

## Handle union disputes with care

Courts don't hear cases involving union employees

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*Liberty is not a means to a political end. It is itself the highest political end.*

- Lord Acton

As Kim McQuillan can attest, unions provide employees with shields that nonunion workers lack. McQuillan, an active union steward with the hotel workers union UNITE who strongly believed in her right to speak freely about her workplace union activity, resisted efforts to sue her for alleged defamation of the company and its owners.

McQuillan claimed she and her co-workers faced resistance to unionize their Niagara Falls hotel, the Sheraton on the Falls.

Interested in hearing her "inspirational" story about the hotel union's efforts, the United Steelworkers invited McQuillan to speak at a conference held at the Sheraton on the Falls. She embraced this invitation to speak to fellow unionists and spread her message of solidarity.

In her speech she claimed that the hotel's owner, the Dicenzo family, was a "powerhouse of profit," adding "money was no object to them in fighting to get rid of the union." She encouraged attendees to band together and unionize more area businesses. McQuillan ended her speech with: "If you don't see me tomorrow, ask the director of conference services?where I am."

The company, concerned about her speech, leapt to investigate. McQuillan admitted making the speech and the employer wrote her up for a "malicious, false and reckless attack" which warranted a suspension until the Sheraton received a written apology and retraction.

McQuillan refused to apologize, saying: "I remain steadfast in the belief that in a democratic society, I have a right to speak freely."

The company and the owners asserted they were personally offended and their reputations damaged before their customer the United Steelworkers.

They hired a lawyer to write McQuillan, threatening a lawsuit. Intent on pursuing the matter and without any apology in hand, the company filed a defamation claim in the courts.

McQuillan successfully applied to have the lawsuit dismissed because she was unionized. Labour arbitrators and labour boards have exclusive jurisdiction to hear disputes regarding unionized employees.

Although McQuillan made the speech outside of her role as an employee, her words stemmed from her workplace union activity and the employer/employee relationship. As the court noted, "The speech deals with workplace issues, disputes and relationships."

I frequently encounter claims prepared by inexperienced lawyers who attempt to sue in the civil courts when there is no legal basis to do so.

Proceedings under the labour law statutes can only be handled by specialized tribunals.

Employers addressing disputes with unionized employees should consider the following:

**Think strategically** The initial threats against McQuillan of suspension and possible reinstatement all related to a "workplace" characterization of the case. This sealed the company's fate when it subsequently argued it was a private dispute between individuals.

**Avoid fighting on several fronts** Pick the proper forum for disputes. Avoid the circumstance, which unions relish, to have numerous proceedings whereby a victory in any one of these cases will carry the day in the court of public opinion with employees or union activists.

**Obtain professional, specialized advice promptly** It is crucial to consult with experienced, specialized counsel and assess relevant strategies prior to acting. This saves costs and leads to better results.

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