expertise and education, to determine if these factors influence decision outcomes. Oswald and Caudhill (1991) found that more experienced and educated arbitrators were less lenient on grievors than less experienced and less educated arbitrators. This was consistent with Nelson and Curry's (1981) research findings where, in cases involving dismissal, the least experienced arbitrators were more likely to reinstate the grievor. However, Henema and Sandver (1983) found that age and experience did not impact arbitral jurisprudence. More recently, Nelson and Kim (2008) found that decision elements (an assessment whether an issue is true and the weight applied to that factor) were influential in the arbitrators' decision; however, the arbitrators' gender characteristics did not have a significant impact on the decision outcome. This research contrasts with Bemmels who found that gender was a significant factor in determining whether female grievors received preferential treatment from male arbitrators (Bemmels, 1988, 1990b, 1991).

Difficulties with the current labour arbitration process. The current arbitration system has received increased criticism. Former Chief Justice Winkler recently noted that "this is not labour arbitration; it is labour dysfunction" (Winkler, 2010, p. 9). Labour arbitration imposes costs and delays that are comparable to the judicial system thereby demonstrating that the current arrangement is "like all systems of

human design… [is] susceptible to human frailty" (Kandel, 2002, p. 135). The two predominant issues of the current labour arbitration system include increased cost and time delay.

Cost. Unlike the traditional court process, labour arbitration does not require the person lodging the complaint to pay directly for representation. These costs are covered by union dues. However, the union and employer are responsible for considerable costs where the parties must compensate legal representation. Employers, in particular (Barnacle, 1991; Block & Stieber, 1987; Ponak, 1987; Wagar, 1994), frequently employ counsel which involves remuneration for representation at the hearing and for preparatory work, including research and witness preparation. The arbitrators' fees are frequently quite costly where the charges include fees for presiding at the hearing and releasing the decision, and also preliminary matters including prehearing conferences, issuing hearing notices, and any preliminary matters relating to procedure (Thornicroft, 2008). For instance, well-respected Arbitrator Picher's per day hearing cost is $3,900 (Lancaster House, 2013). This does not include fees such as room rental and transportation/travel costs (Thornicroft, 2008). Also, if the matter is settled within a month before the hearing, a common occurrence, the cost of the arbitrator can be between $600 and $1,560 without the decision maker attending the hearing (Lancaster House, 2013). These costs do not account for the less obvious costs including employee time dedicated to preparation and upheaval in the workplace. Further, unresolved work disputes may impact the workplace culture and detrimentally impact collective bargaining where discontent can interfere

with productive negotiations and increase the likelihood of a work stoppage (Winkler, 2010).

Delay. A primary criticism of the current labour arbitration framework is the delay associated with the system. Delays are becoming increasingly long (Curran, 2014; Ponak & Olson, 1992) where the decision may be often released a year after the initial grievance is filed (Thornicroft, 1993) . For instance, Thornicroft (1993) approached the issue decades ago when he studied cases over a twelve year period and found that this time period there was an additional seven days of cumulative delay per year. Moreover, Curran (2014) recently revisited the issue and found that the average delay, from grievance filing to resolution was 394.12 days in 1994, 448.50 days in 2004 and 730.03 days in 2012.

Delays typically occur before and after the hearing. For instance, the multi-step grievance process itself is often time consuming where the collective agreement usually requires a number of steps before the matter is referred to arbitration (Thornicroft, 1993, 2008). The pre-hearing delay is usually the largest portion of the cumulative delay (Ponak, Zerbe, Rose, & Olson, 1996) and includes delays due to the inability to co-ordinate dates with sought after arbitrators, the busy schedules of counsel/representatives and witnesses as well as "conscious tactics" (Thornicroft, 1993, 2008) where management engages in purposive delay. Parties are selective in their choice of arbitrators, and accordingly, they research the potential arbitrators and adopt that information to select an arbitrator that they deem appropriate for their case (Bloom &

Cavanagh, 1986; Nelson & Curry, 1981; Thornton & Zirkel, 1990). Not surprisingly, statistical evidence establishes that there is a delay in obtaining certain arbitrators as well as receiving their awards (Thornicroft, 1993).

Thornicroft (2008) argues that once the arbitration is scheduled the "matters tend to proceed quickly" (p. 372) and arbitrators typically release a decision within six to eight weeks of the hearing's end. However, he did not provide evidence for this assertion, and respectfully it has been my experience that decisions are not released that quickly. There are a number of factors that may contribute to the delay in an arbitrator's award. First, as mentioned above, there are a few select arbitrators with very busy schedules which make it difficult to obtain a hearing date with those arbitrators. Also arbitrators, unlike judges, do not typically have the administrative support personnel to provide independent research or assist with scheduling, compensation, and administrative matters (Kandel, 2002) which can naturally delay the process. To minimize a delay attributed to the arbitrator, parties are typically better served scheduling a hearing with a single arbitrator, rather than a tripartite hearing, as it results in a greater delay in receiving the decision (Thornicroft, 1993). Thornicroft (1993) accepts that parties are often required to adjourn the matter to schedule additional hearing days. Scheduling these additional hearing dates is, similar to scheduling the original hearing date, difficult due to delays to schedule the arbitrator, parties, and counsel quickly. This is yet another instance where the grievance resolution may be further delayed.

Grievance arbitration outcomes are also delayed due to the grievance arbitration process itself. Initially disputes were resolved informally and quickly; however, the

culture of arbitrations has changed where "creeping legalism" has entered into the process (Thornicroft, 2008). The central issue of a case has been found to be associated with a greater time period in resolving the case. For instance, Thornicroft (1995b) found that dismissal cases were heard sooner than other types of cases. Further, allegations of insubordination, fighting or drug/alcohol abuse were set down for a hearing date and resolved quicker than cases addressing attendance, theft, or performance (Thornicroft, 1995b).

Another factor that is associated with increased delays in grievance outcome is the use of lawyers who are associated with bringing in legalistic characteristics of the courtroom to the arbitration hearing. In fact, the literature supports that lawyers have increased the delays in arbitration hearings (Thornicroft, 1993). Winkler (2010) contends that when industrial relations practitioners were displaced, and substituted with lawyers, the litigation-based arbitration hearing format became the norm. When legal counsel becomes involved, the hearing's focus is changed to technical arguments, rules of evidence, the production of documents, the presentation of a "litany of prior cases" (Thornicroft, 2008) which mirrors the formal court process. In effect the desire to "leave no stone unturned, to dot every "i" and cross every "t" can escalate the cost of an arbitration and prolong the time it takes to get an award" (Kandel, 2002, p. 135). Although there is limited empirical evidence that addresses the likelihood of winning a case when both parties are represented by counsel (Ponak, 1987), there is evidence of an advantage, to the party with counsel, when only one party is represented (Block & Stieber, 1987; Mark, 2000; Thornicroft, 1994; Wagar, 1994).

The impact of a delayed decision or the success of the parties, at arbitration, is mixed. Early research indicated that a delay in the arbitration outcomes resulted in a disadvantage to the grievor, who was less likely to win reinstatement (Adams, 1978). However, Adams' (1978) findings were not replicated in subsequent studies (Barnacle, 1991; Ponak, 1987; Ponak & Olson, 1992). Although the research is inconclusive as to the impact of the delay on the success of either party, outstanding grievances may negatively impact the workplace and remain an important factor for the union, employer, and individual employee. For instance, Williams and Taras (2000) found that reintegration of a reinstated employee may be difficult for the involved parties. Given these difficulties, some employers and unions settle on a compensation package in lieu of the employee returning to work. Further, Brett and Goldborg (1979) found that wildcat strikes the United States were related to unresolved grievances. It is noteworthy that this study is dated and applied only to wildcat strikes so its generalizability is limited. In addition, the employer may be disadvantaged by awards of significant back-pay if a grievor is reinstated. In effect, the employer can be required to compensate two employees, the replacement employee and the terminated employee, for the work of one individual (Thornicroft, 1993).

Methods to reduce delays in arbitration. Some measures have been developed to respond proactively to delays in dispute resolution. One solution is to adopt expedited arbitration, an option that has been available for some time (Kane, 1973). The parties may adopt a variety of methods to expedite an arbitration process including: limiting the

use of legal counsel, adopting will-says, imposing time limits, requesting the arbitrator issue an oral decision, using a sole arbitration rather than a panel (Thornicroft, 2008), scheduling hearings quickly (Kane, 1973), limiting the use of authorities, or prohibiting the use of written decisions from expedited awards as precedents in subsequent arbitrations. Frequently, collective agreements contain provisions that directly address expedited arbitration options. However, this is often limited to larger employers who are able to design their own arbitration process and are able to return, at least for some aspects, to the "golden days" (Winkler, 2010, p. 9). Parties that are successful in adopting this model return to labour relations-based dispute resolution where the parties' goal is to satisfy the workplace actors (Winkler, 2010). However, expedited arbitration does not offer the parties the cost and time efficient system originally proposed by Kane (1973).

Alternatively, the expedited arbitration process may be adopted through appropriate labour legislation where the parties may apply to the appropriate Minister of Labour (or other applicable labour body) to appoint an arbitrator. Jurisdictions that have applicable legislation include British Columbia (The British Columbia Labour Relations Code, , s. 104), Saskatchewan (2013, s. 6-47), Manitoba (The Manitoba Labour Relations Act, , s. 130(4)), Ontario (The Ontario Labour Relations Act, , s. 49), New Brunswick (The New Brunswick Industrial Relations Act, 2008, s. 55), Newfoundland and Labrador (The Newfoundland and Labrador Labour Relations Act, s. 86(1)), and Nova Scotia (The Nova Scotia Trade Union Act, , s. 46(A)). The expedited arbitration

processes contains similar provisions across Canada where the parties must address the hearing within a specified time limit, which is less than a month.

Mediation. The parties may also adopt mediation as a means to address delay in arbitration by attempting to use this process instead of, or if not successful before, arbitration. Mediation is not the subject of the paper; therefore, it will only be addressed briefly. Mediation allows the parties to discuss and resolve their dispute absent an arbitrator imposing a decision (Welsh, 2001). Some research on mediation by Feuille (1999) has found faster resolution of cases, cost savings, and improved labour relations. In addition to formal mediation, an arbitrator with the consent of the parties, may attempt to resolve the matter though mediation (Thornicroft, 2008).

Mediation-arbitration. The parties may also adopt a mediation-arbitration, or med-arb, system to counter delays. The med-arb system combines the fundamental processes of mediation and arbitration. It engages the neutral in attempting to settle the dispute, through mediation, between the parties. However, the med-arb process ultimately ends in an arbitral award if the parties are not able to successfully resolve the dispute through the mediation process.

Expedited arbitration. The expedited arbitration process developed in response to the "bottlenecks"(Winkler, 2010) as the current system is regarded as "no longer timely…increasingly unaffordable, and [decisions were based] not on merits but on technicality" (Winkler, 2010, p. 8).

EXPEDITED ARBITRATION: IS IT EXPEDITIOUS? EVIDENCE FROM CANADA

Many provincial jurisdictions in Canada have adopted legislation that allows for the parties to use an expedited process. For instance, the Nova Scotia *Trade Union Act* was amended in 2006 to allow the parties access to an expedited arbitration process which could lessen lengthy delays. Specifically Section 46(A) permits a party to a collective agreement to apply to the Minister of Labour to appoint an arbitrator when i) the grievance procedure under the collective agreement has been exhausted, ii) five months or more have passed since the date on which the dispute was referred to arbitration, and iii) no hearings have commenced. Once one of the parties applies to the Minister, s/he appoints an arbitrator and sets down a hearing date within 30 days of filing the order, unless the parties mutually agree to extend this date. The Minister also has the power to set a date whereby the decision must be rendered. Where appropriate and requested by the parties, the arbitrator may award an oral decision within seven days of the hearing.

Ontario instituted similar legislation decades before Nova Scotia in 1979. Section 46 of the *Trade Union Act* differs slightly from the comparative provision, Section 49, of the Ontario *Labour Relations Act*. For instance, the *Labour Relations Act* allows for expedited arbitration where the grievance procedure under the collective agreement has been exhausted or after 30 days have elapsed from when the grievance was first brought to the attention of the other party, whichever occurs first. This contrasts with the *Trade Union Act* which requires that: i) the grievance procedure under the collective agreement has been exhausted, ii) five months or more have passed since the date on which the

dispute was referred to arbitration, and iii) no hearings have been commenced. Arguably, the distinctive feature between the pieces of legislation is the requirement that five months of time elapse before matter can be referred to expedited arbitration. Another difference between the legislation is that the Ontario-based legislation dictates that the appointed arbitrator is to hear the matter within twenty-one days after receipt from the Minister. The Nova Scotia-based legislation requires that the hearing date is set down within thirty days of the order unless the parties mutually agree to another date.

There is not a great deal of research that addresses the expedited arbitration process explicitly. Rose (1986) found that statutory systems are more expeditious than conventional arbitration and that the expedited process can produce financial savings for the parties. Sandver, Blaine and Woyar (1981) explored private arbitration processes in the postal, railway, and paper industry and found that the expedited systems have decreased time delays and costs of arbitration. These systems addressed non-complex issues and sometimes excluded discharge cases. However, these studies did not exclusively study statutorily-based expedited arbitration and some time has passed since these studies, leading to an opportunity to study the issues in the current social, economic, and political environment.

Organizational Justice

Organizational justice is a well-studied concept in the psychology and management literature. For instance, Lind, Greenberg, Scott and Welcahns (2000) found that organizational justice issues were the most influential factors when former

employees were determining whether to pursue a wrongful termination action against a previous employer. The organizational justice factors studied included claimants i) who felt that they had been lied to, ii) dismissed in a disrespectful manner, or iii) treated unfairly throughout the employment relationship. The authors found that the assessment of fair treatment was the most influential factor (Lind, et al., 2000). Specifically, at the time of termination, the feelings of unfair treatment were nearly twice as influential in predicting which employees planned to pursue legal action as any other factor. Further, the study found that a perception of fair treatment predicted the likelihood of suing more than participant characteristics such as gender and union representation (Lind, et al., 2000).

Organizational justice includes four "strongly related yet distinct" (Cohen-Charash & Spector, 2001) constructs: distributive, procedural, informational, and interpersonal justice. Some research suggests there is little distinction among the dimensions, particularly the procedural justice-distributive justice distinction (Cropanzano & Ambrose, 2001). However, meta-analytic research has demonstrated distinctions between the constructs (Colquitt, Conlon, Wesson, Porter, & Ng, 2001). In fact, Colquitt (2001) found that the four justice dimensions, operationalized through a four-factor model, predicted distinct outcomes. In the following chapter I explain each justice dimension. However, given that procedural justice has spurred the greatest amount of research, and is the primary focus of this study, the focus of my literature review is concentrated on procedural justice. It is noteworthy that the studies outlined in

the justice explanations are based on broader explanations of justice across scholarly articles with some focusing on court cases. The literature is absent research that investigates perceptions of justice at arbitrations. However, many of the facets of arbitration and the courts are similar where both involve a release of a decision between opposing parties and involve perceptions of distributive, procedural, interpersonal, and informational justice.

Distributive justice. Colquitt, Greenberg and Zapata-Phelan (2005) described distributive justice as the first "wave" of research in the organizational justice literature. Distributive justice, rooted in equity theory (Adams, 1965) focuses on perceived outcome fairness (Folger, 1977; Folger & Konovsky, 1989; Lind & Tyler, 1988; McFarlin & Sweeney, 1992; Sweeney & McFarlin, 1993). Essentially, distributions are regarded as "fair to the extent that rewards are proportionally matched to contributions" (Ambrose & Arnaud, 2005, p. 61). Initial work by Adams (1965) indicated that individuals were not concerned with the outcome itself, but instead on the fairness of the outcome. The distributive justice dimension is "cultivated" if a decision outcome coincides with an individual's allocation norms or if the proportion of contributions are deemed to be equal to the outcomes (Colquitt, et al., 2001).

In circumstances that involve a court or an arbitration, distributive justice focuses on the outcomes of a decision making body. The litigants evaluate the outcome's fairness on an "abstract principle criterion" (Casper, et al., 1988) and this assessment impacts their overall satisfaction with the judicial experience. This impact extends

beyond the effect of the decision outcome (Casper, et al., 1988). Prior experiences such as prior criminal record, treatment by police at arrest and time spent speaking to a lawyer about a case may also influence perceptions of justice. Casper, Tyler and Fisher (1988) found that these past experiences influence whether an outcome is evaluated as "just". Distributive justice and procedural justice are not described as trade-offs; instead, the concepts are "mutual strengthening" (Brems & Lavrysen, 2013, p. 182).

Procedural justice. Procedural justice concentrates on the selected process's fairness and system evaluation (Folger, 1977). It addresses the proposition that process control impacts satisfaction levels and assessed fairness that is independent of decision control (distributive justice). For decades research has explored participants' evaluations of legal processes where scholars argued that the participants' opinions depended upon the process of the legal decision(s) rather than the decision outcome (Ohbuchi, et al., 2005; Thibault & Walker, 1975).

Two explanations address the use of voice as the key antecedent to procedural justice: i) the instrumental and ii) non-instrumental explanations. The assumption underlying the instrumental explanation is that participants are self-interested (Tyler & Blader, 2000). These individuals have a self-serving bias where they believe they are correct in their respective dispute (Shapiro & Brett, 2005). Shapiro and Brett (2005) argue that "disputants self-serving overconfident, egocentric biases lead them to believe that the decision maker, once informed will see the "rightness" of their claim" (p. 160). Essentially, participants are able to voice their opinions and believe that it will influence

the decision outcome (Barry & Shapiro, 2000; Greenberg, 2000). However, the participants' input must be considered by the decision maker; Avery and Quinoes (2002) found that: "if individuals see that their voice has had no impact on the outcome, they may deem the situation to be procedurally unfair and wonder, why did the decision maker not ask for my input only to disregard it" (p. 82).

The non-instrumental explanation proposes that the voice effect is due to "the affirmation of status in the decision makers' social milieu association with having the right to express one's view" (Shapiro & Brett, 2005, p. 159). The explanation assumes that individuals in conflict are motivated by factors other than self-interest (Tyler & Blader, 2000).[1] Instead, it assumes that individuals value being a member of a group and that the interactions with authorities can affirm or disconfirm the status within the group (Shapiro & Brett, 2005). Essentially, the group value model proposes that by providing the individual an opportunity to "have a say" the authority acknowledges that the individuals are valued members of the group (Shapiro & Brett, 2005). Naturally, an "unstated assumption" of the model is that the authority figure is interested in the participant's input (Shapiro & Brett, 2005).

Litigants' assessments of the processes' fairness is strongly correlated with outcome satisfaction (.38) (Casper, et al., 1988) and authoritative evaluations (.41) (Tyler, 1984). Thibault and Walker (1975) found that retaining control over the process

[1] However, it is noteworthy that the non-instrumental explanation may be another form of self-interest. See Gillespie and Greenberg (2005) for a more thorough review of the issue of self-interest.

was important to individuals. For example, litigants would seek to influence the decision through indirect mechanisms such as controlling the evidence presented at a hearing. Enabling participants "voice" during the decision-making process cultivates procedural justice (Tyler, 1987). This process control is referred in the literature as "fair process effect" (Folger, 1977; Lind & Tyler, 1988) where the impact, on procedural justice, due to the ability of participants to express themselves, was called "voice effect" (Folger, 1977). The voice effect is one of the "most widely documented findings in organizational justice literature" (Shapiro & Brett, 2005, p. 157). The impact of procedural justice is not lost on the judicial bench. For instance, Greacon's (2008) recent article reviewed literature on procedural justice and provided advice on addressing participation, neutrality, trustworthiness, and treating participants with dignity and respect.

Many scholars have examined the impact of procedural justice in court settings where individuals' perceptions of the court were found to impact their evaluation of the justice system as a whole (Greene, Sprott, Madon, & Jung, 2010). Researchers have varied the emphasis on the impact of procedure, where some believed that procedural justice was independent of the sentence severity in criminal prosecution. However, others have argued that procedural justice was even more important to perceptions of fairness than the outcome itself (Tyler, 1987, 1994; Tyler & Caine, 1981; Tyler & Folger, 1980). Greene et al. (2010) found that the courtroom atmosphere related to participant opinions when evaluating court legitimacy. Specifically, the researchers examined court

conduct and evaluated the efficiency/organization and conduct of court personnel over a nine month period. The relationship between the participant opinions and courtroom atmosphere was independent of the perceptions of how each participant felt they had been treated as an individual (2010). Further, evaluations of the judicial system as a whole were largely determined by participants' perceptions of procedural fairness, whereas satisfaction was linked to perceived favourability of outcome (Ohbuchi, et al., 2005).

Tyler and Mitchell (1994) found that evaluations of court legitimacy included examining the court processes rather than examining prior decisions (Tyler & Mitchell, 1994, p. 781). Casper et al. (1988) looked further into the areas that may impact justice perceptions and found that the amount of time spent with a lawyer positively impacted reports of procedural justice where the authors speculated that the evaluation was likely related to voice opportunities. That is, speaking with a lawyer allows one the opportunity to communicate and "voice" the concerns and opinions. Other factors also have a relationship with justice perceptions. For instance, when individuals believed they were subject to fair treatment by authorities including police and judges they were more likely to accept the legal outcome (Aquino, Tripp, & Bies, 2006) and to comply with the outcome (Tyler, 2007). Further, Van De Bos, Wilke and Lind (1998) found that individuals' perceptions of a decision outcome were strongly influenced by evidence that participants were already informed of fairness perceptions. However, they were less impacted by procedural fairness information when examining outcome judgments.

The public's perception of a court system can be linked to the media's portrayal of procedural information. For instance, Ramirez (2008) found that the media's representation of the court, as fair or unfair, played a role in the public evaluation of the fairness of the court. Subsequently, this evaluation impacted the reported support for the court system, as well as the individual judges involved in decision making (Ramirez, 2008).

Brems and Lavrysen (2013) suggest that procedural justice is a particularly important factor for adjudicative bodies that evaluate human rights issues, given that legitimacy is important for a decision making body that deals with controversial issues (Tyler & Mitchell, 1994). Brems and Lavrysen (2013) also suggest that it is imperative for a human rights tribunal to recognize procedural justice as it is close to their "core" business. In fact, procedural justice concerns are more important, the higher the stakes (Casper, et al., 1988; Tyler, 2006) such as decisions involving human rights issues or the loss of freedom.

Justice literature and labour arbitration. Some scholars have focused on areas related to formal judicial courts. For instance, Schuller and Hastings (1996) found that adjudication, as opposed to mediation, was viewed as fairer by participants. Holden, LaTour, Walker, and Thibault (1978) also suggested that the parties favour both outcome and process control over merely one form of control. Scholars have focused on procedural justice and arbitration; however, more of the research, regarding justice dimensions, has been in the commercial context. In the United States the arbitral process

was accused of "elevat[ing] efficiency over accuracy and fairness" (Burch, 2011, p. 49). Further, some scholars comment that the emphasis on efficiency has led to "lawless" decisions (Knapp, 2002). However, despite this argument, many scholars believe the courts are interpreting arbitration decisions in accordance with the intentions of Congress, in the American context (Hayford, 1998), where arbitration offers a "quick, efficient, low-cost alternative to the courts" (LeRoy, 2007). Individuals using arbitration processes emphasized the need for review (Burch, 2011) which was related to "legally inaccurate awards" (2011, p. 51) that received little judicial review opportunities. Unfortunately, the Canadian research does not address these issues.

Elements of procedural justice. Tyler defines the four elements of procedural justice as: i) participation (voice), ii) neutrality, iii) respect, and iv) trust (Tyler, 2007). First, participation ensures that partakers have "the opportunity to tell their side of the story in their own words before decisions are made" (Tyler, 2007, p. 30). Participants in the legal system are positively impacted by participation, regardless of the outcome, when they perceive the decision maker considered their argument (Tyler, 2007). However, if participants do not view the participation as substantive there is not a related positive impact (Shapiro & Brett, 1993; Tyler, 1987, 2006). Therefore, when the decision is unfavourable, decision makers must demonstrate that the participants' submissions were considered when arriving at the final outcome (Brems & Lavrysen, 2013).

The second element of procedural justice is neutrality. This requires the decision maker to demonstrate equal treatment to all participants in the legal process. In addition, the individual participant must perceive impartiality from the decision maker (Brems & Lavrysen, 2013). Tyler defines a component of the concept as "principled decision makers who make a decision based upon rules and not personal opinions" (Tyler & Blader, 2000, p. 30). Neutrality is multifaceted, requiring the court, or arbitrator, to abstain from bias and maintain transparency (Brems & Lavrysen, 2013). It moves beyond an overview of neutrality and extends to consistency regarding decisions and consistent application of the rules across participants and over time (Brems & Lavrysen, 2013).

Providing an explanation on how rules are applied is a helpful component to establish transparency (Tyler, 2007). Further, judges/arbitrators must base their decision on accurate information to develop perceptions of neutrality within litigants. An opportunity to revisit and correct an unfair or incorrect decision is an important factor in developing procedural justice (Leventhal, 1980). Tyler and Huo (2000) also found, when examining the judgments on the fairness of the procedure, and accounting for racial diversity, that Hispanic participants were more focused on neutrality than white and African American participants.

Third, respect is imperative where individuals must be treated as a valued member of society (Greacen, 2008). Greacen (2008) reviewed academic literature and provided advice to his fellow members of the judiciary. In this review he addressed justice

literature and noted the importance of treatment to court participants. This included judges behaving in a neutral manner, demonstrating concern about the litigants, treating parties as valued members of society, and ensuring that the parties were able to participate in the process (Greacen, 2008).

Fourth, trust is a component of procedural justice that relates to "an assessment of the character of the decision maker" (Tyler, 2007, p. 31). Tyler contends that the key "elements in their evaluation involve issues of sincerity and caring" (Tyler, 2007, p. 31). When participants feel shared social bonds and understand the motives of the authorities these lead to trust (Tyler & Huo, 2002). In the court system, trust relates to whether people feel "the court personnel, such as judges, are listening to and considering their views; are being honest and open about the basis for their actions; are trying to do what is right for everyone involved and are acting in the interests of the parties, not out of personal prejudice" (Tyler, 2007, p. 31).

Informational justice. Informational justice is one of two constructs of interactional justice. Interactional justice addresses the impact of interpersonal treatment as a determinant of attitudinal reactions (Colquitt, et al., 2005). Earlier literature combined informational justice with interpersonal justice (Greenberg, 1993a). However, Greenberg (1993b), supported by Colquitt et al. (2001), found that participants displayed unique reactions towards interpersonal and informational justice constructs.

Greenberg's (1987) notion of informational justice refers to the extent that parties are aware of rules and procedures within a given process. As well, a component of

informational justice is that the parties are offered an explanation for the ultimate outcome (Dunford & Devine, 1998). Essentially, it is measuring the perception that procedures are applied consistently across participants and over time without evidence of bias (Dunford & Devine, 1998). The basis of informational justice is that parties want to have policy awareness, which is they have a fundamental desire to know how decisions will be made in general. Further, participants seek information about the explanation behind the decision that impacts them. Many scholars have researched informational justice and found that candid, logical explanations, that are accurate, receive a positive response from participants (Bies, 1987; Bies & Moag, 1986; Bies, Shapiro, & Cummings, 1988; Greenberg, 1991).

Interpersonal justice. Interpersonal justice refers to the perception of a participant's treatment in terms of politeness and dignity. Facets of interpersonal justice include communication (Bies & Moag, 1986; Folger & Cropanzano, 1998), truthfulness, respect, justification, honesty, courtesy, timely feedback and respect for rights (Bies & Moag, 1986). Participant reactions to decision outcomes can be impacted by their perceptions of interpersonal justice. This is the case as issues of sensitivity can make people feel more positively towards an unfavourable outcome (Colquitt, et al., 2001). In an exploratory study, Currie and Raguparan (2013) found that the outcomes of those in drug treatment at the Ottawa Drug Treatment Court were more favourable for those participants who expressed positive justice perceptions, during the program. More

specifically, applicants who graduated from the program, rather than those who were discharged, reported higher feelings of justice (Greacen, 2008).

Conclusion

This chapter provided an overview of the literature addressing arbitration and organizational justice. Currently, industrial relations literature is on a decline and, based on my research, has not addressed expedited arbitration thoroughly. My review of the research indicates that expedited arbitration is a current issue, given its attention by current commentators (Winkler, 2010), and deserving of more study. The arbitration system is marked by delays and extensive costs that mar its ability to address labour relations conflict quickly. Expedited arbitration is a means to address the shortcomings of the current system.

Literature focusing on organizational justice has impacted work-related areas including the courts. The academic literature has not specifically addressed organizational justice with regards to labour arbitration (or more specifically, expedited labour arbitration). The four constructs of organizational justice provide a basis to study expedited arbitration to determine if issues of justice relate to the arbitration process. Procedural justice, focusing on voice, is of particular interest where participants may be concerned about the ability to have their matter heard before the decision maker.

Chapter 3: Empirical and Qualitative Survey of Canadian Labour Lawyers

In this chapter I investigated, and compared, participants' opinions of the expedited and traditional arbitration processes. I adopted a predominantly quantitative survey to measure differences in opinions. The survey is attached in Appendix A. I also asked some open-ended questions that were qualitative in nature. The research sought to determine if participants reported a difference in the organizational justice dimensions with respect to the different arbitration processes. It also investigated the expediency of the expedited arbitration procedure in comparison with traditional arbitration.

Research Design

I administered an internet-based survey to members of the Canadian Association of Labour Lawyers ("CALL") and the Canadian Bar Association British Columbia Labour Law Section ("CBC BC"). CALL is a Canadian organization of "union-side" labour lawyers. There are nearly 500 members located in Canada. CALL sent an email to participants which requested that members respond to the survey and a follow up request was sent to remind participants.

After the first request was sent to CALL, I was contacted by a member of the Canadian Bar Association British Columbia Labour Law Section who inquired if I was interested in surveying members of the organization. The CBA BC was particularly interested in the survey and were hopeful that the research could assist with their

reformation endeavours. Subsequently, the survey was sent to their members and a follow up request was made.

Hypotheses

Due to hectic schedules, agreeing upon a mutually available date for all representatives and witnesses is an arduous task (Ponak, et al., 1996). In fact, one of the primary sources of delay is scheduling the arbitration hearing (Ponak, et al., 1996). It is proposed that the inability to schedule and control the timing of the process influences the parties' decision to not apply for expedited arbitration.

H1: The decision to not apply for expedited arbitration is impacted by the participant's reduced control over the scheduling of the hearing.

Research reveals that when an individual does not possess information about the trustworthiness of an authoritative figure, procedural fairness influences the individual's reaction and level of co-operation (De Cremer & Tyler, 2007). It is proposed that this notion extends to the area of expedited arbitration. Specifically, where the parties may have little, or no, experience or knowledge of potential arbitrators, they are less likely to choose the arbitration process for fear of a practice which lacks procedural fairness. This notion recognizes that the arbitrator plays a crucial role in the fairness of the arbitration process.

Although the parties may exhibit some control over the arbitration process, the ability to influence procedure is minimized in expedited arbitration when the legislation

dictates the timing of the first day of hearing and, in some jurisdictions, the release of the decision. In expedited arbitration, the parties are not able to consensually agree to an arbitrator. This contrasts with the traditional process where most parties use the consensual process. Therefore, by participating in an expedited arbitration, the parties must relinquish control of the process to an arbitrator that they may not favour.

H2: The decision to not apply for expedited arbitration is impacted by the participant's inability to select the arbitrator.

According to Tyler (1987), participants are willing to relinquish control over the decision if they perceive control over the process, including such matters as evidence submissions. Further, procedural justice research proposes that "voice" opportunities for stakeholders are important factors in perceptions of distributive justice (Colquitt, et al., 2001). It is suggested that the parties are reluctant to adopt this process based upon the belief that the expedited process may diminish their opportunity to provide evidence and "voice."

H3: Participants are reluctant to apply for an expedited arbitration based partially on the belief that they may not be able to adequately present evidence.

A factor that influences a participant's perceptions of procedural justice is the accuracy in information collection (Colquitt, et al., 2001). It is proposed that a perception that the expedited process may not lend itself to accurate information collection may influence individuals deciding not to participate in the process. For instance, counsel may

assume that the process is expedited in scheduling the hearing dates and the time afforded to the individuals to present their case before the arbitrator. The assumptions of the time limits could include areas such as the number of authorities allowed, number of witnesses permitted, and the time afforded to counsel to examine and cross-examine witnesses.

H4: The decision to not apply for expedited arbitration is impacted by the participant's perception that the expedited process does not allow sufficient time for the accurate collection of information.

Method

I adopted a combined structured and open-ended survey administered to members of the CALL and the CBA BC. CALL was chosen as the group represents a national sample of labour lawyers located in Canada. The CBA BC provided a representative sample as the organization includes British Columbia lawyers who practiced primarily in labour and employment law.

Research examining justice measures have integrated process control, Leventhal criteria, and interpersonal and informational justice into a single variable. Leventhal (1980) criteria include six criteria of fair procedures: consistency, bias suppression, accuracy, correctability, representativeness, and ethicality. More recently, Colquitt et. al (2001) called for a moratorium on the indirect combination measures where the justice dimensions were collapsed into a single variable. When measuring procedural justice the study operationalized the construct using process control and Leventhal criteria.

Although the items are highly correlated, research indicates that this correlation is not strong enough to have the ideas represent the same construct (Colquitt, et al., 2001). Colquitt et al. (2001) argued that the distinct conceptualizations of procedural justices are necessary, despite controlling for distributive justice.

My research also addressed multiple justice dimensions within the study to incorporate the findings that multiple dimensions explain a greater percentage of outcome variance (Colquitt, et al., 2001). In fact, the constructs of procedural justice and distributive justice provide distinct contributions to the fairness perception (Colquitt, et al., 2001). The measurement of the justice dimensions adopted from the scales developed by Colquitt (2001). These scales addressed earlier issues of content validity (Moorman, 1991) by incorporating a measurement that is developed through leading studies and tested for validity.

The survey also contained open-ended questions of participants to allow a greater breadth of information. These questions included advantages and disadvantages of using the expedited arbitration process, whether certain types of cases were considered more suitable to the expedited process, and general suggestions. For instance, participants were asked: “Can you provide advantages of using the traditional arbitration procedure as opposed to the expedited arbitration procedure?” and “Can you provide advantages of using the expedited arbitration procedure as opposed to the traditional arbitration procedure?”. Further, I inquired: “Do you think that certain types of cases (e.g. discipline, discharge, policy) are better suited for an expedited arbitration process?”.

Lastly, counsel were asked to "provide any other information that may be helpful for the expedited arbitration procedure."

Due to time and financial constraints, an email-based survey was adopted. I used "Qualtrics" (an online survey tool) to administer the survey and collect data. Participants were sent the link to the survey via email from CALL or the CBA BC. Using an online tool provided many advantages. First, the survey did not require the postage and printing costs required of traditional mail surveys (Sheehan & McMillan, 1999). Second, it allowed participants the flexibility to respond to the survey at their convenience. Third, email surveys produce superior response rates (Sheehan & McMillan, 1999). Although more recent literature poses that internet-based surveys are receiving declining response rates (Sheehan, 2001), I tried to address these concerns. For instance, the surveys were sent from the respondents' organization. This minimized the likelihood that potential participants would be reluctant to respond because they were apprehensive of a virus from an unknown source. Fourth, Schaefer and Dillman (1998) found that the electronic format is associated with higher completion rates. Specifically, 69.4% of email participants completed 95% of the surveys whereas 56.6% of written respondents completed the same amount (Schaefer & Dillman, 1998). Respondents were also more likely to provide more detailed responses to open-ended questions (Schaefer & Dillman, 1998) where participants provided more information in internet-based surveys (Paolo, Bonaminio, Gibson, Partridge, & Kallail, 2000). Fifth, given that the emails were sent to members from their organization, it nearly eliminated the issue that Dillman (2000)

expressed regarding the concern that the researcher may be unaware of whether the respondents received the email. Moreover, Krosnick (1999) and Cook, Heath and Thompson (2000) noted that sample representativeness is more important than sample response rates. In this study the sample included a wide range of lawyers who represent unionized employees across Canada.

Sample Selection

Due to financial and time constraints, it was not feasible to survey every labour lawyer in Canada. Therefore, CALL, a membership-driven organization of union-side lawyers in Canada, was used to collect data. The assistance of the organization allowed me to contact a large number of individuals who regularly utilize the arbitration process. In exchange for contacting the organizations' members, the organizations were offered a report and workshop based upon my research results. The CBA BC is a non-partisan group of labour and employment lawyers. The group was also offered a report of the results.

Sample Selection Bias. Sample selection bias occurs when the sample of participants is non-representative of the population (Heckman, 1979). In this study the sample included mainly union-side lawyers as CALL was the primary source of respondents. However, given that most arbitrations are launched by unions it is representative of the counsel utilizing the process. Also, the types of cases that are typically advanced by employers are not those that are normally used in the expedited procedure. For instance, a review of the expedited cases, pursuant to s. 104 of the British

Columbia *Labour Relations Code*, revealed that in 2012 every application was made by a union regarding a dismissal or discipline case (Pocklington, 2013).

A further sample limitation may result from the requirement that counsel take direction from clients. That is, clients may have different opinions regarding the expedited arbitration process than their counsel. If clients have divergent views from their lawyer, the participants' answers may not reflect beliefs in the labour relations field. However, given that counsel influence their clients' procedural choices, the potential impact may be lessened. Further, a potential coverage error (Schaefer & Dillman, 1998), where participants do not have access to email, may bias the sample. A related potential source of sample selection bias may occur if members have submitted an incorrect email address to their respective organization. However, organization participants are self-interested in receiving related emails; therefore, it is unlikely that incorrect emails were frequently provided by members.

Responses. There were 123 participants who filled out parts of the survey; however, only 22 participants completed the entire survey. Participants dropped off at various points in the survey. Therefore, statistical tests were not conducted given the small sample size. Instead, descriptive statistics are provided. The following tables give an overview of the descriptive findings.

Justice Dimensions

Table 3 - 1 provides the justice measure items adopted. These items were previously adopted by Colquitt (2001). The wording was slightly modified to apply specifically to the arbitration process.

Table 3 - 1

Justice Measure Items

Procedural Justice 1. Were you able to express your views during the arbitration? 2. Did you influence the outcome arrived at by the arbitration procedures? 3. Were the arbitration procedures applied consistently? 4. Were the arbitration procedures free of bias? 5. Were the arbitration procedures based on accurate information? 6. Were you able to appeal the decision? 7. Did the arbitration procedures uphold ethical and moral standards?
Distributive Justice 1. Did the decision reflect the effort you have put into the case? 2. Was the decision appropriate for the work you completed? 3. Did the outcome reflect what you have contributed to the case? 4. Was your decision justified, given your performance?
Interpersonal Justice 1. Did the arbitrator treat you in a polite manner?

2. Did the arbitrator treat you with dignity?
3. Did the arbitrator treat you with respect?
4. Did the arbitrator refrain from improper remarks or comments?

Informational Justice

1. Was the arbitrator candid in (his/her) communications with you?
2. Did the arbitrator explain the procedures thoroughly?
3. Were the arbitrator's explanations regarding the procedures reasonable?
4. Did the arbitrator communicate details in a timely manner?
5. Did the arbitrator seem to tailor (his/her) communications to individuals' specific needs?

All justice dimensions were measured using a five point Likert scale. Participants were asked to indicate their level of agreement using the following anchors: i) small extent, ii) fairly small extent, iii) moderate extent, iv) fairly large extent, v) large extent, and vi) not applicable. For the purposes of reporting it was more informative to merge "small extent" and "fairly small extent" as well as "large extent" and "fairly large extent" given the small number of responses. The amalgamation made the differences more meaningful.

Results

There were small differences between the participants' perceptions of expedited and non-expedited arbitration procedures; however, the results were very similar for all four justice dimensions including procedural justice (see Table 3 - 2), distributive justice (see Table 3 - 3), interpersonal justice (see Table 3 - 4), and informational justice (see Table 3 - 5). Therefore, none of hypotheses were strongly supported.

Table 3 - 2

Perceptions of Procedural Justice in Traditional and Expedited Arbitration

	Small Extent/Fairly Small Extent	Moderate Extent	Fairly Large Extent/Large Extent	Not Applicable
Traditional Arbitration	5.6	8.2	72.8	13.4
Expedited Arbitration	6.5	7.1	68.8	17.5

*Reported in percentages. Not Applicable was provided as a category for lawyers who did not have a recent arbitration to provide a report.

As reported in Table 3 - 2, participants reported slightly stronger perceptions of procedural justice when examining traditional arbitration. This disparity may be based on the ability to choose the arbitrator where counsel maintained greater control over this procedure.

Table 3 - 3

Perceptions of Distributive Justice in Traditional and Expedited Arbitration

	Small Extent /Fairly Small Extent	Moderate Extent	Fairly Large Extent/Large Extent	Not Applicable
Traditional Arbitration	7.8	12.7	68.9	10.6
Expedited Arbitration	5.7	7.9	71.6	14.8

*Reported in percentages. Not Applicable was provided as a category for lawyers who did not have a recent arbitration to provide a report.

Table 3 - 3 reveals that perceptions of distributive justice were slightly stronger for expedited arbitration cases. These findings indicate that participants did not believe that the traditional arbitration decisions were superior, in terms of fairness of the outcome, than expedited arbitration decisions.

Table 3 - 4

Perceptions of Interpersonal Justice in Traditional and Expedited Arbitration

	Fairly Small Extent/Small Extent	Moderate Extent	Large Extent/Fairly Extent	N/A
Traditional Arbitration	2.9	4.4	92.8	0
Expedited Arbitration	1.1	4.6	89.8	4.6

*Reported in percentages. Not Applicable was provided as a category for lawyers who did not have a recent arbitration to provide a report.

Perceptions of interpersonal justice were slightly stronger for traditional arbitration cases, as reported in Table 3 - 4. They may be stronger given that the parties may select the arbitrator. In other words, pre-existing relationships between counsel and the arbitrator may strengthen these justice perceptions.

Table 3 - 5

Perceptions of Informational Justice in Traditional and Expedited Arbitration

	Fairly Small Extent/Small Extent	Moderate Extent	Large Extent/Fairly Extent	N/A
Traditional Arbitration	7.5	14.3	68.6	9.7
Expedited Arbitration	4.5	10.9	71.8	12.7

*Reported in percentages. Not Applicable was provided as a category for lawyers who did not have a recent arbitration to provide a report.

Table 3 - 5 reveals that perceptions of informational justice dimensions were marginally stronger for expedited arbitration cases. These findings indicate that participants did not believe that the information provided to the parties was curtailed due to the selection of an expedited arbitration process.

Delays in the Arbitration Process. The study also examined whether expedited arbitration procedures were more expedient than traditional arbitration processes. As reported in Table 3 - 6, when using the expedited process, the first day of hearing was typically scheduled quickly (generally within a month of the filing). This scheduling contrasts dramatically with the traditional process. There was more of a delay reported in

the traditional process, including instances where participants reported more than a 12 month delay.

It is noteworthy that in the qualitative study, found in chapter 4, the parties scheduled a phone hearing to officially commence the hearing in accordance with the legislative requirements. However, in the cases that adopted a phone call to start the hearing, the first day that the parties presented their cases did not occur until later. My survey did not ask participants to indicate that a phone hearing was held. Therefore, it is possible that some of the initial hearing dates were in fact a procedural matter and did not address the grievance.

Table 3 - 6

Comparison of the Delay in the First Day of Hearing for Expedited and Traditional Arbitrations

	Less Than 1 Month	2-3 Months	4-6 Months	7-9 Months	10- 11 Months	Over 12 Months
Frequencies of Traditional Arbitration	2	5	6	5	4	4
Percentages of Traditional Arbitration	7.69	19.23	23.08	19.23	15.38	15.38
Frequencies of Expedited Arbitration	9	5	1	0	0	0
Percentages of Expedited Arbitration	60	33.33	6.67	0	0	0

Dates Scheduled. As reported in Table 3 - 7, the participants reported that there were fewer days scheduled for expedited hearings as opposed to traditional arbitration hearings. However, the qualitative study results revealed that the parties were only permitted to schedule one day of hearing when applying for the expedited process. Therefore, although the data indicated fewer days of hearing were scheduled, this information does not necessarily indicate that the matter was heard in a more expedient manner.

The study also examined whether or not the expedited hearing typically lasted longer, as measured by hearing days, than the traditional process. The data revealed that in the reported cases there were typically fewer days utilized for the expedited process. However, these results should be cautiously accepted given the sample was very small.

Table 3 - 7

Comparison of the Number of Days Initially Scheduled and Eventually Used for Expedited and Traditional Arbitrations

	1 day	**2-5 days**	**6-10 days**	**11-15 days**	**16-30 days**	**31 + days**
Traditional Arbitration: Days Scheduled to Hear the Matter	3	9	3	1	1	0
Percentages	17.65	52.94	17.65	5.88	5.88	0
Expedited Arbitration: Days Scheduled to Hear the Matter	4	2	0	0	0	0
Percentages	66.67	33.33	0	0	0	0
Traditional Arbitration: Days	3	7	5	0	5	1

Used to Hear the Matter						
Percentages	14.29	33.33	23.81	0	23.81	4.76
Expedited Arbitration: Days Used to Hear the Matter	4	4	0	3	0	0
Percentages	36.36	36.36	0	27.27	0	0

*Reported in frequencies.

Delays in Receiving the Award. Table 3 - 8 reports the findings that participants received an expedited award quicker than the expedited award. The results reveal that expedited arbitration decisions are released quicker than traditional arbitration; all expedited arbitration decisions were released within six months.

Table 3 - 8

Comparison in Delay in Receiving a Decision from an Expedited and Non-Expedited Award

	> 1 Month	**2-3 Months**	**4-6 Months**	**7-9 Months**	**10 – 12 Months**	**12 Months**
Traditional Arbitration	8	11	5	1	5	0
Percentages	26.67	36.67	16.67	3.33	16.67	0
Expedited Arbitration	9	2	2	0	0	0
Percentages	69.23	15.38	15.38	0	0	0

*Reported in frequencies.

Qualitative Information. The survey also provided opportunities for participants to provide qualitative comments or their opinions and experiences. The information is complementary to that outlined in chapter four. The participants reported advantages and

disadvantages of the traditional and expedited arbitration procedures. Counsel also offered suggestions of issues that were best suited for an expedited process and general suggestions for improvement.

Advantages of Traditional Arbitration. Participants noted the advantages of traditional

> arbitration included the following: i) the ability to choose the arbitrator, ii) delays within the process lead to settlement as the delay allowed the parties to gather more information and reflect on the issue, iii) the ability to fully exchange particulars, iv) the ability to schedule multiple days, v) more time to prepare for the hearing, vi) procedural fairness concerns protected, vii) better suited for certain types of cases (policy) and where the rules of evidence were more critical, viii) the opportunity for the parties to agree on scheduling, and ix) the grievor felt they were receiving "due process." The most interesting suggestion was one where procedural fairness was emphasized. One participant stated "transparency - ensures that grievors/parties/participants feel that an objective, neutral, fact-finding process is being applied to their dispute. In other words that they are receiving due process."

Advantages of Expedited Arbitration. Participants stated the advantages of the expedited process included a: i) faster process, ii) fixed date, iii) better

cost/benefit analysis,[2] iv) could improve the relationship between the parties if the process was quicker, and v) it enabled the unions to use it as a "tactical weapon." From my experiences, these were relatively consistent with my expectations. Further, the comments about a faster process appears consistent with some of the quantitative reports (first day of hearing scheduled sooner); however, participants in the qualitative interviews did note that the process remained lengthy and the legislation only mandated the scheduling of the first day of hearing. One element that was a bit surprising was the suggestion that expedited arbitration could improve the relationship between the parties given it was often used as a "tactical weapon." This assertion appears to be somewhat contradictory given, if expedited arbitration was used as a "tactical weapon" it may impede relationships between the parties.

Issues Appropriate for Expedited Arbitration. Participants were asked whether expedited arbitration was suitable for certain types of issues. Participants noted that discharge or discipline cases were more appropriate for expedited arbitration. One counsel stated: "termination is especially suited, but only bargaining unit scope issues required the effort of selecting an arbitrator." Further, participants did indicate that the process was not preferred for policy or human-rights based cases. One participant in particular stated: "human rights/harassment issues are

[2] Although this was pointed out by one participant the large majority of qualitative participants noted that there was not a significant cost difference between the expedited and traditional process.

NOT suited to expedited arbitration processes as individuals with these types of complaints tend to have significant concerns that their case is "being heard' and that they are [g]etting due process." This is particularly noteworthy as it implies some justice concerns.

Participant Suggestions Relating to the Expedited Process. The expedited arbitration processes, in each province, differs slightly; however, the themes were quite consistent with respect to improvements in the processes where most focused on measures to expedite the process further. These suggestions included: i) a "better vetting" of arbitrators, ii) the ability to have second and subsequent days of hearing heard sooner, iii) longer waiting periods for the hearing to be scheduled when experts were involved, and iv) the process revamped so it was "truly expedited" with non-precedential awards.

The overwhelming suggestion was that counsel desired an alteration in the current arbitrator roster due to issues of uncertain outcomes, counsel made comments such as "too many arbitrators on the list that no one wants to use or one sided views as too risky" and "impos[ing] more rigorous standard[s] to get on the expedited arbitrators list." Second, counsel noted that the "legislation should be changed that allows the parties to select at least 2 days of hearing within the specified time periods." This change would enable the parties to avoid delays in scheduling the second, and subsequent, hearing dates. Third, participants noted that "allow[ing] for longer time periods when expert

[witnesses] are involved"[3] would improve the process. This suggestion is presumably proposed given that it may be very difficult for an expert to attend a hearing within 21-30 days. Fourth, counsel suggested that expedited arbitration "should be eliminated or revamped so that it is a truly expedited process for fact-driven cases with non-precedential awards." Although arbitration awards are technically non-precedential, the reality is that once there is an arbitration award on a matter the workplace usually complies with this decision and subsequent workplace practices are heavily influenced by the arbitration award. Some of the suggestions proposed included "legislate case management meetings, use will say statements and cross examinations, full disclosure on witnesses…" and "telephone/email/video-conferencing, written submission etc."

Limitations

The limitations of this study are primarily related to the sample studied. First, the response rate was very low which curtailed any meaningful statistical analysis. Adopting a larger sample may result in a more meaningful representation. Second, the use of lawyers rather than employers and grievors or union representatives may impact their perceptions of justice. Lawyers are the representatives of the parties, rather than the parties themselves. Therefore, the justice perception may be different for the parties. However, as noted by Thibault and Walker's (1975) preferences for procedures are similar between observers and participants.

[3] Expert witnesses include individuals who testify on a subject matter related to their professional knowledge. The expert's opinion is provided to assist the decision maker (Westlaw, 2009).

Conclusion

The study revealed that participants reported slightly stronger perceptions of procedural, and interpersonal justice when considering the traditional expedited arbitration process in comparison to expedited arbitration processes. The perceptions of distributive justice and informational justice were slightly stronger for expedited arbitration cases. However, the sample size was small and the differences were very slight. Therefore, it does not appear that participants believed that they would be unfairly treated or not provided an opportunity to represent their case in the expedited arbitration process. The results also indicated that the initial days of hearing were scheduled quicker in expedited arbitrations. Further, expedited arbitrations typically had fewer days of hearing than traditional arbitrations. However, it was not possible to determine if the expedited process actually took less time from the initial grievance referral to the release of the decision.

Chapter 4: Interviews on Arbitration with Employer and Union Counsel

In this chapter I examine the views of union and management lawyers towards the expedited arbitration process in their respective jurisdictions. Each jurisdiction is governed by its own specific legislation; however, the key aspects of the legislation related to expedited arbitration are, not surprisingly, similar. These include the expediency of the first day of hearing, the inability to select an arbitrator, and some requirements on the timeliness of the return of the arbitrator's award.

Research Design

I interviewed union and management-side counsel who were located, and practiced law, across Canada. Specifically, I interviewed counsel in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador. This study expanded upon similar themes in the quantitative study in order to provide more in-depth knowledge of the area. The qualitative aspect of the research further explored the perceptions of study participants. The research focused on obtaining information regarding the respondents' attitudes on the traditional and expedited arbitration processes. Specific areas of focus included opinions regarding the cost of arbitration, delay, appropriate cases for the expedited process, and any perceived limitations of expedited arbitrations. Further information was also sought to expand on the organizational justice research focusing on legal studies.

Although literature has explored justice and participant interaction with the judicial system (Greene, et al., 2010; Tyler, 2006; Tyler & Caine, 1981; Tyler & Folger, 1980), the research is largely dated whereas more recently scholars have focused on organizational issues (Colquitt, et al., 2001). Furthermore, the literature does not extend into the arbitration realm very deeply with few articles that address the issue (Burch, 2011). To my knowledge, Canadian research is absent any scholarly work on the arbitration process that explores themes of organizational justice. The Canadian and American legal frameworks and cultures are distinct (Buckley, 2013), supporting the need to address the gap in the literature. This provided an opportunity to visit an issue that is both timely and understudied. Additionally, this research speaks to limitations within the legislation, with some focus on Nova Scotia that may provide a hindrance to the respondents' use of the process (e.g. the inability to schedule more than one day of hearing).

Hypotheses

The legislation regarding expedited arbitration contains time limits that may be quite onerous on participants. For instance, most statutes require the first day of hearing to be within 30 days of the initial filing (The British Columbia Labour Relations Code, 1995). Hearings require the participation of many individuals which may include the arbitrator, counsel, human resource representatives, managers, employee relations officers, witnesses, and the grievor. Given the participants' busy schedules it is proposed that it is frequently difficult to arrange for the necessary parties to meet in a timely

manner. For instance, in Nova Scotia, Section 46(5)(b) of the *Trade Union Act* provides, unless mutually agreeable by the parties, that the hearing will be set down within 30 days of the Minister's order. Parties may be aware that their schedules, or those of representatives and witnesses, are unable to meet this restriction. Although mutual agreement may exclude this requirement, a party may be reluctant to rely on the opposing party to agree to the delay.

H1: Participants will report that the inability to meet the time limits, imposed by the legislation is a factor in deciding not to apply for the expedited arbitration process.

Individuals value procedural justice as they are concerned with the manner that procedures are able to influence desired outcomes (Brems & Lavrysen, 2013). Procedural justice is linked to positive evaluations of outcome satisfaction (Casper, et al., 1988) and authoritative evaluations (Tyler, 1984). It is proposed that a component of procedural justice is arrived at through choosing an arbitrator given relationships with authoritative figures are influential on a recipient's experiences with procedural justice (Van Prooijen, Van Den Bos, & Wilke Henk, 2007). Van De Bos, Wilke and Lind (1998) found that an individual's perception of a decision outcome was strongly impacted by procedural information when they did not know whether the authority could be trusted. However, if participants were already informed of fairness perceptions they were less impacted by procedural fairness information when examining outcome judgments. Parties value the opportunity to address all components of procedural justice including: participation (Cohen, 1985), neutrality (Brems & Lavrysen, 2013), respect (Tyler, 2000),

and trust in the arbitrator (Tyler, 2007) at a hearing. Furthermore, counsel regularly takes an opportunity to assess an arbitrator to determine favourableness to the case outcome (Bloom & Cavanagh, 1986; Nelson & Curry, 1981). Therefore, the inability for counsel to choose an arbitrator as part of the expedited process negatively impacts the likelihood of counsel to use the process, given that they are unable to assess the arbitrator in terms of voice, neutrality, respect, and trust. Further, counsel's inability to investigate the arbitrator, in advance of appointment, to predict the likelihood of a favourable decision could dissuade counsel from using the process.

H2: Participants will report the inability to agree to a consensual appointment of an arbitrator as a disadvantage of the expedited arbitration process.

One of the concerns with traditional arbitration is the cost (De Berdt Romilly, 1994; Rutledge, 2008; Sack, Goldblatt, & Krashinsky, 1992). The costs include legal representation, particularly on the part of employers (Barnacle, 1991; Block & Stieber, 1987; Ponak, 1987; Wagar, 1994) who frequently engage the advice of counsel. In addition, the parties must split the cost of an arbitrator's fee where they compensate the neutral for assessing preliminary matters, partaking in the hearing, and releasing the decision (Thornicroft, 2008). Furthermore, expenses include room rentals, travel, and the often uncalculated costs related to the hearing. Such uncalculated expenses can include time out of the workforce when employees prepare for the hearing. Arguably, the expedited process may be less costly as the parties may engage in practices to expedite

the length of the hearing, in terms of shortening the number of hearing days, in addition to the first day of hearing.

H3: Participants will consider the additional cost associated with traditional arbitration excusable due, in part, by the ability to choose the arbitrator.

Litigants' assessment of the fairness of the processes is correlated with the reported outcome satisfaction and the litigants' assessment of authoritative evaluations (Casper, et al., 1988; Melton & Lind, 1982; Tyler, 1984). For instance, Tyler (1984) found that participants were more likely to assess judges positively if they believed a fair process was provided. It is proposed that counsel may be concerned that the expedited process does not allow the parties the opportunity to present their entire case. If the process is expedited, the parties may be under the impression that they will be afforded less time and deference to adequately present their case. Consequently, they may feel that the expedited process will negatively impact procedural justice, as well the outcome of their case.

H4: Participants may believe that the case outcome may differ as a result of the expedited process.

Cases are often characterized by different levels of urgency. In the case of a termination, it is often in the best interests of both the employer, and the union, to have the matter addressed quickly. For instance, it is in the best interests of the union to have the member at work earning income. Frequently a grievor, who is reinstated, is done so

with a suspension that reflects the amount of time between the termination and the release of an arbitration award. Therefore, a lengthy delay in achieving a resolution may result in a lengthier suspension for the grievor. Further, if an arbitrator reinstates an employee to his/her former position the award is frequently accompanied by payment for lost wages. Therefore, if the case is not resolved quickly it may result in a large award of damages for the grievor or a large suspension. As such, it is also advantageous for the employer to have a quick decision to avoid a lengthy back pay award. It is proposed that the parties will be more likely to propose that cases such as terminations be addressed by an expedited arbitration process.

H5: Participants will propose that certain matters are better suited for the expedited arbitration process.

Maintaining control over process is important to participants (Thibault & Walker, 1975). Scholars have studied procedural justice and found that the assessment of the process was often more important than the outcome (Tyler, 2006; Tyler & Caine, 1981; Tyler & Folger, 1980). Procedural justice concerns are particularly important for adjudicative bodies that deal with controversial issues (Tyler & Mitchell, 1994). Further, procedural justice concerns are more important the higher the stakes (Casper, et al., 1988; Tyler, 2006). Arbitrators often address issues regarding the financial livelihood of the grievor, which is typically a "high stake" issue.

Enabling participants "voice" during the decision-making process cultivates procedural justice (Tyler, 1987). This process control is referred in the literature to "fair process effect" or "voice effect" (Folger, 1977; Lind & Tyler, 1988). Shapiro and Brett (2005) indicate that when the parties are able to provide evidence to an arbitrator, judge, or mediator, this gives the parties an opportunity to exercise their "voice". Relying on the instrumental explanation of the voice effect, individuals are driven by self-interests (Tyler & Blader, 2000) where the decision maker will support the grievor once s/he is provided the information (Shapiro & Brett, 2005). It is proposed that some counsel may believe that the expedited process does not allow sufficient time to provide voice to clients. Although the process does not provide any time restrictions counsel may be misinformed about the process. In fact, one commentator criticized the adequacy and fairness of arbitrations when the process emphasized efficiency (Knapp, 2002). In the case of expedited arbitrations, if the participants are not afforded sufficient time to address the issue they may not feel that they are able to adequately express themselves.

H6: Participants may believe that procedural justice issues are not addressed and counsel is therefore unable to provide clients a "voice" through the expedited process.

The legislation provides certain limitations for respondents. For example, the Nova Scotia *Trade Union Act* requires a passage of five months before an application for expedited arbitration to an arbitrator may be made for the Minister of Labour. The requisite period may create a legislative hurdle which makes it lengthier to pursue the

expedited rather than the traditional arbitration process given it is likely that the parties may agree to a consensual appointment of an arbitrator, and hold a hearing date, before the first day in accordance with the *Trade Union Act.*

H7: Participants, in Nova Scotia, will consider the 5 month requirement a hindrance to providing an expedient process.

Sample Selection

A snowball method was used to contact and access participants. I started with three contacts: one in British Columbia, one in Ontario, and one in Nova Scotia. These lawyers suggested others who, in turn, also suggested other potential participants. In addition, participants to the quantitative survey (see chapter 3) were provided the opportunity to volunteer for a phone interview. All of the individuals who volunteered were also contacted. In total, there were 26 participants, which included 24 counsel and 2 representatives from provincial bodies. The 24 counsel included 19 (79%) males and five (21%) females. There were 10 (38.5%) employer-side representatives, 14 (53.8%) union-side representatives, and 2 (7.7%) government representatives.

A source of sample selection bias occurs if the lawyers are not representative of the intended population. Unions frequently use business agents rather than individuals formerly trained in law to represent the grievor at the arbitration hearing. Given the population was restricted to lawyers, some members of the labour relations community were excluded. A further potential bias was the high proportion of males in the sample.

However, the practice of law remains characterized by gender disparity where there are more males in senior positions in the profession (Kay, Masuch, & Curry, 2004).

Data Collection

The data were collected by conducting 30 minute phone interviews. With the participants' permission, all interviews were recorded and transcribed. The questionnaire, attached as Appendix B, was adopted to ensure consistency among the questions asked to participants.

Ethical Considerations

In both the email introduction, and statement made before the interview, survey participants were assured that the interview was voluntary and confidential. As such, I endeavoured to maintain the confidentiality and anonymity of the participants by storing the transcriptions in a locked cabinet on campus at Saint Mary's University.

Results

The interviews provided valuable information concerning the expedited process across Canada. The findings are detailed below.

Expediency of the Process: Expedited Arbitration – An Oxymoron.

Hypothesis one was based on the premise that the legislatively-driven time restrictions were being met. However, the results revealed that in many jurisdictions the timelines, as stated within the legislation, were not met. Delays within the expedited process are attributed to a number of factors such as using a telephone call to convene the hearing,

initially scheduling only one day for a hearing, and the delay in receiving the award once the hearing was completed. In addition, the large majority of claims are being filed by unions and, as such, union counsel was able to prepare their case and rearrange their schedule in accordance with the legislative requirements. For instance, when asked whether scheduling was difficult, an employer-side counsel stated: "It's challenging, we've had some weekend cases and some moving things around in order to comply with the legislation…." Therefore, hypothesis one is rejected. Specifically, I hypothesized that a factor in counsel not applying for the expedited arbitration process was that they were unable to meet the strict time requirements; however, the provisions were being interpreted in a flexible manner in order for individuals to comply with the legislation.

One of the most valuable pieces of information, obtained from the interviews, was that counsel perceived that the expedited process was often not speedier than the traditional process. Although the view was not universally held by participants speaking on the issue, some speculated that unions do not use the expedited arbitration process as much as in the past. According to one lawyer: [T]he unions say it isn't something that gives us any advantage … expedited is sort of oxymoronic now with that it's the same length, same duration as a regular arbitration and they don't have the choice [of the arbitrator].

Another counsel questioned whether the process was quicker:

> [W]hat you really care about is not so much what the first day of hearing is but what the last day of hearing is and… I guess marginally this section 49 process might… speed that up just by getting this thing up and on and started earlier than otherwise would be the case but… depending on who's actually appointed and… how the case shapes out there's no guarantee that it's actually going to be finished before then.

An example of an experience with an expedited process, conveyed by counsel, took the following timeline: counsel was provided notice of a hearing in December for February; however, the hearing continued after some disclosure in April or May and the decision was issued in June. Counsel noted, "…and that's not very expedited." One counsel recognized that the "spirit" of the legislation was probably to conclude the hearing quickly rather than the practice of commencing the hearing within the stipulated number of days. The counsel recognized that it would be difficult to comply with such a process and maintain the ability to represent the parties adequately. However, the same participant also noted that if the legislation required strict adherence to the timelines, a change of "culture" would encourage the parties to participate.

Counsel repeatedly noted that it was difficult to argue with an arbitrator who suggested a conference call to commence the hearing: "I think what happens is that some of the arbitrators are very well experienced and very well-esteemed and when they say

this [using a telephone call to commence the process] is how it's going to be that's how it's going to be." The provincial legislation requires the parties to set a hearing date of between twenty-one and thirty days from the initial application. However, a canvas across the country revealed that the initial date, where the parties addressed the issues of the case, was frequently set later than the statutory requirement. Given that the process was usually initiated by unions, scheduling was usually not a factor for union counsel. For instance, an Ontario-based participant stated:

> [B]ecause um being the party that is initiating that process and knowing that it will be exactly three weeks … or twenty-one calendar days from the date that you apply… we have the ability to choose the date ahead of time… Certainly from the employer side they get stuck with the date and we choose and given in most circumstances I would… contact the other side to say that we are going to do this and maybe talk about a day or two … try to make it as convenient as possible.

However, employer counsel were frequently unable to schedule within the confines of the legislation, and the timelines became somewhat fluid. Parties in multiple jurisdictions including Saskatchewan, New Brunswick, and British Columbia noted that often a telephone call started the process to meet the legislative requirements. In one interview, counsel estimated that 95% of cases started with a telephone call where a five minute discussion followed to formally convene the hearing and set dates for the "real hearing."

One employer counsel, commenting on the use of a telephone call to commence the hearing, noted with a positive view:

> Well that's the nature of labour lawyers isn't it? I mean that's what we do, we're flexible and when everybody is behaving professional and in the best interest of our clients. What we do is cooperate and collaborate to get the best process for our clients. So if that means that we take the legislation and make it work for us to get the best outcome then that's what we should do. In my experience by and large in the Labour Relations Bar I've found that that is generally the case that the other side is generally pretty reasonable in making things work.

Essentially, counsel noted that flexibility in the industry, where counsel works regularly with one another and develops good relations, are essential and that a telephone call, which serves the interests of the parties and provides a flexible interpretation of the legislation, is a positive gesture on the part of counsel.

Behind the Scenes: Practical Issues Not Addressed in the Legislation. Many of the jurisdictions have "behind the scenes" interaction that complies with the legislative provisions; however, the actions do not necessarily stand with the spirit of the legislation. This contributed to the rejection of hypothesis one where the parties were not overly concerned with meeting the legislative requirements as the processes informally allowed for alternate procedures to take place. Four important areas came to light when interviewing participants including: the use of a telephone call to begin the hearing, the unpredictable ability to participate in the selection of an arbitrator in British Columbia,

the ability of Manitoban representatives to participate in the arbitration selection, and the failure of arbitrators to meet timelines.

First, as detailed above, in many jurisdictions the parties meet the statutory obligations by holding a telephone consultation within the statutorily mandated period to commence the hearing. In these cases, the parties technically satisfy the obligations under the legislation; however, the substance of the case is not commenced until after the requisite days. Second, in British Columbia there is a slightly different process where the Board contacts the parties to address which arbitrator may be assigned to the hearing. Representatives of the Board noted that this was practiced quite consistently; however, it was described by counsel as a "strange process" that sometimes someone is appointed with no consultation and depending on:

> …who is dealing with the file with the Board and umm… you know who counsel are, the Board will call up those counsel and check with them if they are okay with somebody and try to get the parties to actually agree as opposed to joint appoint someone.

When asked if there was any knowledge of what factors were taken into account on whether there was an unofficial consultation, counsel responded "I have no idea. I just know that sometimes there have been times where counsel has gotten a phone call and other times where it has just been an appointment." Despite the confusion over the parameters of the process the parties supported the input into the arbitrator selection.

Another issue unique to British Columbia was determining which arbitrators were on the list where "people always seem unclear about who is on the list and who is not on the list." However, an examination of the list revealed that it was recently updated in May 27, 2013 (British Columbia Labour Relations Board, 2013). This comment was made prior to this date, so perhaps the confusion has since been cleared up. Third, in Manitoba, parties have the ability to turn down an arbitrator appointed by the Minister. Both the union and employer have an opportunity to do this on one occasion per hearing. However, the practice does not appear to be addressed in the legislation. In the *Guide to the Labour Relations Act,* it states:

> How is an Arbitrator Selected?
>
> The Board shall appoint an arbitrator to hear and determine the matter arising out of the grievance. The Board has established a list of persons who have qualities and experience which make them suitable persons to act as arbitrators. **The Board will select an arbitrator from this list** not only for expedited arbitration, but also for any appointments that it must make in relation to the regular arbitration process (emphasis added) (p. 51).

Fourth, many of the applicable provincial legislation provisions have stipulations on how quickly the decision is to be released. For example, s. 104(6) of the British Columbia *Labour Relations Code* requires the decision be released within twenty-one days and the Ontario *Labour Relations Act, 1995* S. O. 1995, Chapter 1 Schedule A provides the parties with the option to have an oral decision "as soon as practical." However, counsel

within the jurisdictions where such legislative provisions are adopted stated that they were not followed. For instance, one counsel noted that "not, in my experience [is the legislative requirement adhered to]."

Arbitrators.

***Arbitrator Selection: Potluck*.** A consistent concern from both management and union counsel, across the country, was the inability to select the appropriate arbitrator for the case due to the restrictions the expedited arbitration process imposes on the parties. Therefore, hypothesis two was confirmed where participants were concerned with the ability to choose their arbitrator. A number of themes developed regarding the preclusion to choose an arbitrator where counsel's emphasis on the issue varied from language that they "shy away from [the expedited arbitration process]" to avoid certain arbitrators "like the plague."

The Importance of an Arbitrator. Most counsel recognized the importance of obtaining a suitable arbitrator for the case. For instance, counsel stated: "[T]he most important procedural thing that I can possibly do is choosing my arbitrator." Another lawyer asserted: "… I think choosing the arbitrator is part of the strategy of the case. [S]ome lawyers have certain arbitrators they like to use and certain arbitrators they don't like to use… I think some arbitrators are better for certain issues than others." Past decisions also influence the choice of arbitrators where "[s]ome of our clients don't want to use certain arbitrators because of past decisions, so that's a frustration of the process."

Counsel's concerns over choosing an arbitrator have several commonalities including: the belief that the lack of suitable arbitrators, the belief that the inability to find an arbitrator is a confined issue, the experience level of the arbitrator, and the inability of arbitrators to remain neutral. However, a positive outcome is that in some instances, the apprehension of having an arbitrator appointed has led the parties to pursue a consensual appointment.

The Quality of Arbitrators: Jurisdictional Issue. The majority of participants expressed concerns about the value of arbitrators in their geographic area that were available through the expedited process. Some counsel believed the issue was jurisdictionally based, and requested their jurisdiction not be mentioned, given the small labour community, so as not to offend arbitrators. However, the reservation is somewhat artificial as participants in nearly every jurisdiction expressed the same concerns. Comments were made from one jurisdiction that there were a "separate set of rules" or "particular" issues for said jurisdiction, inferring that the issue was unique to the participant's location. In another jurisdiction it was noted that "if I was advising I would almost always advise against it because of the names that currently are on the list of arbitrators." However, contrary to many participants' beliefs the concern over the quality of potential arbitrators was nearly universal across jurisdictions. In some jurisdictions, the concern regarding the quality and neutrality of arbitrators may have been on the union or employer side. This caveat ensures that counsel are not "outed" to practicing arbitrators.

Arbitrators Lacking Experience. Another concern with the quality of assigned arbitrators was the lack of experience where counsel had not developed a relationship with potential neutrals. The issue of arbitrator experience is partially due to a cycle where it is difficult for new arbitrators get obtain clients without a plethora of decisions for employers and unions to assess the arbitrator before appointing a new arbitrator to a case. In some cases, the arbitrators on the provincial list were described as individuals who "never represented unions or employers and have never spent any time thinking about labour relations." When parties were able to obtain an experienced arbitrator, within the confines of the legislation, it is "assume[d] because they've had a cancellation or something right, because otherwise, they would have had their days filled up twenty-one days in advance."

However, some counsel questioned the severity of the impact of the inexperience of arbitrators as expedited arbitration, labelled historically as "second class citizens," did not address difficult issues:

> I mean it's a question of knowing your arbitrator to some extent. I think everyone on the expedited arbitration list… they are not very complicated cases so everyone can do them and do a fairly good job I would say and so, so there is not so much this idea of arbitrator shopping" that would not come into play as much in these types of cases.

Neutrality. An additional concern was the tendency for some arbitrators to not be perceived as neutral:

> And the … thing is where you have arbitrators imposed upon you, you can find yourself… faced with an arbitrator who has a reputation for leaning one way or the other … on issues, and that may require you to litigate an important issue in front of an arbitrator who might be the last person you would choose to deal with that kind of issue.

This comment is supported by a management-side participant, now located in another jurisdiction, who stated:

> I know I've had expedited arbitrations in [province] and some of the people we've had, I just scratched my head as to how people ever thought, conceived [the arbitrators] could be neutral – people who only acted for one side who are deeply entrenched on one side of the labour equation and then here they are as an arbitrator and just a total unwillingness to accept any neutral interpretation of the collective agreement it's quite appalling actually but we don't have that in [jurisdiction].

Some counsel noted that the processes to establish suitable arbitrators were insufficient and inadequate. They indicated that committees were "supposed to" set standards for establishing suitable arbitrators for the list; however, they failed to establish a list of arbitrators that met the needs of the parties to act as a neutral. Counsel frequently indicated that few of the arbitrators on the list "actually worked" outside of being appointed by the expedited process. The participants confirmed that only the minority of arbitrators were entering paid relationships, outside the expedited process, and were unable to obtain consensual appointments despite being available to hear additional cases.

Although most participants commented on concerns about obtaining the best arbitrator for a particular case, one counsel questioned the quality of favouring some arbitrators over others:

> [N]ow I've often wondered really if there is any point in putting that much time and effort and thought into it or not because sometimes it's ah despite all of that you come away from the process thinking this was really ah not a good experience and sometimes you get surprised the other way around as well.

Positive Outcomes Due to the Fear of Arbitrators. In some instances, when the parties are not satisfied with the arbitrators on the list, the expedited arbitration process may assist the parties in coming to a resolution to remain with the consensual arbitration process. Lawyers, explaining their reluctance to use the expedited process, stated:

> … but I'll tell you why I don't use expedited arbitration I'd be very reluctant to do it is because you don't have any control over who the arbitrator is and there are some bad ones out there! I can think of one arbitrator in particular who is on the 49 list and I took over a file where somebody else has agreed to him and it was just a horror show from the onset. And so knowing that there are arbitrators on that list I would not agree to in 175 years, why would I take that risk and that's what I've said to Unions I usually use that example "What if we've got this guy, would you want this guy"? And the Union Counsel always go "Well no I guess not". "Okay so let's work a little bit harder on finding someone we can agree on and dates we can agree on".

Partial Resolution of Issues Related to Arbitrator Selection. One jurisdiction (Manitoba) has adopted a process that appears to adequately address the issue of the neutrality and the experience of arbitrators on the list. The Manitoba Labour and Management Review Committee uses a list of:

> …true neutrals who the community has endorsed as acceptable arbitrators… because this list that is developed by a joint panel of labour and management representatives yeah so you're not getting to choose your arbitrator but you know the list of who might be appointed and it's very unlikely that anyone on that list is gonna be unacceptable.

This contrasts with other jurisdictions where the joint committees do not appear to have successfully developed a list acceptable to many counsel.

Manitoba also adopted a unique procedure when appointing an arbitrator. Counsel explained that:

> …[i]f anybody on that list is unacceptable then you get to cancel one name. So that's good to cancel one name, that's part of the process.…[Y]ou know you worry if you've been cancelling one person all the time and then you get them as an arbitrator then they going to know you've been cancelling them but I don't worry too much about that.

Essentially, both union and management representatives are able to veto one assigned arbitrator if they determined they would prefer another neutral.

The Cost of Expedited Arbitration. Most participants did not believe that the cost of arbitration was impacted by the use of an expedited process. Therefore, hypothesis three was rejected. The hypothesis rested on the belief that there was an additional cost to the expedited arbitration process and this was offset by the desire to choose an arbitrator. As detailed earlier, choosing an arbitrator was crucial for participants; however, cost did not impact this factor as participants did not generally believe the costs to differ between the expedited and non-expedited processes. Their belief that the costs were similar was based on the premise that the expedited process was designed to schedule the initial day of hearing earlier than the traditional process; however, other factors remained similar to the traditional process. These factors included the same number of days of hearing, and the same preparation required, which naturally impacted the costs. Counsel stated: "There's no difference, absolutely none. And that's part of it is time and part of it is, I'll just answer your question, no. There is no difference". Providing more of an explanation, another participant stated: "The issues are the issues. The evidence is the evidence. I don't think there is any appreciable cost differential."

In one instance, counsel believed that the expedited process costs less but this was with the belief that there would be fewer days spent on the matter:

> Less days and less time for the arbitrator to write the award because usually in an expedited arbitration we just want the findings, the conclusion, we don't need a

> reciting of the facts and therefore two to five pages usually end up to be the award.

Participants in two jurisdictions, Newfoundland and Saskatchewan, appeared to have unique factors that impacted the cost. Here, the difference may be reflected in cost as a result of those arbitrators that might be appointed by the legislation. Counsel, who was located in Saskatchewan, stated:

> …I would generally advise against [expedited arbitration] because of the names that are currently on the list probably has a 50/50 percent chance as being twice as expensive as another arbitrator that you know… the more experienced arbitrators tend to be the most reasonable. Some of the very, very new arbitrators would charge an hourly rate they would for legal advice and that often turns out to be a very expensive process.

A Newfoundland-based participant also noted that the rising proportion of lawyers in the ranks of arbitrators have driven up the costs "exponentially out of reach." However, New Brunswick does not struggle with the impact of the varying cost of arbitrators as the advisory committee sets the schedule of fees adopted by the parties (The New Brunswick Industrial Relations Act, 2008).

Does the Outcome Differ in Expedited Arbitration? Most lawyers believed that the outcome was the same regardless of which process was utilized; therefore, hypothesis four is rejected. Although a participant from Newfoundland and Labrador addressed a concern over the inability to represent the entire case, the greatest apprehension relating to outcome was due to the uncertainty of the arbitrator, rather than

the process itself. One counsel recognized that the difference in outcome was difficult to measure. However, s/he could not recall a case where s/he thought that the outcome would have been different had the case been advanced through the traditional arbitration process rather than the expedited arbitration process.

Cases Best Suited to Expedited Arbitration. There was generally a consensus that expedited arbitrations were best suited towards cases where the issue was more of an urgent or easily defined nature such as termination and discipline cases. For instance, counsel stated:

> dismissal … even though a dismissal can be you know a complicated and involved case it's sort of in the interest of both parties to get it decided quickly …if the union is successful and there's a substituted penalty it tends to be a shorter one and from the employers point of view if the union is completely successful then they will have less back pay to pay so uhm actually in the dismissal ones in New Brunswick you know it's a very effective method and really for both parties.

Therefore, hypothesis five is confirmed. Other examples of suitable cases for the expedited process included cases regarding contracting out, a quickly approaching vacation, or an accommodation case where the employer refused to take the employee back into the workplace. One counsel noted that, "I can't imagine why I would ever do expedited arbitration for a policy grievance." Another noted that it was not appropriate for contract interpretation cases given the interpretation can last a "lifetime." Still, another counsel did not have such an issue of whether policy grievances were

appropriate, or not, but was more concerned about the certainty of the result. Only one counsel indicated that s/he did not think that the expedited process was better for certain types of cases.

The Ability of Counsel to Adequately Represent Clients. When addressing whether counsel felt they were able to adequately represent clients and provide them a voice, counsel overwhelmingly believed they had the ability to represent clients, and provide a voice, during the expedited process. Therefore, hypothesis six is rejected. Many participants noted that if they did not believe it to be possible they would not adopt the process. This statement is more appropriate for union counsel, given they typically drive the grievance procedure. It is likely that counsel was not concerned with voice opportunities as participants were not typically restricted in their ability to present their case.

Thibault and Walker (1975)'s seminal work in the area examined an adversarial or inquisitional judicial system. The adversarial system allowed the individual to present evidence, whereas the inquisitional system only allowed the participant to respond to the authority figures' questions. In the expedited arbitration system there is not a limit to individuals presenting evidence; rather, the first day of the process is sped up. Therefore, the voice effect was not likely restricted. An additional reason may be that the lawyers are not as heavily vested in the dispute; therefore, it is possible that the lawyers do not have the same level of self-interest necessary to acquire the voice necessity. They may not have the same self-interest advocated by the instrumental approach. However, there

are similarities between observers and participants' preferences for procedures (Thibault & Walker, 1975). Therefore, it is likely that lawyers and clients would share views on fairness.

Employer counsel did not usually find that they were unable to represent their clients. Instead, they stated that there were often ways to address the short time period such as relying on alternate counsel at the firm or prioritizing files to place an emphasis on the expedited matter. It was also noted that smaller firms may not have the resources to contend with the discreet time frame. Employer counsel also recognized that if the time frame made it difficult to prepare for the hearing, it can be "strategically spun out until you have more of an opportunity to get your case ready if that's a concern."

Some union counsel did acknowledge the importance of providing clients a voice and noted that there was an emotional aspect for grievors where they need to maintain enough control of the process "that they make the employer sit there and actually listen to them… and they won't listen to them in any other setting but in an arbitration they are required to sit in a room and take notes...." It was also a similar concern in Newfoundland where the matter is restricted to representation, and the grievor did not have a direct role. There, counsel noted that it is difficult for the grievor to feel that s/he was "heard" and acceptance may be absent due to this. Although these union responses initially appear to contradict the general trend that the clients are provided an opportunity to engage their voice, I believe it is consistent. These counsel are clarifying that voice opportunities are important in general. They do not appear to be concerned as they believe that their clients were provided an adequate opportunity to be heard.

Nova Scotia: A Unique Scenario. In Nova Scotia, *the Trade Union Act* provides a unique opportunity for examination where the process has not been used since its inception. The *Trade Union Act* reflects similar legislation in other Canadian jurisdictions; however, the distinct difference, in the Act, is the amount of time required before the hearing will advance. In other jurisdictions, such as s. 49(3) of the Ontario *Labour Relations Act*, the grievance may be referred when the parties have exhausted the grievance process, or thirty days have passed since the matter was first referred to the other party (The Ontario Labour Relations Act). However, in Nova Scotia the legislation requires 5 months to pass before the party can refer this matter to arbitration. Therefore, in addition to the time it takes the matter to pass through the union management grievance step process, a longer delay is required. Union counsel did confirm that the five month delay, described as the "ultimate legislative compromise," was influential. Participants noted that before the five months arrived the parties were able to have agreed to an arbitrator and have the date set. In fact, one counsel referred to the expedited process, pursuant to the legislation, as "irrelevant." Therefore, hypothesis seven was confirmed.

Additional Areas Discussed in the Study. The interviews also revealed a number of other areas worthy of noting including factors contributing to the decreased use of the expedited arbitration process and its use to appease the grievor.

A Strategic Method to Counter Delays. Counsel, typically union, frequently noted that the expedited process could be adopted as a tool to combat strategic delays enacted

by employers. Essentially, it is used as a means to address the employer "refus[ing] to agree to anyone as an arbitrator and basically just refus[ing] to participate in the process until it's required to." Described as a "tactic" and a "threat", the process of adopting or threatening to adopt expedited arbitration was used as "standard practice among a lot of union counsel." The procedure was often recommended to clients when there was an issue arriving at an agreement on an arbitrator or dates. Although counsel noted that the tactic was "not a guarantee," it often provided some benefits, including initiating a settlement or simply speeding up the process by having an arbitrator appointed.

One employer counsel noted his/her frustration with other management-side counsel intentionally delaying proceedings and commented on the delay process:

> I don't support this in my clients and my clients don't do this but I am absolutely confident that some employers ask their lawyer, ask their counsel to delay things, "Don't be in any hurry to do this, let them stew, let them sit out there whatever." I can see that tactic which I don't agree with and don't approve of but I bet that people use it and I can certainly see in that case the Union's remedy would be to utilize the Section 49 process.

One management-side counsel had a particularly strong view of union counsel adopting the expedited process to respond to delays, stating:

> I think that unions use the process as a form of harassment, if they are upset with their employer. I think that the unions use the process strategically to put pressure on the employer to resolve matters that they may not otherwise be prepared to

> resolve… the Party who's filing the application can control the timing of when the proceedings begin which means that the Party that's filing the application is advantaged because they can put together their case or prepare their case before filing, knowing that the opposing Party will have to scramble to get everything together within the time frame ah required by the legislation. So that's strategic.

Factors Contributing to the Decreased Use of Expedited Arbitration. The expedited arbitration processes are being adopted less in recent years. For example, in Ontario there were 2,015 s. 49 applications in the 2001/2002 fiscal year and 919 in the 2012/2013. Counsel confirmed these provincial statistics with their perceptions. There were a number of factors used to explain why the expedited process was used less, including the use of expedited arbitration in collective agreements, the adoption of "arb dates," and the inability of counsel to adopt the process once they had received the file.

First, many collective agreements have provisions which encourage expedited processes for the parties. In these cases, the parties are able to agree to terms, as well as an arbitrator, to provide a quick resolution. These agreements typically require that the parties agree to the expedited process so it is not used as a strategic tool in the same manner as an expedited process pursuant to the legislation is frequently adopted. That is, the parties are consensual and are concerned with the timelines rather than advancing grievances where counsel is unsuccessful in scheduling dates. Second, counsel located in Ontario noted that the invention of "arb dates," a process that publishes an arbitrator's calendar, decreased the need for expedited procedures. The online tool allows the parties to canvas what dates are available and choose an arbitrator partially based on these dates.

It speeds up a formerly lengthy process where the parties exchanged letters proposing arbitrators and dates. Third, in some cases, particularly in some jurisdictions, counsel were unable to advance the case to the expedited arbitration process as the client had exhausted the timelines before counsel had received the file. Counsel noted that if a mistake was made with the timelines, it means that "you're basically dead" and "it's not a risk that you want to run needless to say."

Is Expedited Arbitration used to Appease the Grievor? There are divergent views on whether unions adopted the process to appease grievors. Some employers inferred that it may be the case and union counsel was split on the suggestion that the process had been adopted to demonstrate, to the grievor, that the issue was being taken seriously. In some cases union counsel noted that the process was used to signal that the issue "is being dealt with as thoroughly as it possibly can be using the tools of the union." One counsel noted that:

> [Y]ou get a rare case, or maybe it's not that rare, which for whatever reason and politically the union feels it has to pursue the case the union doesn't really believe in the case but it's enough of a squeaky wheel or there's a residual DFR concern I'll say fine let's go ahead, the evidence is easier to deal with in arbitration than with the Labour Board or if we're gonna have to litigate this, we might as well litigate in front of an arbitrator as opposed to the Labour Board of the DFR "so let's go and do that."

Another counsel observed that the law firm had a policy within the office to use the expedited process within the collective agreement "to show members that we want to deal with the matter, that we are serious and that we want to deal with them quickly." Other union counsel had alternate views where they indicated it was not really an issue. Instead, it might be used if there is a significant consequence to the grievor "but not just because the grievor only subjectively thinks their issues are really pressing."

Potential Changes to Existing Legislation

The interviews revealed there were views on the relevant provincial legislation that both separated, and united, employer and union counsel. However, despite the misgivings, one employer counsel based in Ontario noted:

> I would hate to lose it. I think it has a place it only has what's the word that I want, it provides one side or the other with the leverage to ensure that arbitration happens promptly if there is a lack of cooperation on the other side. So everybody has that fall back position where you say "Look if you're not going to get with the program and work with me to find mutually agreeable dates then I'm gonna 49 it." So I think we probably need that backstop as… protection to just make sure that both parties do cooperate in setting dates.

In order to improve current legislation there were a number of suggestions. These were obviously dependent on the jurisdiction; however, many suggestions were applicable to multiple jurisdictions.

The Ability to Schedule Multiple Dates. Counsel suggested that more than one date be scheduled for the initial hearing. This would reduce the likelihood that a hearing would be drawn out over months due to the need to schedule subsequent dates. Specifically, one participant suggested adopting a process like section 133 of the *Labour Relations Act* in Ontario where they set up all the dates. Counsel did recognize that:

> [N]ow obviously… I guess it'll be additional public resources in that and private arbitrators would howl like mad to have their sort of work cut into in that way but some sort of a process where you can actually just sort of go and go day to day… I wouldn't care so much whether or not you were up in three weeks right, if you had to apply and there as some sort of assignment court type of process right where six months after you've applied ah there you go.

It was suggested that in addition to speeding up the process, having the process continue rather than require multiple dates over time would reduce the need for counsel to reacquaint themselves with the case each time there was a time lapse between the hearing dates. If counsel were not required to reacquaint themselves with the case, they would require less time which would likely result in the reduction of legal fees.

Case Management Processes. Participants recommended that structures be added such as mandatory case management or mandatory meeting with a settlement officer. Most jurisdictions addressed the use of a settlement or mediation officer; however, it is a term frequently requiring the mutual agreement of the parties (for example, see section 104(c) of the British Columbia *Labour Relations Code*).

Non-precedential Decisions. Counsel also suggested adopting a non-precedential/non-influential policy for expedited arbitration cases which would serve a number of objectives. This process could increase the number of cases that would be put to an expedited process. This would encourage more cases because even if the decision was not regarded as favourable by union or management, it would not follow the parties for the life of the agreement. The issue was important for employers; although technically labour arbitration decisions do not follow a *stare decisis* process, an arbitration decision is very influential on subsequent organizational practices.

Case Limitation. Counsel suggested that the legislation be limited to certain types of cases. These generally included discipline and dismissal cases.

Cancellation Fees. Counsel requested that restrictions be placed on cancellation fees for arbitrations in the case of expedited arbitrations. That is, given the case is scheduled within a month of the first date of hearing, the parties frequently incur cancellation costs despite only having the hearing booked for a day or two before the parties successfully settle the matter. A suggestion was that a 48-hour grace period should be instituted.

Consent. Participants suggested that expedited arbitration cases, pursuant to the legislation, should only be adopted with the consent of both parties. Respectfully, the parties can consensually agree to the terms of the legislation, with any modifications they deem appropriate, without involving the legislation. However, the process of expedited

arbitration would change if both management and union counsel were required to consent to the process.

Adherence to Timelines. Counsel suggested that the timelines become less of a guideline and instead a rule. However, this was presented with a reservation of whether a fair hearing could be provided to the parties. This reservation was based on the desire to have the client's choice of counsel, experienced counsel, and witnesses' availability, etc. However, it was noted that in Saskatchewan, the parties adjust to the timelines in the *Labour Code*. Counsel also suggested that those arbitrators who do not adhere to the timelines be released from their appointments. Also, it was noted that the decision has to be issued within 90 days unless there is consent from the Board. In the cases where the parties are unable to meet the timelines the parties are able to pull the grievance out of the expedited process.

Document Exchange. There was disagreement on whether greater document exchange should take place. Some counsel advocated for the greater use where documents, or "potentially relevant documents" be exchanged prior to filing. However, consider the contrasting view:

> I've even had lawyers in my own office here talking about exchanging documents… you know document discovery in other words... I mean the whole point of the arbitration process as I understand it when was originally established in the late 60s or even maybe before was cheap, quick, okay and, and, and resolution without strike or lockout right.

Mandatory Mediation. Some participants suggested mandatory mediation within the process. For instance, in Manitoba there is mediation as part of the process which "holds the employers' feet to the fire."

Limitations

The study has a number of limitations. First, it does not address issues of culture. Shaprio and Brett (2004) argue that the there is a Western bias amongst individuals desiring to communicate their voice. However, individuals who subscribe to the values of a less confrontational culture do not generally place the same value on self-interested voice (Lind, Huo, Yuen, & Tyler, 1994). A second limitation is that I interviewed lawyers rather than representatives from the respective organization, union, or the grievor. The decision whether to attend an expedited, as opposed to a non-expedited arbitration, is typically made by a combination of counsel and the union/employer representative. I restricted my interviews to counsel; however, arguably the union/employer representative may have an alternative view on the matter. Further studies may investigate perceptions from employer/union respondents. However, given the decision is strategically made, I suggest that the parties share a view particularly since counsel has a duty to inform their client. It is noteworthy that the client may be responsible for making the final decision on the choice of arbitration. A final limitation is that the study was restricted to counsel. Unions frequently have business agents who represent the union in a hearing and it is possible that there is a distinct view amongst business agents, which differs from counsel, on these issues.

Conclusion

The studies provided complementary analysis on the issues regarding expedited arbitration processes in Canada. The descriptive study demonstrated comparisons for the delays experienced in commencing a labour arbitration and the release of the decision. It also provided information regarding counsel's perceptions of the justice dimensions of the expedited process, as opposed to the traditional process, where the results were comparable. Lastly, it detailed advantages and disadvantages of the traditional and expedited arbitration processes which were explored further in the qualitative study.

The qualitative study provided insight into the limitations and difficulties the parties experience using the expedited arbitration process. The participants' comments were useful in providing insight into the experiences and perceptions of union and employer counsel across Canada. Although there are unique jurisdictional issues, based upon legislation and related practices, there are common threads across the country. The suggestions provided, such as the ability of counsel to give input into the chosen arbitrators, the ability to schedule more than one hearing day, and the use of non-precedential/non-influential awards, may increase the use of the process.

Chapter 5: Content Analysis of Procedural and Distributive Justice Issues

Introduction

In this chapter I examine the content of traditional and expedited arbitration cases decided in Ontario and British Columbia. Similar to De Berdt Romilly's dissertation (1994), the quantitative comparative approach was chosen to further develop the empirical research in the area. Moreover, adopting a quantitative analysis enables a more systematic and objective examination of the case outcomes (De Berdt Romilly, 1994).

I address four issues in this chapter. First, I explore whether the delays are greater in the traditional arbitration process than the expedited process. Second, I examine whether there are typically more days of hearing in traditional or expedited cases. Third, I study whether there is a statistically significant difference between the length of the suspension awarded in traditional and expedited arbitrations. Fourth, I examine if there is a difference found between the outcomes of expedited and traditional arbitration cases.

Hypotheses

Provincial legislation requires that the arbitrator hold the initial hearing date within a requisite time period. Specifically, in British Columbia Section 104(4)(b) of the *Labour Relations Code* requires the arbitrator to commence the hearing within twenty-eight days of being referred the matter (The British Columbia Labour Relations Code, 1995). In Ontario, Section 49(7) of the *Labour Relations Act* requires the arbitrator to

hear the matter within twenty-one days of being appointed. These requirements contrast with the traditional labour arbitration process where there are no time restrictions imposed on the parties (unless the parties choose to impose restrictions). These factors support the matter being heard quicker in the expedited process than the traditional arbitration process.

H1: There is less of a delay to reach the initial day of the hearing in an expedited arbitration process than the traditional arbitration process.

The British Columbia *Labour Relations Code* requires that the arbitrator issue a decision within twenty-one days of the conclusion of the hearing. However, if the parties request, and it is deemed possible by the arbitrator, the arbitrator may release an oral decision one day after the conclusion of the hearing (The British Columbia Labour Relations Code, s. 104(7)). The Ontario *Labour Relations Act* requires that the arbitrator give a succinct decision within 5 days (The Ontario Labour Relations Act, s. 49(9)). These requirements are unique to the expedited arbitration process given there are no legislative requirements that an arbitrator release the decision quickly in traditional arbitrations. Therefore, it is expected that those decisions that are heard pursuant to the expedited arbitration process will be released quicker than the traditional process.

H2: There are fewer days of delay in obtaining an expedited arbitration award than a traditional arbitration award.

Given the previously mentioned legislatively-based time restrictions and the characteristic of the expedited arbitration process, it is expected that delay from the dismissal to the release of the decision will be less in expedited arbitration cases.

H3: The total delay, which includes the time from the hearing to the release of the decision, will be lengthier in traditional arbitration cases.

The legislation pertaining to expedited arbitration does not dictate parameters regarding the number of days of hearing for the arbitration case. However, it is expected that given the parties are concerned with the timeliness of the matter, they may require fewer hearing days.

H4: The expedited arbitration cases will have fewer hearing days than the traditional arbitration cases.

Neither the Ontario *Labour Relations Act* nor the British Columbia *Labour Relations Code* provides any provisions regarding awards. This includes the length of suspension awarded in cases where the arbitrator determines a suspension is appropriate.

H5: The length of the suspension will not be impacted by the choice of a traditional or expedited arbitration process.

The literature reports that there is not a statistically significant difference in case outcomes based upon whether the case was decided using an expedited process in comparison with a traditional arbitration process (De Berdt Romilly, 1994). Based upon

this literature it is proposed that there will not be a statistically significant different case outcome in the expedited arbitration decisions.

H6: There is not a statistically significant difference in the case outcomes of expedited or traditional arbitration cases.

Method

To collect my data, I adopted content analysis which is a method to analyze documents in accordance with pre-determined categories (Bryman, 2008). This method is used in similar studies including Ponak, Zerbe, Rose and Olson (1996) and Thornicroft (1993, 1994). I reviewed the case content of the labour arbitration decisions; specifically, I limited my analysis to discharge decisions. The case collection was restricted to discharge decisions because as Block and Stiber (1987) explained i) the language of disciplinary matters minimizes the problem of variation on contract language, ii) the cases have similar issues given they address unsatisfactory behaviour, and iii) the outcomes can be quantified into separate categories. When one or more grievors were included in a single decision, each grievor was coded as a separate case (Grant, 2008). The variables and coding, detailed below, were arrived at through reviewing the literature and case law in the area. The code book used for analysis is included in Appendix C.

Data Collection

The arbitration awards used for content analysis included cases decided in British Columbia and Ontario. These jurisdictions were chosen given these provinces had a

large sample of cases. Examining two jurisdictions also allowed for a greater number of cases to be examined. The cases were collected from the LexisNexus database from 1997 to 2011. The Ontario Ministry of Labour and British Columbia Ministry of Jobs, Tourism and Skills Training publishes all cases that are provided by arbitrators. These decisions are, in turn, published by LexisNexus. The population included all reported expedited arbitration cases from 1997 to 2011. In order to compare the expedited and non-expedited cases a random sample generator was used to select a similar number of cases which adopted traditional arbitration. Random selection was adopted to minimize selection bias and reduce sample selection bias (Marczyk, DeMatteo, & Festinger, 2005).

Given the parameters of this study all cases were not coded from the traditional sample. Instead I coded, with the assistance of a research assistant, all expedited cases and comparator cases that were selected from 1998, 2000, 2005 and 2010 to allow for an even distribution over the collection period. The entire expedited sample was coded due to the difference in the number of expedited and traditional cases. In order to randomly select the traditional cases a random number generator was used. For instance, if there were thirty-two traditional cases of dismissal for violence in the workplace and only ten expedited cases, a random generator was used to select ten cases between one and thirty-two. Each of these randomly selected cases was included in the coded sample.

Inter-rater reliability was conducted on the primary variables. The variables examined included: i) whether the case was expedited or traditional and ii) whether the

grievance was granted. The results of the inter-rater reliability revealed that there was 100% agreement between the coders for these variables.

Sample Selection Bias

If a sample selection obtains an unrepresentative sample of the population of interest, sample selection bias exists (Winship & Mare, 1992). One source of potential selection bias was the possibility that arbitrators may have failed to forward their decision to their provincial ministry responsible for labour. If the award was not forwarded, these decisions did not enter the sample selection process and may skew the results. In Ontario, Regulation 94/07 of the *Labour Relations Act* requires that arbitrators shall, within ten days of issuing a decision, file the decision with the Ministry of Labour. In British Columbia, Section 96 of the *Labour Code* requires the arbitrator file the award with the Director of the Collective Agreement Arbitration Bureau within ten days of issuing the award. The Director holds the responsibility to make the award publically accessible. However, arguably the Ministries of Labour do not have a means to become aware of all private arbitrations if the arbitrator fails to file the award. Therefore, the sample may incur bias by arbitrators neglecting to file a decision. This potential bias is likely quite small given arbitrators are best served ensuring their decisions are accessible to the public in order to gain future case appointments.

Dependent Variables

The variables were coded using information provided in the written awards. The variables reflect different aspects of the arbitrators' decisions. Delays in arbitration are,

not surprisingly, associated with a difference between expedited or conventional arbitration (Rose, 1986). Dependent variables which address the delays in arbitration include: i) the delay from the date of the termination to the first day of hearing with an arbitrator (Delay to Hearing), ii) the delay from the last day of hearing to the arbitrator's award (Delay to Award), and iii) the total delay from the date of the discharge to the release of the decision (Total Delay). The Total Delay was the sum of the Delay to Hearing and Delay to Award variables. Further, the Length of the Days of Hearing and Length of Suspension Awarded were included as dependent variables.

The final dependent variable was the case outcome; specifically, whether the grievance was granted (0) or denied (1). Second, an ordered analysis was used where the categories included whether the: grievor was reinstated (0), warning or suspension with thirty or fewer days awarded (1), suspension to 120 or fewer days (2), suspension over 120 days awarded (3), and the termination was upheld (4). If the case indicated a suspension in weeks, this figure was multiplied by seven to arrive at a number of days. If the case indicated a number of months, this number was multiplied by thirty to arrive at a number of days. Before coding the dependent variables, z scores were calculated and where a z score was 3 or more the cases were excluded as outliers. The delay variables were also transformed to their natural logs.

Independent Variables

The primary independent variable was whether the case was expedited or traditional. This variable was coded dichotomously: the traditional arbitration process (0)

and the expedited process (1). The cases were categorized as expedited when the parties utilized Section 49 of the Ontario *Labour Relations Act* and Section 104 of the British Columbia *Labour Relations Code.* Cases that are categorized as traditional were those that followed the provisions of the applicable collective agreement.

Control Variables

The control variables included: jurisdiction of the case, year of the case, gender of the arbitrator, gender of the grievor, gender of the employer representative, gender of the union representative, the use of legal counsel/non-legal representation by the union and employer, presence of a policy, record of the grievor, occupation of the grievor, industry of the employer, and category of offence. These control variables were included due to research which suggests these factors may impact the case outcome. For instance, there is mixed research regarding whether a grievor's gender is associated with case outcome (Bemmels, 1988, 1991; Knight & Latreille, 2001; Mesch, 1995; Thornicroft, 1995a). Further, the use of legal counsel has been found to impact the case outcome (Barnacle, 1991; Mark, 2000; Ponak, 1987). In addition, research has shown that the past record of the grievor was related to the arbitration outcome (Rose, 1986; Simpson & Martocchio, 1997).

The jurisdiction was coded as Ontario (0) or British Columbia (1). The year of the case was coded dichotomously as 1997 to 2002 (0) and 2003 to 2011 (1). The gender of the arbitrator, grievor, and counsel were coded as male (0) and female (1). When there

were multiple counsel/representatives, the gender of the most senior representative was coded. If there was an arbitration board, the coding was restricted to the arbitrator.

The use of legal counsel was controlled to include whether the employer did not use legal counsel (0) or did use legal counsel (1). The use of legal counsel by the union was also coded to address when the union did not use legal counsel (0) or did use legal counsel (1). Membership to a provincial law society was the determining factor adopted to establish whether the representative was legally trained. Lawyers require membership to a provincial law society to practice law in Canada. Canada Law List provides an annual list that details every lawyer who holds a membership to a law society. Given the list is released annually the current list may not include lawyers who are no longer practicing but were at the time of the case. This is particularly an issue given the cases were collected over a fifteen year period. In order to address the potential for error, where lawyers could be mistakenly coded as non-lawyers, previous publications by Canadian Law List were consulted to determine if the representative was a lawyer at the time of the hearing (Carswell, 1997).

If the employer did not have a policy, related to the grievance, it was coded as (0) and the presence of a policy was coded as (1). The past record of the grievor was controlled to include a clean (0) or existing record (1). If the previous record was expunged, the grievor was considered to have a clean record. The occupation of the grievor was coded as unskilled (1), semi-skilled (2), and skilled (3). The variable was originally adopted to include additional categories as utilized in Bemmels (1988);

however, there were not enough cases which included these categories (e.g. clerical). Therefore, these variables were collapsed into the remaining appropriate categories.

The industry of the employer included the following: manufacturing (1), services (2), government (3), mining/forestry/mill (4), healthcare (5), food/drink (6), transportation (7), and other industry (8). The subject matter of the offence was coded according to whether it focused on: theft/dishonesty (1), assault/violence (2), alcohol/drug use (3), attendance/absenteeism (4), insubordination (5), work performance (6), harassment/sexual harassment/bullying (7), and other offence(s) (8).

Analysis

Regression. Ordinary least squares regression was used to test whether the choice of arbitration process impacted the: i) Delay to Hearing, ii) Delay to Award, iii) Total Delay, iv) Number of Days of Hearing, and v) Length of Suspension Awarded. The analysis of the dependent variable involved a two-step analysis procedure where the model was run with and without the controls.

Estimation. For the two dichotomous dependent variables (granted and denied) probit estimation was used. The format reflects the logit regression adopted in similarly formatted studies conduct by Bemmels (1988) and Wagar (1994). The fundamental difference between probit and logit methods is that the approaches differentiate the distribution of the error term as either logistic or normal. However, as explained by Lewis-Beck (2002) either choice is suitable and "it is difficult to justify one choice over

the other" (p. v). Probit was performed using the dependent variable of the grievance being granted or denied. Ordered probit analysis was adopted to provide a more in-depth examination of the impact of the choice of arbitration process on the results. Implementing ordered categories allows the study to look beyond whether the termination was sustained or denied. It enabled me to examine an outcome with five categories that differentiate the level of discipline awarded. Again, a two-step procedure used. First, for the effect of choice of arbitration procedure was tested alone; second, the entire model was adopted including the control variables.

The model assumes that when controlling for variables that each case is as likely to succeed as another. This is similar to Bemmels (1988) where gender was studied. It is assumed that, in the case of any study of arbitration awards, that the case reflects the facts of the case accurately. Bemmels (1988) noted that the assumption is "seldom correct" (p. 69); however, it remains uncertain how the incompleteness or the written decision might bias the results of the research. Arguably, certain types of cases are more likely to be sent to the expedited arbitration process (Rose, 1986) as counsel may think that discipline and dismissal cases are more appropriate than policy cases. This factor is accounted for in the study as the sample is limited to discharge cases only. Further, discharge cases are regarded as particularly suitable to expedited arbitration given it is often in the interests of both parties to resolve the matter quickly. The sample also provides a nearly identical number of cases pertaining to various offences (e.g. attendance, violence) to account for differences based on offence.

Empirical Results

The results of the content analysis are presented in two parts. First, the results with respect to five dependent variables, Delay to Hearing, Delay to Decision, Total Delay, Number of Days of Hearing, and Length of Suspension Awarded are presented. Second, the results of the probit analysis, with respect to the whether the discipline is related to the choice of arbitration process, is reported.

Descriptive statistics for the dependent variables are reported in Table 5 - 1. The total sample included 555 labour arbitration cases. As indicated in the table, the grievor prevailed in just under 50% of cases. The grievor was awarded a full reinstatement in 22.2% of cases, a suspension of 30 and fewer days in 10.6% of cases, 31-120 days in 7.0% of cases, and more than 120 days in 9.9% of cases. The dismissal was upheld in 50.3% of decisions. The natural log of the variable was adopted in the regression analysis.

The average delay to participate in an initial day of hearing was nearly 182 days. In 52.8% of the cases, the delay was 120 days or less, in 22.5% of cases between 121 and 240 days, in 12.8% of cases between 241 and 365 days, and delays exceeding one year accounted for 11.9% of the cases. The average delay to receive a decision was 108.15 days, shorter than the delay to obtain an initial day of hearing. In 75.1% of cases the decision was awarded within 120 days, 14.1% of cases between 121 and 240 days, 3.6% in a between a year and 241 days, and only 7.2% of cases had delays longer than a year. The average total delay was 284 days. The total delay of 120 and fewer days accounted

for 24.8% of cases, 121 to 240 days 34.1% of cases, 241 to 365 days 17% of cases, and 24.1% of cases had a total delay of longer than a year.

The average number of days of hearing was slightly more than three and a half days. Over a quarter (27.1%) of the hearings lasted one day, 57.4% of hearings lasted from 2 to 5 days, 10.2% of cases were 6 to 10 days in length, and 5.3% of cases included 11 days of hearing or more. The average length of suspension awarded was 143 days. The length of suspension was 120 days or fewer in 61.5% of cases, 121 to 240 days in 22.4% of cases, 241 to 365 days in 10.5% of cases, and over a year in length in 5.6% of cases. In the regression analysis the variables were utilized in their natural log.

Table 5 - 1

Descriptive Statistics for Dependent Variables

Variables	**Mean**	**Standard Deviation**	**%**	**N**
Delay to Hearing	181.94	187.38		469
Delay to Decision	108.15	155.33		502
Total Delay	284.60	254.80		460
Number of Hearing Days	3.62	3.60		510
Suspension Days Awarded	125.14	132.45		143
Case Outcome				555
Granted			49.7	276
Denied			50.3	279
Award				555

Full Reinstatement			22.2	123
Suspension 30 and Less			10.6	59
Suspension 31 – 120 Days			7.0	39
Suspension More Than 120 Days			9.9	55
Dismissal			50.3	279

Table 5 - 2 provides the mean values of the variables that measure delay. These include the following variables: Delay to Award, Delay to Decision, and Total Delay. The means are provided for the variables and the logged values of the variable. The average number of days of delay was 257.36 day for traditional arbitrations, in comparison with 108.74 days in expedited arbitration. The average number of days of delay was 130.56 for the traditional arbitration procedure and 86.93 days in the expedited format. The average number of days of Total Delay was 381.58 days in the traditional format and 193.34 days in the expedited approach.

Table 5 - 2

Mean Values of Delay Lengths

Arbitration Process	**Delay to Hearing**	**Log Delay to Hearing**	**Delay to Decision**	**Log Delay to Decision**	**Total Delay**	**Log Total Delay**
Traditional	257.36	5.21	130.56	4.13	381.58	5.67
Expedited	108.74	4.41	86.93	3.74	193.34	5.00

*Reported in number of days.

Table 5 - 3 reports the mean values for the dependent variable: the Days of Hearing and the Suspension Days. In addition, I also provide the means after taking the natural log of the variables. The average number of days of hearing was slightly longer

for the traditional arbitration process where it was 3.91 days compared to 3.33 days for the expedited process. The mean for the number of days of suspension was 156.77 days for traditional arbitrations and 95.65 days for expedited arbitrations.

Table 5 - 3

Mean Values for Dependent Variables

Arbitration Process	**Days of Hearing**	**Log Days of Hearing**	**Suspension Days**	**Log Suspension Days**
Traditional	3.91	1.03	156.77	4.26
Expedited	3.33	.90	95.65	3.90

*Reported in number of days.

Table 5 - 4 provides the descriptive statistics for the independent variable, Type of Arbitration. The cases are nearly evenly divided between traditional and expedited arbitration; 49.7% of cases involved the traditional arbitration process and 50.3% used the expedited process.

Table 5 - 4

Descriptive Statistics for the Independent Variable Type of Arbitration

Variables	**%**	**N**
Arbitral Process		555
Traditional Arbitration	49.7	276
Expedited Arbitration	50.3	279

Table 5 - 5 includes the descriptive statistics for the grievance offence. The primary issues were theft/dishonesty and attendance which, in combination, accounted for nearly 50% of the issues before the arbitrators. Work performance was the primary offence in 15.9% of cases and the remaining variables including assault/violence,

alcohol/drug use, insubordination, harassment/bullying, and other offences totaled less than 15% each. Attendance was withheld from the regression analysis to control for multicollinearity.

Table 5 - 5

Descriptive Statistics for Grievance Offence

Variables	**%**	**N**
Grievance offence		555
Theft/Dishonesty	21.3	118
Assault/Violence	7.9	44
Alcohol/Drug Use	8.3	46
Attendance	24.1	134
Insubordination	11.2	62
Work Performance	15.9	88
Harassment/Bullying	6.8	38
Other Offence	4.5	25

Table 5 - 6 provides the descriptive statistics for the employer's industry. In more than 20% of the cases, the employer was in manufacturing. The remaining categories accounted for between 2.5% and 17% of the cases. Manufacturing was withheld from the regression analysis.

Table 5 - 6

Descriptive Statistics for Employer Industry

Variables	**%**	**N**
Employer Industry		550
Manufacturing	23.1	127
Services	14.2	78
Mining/Forestry	16.2	89
Food/Beverage	16.5	91
Government	13.5	74
Healthcare	7.5	41

Transportation	6.5	36
Other	2.5	14

Table 5 - 7 reports the descriptive statistics for the remaining control variables. There were slightly more cases decided in British Columbia (56%) than in Ontario (44%). There were more males, in all categories, including the arbitrators (86.8%), grievors (77.45%), employer representatives (82.2%), and union representatives (76%). This highlights the over-representation of males in these positions, particularly given the sample is over a 15 year period (Kay, 2005). The employer used legal counsel in over 80% of cases whereas the union employed counsel in approximately 60% of cases. The majority of employees were semi-skilled (55.9%). The semi-skilled dummy variable was withheld in the multivariate analysis. The employer had a workplace policy, related to the grievance offence, in approximately 50% of cases. The grievor's record included an incident in nearly 42% of cases.

Table 5 - 7

Descriptive Statistics of Control Variables

Variables	**%**	**N**
Jurisdiction		555
Ontario	44.0	244
British Columbia	56.0	311
Arbitrator's Gender		539
Male	86.8	468
Female	13.2	71
Grievor's Gender		554
Male	77.4	439

Female	22.6	125
Employer Representative's Gender		540
Male	82.2	444
Female	17.8	96
Union Representative's Gender		525
Male	76.0	
Female	24.0	
Employer Use of Legal Representation		551
No Legal Representative	16.5	
Legal Representative	83.5	
Union Use of Legal Representation		551
No Legal Representative	39.4	217
Legal Representative	60.6	334
Occupation		456
Unskilled	26.3	120
Semi-Skilled	55.9	255
Skilled	17.8	81
Policy		528
No	51.9	274
Yes	48.1	254
Past Record		
Clean	58.1	525
Record	41.9	

Delay to Initial Day of Hearing. As noted previously (see Table 5 - 2) the average days of delay in reaching an initial day of hearing was 257.36 days for the traditional arbitration cases and 108.74 days for the expedited arbitration cases.

The results of regression analysis indicated that the expedited arbitration process provided a shorter delay in obtaining the first day of arbitral hearing. Table 5 - 8 reports the findings of Model 1 where the results of the model were significant B= -79, $t(1) = -10.79$, $p < .01$. Model 1 revealed that there was less of a delay in expedited arbitration and explained 20% of the variance in delay between the expedited and traditional arbitration method (R^2= .20, $F(1, 467) = 116.41$ $p < .01$).

Multiple regression was used to test if the use of expedited arbitration significantly impacted the delay in arriving at a grievance outcome. The time period examined for the delay was from the termination to the first day of hearing. The results of Model 2 (with all the control variables included) indicated that expedited arbitration cases were more likely to have a shorter delay in reaching the initial day of hearing then traditional arbitration cases ($B = -.73$, $t(27) = -8.46$, $p < .01$)**.** The full model accounted 27.5 % of the variance ($R^2 = .28$, $F(27, 389) = 5.10$ $p < .01$). These findings are reported in Table 5 - 8.

There was also a significant relationship between the delay to the initial day of hearing and other variables. The control variables including the grievor's gender, the employer's use of a legal representative, the industry category government sector, and the offence of assault were positively related to the delay to the first day of hearing.

However, the use of a legal representative by the employer and the offence category, assault, were negatively related to the initial delay.

Table 5 - 8

Delay to Initial Day of Hearing

	Model 1		**Model 2**	
Variable	**Beta**	**SEB**	**Beta**	**SEB**
Constant	5.20***	0.52	5.18***	.18
Expedited Process	-.79***	.07	-.73***	.09
Jurisdiction			.01	.02
Year of Case			.04	.08
Arbitrator Gender			.13	.13
Grievor Gender			.22*	.11
Gender Employer Representative			-.10	.11
Gender Union Representative			-.02	.10
Employer Legal Representative			-.22*	.19
Union Legal Representation			.12	.08
Policy			.13	.09
Past Record			.20	.11
Occupation				
Skilled			-.02	.12
Unskilled			.13	.11
Industry				
Services			.06	.15
Government			.36**	.15
Mining/Forestry			.16	.14
Healthcare			.12	.20
Food/Beverage			-.05	.16
Transportation			.02	.20
Other			-.12	.29

Offence				
Dishonesty/Theft			-.12	.14
Assault			-.34**	.16
Alcohol/Drug Use			.16	.18
Insubordination			-.00	.15
Work Performance			.01	.14
Harassment/Bullying			.01	.18
Other Offences			-.36	.27

*** $p < .01$, ** $p < .05$, *$p < .10$

Delay to Award. The average number of days before receiving an award was 130.56 days for the traditional process and 86.93 for the expedited process. These results are reported in Table 5 - 2.

The results of the regression analysis (see Table 5 - 9) indicated that there was a statistically significant difference in the amount of time to receive an arbitrator's award when comparing the expedited and non-expedited cases (B= -39, $t(1) = -3.39$, $p < .05$). Specifically 2% of the variance was accounted for in Model 3 ($R^2 = .02$, $F(1,495) = 11.46$, $p < .01$).

Results from the multiple regression revealed that the expedited arbitration variable was not statistically significant, that is, there was not a significant difference in whether a decision was released quicker in the expedited rather than the traditional arbitration process ($B = -.17$, $t(26) = -1.23$). Table 5 - 9 reports the findings of Model 4. Specifically, the use of an expedited approach accounted for 17.1% of the variance ($R^2 = .17$) $F(26,401) = 3.17p < .01$). Control variables that had a significant relationship with the delay to the release of the decision included the year of the case, the use of legal

counsel on behalf of the union, the presence of a related policy, the categories of government and transportation as industry variables, and the categories of dishonesty/theft and other as offence variables. The relationship was positive for all variables except the jurisdiction of the case which was negatively related to the delay to the arbitration awards' release.

Table 5 - 9

Delay to Award

	Model 3		**Model 4**	
Variable	**Beta**	**SEB**	**Beta**	**SEB**
Constant	4.13***	.08	3.60***	.28
Expedited Process	-.39**	.12	-.18	.13
Jurisdiction			-.95***	.14
Year of Case			.11*	.13
Arbitrator Gender			.01	.19
Grievor Gender			-.02	.17
Gender Employer Representative			-.18	.17
Gender Union Representative			-.03	.15
Employer Legal Representative			.16	.18
Union Legal Representative			.38***	.13
Policy			.30**	.13
Past Record			.07	.13
Occupation				
Skilled			.11	.18
Unskilled			-.06	.16
Industry				
Services			-.13	.23
			.61***	.22

Government				
Mining/Forestry			.24	.21
Healthcare			.36	.29
Food/Beverage			.03	.24
Transportation			.56*	.29
Other			.43	.40
Offence				
Dishonesty/Theft			.56***	.20
Assault			.17	.25
Alcohol/Drug Use			.17	.27
Insubordination			.33	.22
Work Performance			.34	.21
Harassment/Bullying			.10	.26
Other Offences			.69*	.36

***$p < .01$, **$p < .05$, *$p < .10$

Total Delay. The average number of days of total delay was 381.58 days for traditional arbitration cases and 193.34 days for expedited arbitration cases. These results are found in Table 5 - 2.

Ordinary least squares regression was used to determine if the use of the expedited or traditional arbitration process significantly predicted the total delay in days (see Model 5 in Table 5 - 10). The results indicated that total delay was associated with the choice of arbitration procedure (B = -.67, $t(1)$ = -9.65, $p < .01$). Nearly 17% of the variance was accounted for with the model (R^2 = .17,F(1, 458) = 93.02, $p < .01$).

With the control variables included (see Model 6 in Table 5 - 10) the choice of arbitration procedure was also significantly associated with the total delay (B = -.54, $t(27)$ = -6.76, $p < .01$). Table 5 - 10 reports the findings of Model 6. The total model accounted for the results of the regression indicated that the use of an expedited

arbitration approach, when including all control variables, the model accounted for 27% of the variance (R^2 = .27, F(27, 382) = 4.87 p <.01).

Other variables, although not the primary variables of interest, that had a significant relationship with the total delay included the jurisdiction, gender of the employers' representative, use of legal counsel by the union, the presence of a policy, and the category of government as an industry variable. The relationship was positive between the total delay and the use of legal counsel by the union, the presence of a related policy, and the government category industry. The control variables jurisdiction and the gender of the employers' representative were negatively related to the total delay.

Table 5 - 10

Total Delay

	Model 5		**Model 6**	
Variable	**Beta**	**SEB**	**Beta**	**SEB**
Constant	5.67***	.05	5.53***	.17
Expedited Process	-.67***	.07	-.54***	.08
Jurisdiction			-.37***	.09
Year of Case			.08	.08
Arbitrator Gender			.02	.12
Grievor Gender			.15	.10
Gender Employer Representative			-.21**	.10
Gender Union Representative			-.01	.10
Employer Legal Representative			-.06	.11
Union Legal Representative			.16**	.08
Policy			.21**	.08
Past Record			-.06	.08

Occupation				
Skilled			-.02	.11
Unskilled			-.01	.10
Industry				
Services			-.07	.14
Government			.42***	.14
Mining/Forestry			.14	.13
Healthcare			.24	.18
Food/Beverage			-.04	.15
Transportation			.20	.18
Other			-.14	.27
Offence				
Dishonesty/Theft			.11	.13
Assault			-.21	.15
Alcohol/Drug Use			.14	.16
Insubordination			.13	.14
Work Performance			.15	.13
Harassment/Bullying			.11	.16
Other Offences			-.07	.25

***$p < .01$, **$p < .05$, *$p < .10$

Regression: Days of Hearing. Table 5 - 3 reports the mean values for the days of hearing. The average number of days of hearing was 3.91 days for the traditional arbitration cases compared to 3.33 days for expedited cases.

Results from Model 7 in Table 5 - 11 revealed that there was a weak statistically significant difference $B = -.13$, $t(1) = -1.91$, $p < .10$ between the number of days of hearing in the traditional and expedited arbitration hearing when not including the control variables ($R^2 = .01$, $F(1, 509) = 3.63p < .10$). However, when accounting for the control variables, there was not a statistically significant difference between the number

of hearing days (B = -.03, $t(27)$ = -.36) and the choice of arbitration procedure. The full model accounted for 20.8% of the variance (R^2 = .21, F(27,422) = 3.85 p < .01).

The jurisdiction of the case, the use of legal counsel by the union, presence of a policy, and a number of industry categories including: government, mining/forestry, and transportation all had significant relationships with the number of days of hearing. There was also a significant relationship between the days of hearing and a number of offence categories including: dishonesty/theft, alcohol/drug use, insubordination, work performance, harassment/bullying, and other offences. All of the variables had a positive relationship with the number of hearing days except the jurisdiction of the case.

Table 5 - 11

Number of Hearing Days

	Model 7		**Model 8**	
Variable	**Beta**	**SEB**	**Beta**	**SEB**
Constant	1.03***	.05	.37**	.16
Expedited Process	-.13*	.07	-.03	.08
Jurisdiction			-.39***	.09
Year of Case			.06	.08
Arbitrator Gender			.03	.11
Grievor Gender			-.00	.10
Gender Employer Representative			-.04	.10
Gender Union Representative			-.12	.09
Employer Legal representative			.15	.10
Union Legal Representative			.29***	.08
Policy			.14*	.08
Past Record			.00	.08

Occupation				
Skilled			.06	.11
Unskilled			-.12	.10
Industry				
Services			.01	.13
Government			.52***	.13
Mining/Forestry			.26*	.13
Healthcare			.21	.17
Food/Beverage			.15	.14
Transportation			.48***	.17
Other			.22	.24
Offence				
Dishonesty/Theft			.66***	.12
Assault			.17	.14
Alcohol/Drug Use			.27*	.16
Insubordination			.40***	.13
Work Performance			.35***	.12
Harassment/Bullying			.30**	.15
Other Offences			.35*	.20

***$p < .01$, **$p < .05$, *$p < .10$

Regression: Length of Suspension Awarded. Table 5 - 3 reports the mean values of the number of days of suspension. The mean for the number of days of suspension was 156.77 days for traditional arbitrations and 95.65 days for expedited arbitration cases.

Results from the regression analysis revealed that there was not a statistically significant difference in the length of suspension awarded in traditional and expedited arbitration cases. First, Model 9, which does not include the control variables, revealed that there was not a significant relationship (B = -.36, $t(1)$ = -1.42), nor did it account for

the variance (R^2 = .01 = F(1, 141) = 2.03). Model 10, which included the control variables, B = -345, t(27) = -1.07, was also not significant. It accounted for 18.2% of the variance (R^2= .18, F(27,118) = .748). The results are reported below in Table 5 - 12. The only control variable with a significant relationship to the length of suspension awarded was the year of the case. It was a negative relationship.

Table 5 - 12

Number of Days of Suspension Awarded

	Model 9		**Model 10**	
Variable	**Beta**	**SEB**	**Beta**	**SEB**
Constant	4.26***	.18	4.12***	.72
Expedited Process	-.36	.25	-.35	.32
Jurisdiction			-.36	.39
Year of Case			-.64*	.34
Arbitrator Gender			.19	.54
Grievor Gender			-.54	.45
Gender Employer Representative			-.16	.45
Gender Union Representative			-.17	.49
Employer Legal Representative			.75	.51
Union Legal Representative			-.17	.33
Policy			.09	.33
Past Record			-.47	.33
Occupation				
Skilled			.35	.46
Unskilled			.70	.43
Industry				
Services			-.53	.51
Government			-.47	.62

Mining/Forestry			.19	.51
Healthcare			.62	1.15
Food/Beverage			-.04	.60
Transportation			.21	.72
Other			.42	1.05
Offence				
Dishonesty/Theft			.05	.53
Assault			.40	.55
Alcohol/Drug Use			.46	.70
Insubordination			.29	.58
Work Performance			.27	.53
Harassment/Bullying			.87	.78
Other Offences			.05	.99

***$p < .01$, **$p < .05$, *$p < .10$

Differences in Outcomes of Decisions. Table 5 - 13 presents the results of the probit analysis of the effect of expedited and traditional arbitration process on the arbitration outcome. Specifically, the models examined if the choice of the arbitration process was associated with whether the grievance was denied (in whole or in part) or not. The omitted categories for Model 12 included semi-skilled workers, manufacturing, and attendance. Model 11 examined the effect of choice of traditional or expedited arbitration on the favourability to the award with the omission of the control variables. The results indicated that the choice of the arbitration procedure did not impact the arbitrators' decisions to deny the grievance. Model 12 includes the control variables and also revealed there was not a significant relationship between the type of arbitration and case outcome.

Although not the primary variables of interest, there were also some control variables that had a significant relationship with whether the grievance was successful. These included the gender of the arbitrator, the employer's use of a legal representative, the union's use of legal representative, the category of transportation as an industry, and two offence categories: assault, and other offences. The association was positive for the following variables: the gender of the arbitrator, the employer's use of a legal representative, and transportation. The association was negative for the union's use of legal representative, assault, and other offences.

Table 5 - 13

Probit Analysis of Probability of Employer Victory

Model	Model 11		Model 12	
		Standard Error		Standard Error
Constant	.07	.08	-.61**	.29
Expedited Process	-.13	.11	-.02	.13
Jurisdiction			.16	.15
Year of Case			.52	.13
Arbitrator Gender			.42**	.19
Grievor Gender			-.27	.17
Gender Employer Representative			.13	.17
Gender Union Representative			.06	.16
Employer Legal Representative			.55***	.19
Union Legal Representative			-.30**	.13
Policy			-.06	.13
Past Record			.05	.13
Occupation				
Skilled			.22	.18

Unskilled			.16	.16
Industry				
Services			-.14	.23
Government			.11	.23
Mining/Forestry			.06	.22
Healthcare			-.48	.30
Food/Beverage			.33	.23
Transportation			.58*	.30
Other			.32	.43
Offence				
Dishonesty/Theft			-.22	.20
Assault			-.52**	.26
Alcohol/Drug Use			-.08	.26
Insubordination			-.20	.23
Work Performance			-.17	.22
Harassment/Bullying			.23	.27
Other Offences			-1.27***	.44

***$p < .01$, **$p < .05$, *$p < .10$

The results of Model 13, reported in Table 5 - 14, revealed that the use of an expedited or traditional arbitration procedure did not impact whether the arbitrator typically awarded a more severe penalty. Model 14 also used ordered probit estimation, with the control variables included. Overall, the entire model was significant. The model addressed the likelihood that the arbitrator would outright uphold the grievance, award a suspension of 30 days or less, a 31 to 120 day suspension, a 121 day or longer suspension, or deny the grievance. Control variables that also had a significant relationship with the award included the year of the case, arbitrator's gender, the grievor's gender, the use of legal counsel by both the union and employer, the category of healthcare and transportation as industry variables, and the category of other offences as a

category of offence variable. The relationship was positive for the year of the case, arbitrator's gender, employer's legal representative, and transportation. The relationship was negative for the grievor's gender, union legal representative, healthcare, and other offences.

Table 5 - 14

Ordered Probit Analysis of Probability of Employer Victory

Model	**Model 13**		**Model 14**	
		Standard Error		**Standard Error**
Expedited Process	-.15	.10	-.10	.12
Jurisdiction			.18	.14
Year of Case			.39***	.12
Arbitrator Gender			.46***	.17
Grievor Gender			-.26*	.15
Gender Employer Representative			.11	.15
Gender Union Representative			-.02	.14
Employer Legal Representative			.67***	.17
Union Legal Representative			-.32***	.12
Policy			-.08	.12
Past Record			.00	.12
Occupation				
Skilled			.27	.17
Unskilled			.15	.15
Industry				
Services			-.20	.20
Government			-.05	.20
Mining/Forestry			-.79	.26
Healthcare			-.77***	.26
Food/Beverage			.20	.21
Transportation			.61**	.21

Other			.08	.39
Offence				
Dishonesty/Theft			-.18	.18
Assault			-.15	.22
Alcohol/Drug Use			-.02	.24
Insubordination			-.04	.20
Work Performance			.05	.19
Harassment/Bullying			.45	.25
Other Offences			-1.11***	.34

*** $p < .01$, ** $p < .05$, * $p < .10$

Discussion

The first contribution of this study was that the expedited arbitration cases were characterized by fewer delays than traditional arbitration cases. Specifically, the results supported hypotheses two and four where there were significantly fewer days of delay in obtaining a first day of hearing and the total delay was less in the expedited arbitration cases. However, hypothesis three was rejected given the decisions were not received sooner in the expedited arbitration process than the traditional process. This contrasts with earlier research that found that, in the initial period of expedited arbitration, the delay was less in receiving the decision in the expedited arbitration process (Rose, 1986). However, my findings support commentary such as Winkler (2010) which advocates for alternative methods to encourage expedited arbitrations. The results support the use of an expedited approach in cases where the parties want to resolve the issues quickly. It is noteworthy that expedited arbitration decisions, despite legislation which put forth time-

based requirements of arbitrators, are not received quickly, in comparison with the traditional arbitration cases.

The second contribution was the finding that there was no statistically significant difference in the results of the expedited arbitration process in comparison to the traditional arbitration process. That is, the arbitrators' decisions do not differ based on the arbitration process chosen. The results of this study should lend some comfort to those that may believe the results may differ in the expedited arbitration process in comparison with the traditional process. The study contributes in three ways to the current literature addressing arbitration. First, the findings suggest that the arbitration outcome(s) of expedited arbitration cases did not differ from the traditional arbitration cases. Hypothesis six was confirmed. Therefore, if parties are concerned that there is a disparity in the results, based upon the choice of arbitration process, it is unwarranted. This should be positive news for employers and unions who are apprehensive that the quality of the decision may be inferior in the expedited process. A related contribution was that the length of suspension awarded was not different based on the choice of an expedited or traditional arbitration approach. Thus, hypotheses five was supported.

A third contribution was that expedited arbitration was not significantly associated with fewer days of hearing than traditional arbitration. Therefore, hypothesis four was rejected. This indicates that although the expedited arbitration process may be quicker, it is not due to the number of days of hearing.

Conclusion

This study presents evidence that the arbitral case outcomes were not significantly different when comparing the expedited and traditional arbitration processes. It confirms that the expedited arbitration process is quicker than the traditional process. This included the initial hearing date and the total delay. However, the parties did not receive the decision quicker when utilizing the expedited arbitration process. This was naturally based on the assumption that the expedited and non-expedited cases were equally valid cases. Further, there was not a statistically significant difference in the number of days of hearing. Lastly, and perhaps most importantly, there was not a statistically significant difference in the outcome of expedited and traditional cases. This included when examining the issue in terms of whether the grievance was granted or denied using five levels of arbitral award, and the number of days of suspension awarded.

The policy implications of this research are important. The findings indicate that employers and unions should pick their preferred forum, either expedited or traditional arbitration, without the fear that the results may be dependent on the forum utilized. Although the parties may believe that the choice of arbitration process leads to different outcomes, this statistically-based research indicates that this assumption is unfounded. Therefore, at a time when the legal community is concerned with the current state of labour arbitration (Winkler, 2010), the parties may want to consider increasing use of expedited arbitration.

Chapter 6: Research Summary, Policy Recommendations and Avenues for Future Research

My dissertation investigated a multi-disciplinary subject matter, expedited arbitration, in law and industrial relations. By adopting a multi-method approach, I was able to explore the issue of arbitration in Canada by obtaining rich data from case law and practicing lawyers. My research confirmed that labour arbitration in Canada continues to be a lengthy, costly, and often times a frustrating process. The current framework of the expedited arbitration process is highly criticized by counsel. Such criticized areas as the lack of choice of arbitrator and timeliness were central to these concerns. Statistical analysis revealed that the entire expedited process, measured from date of termination to the release of the arbitration decision, provided a quicker resolution than traditional arbitration. This contrasted with counsels' beliefs that the expedited process did not provide a quicker outcome to the grievance. However, counsels' assertion that the decisions themselves were not rendered more quickly was confirmed by the statistical analysis. My research also revealed that the number of days of hearing was not statistically different between the expedited and non-expedited process. Further, there was also not a statistical difference in the length of the suspension awarded by the arbitrator when comparing the expedited and traditional arbitration process or the outcome of the decision.

From my perspective, which I approached as a neutral, I think that the current expedited system does provide some challenges for employers, unions, and grievors. Naturally, there is an inherent interest on the part of unions to advance a grievance expeditiously. This interest is not necessarily always shared by employers who may be less inclined to resolve the matter quickly.

Chapter 2 provided a review of the literature on arbitration and organizational justice. The literature review highlighted that existing research has not sufficiently addressed issues of justice in the labour arbitration arena. Specifically, the current research does demonstrate that issues of justice are apparent and important in the legal context, where assessment of the processes fairness (distributive justice) is strongly correlated with outcome satisfaction (Casper, et al., 1988) and authoritative evaluations (Tyler, 1984). A review of the literature and commentary revealed that arbitration, as a cost and time-efficient method to resolve workplace disputes, has lost its positive impact on the workplace as delays are the norm rather than the exception (Winkler, 2010). The literature review provided a basis on which to inform my research and address the current gaps in the arbitration research.

In Chapter 3, I explored the results of a survey provided to union-side lawyers in Canada. The responses to issues addressing measures of justice must be treated with caution given the low response rate. However, it appeared that most counsel were not concerned with issues of procedural, distributive, informational, or interpersonal justice.

The responses were similar when assessing expedited and traditional cases. These results were generally consistent with findings presented in Chapter 4.

In Chapter 4, I presented qualitative research by interviewing counsel who were geographically located across Canada. The interviews revealed that there were consistent concerns amongst participants regarding the length of delay for traditional and expedited labour arbitrations. It was their perception that the amount of total time to resolve an issue, using the expedited or traditional arbitration, was similar. However, analysis of the data revealed that expedited arbitrations were delayed by fewer days. The difference in the length of the hearing may reflect a number of issues. For instance, counsel may not advance legalistic issues, such as preliminary objections, that cause delays. Arguably, arbitrators may not be as receptive to hearing such motions. Further, given that at least one of the parties is interested in expediting the procedure, this may provide pressure for scheduling quicker dates. Also, the data does not reveal the number of hours within each day of hearing. It is possible that the parties may hold longer hearing dates in the expedited arbitration procedure.

Counsel were most concerned with the availability of suitable arbitrators. This concern was partially based on counsels' lack of experience with a large pool of arbitrators. Further, counsel were frustrated with the delay in being able to schedule a hearing date given that many sought after arbitrators had busy schedules. Another issue that was explored included the outcome of a case; participants revealed that they did not believe that the use of the expedited arbitration process impacted the outcome of the case.

This assertion was confirmed by the statistical analysis in Chapter 4. Further, distributive and procedural justice dimensions were explored and the research indicated that participants generally felt that they were given an opportunity to adequately present their case and provide "voice" opportunities for their clients.

Content analysis was adopted in Chapter 5 to provide an empirical analysis of traditional and expedited arbitration. I found that cases which used the expedited arbitration process were before an arbitrator, for the first day of hearing, quicker than traditional arbitration cases. The resolution of the entire process, from the date of termination to the arbitrator's decision, was also delayed by fewer days in the expedited process than the traditional process. However, the release of arbitrators' decisions were not statistically different when comparing the expedited and traditional arbitration case decisions. Further, there was not a difference in the length of the hearing, as measured by the number of hearing days, or the length of suspension awarded by arbitrators in the expedited and traditional arbitration methods. These results provided some support for the information revealed in the qualitative interviews relating to procedural and distributive justice. For instance, the length of hearing did not differ based on the process selected. This finding implies that issues of procedural justice were not overlooked in the expedited procedure. Further, the length of suspension awarded was not impacted by the arbitration process, indicating that issues of distributive justice were properly addressed.

There was no difference in the result of the outcomes of the expedited and traditional arbitration cases. This was found when measuring the variable in two ways.

First, the simplistic measure of union success in overturning the discipline (in whole or part) was not found to have a statistically significant difference when comparing the expedited and traditional arbitration processes. Second, there was no difference found between the outcome of traditional and expedited arbitration cases when investigating the outcome of the variable in an ordered format with the following categories: i) outright win, ii) up to 30 day suspension, iii) 31 to 120 day suspension, iv) 121 day suspension and greater, and v) grievance upheld. These results again support the qualitative interviews and survey results where participants believed that issues of distributive justice were addressed in the expedited arbitration process. That is, counsels' beliefs that their choice of procedure would not impact the outcome was supported by the study's findings of the content analysis.

Improving the Current Expedited Arbitration Framework

This dissertation allowed for the formulation of some suggestions for improving the current expedited arbitration processes. First, it would be helpful to provide more opportunities for arbitrators to obtain exposure to potential clients through non-precedential awards. Arbitration awards that are not precedent setting would allow the parties to resolve workplace issues without a concern that an arbitration decision would impact a similar issue, in the future, at the workplace. The qualitative research revealed that the participants' perceptions were that there was not a shortage of arbitrators; however, the participants indicated their perception that there were an insufficient number of arbitrators with suitable experience. That is, participants indicated that many

arbitrators did not receive frequent appointments and were, therefore, readily available to hear cases. Although some of the reluctance was based on the belief that the arbitrator was not neutral, which may not be addressed by further experience, often participants were reluctant to select arbitrators who did not have a reliable track record.

Providing the parties an opportunity to work together, without the fear of long-term consequences, may provide a positive opportunity for employers and unions. This may increase the number and types of cases that could be considered for the expedited route. Further, the identity and experience of the arbitrator would not be as crucial. Non-precedential decisions would also allow unions and employers to become familiar with arbitrators without apprehension related to more long-term decisions in the organization. Further, junior counsel and arbitrators would be afforded an opportunity to develop their skills, expertise, and reputation. This would be particularly beneficial for the arbitrators who frequently struggle with an opportunity to demonstrate their abilities and gain experience. New arbitrators are often faced with a "catch 22" as they are unable to gain the experience without first developing a reputation.

Second, although my legal background leads me to be somewhat conflicted by the following suggestion, the parties may be positively served by returning to a less legalistic arbitration process. There is a view amongst counsel that "the facts win the case". Therefore, if we believe this premise to be true, then many legal intricacies are not imperative for the decision outcome. However, this must be adopted with caution to ensure that the parties benefit from procedural and distributive justice.

Third, the process may be enhanced by allowing more than one day of hearing to be scheduled from the onset of filing. This will naturally bring about advantages and disadvantages for the parties. It will make it more difficult for employer-side counsel who, in most jurisdictions, may not have significant input in scheduling. However, providing the opportunity for counsel to schedule multiple days may ensure that the process is more expedited. Perhaps the applicable legislation may be altered to allow the opportunity for multiple days of hearing. A compromise may be provided whereby the parties mutually agree to schedule the multiple hearing days in advance.

Fourth, the evidence suggests that expedited arbitration decisions are not received by the parties in a quick manner. This was demonstrated by interviews with counsel and empirical analysis. Counsel do not feel comfortable asking for an arbitrator to render a decision quickly given a request to quicken the process may impact the relationship between counsel and the arbitrator. Therefore, the motivation must come from government intervention given the expedited arbitration is administered through the ministries responsible for labour. If the expectation is that arbitrators return a decision within the requisite time frame (e.g. 30 days), and this time restriction is enforced, this will speed up the process and ensure that it remains within the spirit of the legislation. The implementation of these suggestions may provide an opportunity to respond to criticisms of the arbitration process (Winkler, 2010) and improve the expedited arbitration process so that workplace disputes are resolved in a timely manner.

The Challenges of Studying Labour Arbitration

Labour arbitration case decisions are central to workplace outcomes and have broader implications for workplace practices. That is, although strictly speaking labour arbitrators are not required to follow *stare decisis* principles, in reality previous decisions are influential. Arguably, precedents are becoming more influential as the labour arbitration process becomes more legalistic. Some workplaces turn to case law to determine appropriate employee discipline; therefore, my research has implications for the manner that discipline issues may be handled in Canadian workplaces.

Like all research areas, studying labour arbitration has many challenges. A limitation in my research was the difficulty in obtaining information from union-side leaders/representatives. Canadian unions are well-represented by non-legally trained individuals. I was not able to access a sizable sample of union representatives. Therefore, non-legally trained representatives were not included in the qualitative portion of the research. However, this short-coming was partially addressed as the sample for the content analysis included cases presented by legally trained and non-legally trained representatives.

I adopted the termination date as the trigger factor to examine the length of the delay. However, an alternative date, such as the grievance date, may provide different results. Arguably, the delay to the initial day of hearing may be lengthened due to the delay on the behalf of the union in filing the grievance. However, collective agreements typically require a defined time limit on grievance filing which limits the possibility for

lengthy delay at this step in the dispute resolution process. Further, given the cases examined were exclusively termination cases it was in the best interests of the union, and grievor, to file the grievance quickly.

Interviewing multiple parties including employers, grievors, and arbitrators would add to the breadth of knowledge obtained from qualitative methods. However, there are inherent difficulties in interviewing these parties. First, there may issues of honesty given the complicated process of workplace issues. Second, accessibility of these individuals may be difficult given the parties may not be inclined to participate. However, if the multiple parties are interviewed other areas that could then be explored include the perceptions of justice from multiple sources. This would ensure that the research is rigorous and approaches issues, related to arbitration, from multiple perspectives. In particular, as noted by Grant (2008), from the non-unionized perspective, the input of the employee is rarely studied. Given the grievor is arguably the most interested, and most vested, in issues of distributive and procedural justice, examining the issue from the perspective of the grievor should provide additional insight into the field of study.

Obtaining data for the quantitative component of the research was difficult and the low response rate made it inappropriate to conduct statistical analysis. In the future, approaches ensuring survey completion, such as using incentives or minimizing the survey length, may increase full survey completion.

Future Research

There are many opportunities to build upon this dissertation to provide greater knowledge on arbitration in Canada. This is particularly the case given that the Don Woods Lecture (Winkler, 2010) has provided a renewed interest in the area (e.g. Curran, 2014). Many of these research opportunities relate to limitations of my dissertation. First, the qualitative aspect should also include assessing the opinions of arbitrators, employers, and grievors directly. This would strengthen research in the area by providing multiple perspectives of the issues of organizational justice measures. It would be particularly beneficial, interesting, and relevant to determine the grievors' perspectives on justice dimensions. Further, invoking multiple sources would allow the researcher to determinate if the views of counsel, arbitrators, and grievors are aligned. By adopting these perspectives, and obtaining a sizable sample, it would also strengthen the value of the research related to issues of organizational justice. Interviewing arbitrators would also provide information on whether issues of justice are relevant to the arbitrators and if these issues are considered when establishing relationships with employer and union representatives and grievors. Further, restorative justice dispute resolutions processes provide an opportunity for further study. For instance, in Nova Scotia the Human Rights Commission has adopted restorative justice practices that may be studied through an organizational justice framework. An additional area to explore is the role of the mediation-arbitration system and its impact on the use of expedited arbitration. It would be interesting to compare and contrast perceptions of justice between the expedited,

traditional and med-arb system. Investigating the increased use of med-arbs may also provide further information on the reduction of the expedited arbitration process.

Appendix A

Survey: Arbitration – Canadian National Survey

Informed Consent Form

Informed Consent Form: Expedited Arbitration Study
SMU REB File # (12-285)

Shannon Webb, Primary Investigator, PhD Candidate
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We are conducting research on traditional and expedited arbitration process. The principal investigator for the research project is Shannon Webb and the research advisor is Dr. Terry Wagar (Management Professor, Sobey School of Business). Any concerns should be directed to Shannon Webb**.**

As a participant in this study we invite you to complete a survey regarding your experiences as a lawyer where the study focuses on the expedited arbitration process. This questionnaire will only take approximately 5 – 15 minutes.

There are no anticipated risks as a result of this study. There are several indirect benefits of this research. For example, the information you provide may impact labour policy in your jurisdiction and; therefore, impact your practice and daily work life and experiences. Please be as honest as possible when completing the questionnaire; any identifiable information provided will be confidential and participation will be completely anonymous.

Certification:
This research has been reviewed and approved by the Saint Mary's University Research Ethics Board. If you have any questions or concerns about ethical matters, you may contact the Office of Research Ethics at ethics@smu.ca or (902) 420-5728.

Withdrawal:

You may withdraw from the study without penalty. You may email shannonwebb@eastlink.ca up to a week after you complete the survey to withdraw from the study.

Participant:
I understand what this study is about and appreciate the risks and benefits. I have had adequate time to think about this, I understand that my participation is voluntary and that I can end my participation at any time while taking the survey. By completing the survey I agree to participate in this study.

Contact Information:

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EXPEDITED ARBITRATION: IS IT EXPEDITIOUS? EVIDENCE FROM CANADA

INTRODUCTION

This study is designed to investigate arbitration procedures.

For the purposes of this survey traditional arbitration is classified as any arbitration where the parties follow a process where they agree on an arbitrator and do not impose time lines on the process (e.g. the hearing must be contained to 1 day).

The expedited arbitration process is classified as the process whereby one, or both, of the parties apply to their respective Ministers to appoint an arbitrator to hear the matter in an expedited manner.

In both traditional and expedited arbitration the study addresses decisions that go to a full hearing. It does not address those matters that are settled by the parties or with the assistance of the arbitrator

PART 1: ARBITRATION EXPERIENCE

Please answer the following questions by referencing the procedures used to arrive at the outcome of your most recent arbitration hearing. This applies to an experience where a decision was released (not settled beforehand or with the assistance of the arbitrator).

Have you used a traditional arbitration process? This process is defined as an arbitration where the parties agree upon the arbitrator and do not agree upon an expedited process (e.g. restrict the days of hearing, the number of witnesses etc.)

- ❑ Yes
- ❑ No

If Yes, survey will direct to Part 2

If No, survey will direct to Part 4

Part 2: Traditional Arbitration

What was the issue of your most recent traditional the arbitration?

- ❑ Discipline/Discharge

  If selected: Please specify E.g. theft, absenteeism, space provided

- ❑ Policy

- ❑ Contract Interpretation

Approximately how many days of delay were there between scheduling the hearing and the first day of the hearing?

Fill in number

Approximately how many days were scheduled to hear the matter?

Fill in number

Approximately how many days were actually used to hear the matter?

Fill in number

Approximately how many days from the last day of the hearing until the parties received the award?

Fill in number

Part 3: Attitudes Held Towards Traditional Arbitration

Please answer the following questions by referencing the procedures used to arrive at the decision of your most recent traditional arbitration. Please select a number from "1" (to a small extent) to "5" (to a large extent). If the statement does not apply, select "1" .To what extent:

List the reasons that lead you to select the traditional arbitration procedure?

Place to fill in.

To a Small Extent	To a Fairly Small Extent	To a Moderate Extent	To a Fairly Large Extent	To a Large Extent
1	2	3	4	5

Were you able to express your views during the arbitration? 1 2 3 4 5

Did you influence the outcome arrived at by the arbitration procedures?	1	2	3	4	5
Were the arbitration procedures applied consistently?	1	2	3	4	5
Were the arbitration procedures free of bias?	1	2	3	4	5
Were the arbitration procedures based on accurate information?	1	2	3	4	5
Were you able to appeal the decision?	1	2	3	4	5
Did the arbitration procedures uphold ethical and moral standards?	1	2	3	4	5
Did the decision reflect the effort you have put into the case?	1	2	3	4	5
Was the decision appropriate for the work you completed?	1	2	3	4	5
Did the outcome reflect what you have contributed to the case?	1	2	3	4	5
Was your decision justified, given your performance?	1	2	3	4	5
Did the arbitrator treat you in a polite manner?	1	2	3	4	5
Did the arbitrator treat you with dignity?	1	2	3	4	5
Did the arbitrator treat you with respect?	1	2	3	4	5
Did the arbitrator refrain from improper remarks or comments?	1	2	3	4	5
Was the arbitrator candid in (his/her) communications with you?	1	2	3	4	5
Did the arbitrator explain the procedures thoroughly?	1	2	3	4	5
Were the arbitrator's explanations regarding the procedures reasonable?	1	2	3	4	5
Did the arbitrator communicate details in a timely manner?	1	2	3	4	5
Did the arbitrator seem to tailor (his/her) communications to individuals' specific needs?	1	2	3	4	5

EXPEDITED ARBITRATION: IS IT EXPEDITIOUS? EVIDENCE FROM CANADA

Please answer the following questions by referencing the arbitrator in your most recent traditional arbitration. In the space next to the statements below, please select a number from "1" (agree strongly) to "4" (disagree strongly). If the statement does not apply, select "1." To what extent:

Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly
1	2	3	4

Did you trust the arbitrator?	1	2	3	4
Did the arbitrator try to do the right thing by you	1	2	3	4
Did the arbitrator take your needs into account?	1	2	3	4
Did the arbitrator care about your concerns?	1	2	3	4
Did you willingly accept the decision made?	1	2	3	4
If in a similar situation in the future, would you like to see the situation handled differently?	1	2	3	4
Did you consider a judicial review of the decision?	1	2	3	4
Did you believe the arbitrator could have handled the situation in a better way?	1	2	3	4

Part 4: EXPEDITED ARBITRATION

What province/territory do you live in?

Drop Down with provinces/territories.

Note: If it is a province that does practice expedited the parties will be sent to the following question. If not, they will go directly to part 12. The provinces that do not have the legislation include Alberta, PEI, Quebec, Newfoundland, NWT, Nunavut and Yukon.

Do you practice law exclusively using The Canada Labour Code (Federal jurisdiction)?

- ❑ Yes
- ❑ No

If No, go to the next question.

If yes, go to Part 12.

Are you aware of the expedited procedure, which is governed by legislation (e.g. British Columbia S.104, Saskatchewan S. 26.3, Manitoba S. 130, Ontario S. 49, New Brunswick s. 55.01, Nova Scotia S. 46) which requires an application to the minister, in your respective jurisdiction?

- ❑ Yes
- ❑ No

Have you ever applied for the legislatively based expedited arbitration procedure?

- ❑ Yes
- ❑ No

Have you used the legislatively based expedited arbitration procedure where the arbitrator made a decision?

- ❑ Yes
- ❑ No

If No redirected to Part 7

If Yes redirected to Part 5

PART 5: EXPEDITED ARBITRATION EXPERIENCE

Please answer the following questions using your last experience with the legislatively based expedited arbitration procedure.

What was the issue of the arbitration?

- ❑ Discipline/Discharge
- ❑ Policy
- ❑ Contract Interpretation

Approximately how many days of delay were there between scheduling the hearing and the first day of the hearing?

Fill in number

Approximately how many days were scheduled to hear the matter?

Fill in number

Approximately how many days were actually used to hear the matter?

Fill in number

Approximately how many days from the last day of the hearing until the parties received the award?

Fill in number

PART 6: ATTITUDE TOWARDS EXPEDITED ARBITRATION

Please answer the following questions by referencing the procedures used to arrive at the outcome of your most recent expedited arbitration. This applies to an experience where a decision was released (not settled beforehand or with the assistance of the arbitrator).

List the reasons that lead you to select the expedited arbitration procedure?

Place to fill in.

Please select a number from "1" (to a small extent) to "5" (to a large extent). If the statement does not apply, select "1" .To what extent:

To a Small Extent	To a Fairly Small Extent	To a Moderate Extent	To a Fairly Large Extent	To a Large Extent
1	2	3	4	5

Were you able to express your views during the arbitration?	1	2	3	4	5
Did you influence the outcome arrived at by the arbitration procedures?	1	2	3	4	5
Were the arbitration procedures applied consistently?	1	2	3	4	5
Were the arbitration procedures free of bias?	1	2	3	4	5
Were the arbitration procedures based on accurate information?	1	2	3	4	5
Were you able to appeal the decision?	1	2	3	4	5
Did the arbitration procedures uphold ethical and moral standards?	1	2	3	4	5

Did the decision reflect the effort you have put into the case?	1	2	3	4	5
Was the decision appropriate for the work you completed?	1	2	3	4	5
Did the outcome reflect what you have contributed to the case?	1	2	3	4	5
Was your decision justified, given your performance?	1	2	3	4	5
Did the arbitrator treat you in a polite manner?	1	2	3	4	5
Did the arbitrator treat you with dignity?	1	2	3	4	5
Did the arbitrator treat you with respect?	1	2	3	4	5
Did the arbitrator refrain from improper remarks or comments?	1	2	3	4	5
Was the arbitrator candid in (his/her) communications with you?	1	2	3	4	5
Did the arbitrator explain the procedures thoroughly?	1	2	3	4	5
Was the arbitrator's explanations regarding the procedures reasonable?	1	2	3	4	5
Did the arbitrator communicate details in a timely manner?	1	2	3	4	5
Did the arbitrator seem to tailor (his/her) communications to individuals' specific needs?	1	2	3	4	5

Please answer the following questions by referencing the arbitrator in your most recent expedited arbitration. In the space next to the statements below, please select a number from "1" (agree strongly) to "4" (disagree strongly). If the statement does not apply, select "1." To what extent:

Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly
1	2	3	4

Did the arbitration procedures uphold ethical and moral standards?	1	2	3	4
Did you trust the arbitrator?	1	2	3	4

Did the arbitrator try to do the right thing by you?	1	2	3	4
Did the arbitrator take your needs into account?	1	2	3	4
Did the arbitrator care about your concerns?	1	2	3	4
Did you willingly accept the decision made?	1	2	3	4
If in a similar situation in the future, would you like to see the situation handled differently?	1	2	3	4
Did you consider a judicial review of the decision?	1	2	3	4
Did you believe the arbitrator could have handled the situation in a better way?	1	2	3	4
Did the arbitration procedures uphold ethical and moral standards?	1	2	3	4

PART 7: BACKGROUND INFORMATION

Please indicate your age:

- ❑ Under 30
- ❑ 30-39
- ❑ 40-49
- ❑ 50-59
- ❑ 60 and over

Please indicate your gender:

- ❑ Male
- ❑ Female
- ❑ Do not identify as male or female

Do you represent employers or unions?

- ❑ Management
- ❑ Union
- ❑ Both
- ❑ Other _____

What is your annual income?

- ❑ Under $50,000
- ❑ $50,001 – $100,000

- ❑ $100,001 – $150,000
- ❑ $150,001 – $200,000
- ❑ Over $200,000
- ❑ Prefer not to answer

PART 8: EDUCATION

What is your highest level of education?

- ❑ Law School
- ❑ Graduate Law School (LL.M.)
- ❑ Other (Please specify) _____

What year were you called to the bar?

Drop Down

Did you receive any training on arbitration procedures during law school?

- ❑ Yes
- ❑ No

Did you receive any training on arbitration procedures outside of law school?

- ❑ Yes
- ❑ No

PART 9: GENERAL QUESTIONS

Can you provide advantages of using traditional arbitration procedure as opposed to the expedited arbitration procedure?

Provide blank space.

Can you provide advantages of using the expedited arbitration procedure as opposed to the traditional arbitration procedure?

Provide blank space.

Do you think that certain types of cases (e.g. discipline, discharge, policy) are better suited for an expedited arbitration process?

Provide blank space.

Can you provide any other information that may be helpful to increase the use of the expedited arbitration procedure?

Provide blank space.

Do you think that other factors (e.g. the availability of expedited arbitration through collective agreement provisions or through the agreement of the parties) is a factor that decreases the legislative option?

Provide blank space.

What are some of the reasons that you may adopt the process (e.g. strategic, to show the grievor the union is proceeding, etc.)

Provide blank space.

Do you have any other general comments?

Provide blank space.

PART 11: FOLLOW UP

If you would consider partaking in a 30 minute phone interview, at a time that is convenient for you, please provide your email address. If you prefer to email the researcher directly please email shannonwebb@eastlink.ca.

If you would like to be provided a copy of any publications please provide your email address.

You have completed the questionnaire.

If you would like any further information on this study, do not hesitate to contact me at the following email address: shannonwebb@eastlink.ca.

Thank you for your time. Your participation is greatly appreciated.

This section included for those who are not one of the jurisdictions that have expedited arbitration.

Part 12

Some jurisdictions have expedited arbitration in their legislation where the parties may apply to the Minister to have a grievance heard quickly. Different jurisdictions have different emphasis (e.g. the first day of hearing must be within 21 days of filing, the entire matter must be heard within 90 days, the arbitrator is appointed by the minister etc.). The following are questions regarding the implementation of such a process in your jurisdiction.

1. Would you like to see the opportunity to use such a process in your jurisdiction? Why or why not?
2. Are there issues that you think would be valuable to be included in the process?

Redirect to Part 9, then to part 12.

Appendix B

Qualitative Interview Questions and Consent Form

Thank you for agreeing to participate in this research project. It fulfills an important component of my doctoral dissertation. I am looking to investigate expedited arbitration processes in Canada. Continuing with the interview indicates you give consent to be used in the study where any identifiable information will be kept confidential. The interview will be recorded with your consent. The information will be transcribed; however, will be reported in a manner that will maintain your anonymity. You may withdraw from the study during the survey or up to a week after your interview. If you would like to withdraw after the conversation please email shannonwebb@eastlink.ca.

Interview Questions

1. Are you familiar with the expedited arbitration process? Inform participant if needed.
2. Have you ever applied for the expedited arbitration process? Why or why not?
3. Have you ever considered applying for the expedited arbitration process? Why or why not?
4. Do you consider costs a factor when deciding to use a traditional or expedited arbitration process? Please explain.
5. Do you consider delay as an issue in the outcome of your decisions when deciding whether to utilize the expedited process? Please explain.
6. Do you consider delay as an important factor in your practice? Please explain.
7. Are you more likely to use the expedited arbitration procedure in certain types of cases? Why?
8. What are some perceived limitations of the expedited arbitration process?

9. Do you think that parties may not be able to adequately represent their case, and provide clients "voice" by adopting the expedited process?
10. Do you think that the outcome of expedited arbitration processes differ from traditional processes?
11. Do you consider that you may not be able to choose your arbitrator when deciding whether or not to adopt the expedited arbitrator approach?
12. Is scheduling a difficulty that the *Trade Union Act* (or other legislation) may provide that are a hindrance to the respondents' use of the process (e.g. the inability to meet scheduling requirements)?
13. Are there any other points you would like to address on the expedited arbitration process?
14. If your jurisdiction does not have the expedited arbitration process would you like the process to be adopted?

Appendix C

Coding Manual – Expedited Arbitration

Note: If the information is not available input "N/A"

Case: Input entire case name.

Citation: Input citation.

Expedited: Input "Ex" for expedited or" Tr" for traditional. This can be determined by reference in the case (e.g. S. 104 BC, S. 49 ON or mention of expedited).

Jurisdiction: Input "ON" for Ontario or "BC" for British Columbia.

Granted/Denied: Input if the grievance is "granted" or "denied".

Warning/Suspension/Suspension (Length)/Dismissal: Input the discipline issued by the arbitrator. Place "Y" for Yes and "N" for No. For Suspension (Length) indicate the number of days stated in the case. If the arbitrator uses months rather than dates enter the months and note the measurement is months (so it may be recoded later). If there is not a suspension awarded input "NA".

Financial Award: Input if there is back pay or the amount and reason given for any other financial award.

Delay for first date of hearing: Input the date of the dismissal (not the grievance) and the date of the first day of the hearing. In some cases the first date of the hearing may not be listed. In these cases try to find another citation to determine if it is available.

Delay between First Date of Hearing and Decision Released: Input the date of the first date of the hearing and the date that the decision was released.

Days of Hearing: Input the number of days of hearing. If there started by a telephone conversation indicate.

Offence: Indicate the offence: alcohol/drug, assault/violence, attendance, dishonestly/theft, harassment/bullying, innocent absenteeism, insubordination, work performance, off duty conduct, or other. Note: The cases are all categorized already.

Year of Case: Input the year that the case was released.

Name of Arbitrator: Input arbitrator name.

Gender of Arbitrator: Input "M" for Male and "F" for female.

Griever Gender: Input "M" for Male and "F" for female.

Past Record of Gender: Input past record of grievor in this manner: discipline (year) issue. E.g. suspension (1999) violence. It can be repeated additional offences. If there is no record input "clean". Input "N/A" if the decision does not indicate if there is a past record.

Grievor Age: Input age (rounded down) of the grievor.

Use of Legal Counsel (employer): Input the name of the representative. If it indicates directly afterwards counsel or representative leave it included. It will allow easier to determine if it is a lawyer.

Use of Legal Counsel (union): Input the name of the representative. If it indicates directly afterwards counsel or representative leave it included. It will allow easier to determine if it is a lawyer.

Industry of Employer: Input the industry.

Presence of a Policy: Input "Y" if there is a policy on the subject of the grievance and "N" if there is not a policy. If you are uncertain if the policy is on point indicate "Y uncertain" and explain.

Seniority of Grievor: Input the seniority in years rounded down. If it is not available input "N/A".

Occupation of Grievor: Input the stated occupation.

Number of Employees: Input the number of employees working at the employer. If it lists unionized workers and non-unionized workers input U (the number) and N-U (the number).

Mitigating Factors: Input any mitigating factors considered by the arbitrator.

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