

TORT LIABILITY IN A COLLECTIVE BARGAINING REGIME

By Susan A. Tacon
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Tort Liability in a Collective Bargaining Regime is Ms. Tacon's vehicle for offering a constructive criticism of the present mode of resolving issues of industrial conflict. She submits that the courts interfere in this area by applying traditional tort doctrines. In her words, "the judge, the court and the common law are the wrong institutions to effectively resolve industrial disputes in the modern era of collective bargaining."¹ The solution she provides is that these matters should be dealt with by administrative tribunals.

Ms. Tacon explains the "how's and why's" of judicial intervention. She makes references to the history of the trade union movement and to the traditional orientations of the judiciary. She shows how the judiciary interferes with the rights of trade unions vis-a-vis employers and the public. Further, she explains that the judiciary justifies this interference through the application of tort law. Throughout her book, she respectfully argues against the merits of this judicial intervention on the grounds of various historical, doctrinal, and institutional handicaps in the judicial process itself. She also notes an alleged absence of a legislative mandate prescribing such wide interference.

Ms. Tacon expresses a preference that labour relations be dealt with by administrative tribunals modelled on the Labour Relations Board as created by the British Columbia Labour Code. While she does not embark on a detailed description of the B.C. Labour Relations Board, she presents numerous arguments in favour of such a tribunal. She submits that such tribunals would not have the partiality against unions which she alleges exists in the courts, and, as compared to the courts, such tribunals would be inexpensive, informal, and flexible.

Chapter One serves as an introductory overview of the scope and slant of the book.

Chapter Two briefly outlines the history of the trade union movement from the days of the Industrial Revolution. The modern Canadian collective bargaining regime is explored here, and throughout the book, by reference to the Ontario *Labour Relations Act*. In this chapter the author discusses how the judiciary interferes in labour relations by examining the various tort doctrines which are applied. These include defamation, trespass, assault, nuisance, civil conspiracy, inducing breach of contract, and interference with economic relations.

In Chapters Two through Five, the author looks at picketing as a labour relations event which the courts fragmentally analyze in the language of tort law. These chapters cover judicial interference at the various stages of the collective bargaining regime from the time the collective agreement is negotiated, and through to the actual currency of the agreement.

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1. S. Tacon, *Tort Liability in a Collective Bargaining Regime*, (Toronto: Butterworths, 1980), p. 148.

Ms. Tacon uses her well-organized conclusion to summarize her line of argument and to ameliorate somewhat her criticism of the courts in this area.

The thesis of *Tort Liability in a Collective Bargaining Regime* is developed through a well-written, well-researched, and well-documented analysis of Canadian labour relations law. As well as the numerous case references in the text, there are many useful footnotes which elaborate on the text and refer to other enlightening decisions and comments. The author has also compiled a comprehensive table of cases which focuses on Canadian decisions from the 1960's to date.

Ms. Tacon's stated intention is that the book be useful to both teachers and practitioners of labour law. However, the exhaustive theoretical analysis would render it of perhaps more interest to academics and law reformers than to practitioners. This work, which began as a master's thesis, does not purport to explain the rudiments of labour law. It is submitted that it could be best appreciated by those with a background in the subject.

Tort Liability in a Collective Bargaining Regime is a fine piece of legal writing produced by an advocate who argues her case so adamantly that she may actually incense a reader who adheres to a contrary position.