

Canadian Civil Remedies for Torts in Novel Situations and Special Circumstances

Lynn M. Kirwin

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Book Review

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In *Canadian Civil Remedies For Torts in Novel Situations and Special Circumstances*, Lynn M. Kirwin provides an overview of the legislation and case law pertaining to a wide variety of special torts. The book is organized into four chapters, 1) Torts and Law Enforcement Officials, 2) Torts in Sports, 3) Workplace Torts, and 4) Public Torts. Lynn Kirwin has worked as a sole practitioner in family law and is the co-author of *Child Protection: Practice and Procedure* and *Child Protection Law in Canada*.

The first chapter, entitled Torts and Law Enforcement Officials, covers strip searches, physical and sexual assault by law enforcement officers, and false imprisonment. Kirwin starts with the treatment in Canada and then narrows to individual provinces. She often includes definitions and breaks down legal issues into numbered lists, offering practical questions which lawyers should ask themselves when working on a legal problem. She includes the most recent and authoritative cases for each topic (for both the plaintiff and defendants), and provides short overviews of cases, the pertinent facts, and overall conclusions. There are also examples of sentencing and numerical damages.

In the chapter on Torts in Sports, Kirwin outlines how different provinces have interpreted legal issues in sports. For example, the provincial courts have disagreed "whether the conduct in a sporting event needs to be a deliberate intention to injure to be actionable, or whether the standard of care is one of recklessness or negligence" (p 175). The wide variety of topics included are: liability of instructors/coaches, waivers and releases, school sports programs, sports equipment manufacturer liability, sexual abuse in sports, sports in camps, liability of sports governing bodies, and liability towards spectators. Surprisingly, torts in sports is an area that has not been covered in detail by the well-known Canadian textbooks on torts, including Klar, Linden and Feldthusen, and Fridman.

The third chapter offers an overview on torts in the workplace, including physical harm, sexual assault and harassment, mental suffering/emotional distress, bullying, and defamation. Many of the topics covered are very relevant to today's digital world such as sexual harassment through unwanted text messaging, wrongful dismissal and internet pornography, and defamation in newsletters and internet message boards. Kirwin incorporates content from different Canadian jurisdictions, and includes references to decisions from human rights tribunals and arbitration boards. The chapter describes various legal tests such as the test to establish that an employee's misconduct justifies dismissal (p. 313), the test for assessing whether sexual harassment amounts to just cause for dismissal (p. 314), the legal principles for termination of employment (pp. 314-315), and factors to assess damages for sexual harassment (p. 348), which is very practical.

The final chapter is on public torts. Kirwin starts out by defining and distinguishing non-pecuniary and pecuniary damages. The topics then covered are: stalking/battery/assault, defamation,



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internet defamation, invasion of privacy, school age cyber-bullying, school-based torts, malicious prosecution/intentional infliction of mental shock, and torts evolving minors. Again, the subject matter is very timely and also tied to the Internet age as Kirwin has sections on defamation and bullying through blogs and Facebook.

Overall, I would recommend this book for any litigation firms. It is clearly laid out and easy to understand, so the content would be accessible to students and new associates. There is a table of contents, index, table of cases, and footnotes for each case cited, so lawyers will easily be able to locate the cases discussed. Kirwin has identified a wide variety of special torts that are not discussed in detail in other Canadian textbooks on torts. The case law she includes is recent and authoritative and she includes cases and legislation from all jurisdictions. Reasonably priced at \$139, it is definitely a worthwhile purchase for any litigation library.

