

ONTARIO COURT DEFERS TO OLRB ON THE BASIS OF WEBER

Caessant Care Nursing and Retirement Homes Ltd. v. Priest, [1999] O.J. No. 4744 (Ont. S.C.)

Facts

The Service Employees International Union ("SEIU") undertook a public campaign to effect changes in working conditions for American nursing home workers. In the course of this campaign, Mark Priest, a Business Agent for Local 220 of the SEIU allegedly published documents containing false and defamatory statements about the working conditions and living environment at a retirement home owned by Caessant Care. Caessant Care brought an action for defamation.

The Defendant brought a motion to have the action dismissed on the grounds that the Court had no jurisdiction and that there was another proceeding (before the OLRB) taking place.

Held

Despite the fact that the OLRB proceeding differed in its cause of action and relief requested, and in the fact that Priest was not a party to the OLRB proceeding as he was not an employee of Caessant, the Court found that the OLRB was the appropriate forum to resolve the issue. The Plaintiff was unsuccessful in arguing that the OLRB lacked the jurisdiction to grant a remedy against the Defendant since the Defendant was not an employee. To the contrary, the Court concluded that the OLRB has a broad remedial authority including the authority to award damages. Furthermore, the OLRB can apply common law principles for a tort such as defamation.

In conclusion, the Court deferred the issue to the OLRB finding that the OLRB has exclusive jurisdiction to resolve a dispute which arises in its essential character out of the Collective Agreement.