Understanding the outcomes of employment adjudications: a comparative study of adjudication bodies in New Zealand and the United States

Michael A. Gurdon[1], **Ian McAndrew**[2], **Martin E. Risak**[3]

1. **The University of Vermont, USA**
2. **University of Otago, New Zealand**
3. **University of Vienna, Austria**

INTRODUCTION

The purpose of our research is to identify factors associated with adjudication outcomes in employment grievances arising from the alleged unfair dismissal or otherwise disadvantaging of workers in their employment. We do this by examining the processes and outcomes of employment grievance adjudication bodies. This particular paper focuses on the identity of the adjudicator as a factor associated with, and predictive of, adjudication outcomes. To date, the project has examined the output of the New Zealand Employment Tribunal, which presided over grievances in that country through the 1990s until being disestablished in 2002; and the Vermont Labor Relations Board, which has had jurisdiction for grievances arising in public sector employment since 1977.

BACKGROUND TO THE RESEARCH

Neutral adjudicators have long been considered an essential element in systems of fairness, justice and enforcement of rules in most parts of the world, and in fields as diverse as sports, business, and criminal affairs. In some fields, employment relations among them, parties have – variously for reasons of time, cost, informality, finality, and expertise – sometimes moved to have their cases decided, at least in the first instance, by private arbitration rather than leaving them in the hands of the civil courts. Grievance-processing under union-negotiated contracts in the US would be the prime example of parties opting out of the civil court system into a private arbitration system.

In other employment relations jurisdictions, adjudication of disputes has remained with public bodies in the form of low level, specialist tribunals, accessible to the lay person, with the general civil courts entering the field only at the appellate level, if at all. The industrial and employment tribunals of the United Kingdom, Australia, and New Zealand would be examples of this approach.

A third model in the employment relations field is the specialist court, sometimes in tripartite format, acting as a grievance adjudicatory body in the first instance. The labor and employment courts in a number of European countries are examples of this model. In other jurisdictions, and there are many examples of this, an employment court functions as a specialist appellate body, but is not ordinarily available to parties as the first port of call for disposition of their grievances. This appellate function is beyond our scope here; our interest is in adjudicators of initial jurisdiction.

What all these systems have in common is specialist adjudicators. Though sometimes subject to supervision by the courts, they nonetheless stand outside the normal civil courts, hearing and deciding employment rights cases, and developing their own jurisprudence in the process. As long as these systems have been in place, scholars and practitioners alike have speculated on how these individuals and panels make decisions, what factors – legitimate or otherwise – influence their decisions, and if and how their decisions can be predicted.

PRIOR RESEARCH

The starting point for this line of inquiry is that, to coin a phrase, “arbitrators and judges are people too.” As such, they necessarily each bring to their work their individual values,

ethics, education, experience, gender, age, and whatever else defines them. So it follows that different decision makers may make different decisions when confronted with the same set of facts.

The relative independence granted private arbitrators in the US by the *Trilogy* cases, for instance, generated a lot of interest in their decision making. That the current employment adjudication authority in New Zealand operates free of the supervision of the court that oversaw its predecessor is applauded by some as an aid to efficiency and informality. To others, it is a reason to pay closer attention to its decision making.

Characteristics of Adjudicators

Because much of the past research has been stimulated by the US practice of examining arbitrators' backgrounds and records in the arbitrator selection process, it has tended to focus on the characteristics of arbitrators as the independent, predictive variables. One of the most influential pieces written on the subject (Gross 1967) starts with the thesis that arbitrators bring their own ethics, beliefs and values to their management and decision-making of cases, and that that influences the selection and organization of data that they consider relevant to a case, the emphasis that they place on various pieces of evidence, how they organize the hearing process, their attitudes towards precedents, and whether they read employment documents, rules, and statutes in a strict constructionist way or in a broader sense.

These differences could be expected to produce different outcomes. Gross acknowledged that arbitrators have powerful incentives – including making a living – to stay within parameters and principles accepted by the community of arbitrators; but maintained that there was still considerable scope for legitimate differences among them on many cases. This proposition we accept as one of the premises of our research project.

Anchored to key principles. Each of the variables identified by Gross in his important paper has been examined in subsequent studies. The research evidence is mixed. Dworkin (1974), writing as an experienced arbitrator, essentially endorsed the Gross thesis, suggesting that all arbitrators followed basic principles, but acknowledging individual differences "with regard to the factors or criteria that (s)he may deem significant" to a particular case. Cain and Stahl (1983) measured arbitrators' individual leanings on key principles: efficiency or management rights, equity or fairness to employees, and stability in the workplace as determining criteria in arbitral decision making. They reported that each of the arbitrators studied was internally consistent in his approach, and that they all adhered to the same basic principles. However, they concluded that decisions could be predicted based on a correct reading of an arbitrator's views on the three criteria.

Block and Stieber (1987) examined some 1,200 grievance arbitration awards in cases involving discharge for just cause. Among their findings was that the awards of several of the arbitrators studied were consistently more favourable to one of the parties than to the other party in terms of both the probability of denying or sustaining a grievance and the amount of back pay awarded.

Relatively few studies have directly suggested inappropriate adjudicator bias in employment disputes, but many focus on arbitrator differences of views and inclinations. Giacalone et al. (1992) argued that arbitration is subject to the same sources of potential bias as the courts. The arbitrator's locus of control may, they argue, dominate the decision. For instance, arbitrators vary on how they apportion responsibility to grievants versus the circumstances in which grievants found themselves. Or some are more authoritarian than others and would react more harshly to disobedience or insubordination by a grievant worker. They argue that these are the sorts of biases judges may also harbor. However, in cases of single arbitrators or panels, such liberties as loosening the rules of evidence, lowering the standard of proof, and less attention to legal and formal procedures generally leaves open the possibility of further biases arising from the quality of evidence that the arbitrator has access to.

Thornton and Zirkel (1990) set out to test arbitrator consistency by having 177 arbitrators name their awards in three variants of six employment rights cases. The highest

degree of agreement was at about 70 percent, but no more than 57 percent came to the same conclusion on the same set of facts in any of the other five cases. So the authors found considerable arbitrator variation, but were unable to attribute it to any of the factors specifically tested – age, gender, education, and experience.

In other studies, different arbitrator values and leanings have, not unreasonably, been found to be associated with more tangible arbitrator characteristics. For example, Simpson and Martocchio (1997) examined the influence of grievant work history factors on arbitrators' decisions in a simulated study involving a survey of the responses of 179 arbitrators to 32 hypothetical discharge cases where absence from work was the basis for discharge. Amongst other findings, the authors concluded that arbitrators' backgrounds, age, and experience were significant influences on arbitrators' values and hence on arbitral decision making. For example, Simpson and Martocchio found that arbitrators with business administration degrees were more likely to uphold management's dismissal decisions than arbitrators with law or industrial relations degrees, reflecting a higher valuing of the efficiency principle over fairness amongst the business educated arbitrators.

Education, age and experience. Zirkel (1983) conducted research more akin, in its breadth, to the present research project. Zirkel built profiles of 400 grievance arbitration cases, most involving discipline or discharge, noting characteristics of the hearing, the issues involved, decision outcomes, and the gender, occupation, and experience of the arbitrator. The case sample involved 225 arbitrators, a small percentage of whom were women. Zirkel found no significant predictors of outcomes, specifically concluding that neither the gender of the arbitrator, the use or not of lawyers, nor the sector (public versus private) were significantly related to arbitration outcomes.

Research such as Zirkel's, testing multiple variables, has not been uncommon. Nelson and Curry (1981) found evidence that age and experience (the latter measured by the number of cases decided) were predictors of some adjudication outcomes, but that the arbitrator's education was not. Heneman and Sandver (1983), on the other hand, found that arbitrator education was the only reliable predictor.

A number of studies have examined the influence of lawyers in arbitration. Bingham and Mesch (2000) found that arbitrators who were lawyers were less likely to reinstate dismissed employees than those who were not. By contrast, Harcourt (2000), using Canadian data, found no such effect. McCammon and Cotton (1990) found that none of the arbitrator characteristics they tested, including whether the arbitrator was legally trained or not, or level of experience, were associated with decision outcomes.

Continuing the inconsistency of findings on point, Thornicroft (1995), in a study primarily focused on gender effects in arbitration, found as an aside that arbitrators who were lawyers decided wholly or partially for the grievant less often than arbitrators who were not lawyers. As noted earlier, education was one of the variables tested by Thornton and Zirkel (1990). They found that outcomes were not predictable by any of the arbitrator characteristics they measured, including legal background.

THE RESEARCH PROJECT

The present research project originated with a study of the New Zealand Employment Tribunal, established in 1990 as a "low level" body charged with resolving all employment rights issues arising in both the public and private sectors. The Tribunal was authorized to practice mediation, and where mediation was unsuccessful, to adjudicate. Most cases coming before the Tribunal were resolved in mediation; for those that weren't resolved or withdrawn, the Tribunal heard the case in its adjudication jurisdiction, and issued a binding decision, though subject to appeal to the courts. The Tribunal had exclusive initial jurisdiction over employment rights disputes in New Zealand, and all employed persons at whatever level had access to the Tribunal and its procedures (cf. McAndrew 1995).

Numbers varied, but there were generally about 28 members on the Tribunal, perhaps half of them lawyers. The remainder tended to be experienced labor relations practitioners from one side of the table or the other, with no discernible political bias to the appointments.

Members both mediated and adjudicated cases, though having mediated a case a member was not then able to subsequently adjudicate the matter. The case would go to another member for adjudication. The adjudication process was relatively informal, in the nature of a lower level, but adversarial court process. Members functioned individually in both the mediation and adjudication forums.

In 2000, an incoming Labour Government replaced the Tribunal with a civil service staffed mediation service and a separate adjudication Authority instructed to practice a more directive and inquisitorial style of adjudication. The Tribunal stayed on until 2002 to complete its accumulated caseload.

The New Zealand Employment Tribunal Database

The first source of data for this research project is a database of all adjudication decisions issued by the Employment Tribunal during its existence from 1990 until its disestablishment. Decisions number some 12,000 across a range of issue and procedural categories. The variables captured for the database are in several categories: the issues involved in the case; characteristics of the parties, including gender, occupation, industry, and representation; characteristics of the Tribunal adjudicator, hearing and decision, including for example the gender of the adjudicator, location and length of the hearing, and length of the decision; and various measures of the outcomes of the cases - who won, who lost, and the nature of remedies awarded, if any.

A number of academic and practitioner papers have issued from this project to date. An early paper (McAndrew et al. 1997-98) examined gender factors associated with adjudication outcomes in misconduct discharge cases. There were some limited gender patterns to win-lose outcomes, though they were secondary to variables such as location in regression analysis. McAndrew (1999) reported some statistically significant outcome patterns by representation, with the value of lawyers in certain types of cases being most pronounced. McAndrew (2000) documented declining success rates for grievants over the life of the Tribunal, and illustrated patterns by type of grievance, but without finding anything in the data that explained the downward trend. McAndrew (2001, 2002) and Beck and McAndrew (2002) continued analysis of adjudication patterns in the Employment Tribunal and began some comparative analysis with the adjudication outputs of the new, inquisitorial Employment Relations Authority that replaced the Tribunal in its adjudication function. These analyses indicated decision outcome patterns by nature of party representation, and by issue.

However, the one variable that was beginning to emerge in regression analysis as being most significantly predictive of outcomes was the identity of the adjudicator. In Tribunal decision making, Tribunal members sorted into decision-pattern groups, varying to some extent with the nature of the issues under determination. In the case of dismissal and disadvantage 'personal grievances' that were most of the Tribunal's case load, for example, members sorted into four distinct groups, with employee win rates of 35 percent, 53 percent, 65 percent, and 75 percent. The groups did not have any evident distinguishing profiles that would have allowed a tidy conclusion. They each had about the same number of members; there were male and female members in each group; and there were lawyers and non-lawyers in each (Beck and McAndrew 2002). Regression analysis yielded some secondary outcome predictors for two of these groups, but not for the others.

On personal grievance files, Authority members sorted in regression analysis into two distinct decision patterns, averaging 38 percent grievant success versus 66 percent grievant success. In general, the former Tribunal members, who were more experienced in decision-making and tended to be older than the new appointees, were harsher in their treatment of grievants than the new appointees. Virtually all of the Tribunal holdovers were in the 38 percent category, while all of the new appointees were in the 66 percent category (McAndrew 2002; Beck and McAndrew 2002). Beyond that, there were again no clear patterns to the two groupings by education, gender, age, or other obvious characteristics except experience.

The Comparative Dimension to the Project: The Vermont Labor Relations Board

Given the New Zealand results, it was the influence of adjudicator identity that was of most interest in extending the research to other jurisdictions. Most previous research on grievance adjudication outcomes has been centered on individual private arbitrators in the North American union contract context. Our New Zealand research was unusual in looking at appointed neutrals functioning within the framework of a statutory mediatory and adjudicatory body. Ideally, we needed to go beyond that single institution and country to argue for conclusions that might have general application.

The Vermont Labor Relations Board (VLRB) provides an interesting and unusual first comparison. It is atypical among state public employment relations boards in the United States in that, in addition to determining bargaining unit issues and unfair labor practice cases, it also hears and decides individual grievances, including discipline and discharge grievances. The Board has exclusive jurisdiction over grievances of State, State College, and State University employees in Vermont. Grievances constitute about half of the Board's caseload.

The VLRB consisted of five part-time members over the majority of the study period. Although each was a gubernatorial appointee, a political balance has been maintained in Board composition : no more than three could be from the same party and no more than two of the same identified affiliation could be assigned to a three-person panel.

Hearings are adversarial in style, fully recorded, with transcripts made available on request. Written briefs of evidence and legal briefs are typically filed. Most parties choose to be represented, mostly by lawyers or lay union officials. Hearings are open to the public and decisions are issued as public documents and available on the Board's website. Board decisions can be appealed to the Vermont Supreme Court on points of law. In most respects, hearings are similar to the adjudication hearings that prevailed in the New Zealand Employment Tribunal.

Construction of a database of VLRB decisions was undertaken by research staff at the Universities of Otago and Vermont. The variables data recording sheet employed for the New Zealand data was modified slightly to reflect differences in the Vermont system, including notably the use of panels rather than individual adjudicators.

All VLRB decisions on matters equivalent to matters defined in the New Zealand context as "personal grievances" were entered into the database. This scope incorporates decisions relating to alleged unfair dismissal, other alleged unfairness of the employer to the detriment of the employee (including but not limited to lesser forms of discipline), and allegations of discrimination or harassment on protected bases. Only substantive decisions were documented; decisions dealing solely with interlocutory or procedural matters were not included in the database. The excellent VLRB website contains full texts of all its decisions, and all within scope (except two missing outcome data) between 1977 and 2006 are included in the database. They number 394 published decisions. Of these, 43.9 percent were decided in favour of the employee, 55.6 percent were decided in favour of the employer, and two decisions could not be classified as more favourable to one party than the other.

The variables captured for the Vermont database are in the same several categories as the New Zealand data: the issues involved in the case; characteristics of the parties, including gender, occupation, industry, and representation; identity and characteristics of the Board adjudicators and panels, hearing and decision, including for example the gender of the adjudicator, location and length of the hearing, and length of the decision; and various measures of the outcomes of the cases - who won, who lost, and the nature of remedies awarded, if any.

Sixteen different adjudicators were involved in the decisions included in the database. The number of cases an arbitrator was involved in ranged from eight to 187 and service on the board ranged from two to 18 years. Characteristics of board members were recorded where available, including political party affiliation, work history (for instance, state government, attorney, military, union, or private business), and gender.

RESULTS OF THE VLRB ANALYSIS

The Vermont data were subjected to a range of statistical tests to establish the likelihood of relationships between independent variables and decision outcomes. Secondary correlations were also considered between independent variables. In terms of predicting outcomes, no statistically significant associations between variables describing the parties, the issues, or the process emerged from regression analysis, although there were some suggestive relationships that warrant further examination at another time.

On the central question of whether the person of the arbitrator has any impact on the grievance outcome, Pearson Chi-Squared tests confirmed that the pattern of decision outcomes varied significantly with the presence on the board panel of several of the 16 members who had served on the VLRB over the years. The results confirmed the significance of Member Comstock (at $p=0.028$), Member Zuccaro (at $p=0.013$), and Member Park (at $p=0.035$). Two other arbitrators (Member Seaver and Member Kemsley) were found to have marginal significance values (at $p>0.05$ but <0.1). Logistic regression was also carried out on a number of models including "all arbitrators," "arbitrators + arbitrator characteristics," "arbitrators + case characteristics," and a variety of other combinations. Significance values varied throughout. The only two constants were Zuccaro and Comstock, who consistently had significance values well below 0.05.

The following table lists the results of Linear Regression and Pearson Chi-Square tests in the fourth and fifth columns respectively. Entries in bold refer to arbitrators with either significant regression or chi-square values. The two outlined entries, for Members Comstock and Zucarro, are, as noted, the only entries where significance values for *multiple* tests were consistently corroborated.

VLRB Arbitrator	Grievant Win Ratio	Number of cases	Logistic Regression P-values	Pearson Chi-Sq
Burgess, John	0.462	26	0.632	0.42
Wallace, James	0.400	10	0.188	0.527
Kemsley, William	**0.476**	**187**	**0.225**	**0.081**
Brown, Robert	**0.453**	**64**	**0.049**	**0.422**
Cheney, Kimberly	0.475	118	0.67	0.195
Gilson, James	**0.421**	**57**	**0.027**	**0.457**
Mchugh, Charles	0.490	100	0.766	0.154
Toepfer, Louis	**0.422**	**102**	**0.065**	**0.363**
Seaver, Leslie	**0.357**	**70**	**0.035**	**0.075**
Frank, Catherine	**0.431**	**137**	**0.062**	**0.419**
Park, Richard	**0.328**	**61**	**0.145**	**0.035**
Comstock, Carroll	**0.358**	**106**	**0.022**	**0.028**
Zampieri, John	0.439	41	0.512	0.556
Zuccaro, Edward	**0.208**	**24**	**0.004**	**0.013**
Wilson, Joan	0.250	8	0.643	0.233
Yessne, Dinah	0.500	14	0.37	0.427
Average		70.3125		

While, as with the New Zealand data, we are satisfied from the Vermont evidence that identity of adjudicator can be associated with the likelihood of certain patterns of decision outcomes, the Vermont data thus far have not offered more certitude about particular characteristics that would have predictive value. Of course, influence on decisions in the

Vermont panel system is a more complex matter than in the New Zealand model of a single adjudicator acting alone.

The attempt to predict outcomes by adjudicator background characteristics shows some promise but is certainly not definitive. With a sample of only 16 individuals in a small geographic region, it is difficult to say if a certain variable has a practically significant effect on outcome. Searching for intuitive patterns by political party yielded mixed results, with one of the VLRB members affiliated with the Democratic Party and with a background as a union official (Member Comstock) significantly likely to be a member of panels deciding against the grievant.

On the other hand, our evidence does provide some indication that political party and employment background might make a difference in grievance decisions. Member Zaccaro's party affiliation is Republican and he is an attorney by occupation, so that his association with a significantly low grievant success rate is more consistent with some earlier research, and certainly less counter-intuitive. Further, Member Seaver, who is identified by one significant result and one that is more marginal, is a registered Republican and a former bank president. Of the three other panel members who meet one significance test (Members Brown, Gilson, and Park), two are Republicans (the other is an Independent) and two of the three also had significant corporate backgrounds.

In terms of other characteristics, linear regression between number of cases as one measure of experience and the employee win/loss ratio had an R-squared value of .149, explaining only 15 percent of the variance in the model. Attempting to correlate years on the board as an alternative measure of experience with the win/loss ratio had an even lower R-squared value (.0049). Again, this may arise from the panel-based nature of the VLRB in that members new to the process may be more inclined to seek consensus with their senior fellows rather than making the running in the face of different views. Fundamentally, if there are explanations to be found in the characteristics of the adjudicators, we have not as yet made much progress in identifying them.

It has to be acknowledged that limitations in the data may account for the difficulties in analysis. Because much of the data is nominal, parametric analysis is limited in effectiveness. Additionally, while a sample size approaching 400 is statistically relevant within a larger population, this sample of three hundred and ninety six is the entire population and may be limited in its representativeness of other, larger populations. Finally, the small population of adjudicators fails to reach the 30-observation count usually regarded as the minimum for representative analysis.

CONCLUSIONS

Thornton and Zirkel (1990) conducted a comprehensive 'laboratory' study that established quite persuasively that arbitrators vary considerably in decision making. In other words, that who hears and decides your case is often a good predictor of likely outcome. But while the the authors found considerable arbitrator variation, they were unable to attribute it to any of the characteristics of the arbitrators specifically tested – age, gender, education, and experience. While there have been some pieces of research that have arrived at different findings in some respects, that inability to convincingly attribute the variability of adjudicator decision making remains pretty much the state of play.

Our New Zealand data produced reliable indications that the identity of the adjudicator is, at least under some circumstances, a predictor of adjudication outcomes. Experience was identified as one influential characteristic, at least under circumstances where there were two populations with quite distinct backgrounds – the old Tribunal adjudicators and the new Authority adjudicators – in the transition from one institution to another. There were some suggestive statistics about some other independent variables, but only suggestive statistics.

The Vermont comparison essentially reinforces those findings. Intuitively, individual adjudicator influence on decision making should be harder to both exercise and identify given the panel nature of the adjudication body in the VLRB system. Yet, our data show some individual members to be significantly associated with particular patterns of grievant success rates. Again, however, in looking for characteristics of the adjudicators that might go towards

explaining those patterns, the data are not definitive. There are some suggestions there, but nothing conclusive.

As Gross (1967) suggested 40 years ago, it would seem likely that variable patterns of decision-making result from variation in adjudicators' views on key principles and predispositions guiding their interpretations of key facts that they bring to grievance hearings and apply to their decision making. That is consistent with Dworkin (1974) and Cain and Stahl (1983), and with the reasoning of Giacolone et al. (1992). Deciding for the grievant or for the employer in a grievance case of even routine complexity involves a sequence of decisions over interrogatory matters, evidence, the substance of the employer's claim about the grievant, the adequacy of the procedure followed by the employer, and the remedies, if any, that are appropriate. There is potential for different 'intermediate' decisions to be made at any or all of these points. Where, for example, an adjudicator is confronted with a conflict of evidence, often a decision on witness credibility is required. There is a range of criteria that might be employed to make that call, and adjudicators might differ on which ones matter to them. And so it might be with a host of other intermediate decisions along the way to a final determination of the case.

It seems reasonable to suggest that, to the extent there is legitimately room for different decisions within the framework of applicable law, what adjudicators bring to their decision making is a product of who they are – their age, experience, education and training, gender, and other characteristics – though the forum for decision making might also be a factor. That was the finding of Simpson and Martocchio (1997), among others, and it makes sense. Our data from both New Zealand and Vermont suggest that all of this is true, but have yet to yield conclusive results.

So where to from here? What we have not yet explored directly are the views and predispositions that our adjudicators are bringing to their decision making, and that suggests itself as a direction for our continuing research. Presumably we might find predictable links between adjudicator characteristics – education, party affiliation, and so forth – and their views and predispositions. That might be more fruitful than attempting to link characteristics to outcomes directly. At the same time, we will continue to examine the existing data, only a small part of which has been dealt with here. In addition, we will continue to extend the comparative study, looking next at the Labour Courts of Austria in the Vienna province.

REFERENCES

Beck, Kathryn & Ian McAndrew. Decisions and Damages: Are They Predictable? Invited Address to the New Zealand Law Society *Employment Law Conference.* Wellington. November 8, 2002.

Bingham, Lisa B. and Debra J. Mesch (2000) Decision Making in Employment and Labor Arbitration. *Industrial Relations* 39(4): 671-694.

Block, Richard N. and Jack Stieber (1987) The impact of attorneys and arbitrators on arbitration awards. *Industrial & Labor Relations Review* 40(4): 543-555.

Cain, Joseph P. and Michael J. Stahl (1983) Modeling the policies of several labor arbitrators. *Academy of Management Journal* 26(1): 140-147.

Dworkin, Harry J. (1974) How arbitrators decide cases. *Labor Law Journal* 25(July): 200-210.

Giacalone, Robert A., Martha L. Reiner, and James C. Goodwin. (1992) Ethical concerns in grievance arbitration. *Journal of Business Ethics* 11(4): 267-272.

Gross, James A. (1967) Value judgments in the decisions of labor arbitrators *Industrial and Labor Relations Review* 21(3): 55-73.

Harcourt, Mark (2000) How attorney representation and adjudication affect Canadian arbitration and Labor Relations Board decisions *Journal of Labor Research* 21(1): 149-159.

Heneman, Herbert G. III and Marcus H. Sandver (1983) Arbitrators' backgrounds and behavior. *Journal of Labor Research* 4(2): 115-124.

McAndrew, Ian (1995) The New Zealand Employment Tribunal: a review and assessment. *Asia Pacific Journal of Human Resources* 33(2): 37-50.

McAndrew, Ian, Dermott J. Dowling and Sean Woodward (1997-98) Gender patterns in the New Zealand Employment Tribunal: some notes on theory and research. *New Zealand Journal of Industrial Relations* 22(3)/23(1): 277-300.

McAndrew, Ian (1999) Adjudication in the Employment Tribunal: some facts and figures on caseload and representation. *New Zealand Journal of Industrial Relations* 24(3): 365-382.

McAndrew, Ian (2000) Adjudication in the Employment Tribunal: some facts and figures on dismissal for misconduct. *New Zealand Journal of Industrial Relations* 25(3): 303-315.

McAndrew, Ian (2001) Adjudication outcomes in the Employment Tribunal: some early comparisons with the Employment RelationsAuthority. *New Zealand Journal of Industrial Relations* 26(3): 341-348.

McAndrew, Ian (2002) Determinations of the Employment Relations Authority. *New Zealand Journal of Industrial Relations* 27(3): 323-347.

McCammon, Marlise and John L. Cotton (1990) Arbitration decisions in subcontracting disputes *Industrial Relations* 29(1): 135-144.

Nelson, Nels E. and Earl M. Curry Jr. (1981) Arbitrator characteristics and arbitral decisions. *Industrial Relations* 20(3): 312-317.

Simpson, Patricia A. and Joseph J. Martocchio (1997) The influence of work history factors on arbitration outcomes. *Industrial and Labor Relations Review* 50(2): 252-267.

Thornicroft, Kenneth W. (1995) Gender effects in grievance arbitration … revisited. *Labor Studies Journal* 19(4): 35-44.

Thornton, Robert J. and Perry A. Zirkel (1990) The consistency and predictability of grievance arbitration awards *Industrial and Labor Relations Review* 43(2): 294-307.

Zirkel, Perry A. (1983) A profile of grievance arbitration cases *The Arbitration Journal* 37: 35-38.