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A Framework Emerges - Recent developments in the Law of Intentional Economic Torts

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Economic torts provide relief in relation to intentional interference with economic interests. This collection of torts can be divided into two categories: deceptive market practices¹ and improper market practices. This paper concerns itself exclusively with the latter, examining the torts of inducing breach of contract, unlawful interference with economic interests and civil conspiracy.

Historically, the torts of inducement to breach a contract (the “inducement tort”), unlawful interference with economic interests (the “unlawful interference tort”) and civil conspiracy have been difficult to plead. This difficulty reflects the courts’ struggle to clearly identify when the intentional interference with economic interests should be actionable. This struggle is, at least in part, attributable to the challenge of striking a proper balance between competition in a free market and unfair or improper market practices.

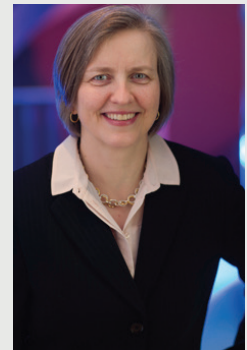
The relationship between the parties involved in an action for interference with economic interests is complicated by that fact that all three torts must involve at least three parties. Under the inducement tort, the plaintiff and a third party have a valid, subsisting contract, and the defendant, not a party to the contract, interferes. Although the plaintiff can take action against the third party for breach of contract, action can also be taken against the defendant. The unlawful interference tort arises where the defendant unlawfully interferes with the plaintiff’s economic interests by conduct directed at a third party with the intent to cause the plaintiff injury. Where there is an existing contractual relationship between the plaintiff and a third party, the tort may be made out despite the fact that the contract is not breached if the plaintiff otherwise experiences injury to its economic interests arising from the defendant’s use of unlawful means with intent to injure.



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¹ This category includes deceit, injurious falsehood, passing-off and misappropriation of personality. For a general discussion, see Philip H Osborne, *The Law of Torts*, 4th ed (Toronto: Irwin Law Inc., 2011) at 315.

Alternatively, the tort may be committed in the absence of an underlying contract between the plaintiff and a third party, provided the plaintiff's economic interests are injured by the defendant's use of unlawful means in relation to a third party (where, for example, the formation of a contract is prevented by the defendant's use of unlawful means). The tort of civil conspiracy requires at least two parties to conspire against the plaintiff.

At times courts have conflated the requirements for pleading the unlawful interference tort with the requirements for pleading the inducement tort. Thankfully, in 2007 the House of Lords endeavoured to untangle the two in *OBG Limited v. Allan*.² What have emerged are two separate, discrete torts. The Court of Appeal of New Brunswick and the Court of Appeal of Ontario have since applied some parts of the *OBG Limited* decision in their own judgments, providing their expertise regarding the necessary components for both the inducement torts and unlawful interference torts. To date, the Court of Appeal of British Columbia has not considered *OBG Limited*.

The objective of this paper is to set out the necessary elements for the three types of improper market practices torts: the inducement tort, the unlawful interference tort and the tort of civil conspiracy. After providing a brief history, the second and third sections will examine the inducement tort and the unlawful interference tort, respectively, and the fourth section will highlight the differences between the two. The fifth section will examine the tort of civil conspiracy. This paper will conclude with some thoughts on the future of the torts governing improper market practices in Canada.

I. A Brief History

The reticence of courts to interfere with market practices is illustrated by *Allen v. Flood*,³ an 1898 decision of the House of Lords. In *Allen*, the defendant trade union disapproved of the conduct of some of its members, the plaintiff group of shipwrights, and threatened their employer that it would call all employees out on a lawful strike unless the plaintiff shipwrights were dismissed. The employer obliged. The plaintiff shipwrights took action against the defendant union, and although it was found that the defendant union's actions were malicious and motivated purely by a desire to punish the plaintiff, it was not found liable because it had not committed any nominate economic tort.

Uncertainty surrounding the torts of improper market practices was compounded during the second half of the 20th century by the attempt of some courts to categorize the inducement tort as the unlawful interference tort. This led to the perception that liability was being expanded to

² [2007] UKHL 21 [*OBG Limited*].

³ [1898] AC 1 (HL) [*Allen*].

include situations which did not fall properly under either tort and created confusion with respect to the necessary intention for liability.⁴

More than a century after *Allen v. Flood* was decided, the House of Lords in *OBG Limited* re-engaged with these principles. This decision provided a clearer picture of what is required for the unlawful interference tort and the inducement tort.

II. Inducement to breach a contract

The tort of inducing breach of contract arises when a party's wilful interference results in the breach of an existing contract.⁵ When a third party knows of a contract between two parties and unjustifiably interferes with it to secure a breach of contract, the party who is harmed by the interference can take action against that third party.⁶

Traditionally, this tort has four requirements: 1) knowledge of the contract; 2) an intention to bring about a breach of the contract; 3) conduct which results in the breach of the contract; and 4) damages to the plaintiff.⁷

Although the tort of inducing breach of contract is rooted in medieval law of master and servant,⁸ the modern version stems from the 1853 House of Lords case *Lumley v. Gye*.⁹ In *Lumley*, the plaintiff had a contract with an opera singer, Miss Wagner, to sing exclusively at his theatre. The defendant, who wanted to showcase Miss Wagner's talents at his own theatre and for his own benefit, persuaded Miss Wagner to break her contract with the plaintiff and sing exclusively for him. The plaintiff took action against the defendant, and although the defendant was not a party to the contract, he was found liable.¹⁰

In *SAR Petroleum v. Peace Hills Trust Company*,¹¹ the New Brunswick Court of Appeal broke down the inducement tort into eight elements. The NBCA's articulation does not change the law but restates it, drawing attention to those elements that are often easily satisfied, and in turn ignored. The eight elements are:

1. there must have been a valid and subsisting contract between the plaintiff and a third party;

⁴ *AI Enterprises and Schelew v Bram Enterprises and Jamb Enterprises*, 2012 NBCA 22 at para 25.

⁵ Peter Burns and Joost Brom, *Economic Interests in Canadian Tort Law* (Toronto: LexisNexis Canada Inc, 2009) at 77.

⁶ GHL Fridman, *The Law of Torts in Canada*, 3rd ed (Toronto: Carswell, 2010) at 751-752.

⁷ *Ibid* at 753.

⁸ As masters claimed proprietary interests in servants, it was deemed unlawful for a master to interfere with or entice the servants of another master.

⁹ (1853), 2 E & B 216, 118 ER 749 (QB) [*Lumley*].

¹⁰ *Ibid*.

¹¹ *SAR Petroleum v. Peace Hills Trust Company*, 2010 NBCA 22 [*SAR Petroleum*].

2. the third party must have breached its contract with the plaintiff;
3. the defendant's acts must have caused that breach;
4. the defendant must have been aware of the contract;
5. the defendant must have known it was inducing a breach of contract;
6. the defendant must have intended to procure a breach of contract in the sense that the breach was a desired end in itself or a means to an end;
7. the plaintiff must establish it suffered damage as a result of the breach; and
8. if these elements are satisfied, the defendant is entitled to raise the defense of "justification".¹²

Elements 1 and 2: A valid and subsisting contract was breached

The first two elements require that a valid and subsisting contract between the plaintiff and a third party (e.g., Ms. Wagner in *Lumley*) is breached. Where a contract does not exist, the tort of inducing breach of contract cannot be maintained.¹³

Element 3: The defendant's acts caused the breach

The third element necessitates that the acts of the defendant caused the breach. Courts distinguish advice that is merely intended as advice from advice that is intended to persuade. "Advice is not actionable; persuasion or pressure is."¹⁴ Courts will undertake to find a causal connection between the defendant's actions to try and induce breach of the contract and the third party's actions.

Element 4: The defendant was aware of the contract

The fourth element requires that the defendant must be aware of the contract. The defendant's awareness of the contract is required because intentional interference presupposes knowledge: if the defendant is not aware of an existing contract, there can be no intention to break it.¹⁵ English courts have established that a defendant need not know the precise terms of a contract to be liable as long as the defendant has sufficient knowledge of the terms to know that his or her conduct would induce a breach of the contract. Canadian courts have yet to be so clear.¹⁶ If *SAR Petroleum* is any indication, however, it seems likely that Canadian courts will adopt a

¹² *Ibid.*

¹³ Lewis Klar, *Tort Law*, 5th ed (Toronto: Thompson Canada Limited, 2012) at 710. Note: although taking action for inducement of breach of contract is not possible, action under another tort, such as unlawful interference with economic interests (discussed in the next section), may be possible.

¹⁴ *Supra* note 7 at 759.

¹⁵ *Supra* note 12 at para 45.

¹⁶ GHL Fridman, *The Law of Torts in Canada*, 2nd ed (Toronto: Carswell, 2002) at 794.

similar standard, holding that the defendant must know of the contract's essential terms.¹⁷ The NBCA in *SAR Petroleum* qualifies the principle by explaining that if the defendant has means to acquire knowledge of the contract's terms and deliberately fails to do so, the requisite knowledge will be deemed to be acquired, and this element will be satisfied.¹⁸

Element 5: The defendant knew it was inducing a breach of the contract

The fifth element requires the plaintiff to establish that the defendant knew it was inducing the third party to breach its contract with the plaintiff. If the defendant honestly believed that her actions would not breach the plaintiff's contract, liability is avoided.¹⁹

Element 6: The defendant intended to procure a breach of contract

The sixth element is often regarded as the most problematic element for the plaintiff to establish. The plaintiff must prove that the defendant intended to induce a breach of contract "by showing that the defendant acted with the desire to cause a breach of contract or with the substantial certainty that a breach of contract would result from the defendant's conduct."²⁰ In other words, breach of the contract has to be an end or a means to an end.

Understanding the rationale for this element may be more easily understood when it is examined in the negative. As explained in *SAR Petroleum*:

if the breach of contract were neither an end in itself nor a means to an end, one must conclude that it was unintended. Hence, if the defendant did not act out of malice or obtain an economic advantage as a result of the breach, it should follow that the requisite intention is absent and the tort action must fail.²¹

As a final point under the sixth element, although the House of Lords relied on malice as an element in *Lumley*, it is not a required element. The required element is proof of the defendant's intention to procure a breach of contract.

Element 7: The plaintiff can prove damages

The seventh element requires the plaintiff to prove that damage was suffered in consequence of the defendant's conduct. When making a claim for damages, the plaintiff should contemplate three things. First, the plaintiff's action against the defendant will often coincide with a

¹⁷ *Supra* note 12 at para 45.

¹⁸ *Ibid.*

¹⁹ *Ibid* at para 46.

²⁰ *Supra* note 14 at 710.

²¹ *Supra* note 12 para 55.

successful action for breach of contract against the third party. Receiving the same damages twice, known as overlap, will not be awarded and a claim for both should be avoided.²² Second, some damages that are not recoverable in the action for breach of contract against the third party are recoverable in tort against the defendant.²³ Finally, damages for inducing breach of contract are “at large”, defined as “a matter of impression and not addition.”²⁴ Strict proof of specific damage is not required. At large damages may go beyond normal contractual damages and have been theorized to include loss of reputation, as well as punishment to the defendant.²⁵

Element 8: The defendant is unsuccessful in raising the defence of justification

The final element is that a defendant may rely on the defence of justification to avoid liability for inducing breach of contract. The ambit of justification is uncertain. If successful, it allows the deliberate interference in the contractual interests between the plaintiff and a third party.²⁶ The courts have been reluctant to define the scope of the defence of justification, leaving discretion completely in the hands of the trier of fact.²⁷ Successfully raising the defence of justification is rare.²⁸

The required components of a pleading of the inducement tort

A pleading for the inducement tort must set out:

1. that a valid and enforceable contract subsisted between the plaintiff and the third party;
2. that the defendant was or can be assumed to have been aware of the existence of that contract;
3. that the defendant procured a breach of the contract;
4. that the breach was effected by wrongful interference on the party of the defendant; and
5. that the plaintiff suffered damages as a result.²⁹

²² *Supra* note 14 at 717.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Supra* note 6 at 107. Burns and Blom explain that the most comprehensive discussion of the defence of justification in Canadian jurisprudence was undertaken by Justice Gale in 1964, where he discussed three potential defences: superior legal rights, superior moral duty and superior public duty.

²⁸ *Posluns v Toronto Stock Exchange et al*, 1965 CanLII 32 (ONCA) and *Even v. El Al Israel Airlines Ltd*, 2006 CanLII 5305 (ON SC) are two cases where the defendant successfully raised the defence of justification.

²⁹ *Posluns v Toronto Stock Exchange*, *ibid*, cited in McLachlin and Taylor, *British Columbia Court Forms, Second Edition 2e*, loose-leaf (consulted on 3 May 2013), (Markham, LexisNexis Canada Inc, 2005) vol 2 at 11F115.

III. Unlawful Interference with Economic Interests

Liability for intentional economic interference is not confined to situations involving a breach of contract. Unlawful interference with economic interests is tortious not because of the ends (unlike the inducement tort), but because of the means. The essence of a free market economy allows the lawful intent to cause economic loss to others. However, if a party does so in an *unlawful* manner with intent which results in damage suffered by the plaintiff, the unlawful interference tort applies.³⁰

The Ontario Court of Appeal in *Alleslev-Krofchak v. Valcom Ltd.*³¹ set out the “role of the intentional interference tort” as follows:

If the third party ... interferes with the plaintiff's economic interests as a result of unlawful means used by the defendant against that third party, the defendant ought to be liable to the plaintiff because unlawful means were employed by the defendant to intentionally harm the plaintiff.³²

OBG Limited sets out four conditions which must be met to establish the tort of unlawful interference with economic interests: 1) interference with the plaintiff's trade or business (*i.e.*, the plaintiff's economic interests); 2) the use of unlawful means; 3) the intent to injure the plaintiff; and 4) damage suffered by the plaintiff.³³ Some of these elements have been further refined, in some instances by Canadian courts.

Element 1: Interference with the plaintiff's trade or business

The unlawful interference tort exists in two kinds of situations: when a defendant interferes with an existing contract between the plaintiff and a third party *without* causing a breach of the contract,³⁴ and when the defendant interferes with the plaintiff's economic interests without reference to a particular contract entered into by the plaintiff and a third party, but does something that affects the plaintiff's economic situation generally through a third party.³⁵ If the actions of the defendant result in a breach of contract, the tort of unlawful interference with economic interests does not apply.

Element 2: The use of unlawful means

The question of what amounts to “unlawful means” is the element that has caused the most difficulty. There are two layers of complexity: first, what sort of conduct is sufficient to amount

³⁰ *Supra* note 6 at 10.

³¹ 2010 ONCA 557.

³² *Ibid* at para 97.

³³ *Supra* note 7 at 767.

³⁴ *Ibid*.

³⁵ William Blair, *Bullen & Leake & Jacob's Precedents and Pleadings* (London: Sweet & Maxwell, 2012) at 60-08.

to unlawful means and second, must unlawful means be actionable by a third party against whom they are directed (as opposed to being actionable by the plaintiff).

The B.C. Court of Appeal explained in *Pro-Sys Consultants Ltd. v. Microsoft Corp.*,³⁶ that the case law reflects two different views of what might constitute “illegal or unlawful means.” Under the narrow view, this phrase only includes acts prohibited by law or statute. Under the broader view, it extends to acts without legal justification, or acts the defendant “is not at liberty to commit.” Which of these is the correct formulation is still an open question in B.C., although there are more cases reflecting the broader view. The following have been held to constitute “unlawful means” in Canadian jurisprudence: crimes and torts; contractual breaches; statutory breaches; contempt of court; and aiding and abetting contempt of court.

The House of Lords in *OBG Limited* provided a further refinement of this issue. While the focus of that decision, and the distinction between the ruling of the majority and the minority, was on whether conduct actionable directly by the plaintiff could amount to “unlawful means”, the majority effectively blended the two questions by defining unlawful means as acts against a third party that are actionable by that third party or would have been actionable if the third party had suffered a loss.

On the second issue, the majority of the House of Lords emphasized that to qualify as “unlawful means” the defendant’s actions cannot be directly actionable by the plaintiff and instead must be directed at a third party, which then becomes the vehicle through which harm is caused to the plaintiff. The Ontario Court of Appeal has adopted this view³⁷ in *Correia v. Canac Kitchens*³⁸ and *Alleslev-Krofchak v. Valcom Ltd.*;³⁹ so too has the New Brunswick Court of Appeal in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*⁴⁰ The Court of Appeal of British Columbia has yet to render a judgment on this issue, however in *0856464 B.C. Ltd. v. TimberWest Forest Corp.*,⁴¹ the British Columbia Supreme Court adopted the same view as the Ontario and New Brunswick Courts of Appeal.

Element 3: The intent to injure the plaintiff

In *OBG Limited*, the House of Lords maintained that “there must be an intention to cause loss.”⁴² The intentional acts at issue must be directed, at least in part, against the plaintiff.⁴³ In

³⁶ 2011 BCCA 186, leave to appeal to S.C.C. allowed (2011), 430 NR 392 (note).

³⁷ It is worth noting that the Saskatchewan Court of Appeal recently concluded that the law on this issue was unsettled in that province: *Mallard v. Saskatchewan Financial Services Commission*, 2011 SKCA 150, application for leave to appeal to S.C.C. filed, 2012 CarswellSask 84.

³⁸ 2008 ONCA 506 at paras 101, 106.

³⁹ *Supra* note 32.

⁴⁰ *Supra* note 5.

⁴¹ 2012 BCSC 597.

⁴² *Supra* note 3 at para 62.

⁴³ *Westcoast Landfill Diversion Corp. v. Cowichan Valley (Regional District)*, 2009 BCSC 53 at para. 374 [*Westcoast Landfill Diversion*]; *Print N’ Promotion (Canada) Ltd. v. Kovachis*, 2011 ONCA 23 at para. 23 [*Print N’ Promotion*].



the absence of malice or deliberate conduct calculated to interfere with economic or trade interests to the detriment of the plaintiff, there can be no liability.⁴⁴ However, the injury to the plaintiff need not be the defendant's primary or predominant purpose in acting.⁴⁵ And further, one intends to cause loss even though it is the means by which one achieves the ends of enriching oneself.⁴⁶

On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions.⁴⁷ Accordingly, the requirement of an intention to injure is not made out where the wrongful conduct at issue was not targeted against the plaintiff but, rather, was simply an incidental or foreseeable result of the defendant's allegedly wrongful conduct.⁴⁸ Negligence or recklessness are sufficient to support the required intention to make out the tort.⁴⁹

Element 4: Damage was suffered by the plaintiff

As with all economic torts, proof of damage is essential and the plaintiff must show that the damage was caused by the unlawful interference. There must be a causal connection between the unlawful means and the loss suffered by the plaintiff.⁵⁰

The required components of a pleading of the unlawful interference tort

A pleading for the unlawful interference tort must set out:

1. use by the defendant of unlawful means, thereby;
2. interfering with the actions of the third party in relation to the claimant;
3. intention to cause loss to the claimant; and
4. damage.⁵¹

IV. The differences between the inducement tort and the unlawful interference tort

The inducement tort and the unlawful interference tort are distinct and separate torts which apply in different factual settings.

⁴⁴ *Westcoast Landfill Diversion, ibid*, at paras 376, 409.

⁴⁵ *Reach MD Inc v Pharmaceutical Manufacturers Association of Canada* (2003), 65 OR (3d) 30 at para 46 (CA).

⁴⁶ *Supra* note 3 at para 62, cited in *Westcoast Landfill Diversion*, at para 375, and in *Print N' Promotion*, at paras 25-26.

⁴⁷ *Supra* note 3 at para 62.

⁴⁸ *Print N' Promotion, supra* note 44 at para 24.

⁴⁹ *Supra* note 39.

⁵⁰ *Supra* note 32 at para 50.

⁵¹ *Supra* note 36.

Unlawful interference is a tort of “primary liability”; it is not dependent upon the wrongful act of another party. In contrast, the inducement tort is a tort of “accessory liability”, requiring the primary wrongful act of the third party to breach the contract with the plaintiff.⁵²

In addition, the unlawful interference tort requires the use of independently unlawful means, whereas the inducement tort does not.⁵³ The inducement tort may involve conduct entirely lawful, such as gentle persuasion.⁵⁴

Further, liability for unlawful interference does not depend, as does inducing a breach of contract, upon the existence of contractual interests, as long as the intended consequence of the wrongful act is damage in any form, for example, the plaintiff’s economic expectations.⁵⁵

Finally, both are torts of intention but the intended results are different, in that in the unlawful interference tort the defendant must have intended to cause the plaintiff damage, whereas in the inducement tort an intention to cause a breach of contract is both necessary and sufficient.⁵⁶

V. Civil Conspiracy

The tort of civil conspiracy is often pleaded as an alternative to the inducement tort or the unlawful interference tort. Conspiracy comes in two varieties: conspiracy to injure (also referred to as lawful means conspiracy or “simple motive conspiracy”) and conspiracy to injure by unlawful means (also referred to as “unlawful means conspiracy”).⁵⁷

Lawful means conspiracy is when “two or more persons are liable for agreeing to a course of conduct, which may otherwise be legal, with the predominant purpose of injuring the plaintiff.”⁵⁸ Unlawful conspiracy “does not require that the predominant purpose of the conspiracy be to injure the plaintiff, only that the conspirators direct their unlawful conduct at the plaintiff and know or ought to know that injury to the plaintiff is likely to and does result.”⁵⁹

Common to both varieties is an agreement between two or more parties to act. In *Nicholls v. Richmond (Twp.)*,⁶⁰ Justice McLachlin (as she then was) articulated that the agreement between conspirators need not be in a specific form or even constitute a binding contract; it

⁵² 4726031 *Manitoba Ltd v A Stepping Stone Adult Learning Centres*, 2012 MBQB 205 at para 154.

⁵³ *Ibid.*

⁵⁴ *Supra* note 4 at para 27.

⁵⁵ *Supra* note 53.

⁵⁶ *Ibid.*

⁵⁷ *Supra* note 6 at 11.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Supra* note 14 at 731 citing *Nicholls v. Richmond (Twp.)* [1984] 3 WWR 719 at 730-31 (BCSC).

merely needs to be a “joint plan or common design.”⁶¹ However, “parties who act independently, each with the intention of injuring the plaintiff but not having agreed together in advance to do so, cannot be sued for conspiracy.”⁶² Further, “[m]ere knowledge, acquiescence, or approval of the action, without co-operation or agreement to co-operate” has been held as insufficient to establish a conspiracy.⁶³

Once the plaintiff has established an agreement between two or more parties to act, action can be brought as simple motive conspiracy or unlawful means conspiracy.

Simple motive conspiracy

Under simple motive conspiracy, the greatest challenge lies in proving that the defendants’ predominant purpose was to cause injury to the plaintiff. If the defendant’s actions were *not* for the predominant purpose to cause harm (for example, to promote its own interests or the interests of another), the action fails.⁶⁴

A.G. Ont. V. Dieleman,⁶⁵ a 1994 decision of the Ontario General Division, provides a good example. The defendants, anti-abortion protestors, picketed hospitals, clinics and the homes and offices of doctors. Although the defendant protestors worked together and caused harm to the plaintiffs, the tort of conspiracy as a cause of action failed because the defendants’ predominant purpose was to advance their ideological views, not to harm or injure health providers.⁶⁶

Although somewhat confounding, it must be remembered that when one party acts alone for the predominant purpose of injuring the plaintiff, no cause of action can be raised. However, when those same actions are committed by two or more parties acting in concert, an action can be raised.⁶⁷ This outcome has been criticized by legal academics.⁶⁸

Unlawful means conspiracy

The tort of unlawful means arises when parties combine to use unlawful means and the plaintiff endures harm or damage as a result.⁶⁹ The application of the unlawful means conspiracy tort is narrow. If the unlawful means are in themselves tortious and would give rise to a cause of

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid* at 732 citing *Culzwan Investments Ltd v Midwestern Broom Co* [1984] 3 WWR 11 at 40 (Sask QB).

⁶⁴ *Supra* note 14.

⁶⁵ (1994), 117 DLR (4th) 449 (Ont Gen Div).

⁶⁶ *Supra* note 14 at 733.

⁶⁷ *Supra* note 7 at 724.

⁶⁸ *Supra* note 14 at 730.

⁶⁹ *Ibid* at 734.

action without two or more parties acting together, a claim for conspiracy adds little to the cause of action (although it may give rise to more damages).⁷⁰

In *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*,⁷¹ a 1983 decision of the Supreme Court of Canada, Justice Estey states that to establish the tort of unlawful means conspiracy the defendants work together to commit an unlawful act which is directed towards the plaintiff and intended to cause injury to the plaintiff, and injury to the plaintiff is likely to and does result.⁷²

The legitimacy of this tort has also been questioned by academics. The main criticism relates to the fact that the addition of other parties acting in concert creates greater liability that would be present if the parties simply acted alone.

The required components of a pleading of conspiracy

A pleading of conspiracy must set out:

- the parties to the agreement (combination) (you can chose which ones you name as defendants but you must name all the conspirators in the body of the pleadings and outline their relationship to each other);
- the particulars of the agreement;
- the purpose or object of the conspiracy;
- the overt act or acts done in furtherance of the agreement (and to the extent they are unlawful, in what way they were unlawful); and
- the damages suffered by the plaintiff from those acts. Special damages need to be pleaded and proved.

VI. Conclusion

Some of the benefits of *OBG Limited* are obvious: the House of Lords' delineation of the inducement tort and the interference tort have provided a better understanding of the distinction between the two. This has allowed subsequent courts to refine the elements of each further and has allowed for their easier application.

OBG Limited may also have latent benefits. Lord Diplock described the tort of conspiracy as “a highly anomalous cause of action.”⁷³ Others have called for its abandonment.⁷⁴ As the tort of civil conspiracy is often pleaded as an alternative to inducing breach of contract or unlawful

⁷⁰ *Ibid.*

⁷¹ [1983] 1 SCR 452.

⁷² *Ibid.*

⁷³ *Lonrho Ltd v Shell Petroleum Co Ltd*, [1981] 2 All E R 456 (HL) at 463.

⁷⁴ *Supra* note 14 at 730.

interference with economic interests and the frameworks which have emerged from the *OBG Limited* are clearer and easier to apply, litigants may feel less compelled to include a pleading of civil conspiracy. This would be another step in making economic torts easier to understand, easier to plead and, ultimately, less anomalous.

This paper was prepared for a Continuing Legal Education Society of BC course on Economic Torts held on May 23, 2013 in Vancouver, BC.

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