

**CRIMINAL COURT FINDING OF GUILT MAY NOT BE CHALLENGED AT ARBITRATION,  
ONTARIO DIVISIONAL COURT**

*Toronto (City) v. C.U.P.E., Local 79*

**Facts**

The Ontario Divisional Court heard three applications for judicial review of arbitration decisions that reinstated grievors following their convictions for sexual assaults that occurred in the workplace. In the first award, the grievor was convicted of sexually assaulting a child at a city-run recreation centre, in the second award the grievor was convicted by a jury of sexual assault of a developmentally challenged resident of a provincially-regulated facility, while in the third decision the grievor was found guilty of sexual assault and assault against prisoners at a correctional facility. In each instance, the arbitrators did not consider the convictions as conclusive evidence of the grievors' guilt. Rather, the arbitrators reviewed all the evidence and in two awards concluded that the grievors were not guilty of the crimes.

**Decision Of The Ontario Divisional Court**

Justices O'Driscoll, MacFarland and Crane of the Ontario Divisional Court unanimously allowed the application for judicial review and quashed the awards of the arbitrators. The court relied on section 22.1 of the Ontario *Evidence Act* and found that proof that the grievors had been convicted in Canada of a crime was proof, in the absence of evidence to the contrary, that the crime had been committed by the grievors. The court cited the judgment of the Supreme Court of Canada in *Wilson v. The Queen* for the proposition that a court order is binding and conclusive unless set aside on appeal or lawfully quashed.

As the convictions of each grievor followed a trial and had been confirmed on appeal, it was not open to union counsel to launch a collateral attack on the convictions of the grievors. The court concluded that it was irrelevant whether the arbitrator agreed with the convictions, and stated that the certificate of conviction was "not a 'piece of evidence' that may or may not be persuasive depending upon the view taken the arbitrator." Finally, the court determined that the doctrines of issue estoppel and abuse of process applied to labour arbitrations, and that the parties could not re-litigate a matter which had been conclusively determined by a court.