TORT LIABILITY IN A COLLECTIVE BARGAINING REGIME, by Susan A. Tacon, Butterworth & Co. (Canada) Ltd., pp. xvii and 155.

This is not so much a textbook about the usage of tort liability concepts in labour relations as it is a thesis which posits the notion that the courts should be excluded from having a role in supervising collective labour relations. Indeed, the book is rather evidently a re-write of a Master's thesis and, hence, part of its appeal is dependent upon the reader's desire to consider an academic theory of labour relations, as compared to the usual doctrinal text which asserts and synthesizes propositions of law supported by authority. Thus, let the practitioner beware for he shall not find a guide to practice or procedure in this book.

This is not to say that it would not be a useful addition to a library for it does contain a detailed, albeit somewhat dated (no cases later than 1977 are cited), examination of cases and judicial trends. In this sense, the book serves as a useful update of other material on tort liability of strikers. The last major Canadian work on the subject was probably Christie's, "The Liability of Strikers in the Law of Tort", which was published in 1967.

Essentially, the theory enunciated by Tacon's book breaks down into two propositions: (1) that judicial intervention into collective labour relations through the application of tort principles has been ill conceived and harmful; and (2) that the administrative model of adjudication is a superior mechanism which, in the long run would foster more responsible labour relations.

With respect to the first proposition, the notion advanced is that while the courts have applied tortious concepts to collective labour relations, such concepts are not suited to dealing with the economic realities of labour relations. By inference, one draws the conclusion that the courts have exerted a major conservative influence to limit the effectiveness of the strike and picket weapon and have, in this fashion, distorted the balance of power between employers and trade unions. The courts have consistently denied the validity of the inherently coercive nature of the strike and picket line by examining such conduct within the strictures of tort and contract law. Not only have they applied traditional torts such as assault and intimidation to control violence on the picket lines, but they have also developed a tortious concept of unlawful interference with economic relations based upon the timing and purpose of the picket line[1] and strict compliance with the procedural provisions of labour legislation.[2]

This criticism is not new. The major work by Frankfurter and Greene[3] and subsequent studies on the strategic use of the interim injunction by employers[4] have all pointed in a similar direction. This book, in common

1. *See Koss* v. *Konn* (1961), 30 D.L.R. (2d) 242.
2. *See Western Dist. Diamond Drillers Union* v. *Minister of Labour* (1960), 60 C.L.L.C. 15,278.
3. The Labour Injunction (1930).
4. *See* for example: Carrothers, The Labour Injunction in British Columbia, (1956); Swan, The Labour Injunction in Alberta (1971), Alta. L.R. 1.

with others, seeks to express dissatisfaction with such developments on the basis of legal analysis, although its origins may be dependent much more upon attitudes towards the conflicting values of laissez faire, freedom of trade economics versus the rights of workers and trade unions.

It is with the second proposition that the book treads upon less sure ground. While some decisions of other labour boards are used, the author essentially relies upon the British Columbia Labour Relations Board as her focus of comparison with judicial decisions. Tacon cites a number of decisions indicating the willingness of that tribunal to overlook technical, procedural flaws in light of labour relations policy considerations. From that she extrapolates the notion that such boards should replace the courts in adjudicating labour relations issues. It is not clear that such an extrapolation is merited for it, perhaps, ignores some of the political realities underlying the origins of the British Columbia Labour Code: i.e., its introduction by an N.D.P. government; the empowering of the board in wider terms than is usual; the complete ouster of judicial review in certain circumstances; and the influence of some of the strong personalities on the board itself (Paul Weiler chaired the board during the period examined). In the final analysis it is the legislature which determines the direction of labour relations through its labour legislation and appointments to the governing tribunals.

In summary, it is an interesting book which at least advances a theory and poses conceptual and policy issues which could, and should, promote debate. It can be a welcome relief from what seems, on occasion, to be a steady diet of uncritical legal writing.

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