Most Negative Treatment: Check subsequent history and related treatments.
1998 CarswellNS 255
Nova Scotia Supreme Court [In Chambers]

Conrad v. Imperial Oil Ltd.

1998 CarswellNS 255, [1998] N.S.J. No. 267, 169 N.S.R. (2d) 59, 508 A.P.R. 59, 81 A.C.W.S. (3d) 632

Harley Conrad, Applicant and Imperial Oil, a partnership of Imperial Oil Limited and McColl-Frontenac Petroleum Inc., Respondent

Gruchy J.

Judgment: June 16, 1998
Heard: April 15, 1998
Docket: S.H. 144535/98

Counsel: *Ronald A. Pink, Q.C.* and *David J. Roberts Esq.*, for the Applicant.
Peter Bryson, Esq. and *Brian Johnston, Esq.*, for the Respondent.

Headnote

Labour law --- Discipline and termination — What constituting discipline or termination

Oil company sold fleet of ocean tankers to new company — Oil company informed employees and that they all would be offered employment by new company, and all employees consented — Employee applied for order requiring oil company to pay employees 16 weeks wages in lieu of notice of termination — Application was dismissed — Employees were transferred to new company, not terminated — Group termination within meaning of Canada Labour Code had not occurred and no employment loss was suffered as all employees consented to new employment — Oil company was under no obligation to give notice of termination — Canada Labour Code, R.S.C. 1985, c. L-2.

Labour law --- Discipline and termination — Practice and procedure — Miscellaneous issues

Oil company sold fleet of ocean tankers to new company — Oil company informed employees and that they all would be offered employment by new company, and all employees consented — Employee applied for order requiring oil company to pay employees 16 weeks wages in lieu of notice of termination — Application was dismissed — Action was taken by employee personally without reference to his representative capacity — Employee had no right to ask for remedy of 16 weeks wages for all employees as other people would be affected by action taken in his personal capacity.

Labour law --- Discipline and termination — Remedies at arbitration — Damages and compensation — Determination of award — General

Oil company sold fleet of ocean tankers to new company — Oil company informed employees and that they all would be offered employment by new company, and all employees consented — Employee applied for order requiring oil company to pay employees 16 weeks wages in lieu of notice of termination — Application was dismissed — Damages of 16 weeks wages in lieu of notice was not necessarily equivalent to 16 weeks notice of termination required by s. 212 of Canada Labour Code — Damages sought were not consistent with claim — Code provided no indication that 16 weeks notice equated 16 weeks wages — Canada Labour Code, R.S.C. 1985, c. L-2, s. 212.

Labour law --- Labour relations boards — Jurisdiction — General principles

Oil company sold fleet of ocean tankers to new company — Oil company informed employees and that they all would be offered employment by new company, and all employees consented — Employee applied for order requiring oil company to pay employees 16 weeks wages in lieu of notice of termination — Application was dismissed — Canada Labour Code was complete regime for employment standards and had not contemplated enforcement by private litigation — Court would not interfere with statutory scheme of Code — Canada Labour Code, R.S.C. 1985, c. L-2.

Table of Authorities

Cases considered by *Gruchy, J.*:

A'Hearn v. T.N.T. Canada Inc. (1990), 74 D.L.R. (4th) 663 (B.C. C.A.) — considered

Frame v. Smith, 78 N.R. 40, [1987] 2 S.C.R. 99, 42 D.L.R. (4th) 81, 23 O.A.C. 84, 42 C.C.L.T. 1, [1988] 1 C.N.L.R. 152, 9 R.F.L. (3d) 225 (S.C.C.) — considered

Gendron v. Supply & Services Union of the P.S.A.C., Local 50057, [1990] 4 W.W.R. 385, 66 Man. R. (2d) 81, [1990] 1 S.C.R. 1298, 44 Admin. L.R. 149, 90 C.L.L.C. 14,020, 109 N.R. 321 (S.C.C.) — considered

Rizzo & Rizzo Shoes Ltd., Re, 154 D.L.R. (4th) 193, 36 O.R. (3d) 418 (headnote only), *(*sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 221 N.R. 241, *(*sub nom. *Adrien v. Ontario Ministry of Labour)* 98 C.L.L.C. 210-006, 50 C.B.R. (3d) 163, *(*sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 106 O.A.C. 1, [1998] 1 S.C.R. 27, 33 C.C.E.L. (2d) 173 (S.C.C.) — distinguished

St. Anne Nackawic Pulp & Paper Co. v. C.P.U., Local 219, 86 C.L.L.C. 14,037, [1986] 1 S.C.R. 704, 28 D.L.R. (4th) 1, 68 N.R. 112, 73 N.B.R. (2d) 236, 184 A.P.R. 236 (S.C.C.) — considered

T.W.U. v. British Columbia Telephone Co., [1982] 6 W.W.R. 97, 39 B.C.L.R. 175, 83 C.L.L.C. 14,001, 140 D.L.R. (3d) 135 (B.C. S.C.) — considered

Statutes considered:

Canada Labour Code, R.S.C. 1985, c. L-2

Generally — referred to

Pt. III — referred to

Div. IX — referred to

s. 211 "joint planning committee" — referred to

s. 211 "redundant employee" — referred to

s. 211 "trade union" — referred to

s. 212 — considered

s. 212(1) — considered

s. 212(2) — referred to

s. 214 — referred to

s. 221 — referred to

s. 226 — referred to

s. 248 — referred to

s. 251 — referred to

Rules considered:

Civil Procedure Rules

R. 5.09 — referred to

***Gruchy, J.*:**

1 East Coast Marine Division of Imperial Oil Limited operated a fleet of ocean tankers for the delivery of refined petroleum products from Dartmouth, Nova Scotia, to distribution points in the Atlantic Provinces, the Gulf of St. Lawrence and the Great Lakes. There were approximately 88 full time employees of the Division. On January 5, 1998, Imperial Oil advised those employees that it had agreed to sell its fleet to Algoma Tankers Limited. On January 7, 1998, Imperial gave letters to the employees indicating that their employment with Imperial would terminate on February 1, 1998, and they would be offered

employment with Algoma to commence on the date of their termination with Imperial. The plaintiff has stated that his and his fellow employees' transfer to Algoma will result in the loss of certain benefits. Imperial disputes that position.

2 On January 23, 1998, the plaintiff commenced action by way of an Originating Notice, Application Inter Partes whereby he sought an injunction to prohibit Imperial from terminating the employment of the employees of the Division until it had complied with Division IX of the *Canada Labour Code*.

3 Mr. Conrad's application was resisted by Imperial Oil Limited.

4 The application for injunction was heard by the Honourable Associate Chief Justice Joseph P. Kennedy on January 27, 1998. While Justice Kennedy found that there may be a legitimate issue to be determined, he dismissed the application for injunction. In effect, Justice Kennedy found that if the plaintiff was successful, the appropriate remedy would be found in damages.

5 On April 2, 1998, Mr. Conrad filed an additional affidavit in which he stated that after the decision of Justice Kennedy, he and his fellow employees of Imperial had in fact taken employment with Algoma. He said that he had instructed his counsel to seek leave of the Court to amend the Originating Notice, Application dated January 20, 1998, by "deleting the application for injunction ... and substituting in its place the words 'an order requiring Imperial to pay the employees of its East Coast Marine Division whose employment was terminated effective February 1, 1998 sixteen (16) weeks pay in lieu of the the notice required by Division IX of the Canada Labour Code'."

6 The applicant does not appear to have pursued his stated intent to make application to the Court for leave to amend the Originating Notice, Application, and in fact the Originating Notice remains as it was initially framed. The parties, however, appear to have acted on the assumption that leave of the Court had been obtained and the amendment made. I will act on the same assumption. That is, this is an application for an order requiring Imperial to pay the various employees of its East Coast Marine Division 16 weeks' pay in lieu of the notice required by Division IX of the *Canada Labour Code*.

7 The parties are agreed that the East Coast Marine Division of Imperial was a Federal undertaking and that the *Canada Labour Code* applies to it. Division IX deals with group termination of employment. That section provides in part as follows:

> **Division IX - Group Termination of Employment**
>
> ***[9864] Definitions***
>
> **Sec. 211.** In this Division,
>
> > "joint planning committee" means a committee established pursuant to section 214;
> >
> > "redundant employee" means an employee whose employment is to be terminated pursuant to a notice under section 212;
> >
> > "trade union" means a trade union that is certified under Part I to represent any redundant employee or that is recognized by an employer of any redundant employee as the bargaining agent for that employee.
>
> ***[9865] Notice of group termination***
>
> **Sec. 212.** (1) Any employer who terminates, either simultaneously or within any period not exceeding four weeks, the employment of a group of fifty or more employees employed by the employer within a particular industrial establishment, or of such lesser number of employees as prescribed by regulations applicable to the employer made under paragraph 227(b), shall, in addition to any notice required to be given under section 230, give notice to the Minister, in writing, of his intention to so terminate at least sixteen weeks before the date of termination of the employment of the employee in the group whose employment is first to be terminated.
>
> **Copies of notice**

(2) A copy of any notice given to the Minister under subsection (1) shall be given immediately by the employer to the Minister of Human Resources Development and the Canada Employment Insurance Commission and any trade union representing a redundant employee, and where any redundant employee is not represented by a trade union, a copy of that notice shall be given to the employee or immediately posted by the employer in a conspicuous place within the industrial establishment in which that employee is employed.

8 Mr. Conrad has taken the following positions:

(a) Imperial did not provide 16 weeks' notice of termination as required by section 212(1);

(b) It did not form a joint employer/employee committee as required by section 214 of the Division;

(c) No program was implemented to mitigate the impact of the termination as required by section 226 of the Division; and

(d) It did not engage in a consultative process as required by Division IX.

9 Mr. Ross V. Matthews of Imperial filed affidavits in response to this application. He outlined some of the considerations leading to the sale of the tankers to Algoma. With respect to the actual transfer of the plaintiff and his fellow employees, Mr. Matthews said that Imperial took care to ensure that the interests of the employees were protected and that salary and benefits to be given to the employees by Algoma were comparable to those they had received at Imperial. Mr. Matthews outlined that Imperial had taken steps to discuss the transfer to Algoma with each of the employees and that they were each given an opportunity to obtain any information they wanted. Mr. Matthews said that all Imperial employees affected by the sale, including Mr. Conrad, had accepted the Algoma employment offer. Each employee affected was given an offer of separation payment by Imperial, which offer took into account the employee's years of of service and any discrepancies between the benefit packages to be provided by Algoma compared to the benefits provided by Imperial. The offers of separation payments varied from approximately three weeks' to eleven weeks' pay, with a vast majority of employees receiving approximately eleven weeks. Nineteen of the 88 employees affected accepted the separation package and signed a form of release to Imperial, including a waiver of rights under the *Code*.

10 Mr. Matthews, in his affidavit, set forth that inquiries were made of a Labour Standards officer at Human Resources Development Canada (the Branch of the Department in charge of the administration of the *Canada Labour Code*) and the parties were advised that Division IX of the *Code* did not apply in the situation under consideration. Mr. Matthews attached as an exhibit to his supplementary affidavit dated April 9, 1998, a copy of a letter dated February 25, 1998, from Mr. Ed Dugas, Labour Affairs Officer of Human Resources Development Canada, Labour Program, to Mr. Conrad's counsel, Pink Breen Larkin. The letter stated as follows:

This is a response to your verbal request concerning the applicability of Division IX, Group Termination to the sale of Imperial Oil's east coast tanker operations to Algoma Tankers Limited. A review of the documentation provided to our department by yourself as well as Imperial Oil Limited has confirmed my original position. As currently stated, this situation does not meet the Code's definition of a Group Termination. The employees are not being terminated, they are being transferred. It would appear that the only people who will lose their jobs are those who refuse offers from Algoma Tankers Limited. This being the case, Division IX would not apply.

Further it would also appear, in reviewing the collective agreements negotiated between Algoma and its three bargaining agents, that the requirements of Section 189 of the Code have been met.

11 Mr. Matthews stated that all the affected employees have gone to work with Algoma. Some employees did not start working immediately as they took accumulated time off which they had acquired as a result of their service with Imperial. Thirty-one of the employees affected received promotions to a higher rank with Algoma (and in some cases to an additional higher rank) with commensurate compensation improvement as a result of transferring to the larger Algoma fleet.

12 I have no evidence of the value of the benefits purported to have been lost by the employees as a result of their transfer to Algoma; nor do I have any evidence as to the compensation offered to or accepted by the employees as they transferred to Algoma.

Issues

13 Mr. Conrad has stated the issues as follows:

> 1. Was the termination of the employment of the employees of the East Coast Marine Division of Imperial Oil a group termination of employment in the meaning of Division IX of the *Canada Labour Code*?
>
> 2. What is the appropriate remedy for the obligation of the applicant?

14 Imperial has submitted that the issues are:

> (a) Whether the Nova Scotia Supreme Court is the appropriate forum for the determination of this matter;
>
> (b) Whether this Court has jurisdiction to enforce statutory rights;
>
> (c) Whether Division IX of the *Canada Labour Code*applies in this instance;
>
> (d) If Division IX does apply, whether the relief sought by the applicant is available under the statute; and
>
> (e) Whether the applicant, Harley Conrad, has any right to claim monies on behalf of other affected employees including those who have signed releases.

15 I will only address issues which I consider essential in the circumstances of this case.

1. Was termination of the employment of the employees of the East Coast Marine Division of Imperial Oil a group termination of employment in the meaning of Division IX of the Canada Labour Code?

16 Unquestionably, Imperial ended its employment relationship with each of the employees. All criteria serving to identify an employer/employee relationship as between Conrad and Imperial ended. But Human Resources Development Canada and Imperial both said the employment of the employees in question was not terminated; the employees were transferred. Indeed, it is clear on Mr. Conrad's evidence that there was no loss of employment for him or for any of his fellow employees. By their acceptance of employment with Algoma, Mr. Conrad and his fellow employees all appear to have consented to the exchange of employers. Imperial takes the position that it did not terminate employment of those concerned, but rather, ensured the continuation of their employment with another employer. This is the crucial question with respect to s.212. All other conditions relative to the applicability of s.212 are present. That is, there was a group of fifty or more employees involved whose employment by Imperial was terminated. If there was a termination of employment, then the Minister was entitled to sixteen weeks' notice and a copy of that notice was to be given to the employees affected.

17 Mr. Conrad has pointed to in *Rizzo & Rizzo Shoes Ltd., Re* (1998), 154 D.L.R. (4th) 193 (S.C.C.). That case, however, involved the effect of an employer's bankruptcy resulting in the dismissal of employees on the date of the Receiving Order. That case deals with the statutory interpretation of the relevant *Employment Standards Act* and is unquestionably pertinent to such interpretation, but the case is distinguishable on its facts. In that case there was a termination of employment from the perspective of both employer and employee. There is no mention in the report of arrangements having been made by the employer for the continued employment of its employees, as in the case before me. The case is not helpful in addressing the factual situation here.

18 In my view, there is no question as to the purpose or the scheme of the *Canada Labour Code*. Both are abundantly clear. The *Code* would clearly have required notice to the Minister if the employment of Mr. Conrad and his fellow employees had been terminated without arrangements for continued employment by Algoma.

19 I have concluded that in the circumstances of this particular case Mr. Conrad suffered no termination of employment. His employment was continued by the new employer. Accordingly, Imperial was not under an obligation to give the Minister notice of termination; in fact, the Minister declined notice. From the subjective perspective of Mr. Conrad and his fellow employees, there was no termination of employment within the meaning of Division IX of the *Code*. The intention of the notice period referred to in s.212 is to minimize the adverse effects which may be suffered by employees who will be losing employment. Here there was no termination of employment by either Mr. Conrad or his fellow employees within the meaning of Division IX of the *Code*.

2. Form of Action

20 This action is taken by Harley Conrad personally. There is no reference in the pleadings to the action having been taken in a representative capacity as would be required by *Civil Procedure Rule* 5.09. Nonetheless, Mr. Conrad describes himself as "chair of the Imperial Tanker Employees' Termination Committee". I do not know whether Mr. Conrad purports to have taken this action on behalf of that Committee, nor am I aware of that Committee's legal status. Mr. Conrad's affidavits in support of the application appear to speak on behalf of 88 full-time employees of the East Coast Marine Division of Imperial Oil, but I do not know if that Committee encompassed all 88 employees. Mr. Conrad's affidavits address what he considers to be a prejudice to all the employees affected by the transfer; this is a finding of fact which I cannot make on the evidence before me. Indeed, there is evidence before me from Mr. Matthews' affidavits that some (19) of the 88 employees have specifically waived "...any and all rights under employment standards legislation, i.e., the *Canada Labour Code*." Mr. Conrad has purported by his affidavit of April 2, 1998, to ask for an order requiring Imperial to pay the employees affected sixteen (16) weeks pay in lieu of notice required by Division IX of the *Canada Labour Code*. He does not have the right to ask for that remedy affecting other people in an action taken in his personal capacity.

21 It is my conclusion that if Mr. Conrad has any right of action, he has taken it in the wrong form.

3. The remedy sought

22 In addition, the request for 16 weeks' pay in lieu of notice cannot be equated to the notice requirement of s.212. That section is intended to require notice of termination so that during the 16 week period the adverse effects of the termination may be mitigated while the employees affected continue to be employed. The period is intended to be used for the employer and employees to negotiate jointly to achieve the objects set forth in s.221. The thrust of the negotiations would be for the protection of the group. There is no guarantee in this process for the protection of individual benefits or even equality of protection. It is impossible to conclude that Mr. Conrad, or any of the group, would have achieved the equivalent protection of 16 weeks' pay in lieu of notice by the process established by Division IX, assuming that division is applicable at all.

4. Jurisdiction of the Court

23 The *Canada Labour Code* establishes a complete regime for standards of employment in federal works, undertakings and businesses, including the tanker business of Imperial under consideration. The collective rights of employees under the jurisdiction of the *Code* are exclusively governed by its terms. When approached by the parties, the Labour Affairs Officer of Human Resources Development Canada, the Federal department charged with the responsibility for the administration and enforcement of the *Code*, ruled that Division IX did not apply to the situation under consideration. There is no appeal procedure from such a decision set forth in the *Code*.

24 Imperial has submitted, and I agree, that the Court should not interfere with the comprehensive statutory scheme of the *Code*. It points to the decision of the Supreme Court of Canada in *St. Anne Nackawic Pulp & Paper Co. v. C.P.U., Local 219* (1986), 28 D.L.R. (4th) 1 (S.C.C.), wherein the jurisdiction of a Court in relation to a claim for damages for an illegal strike was considered where an arbitration process was available. Justice Estey said at p. 14:

> What is left is an attitude of judicial deference to the arbitration process. This deference is present whether the board in question is "statutory" or a private tribunal (on the distinction in the labour relations context, see *Roberval Express*

Ltd. v. Transport Drivers, Warehousemen & General Workers Union, Local 106 et al. (1982), 144 D.L.R. (3d), [1982] 2 S.C.R. 888, 83 C.L.L.C. 14,023; *Howe Sound Co. v. Int'l Union of Mine, Mill & Smelter Workers (Canada), Local 663* (1962), 33 D.L.R. (2d) 1, [1962] S.C.R. 318, 37 W.W.R. 646, affirming 29 D.L.R. (2d) 76, 36 (1961), 29 D.L.R. (2d) 76, 36 W.W.R. 181; *Re Int'l Nickel Co. of Canada Ltd. and Rivando* (1956), 2 D.L.R. (2d) 700, [1956] O.R. 379 (C.A.)). It is based on the idea that if the courts are available to the parties as an alternative forum, violence is done to a comprehensive statutory scheme designed to govern all aspects of the relationship of the parties in a labour relations setting. Arbitration, when adopted by the parties as was done here in the collective agreement, is an integral part of that scheme, and is clearly the forum preferred by the Legislature for resolution of disputes arising under collective agreements. From the foregoing authorities, it might be said, therefore, that the law has so evolved that it is appropriate to hold that the grievance and arbitration procedures provided for by the Act and embodied by legislative prescription in the terms of a collective agreement provide the exclusive recourse open to parties to the collective agreement for its enforcement.

25 *St.-Anne* was followed by the British Columbia Court of Appeal dealing with the *Code* in *A'Hearn v. T.N.T. Canada Inc.* (1990), 74 D.L.R. (4th) 663 (B.C. C.A.), at 673 as follows:

> Since *St. Anne* was decided there has been a clear message from this court and from other courts in Canada that it would be wrong for the court to assume a jurisdiction parallel to that of specialty labour tribunals and other speciality tribunals to deal with claims such as those forming the subject of this appeal. For the courts to do so would be to frustrate the comprehensive scheme assigned by Parliament to the other tribunals whose sole work is to address and supervise these matters: see *Bowcott v. C.B.R.T.& G.W., Local 400* (1988), 29 B.C.L.R. (2d) 198 at pp.202-4, 1- A.C.W.S. (3d) 410 (C.A.); *Moore v. British Columbia* (1988), 50 D.L.R. (4th) 29 at pp. 36-7, 88 C.L.L.C. ¶17,021, 23 B.C.L.R. (2d) 105 (C.A.); *Jordan v. District Transportation System Ltd.* (1986), 11 C.C.E.L. 142 (Ont. Dist. Ct); *Sitka Forest Products Ltd. v. Andrew* (1988), 32 B.C.L.R. (2d) 12 A.C.W.S. (3d) 260 (S.C.): *Ferris v. Kirstiuk* (1989), 90 C.L.L.C. ¶12,302, 14 A.C.W.S. (3d) 69 (B.C. Co. Ct.).

26 It is clear that the Court should not intervene in relation to issues addressed by the *Code*. In *Gendron v. Supply & Services Union of the P.S.A.C., Local 50057*, [1990] 1 S.C.R. 1298 (S.C.C.), Justice L'Heureux-Dubé describe the *Code* as a complete and comprehsnsive scheme that both supplies the duty and provides the necessary adjudicative machinery such that resort to the common law is duplicative in any situation where the statute applies.

27 Justice L'Heureux-Dubé went on to conclude that the Courts owe deference to decision-making structures set up by labour legislation in general. In this case the appropriate officer pursuant to the *Code* ruled that Division IX does not apply. Deference requires this Court to honour that decision - even though it is one by which jurisdiction was declined. I conclude that to apply a sanction against Imperial by ordering 16 weeks' pay in lieu of the notice requirement of s.212 would amount to interference with and intervention in the process contemplated by the *Code*. Part of that process includes a mechanism in s.248 whereby the Minister of Labour may cause an inquiry to be made into and concerning employment. In addition, an inspector may be designated by the Minister who, pursuant to s.251, is empowered to order the payment of wages to employees entitled to them. That is the remedy which Mr. Conrad seeks by this action to have imposed by the Court. An order by the Court paralleling the *Code*'s process would, in my view, be inappropriate

28 Part III of the *Code* provides penalties for breaches of its provisions but provides no remedy to individual employees (or groups of employees) whose employment has been terminated without compliance with s.212. Justice Spencer considered this subject in *T.W.U. v. British Columbia Telephone Co.* (1982), 140 D.L.R. (3d) 135 (B.C. S.C.). He considered the matter of penalties and enforcement of the *Code* and concluded at p.141:

> Thus no remedy is provided by the *Canada Labour Code* to an employee or class of employees who have been deprived of their statutory right to have the Minister notified and themselves to receive notice under the provisions of s.60 of the Act.

29 Justice Spencer did not rule out the possibility of a private right of action.

30 The *Code* is a comprehensive statutory scheme with its own enforcement mechanisms. It makes no allowance for enforcement by private civil action. It does not address the matter of a private civil action. Imperial has pointed to the decision of the Supreme Court of Canada in *Frame v. Smith* (1987), 42 D.L.R. (4th) 81 (S.C.C.), wherein the majority of the Court said (at pp. 115-117):

> But what really determines that matter, in my view, is that any possible judicial initiative has been overtaken by legislative action.
>
> . . . . .
>
> It seems obvious to me that the legislature intended to devise a comprehensive scheme for dealing with these issues. If it had contemplated additional support by civil action, it would have made provision for this...
>
> In adopting this position, I am merely following the approach taken by this court in a number of recent cases. In *Board of Governors of Seneca College of Applied Arts & Technology v. Bhadauria* (1981), 124 D.L.R. (3d) 193..., the court had to deal with the issue whether the repeated denial of employment on the ground of racial discrimination gave rise to a common law tort. As in the case here, a comprehensive statute, the *Ontario Human Rights Code*, R.S.O. 1970, c.318, had been enacted to deal with the problem in the fact of rudimentary common law development. As here too, the substance of the right was defined by statute and an array of remedies had been devised to enforce it. Laskin C.J.C., speaking for the court, at p.200 D.L.R., p.189 S.C.R., made it clear that there was no room "to create by judicial fiat an obligation...to confer...[a] benefit upon certain persons...solely on the basis of a breach of statute, which itself provides comprehensively for remedies for its breach"....
>
> More generally, what the present action appears to contemplate is the enforcement of a statutory duty, or what amounts to the same thing, an order made by virtue of a statutory discretion, by means of a civil action rather than by means of the remedies provided by the Act. This court had occasion to deal with that issue in *The Queen in right of Canada v. Saskatchewan Wheat Pool* (1983), 143 D.L.R. (3d) 9... The court flatly rejected the notion of a nominate tort of statutory breach; if the legislature wished to provide for a civil action, it held, it could do so. Any other course would simply allow the courts to choose, in no predictable fashion, to grant a civil remedy for a statutory breach whenever they thought fit....

31 It is my conclusion that this action is, in effect, an attempt to have the Court enforce what the plaintiff sees as a statutory obligation. It is, of course, no longer possible to follow the course of action prescribed by Division IX, but assuming for the moment that such a course was mandated in these circumstances (and I find it was not), that course would not translate to the remedy sought and this Court should not resort to it.

Conclusion

32 For all the above reasons, I dismiss this action with costs. If necessary, I will hear the parties with respect to the costs.

Application dismissed.