

## THE LACK OF ARBITRAL JURISDICTION TO EXTEND ARBITRATION REFERRAL TIME LIMITS

*Leisureworld Nursing Home Limited v. S.E.I.U., Local 204* (1997), 99 O.A.C. 196 (Ont. Div. Ct.), aff'd [1997] O.J. No. 4815 (C.A.)

### Facts

Prior to 1992, the Ontario Labour Relations Act (the "LRA") was nearly identical to the current statute and gave arbitrators the jurisdiction to relieve from time limits in the "grievance procedure". Some arbitrators interpreted that legislation as conferring upon them the authority to relieve against the strict time limits for referring a matter to arbitration as well as the time limits in the grievance procedure. The 1992 amendments to the section codified that interpretation by specifically authorizing arbitrators to relieve against time limits in "any step in the grievance procedure or arbitration procedure." In 1995, the reference to the "arbitration procedure" was removed from the legislation. Currently, section 48(16) of the LRA allows an arbitrator to extend the time limit for any step in the "grievance procedure."

In the above noted case, the S.E.I.U. attempted to refer a grievance to arbitration beyond the mandatory time limit established by the collective agreement. A Board of Arbitration found that the union's referral was untimely and that it had no power to extend the time limit.

### Divisional Court

The Divisional Court upheld that decision on the basis of the legislative history of the relevant sections of the LRA. The Divisional Court found that while an arbitrator may extend the time limit for any step in the grievance procedure, the referral to arbitration is not part of the grievance procedure. The Court concluded that the 1995 amendment to the LRA specifically eliminated the authority to extend the time limits for referring a matter to arbitration.

### Court of Appeal

The Court of Appeal upheld the Divisional Court's decision. The Court of Appeal's brief endorsement reads as follows:

We agree with the decision of the Divisional Court and with their reason for it. It is clear from the context afforded by several Labour Relations Acts that the legislation has intentionally drawn the distinction between "grievance procedure" and "arbitration procedure" and, accordingly, in our view did not intend to include steps in arbitration procedure in s. 48 (16). The appeal is dismissed with costs.

Employers and unions should ensure strict compliance with any time limits for referral to arbitration. In addition, before agreeing to extend the time limit for referral to arbitration, the

parties should be aware that failure to comply with such a time limit may otherwise mark the end of the grievance.