

**Protecting Status Rights: Employment and Labour Tribunal Remedies**

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Charles E. HUMPHREY\*<sup>1</sup>

**INTRODUCTION** ..... 2

**I. PURPOSE OF REMEDIES** ..... 3

**II. LABOUR RELATIONS BOARD** ..... 7

**III. HUMAN RIGHTS TRIBUNALS** ..... 12

**IV. WORKERS' COMPENSATION TRIBUNALS/RETURN TO WORK RIGHTS** ..... 16

**CONCLUSION** ..... 19

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<sup>1</sup>. Stringer, Brisbin, Humphrey, Toronto, Ontario.

Many of the rules governing the employment relationship are not created by the parties to that relationship. They do not arise as a result of negotiated individual contracts of employment or through the collective bargaining process. Many of the rights which employees now have flow from the individual's status as an employee. They are granted by legislatures as they enact legislation to deal with employment standards, labour relations, workers' compensation, human rights, pay equity and occupational health and safety. These rights are not dependent upon any agreement by the parties to the employment relationship but, rather, attach to the employee by virtue of his or her status of an employee.

This paper will consider the remedies being granted by a representative group of labour and employment law tribunals charged with enforcing status rights. The paper deals with the broader subject of remedies as opposed to the narrower issue of damages simply because the enforcement of status rights often involves more than awarding of damages. This is so because of the underlying concerns of the tribunals, as discussed below, and because of the nature of the rights being protected. This paper will deal with three areas - labour relations legislation with a particular focus on the response to unfair labour practices; remedies imposed by human rights tribunals; and decisions by workers' compensation tribunals relating to the rights of injured workers to return to work. These particular pieces of legislation and these tribunals have been selected because of the range of issues and responses which their remedial authority and practices illustrate.

The remedial authority and concerns of the three types of legislation differ:

1. Labour Relations Acts, it has been said, are primarily concerned with the "establishment and regulation of collective bargaining" and only incidentally with the righting of individual wrongs.<sup>1</sup> That is, remedies to individual employees are granted within the context of the advancement of the concerns with collective bargaining which is the primary focus of the legislation. Grants of remedial

authority are broad, allowing tribunals considerable scope for the development of remedies.

2. Human Rights Codes, in contrast to labour relations concerns with the collective, have the individual as their focus. The tribunals charged with enforcement of the legislation grant remedies as a result of the complaints of individuals. The tribunals have a concern with the broader community and the impact of their actions on that community. The concern arises, however, in the context of the remedying of the complaints of individuals. As in the case of Labour Relations Boards, the remedial authority of such tribunals is broad, allowing for flexibility in the creation of remedies which meet the combined objectives of righting the individual wrong and promoting the Code's purpose in the community.
3. Workers' pension statutes and the tribunals enforcing them have recently been granted authority in some provinces<sup>2</sup> to remedy failures of employers to return injured workers to work. The authority given to the Tribunals varies from province to province. In Ontario, it is very narrow and does not provide for reinstatement by the tribunal.<sup>3</sup> The central concern of the tribunals is the righting of individual wrongs as part of a legislative scheme which has underlying policy objectives. Depending on the particular province the Tribunals have greater or lesser ability to further policy objectives.

## **I. PURPOSE OF REMEDIES**

Mr. Justice Estey in a lecture on this topic ten years ago quoted Dean Langdell:

*It is because rights exist and because they are sometimes violated that remedies are necessary. The object of all remedies is the protection of rights.*

Mr. Justice Estey went on to comment that:

*The right may be protected in three ways; namely, by preventing the violation of it (by injunction), by compelling a specific reparation of it when it has been violated (by restitution) and, thirdly, by compelling a compensation in money for a violation (by damages).<sup>4</sup>*

The dominant remedy granted for breach of an individual contract of employment has been damages. The measure of damages being:

*[T]he amount that the plaintiff would have earned had the employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the plaintiff, in minimizing damages, either had obtained or should reasonably have obtained.<sup>5</sup>*

Employment continuing according to the contract has, in the absence of a written contract, generally meant until termination for cause or on reasonable notice.

Remedies in common law employment contract cases have generally meant damages. Establishing damages has essentially required determining whether any are available. Was there just cause and, if damages are to be awarded, how much? What is the length of reasonable notice? While other heads of damage have been recognized, they are the exception rather than the rule. The process is a matter of measuring in money the value of the contract lost. The principles delineating the limits of entitlement are well-established. Their application in the particular case is the only issue. The concern is strictly with righting an individual wrong by way of money payment.

The principles in the case of labour and employment tribunals discussed here differ fundamentally from those in cases of contract. One of the risks in discussing remedies arising out of statutes that regulate employment is failing to recognize the fundamental difference. It is easy

to slip into thinking in contractual terms, when employment is involved. However, the rights being protected by remedies granted by labour and employment tribunals are not contractual. Rights may exist because an employment contract has been entered into but they do not depend upon the contract, once made, to give them life. While this is a statement of the obvious, it is a notion that is easy to forget given our natural inclination to think of employment in contractual terms.

It is submitted that remedies for labour and employment tribunals have two purposes:

- a) the righting of the wrong done to the individual employee(s); and
- b) furtherance of the objectives of the statute.

These are, of course, not mutually exclusive purposes.

The existence of and the interplay between these two purposes makes the appropriate remedial concerns of tribunals fundamentally different from those of a Court dealing with contracts of employment. It may appear that righting individual wrongs will, in cases of employment or income loss, involve a determination of damage in contractual terms. While contractual principles may be considered, they should not be determinative in measuring damages to individuals for breach of status rights. Damages for breaches of an employment contract normally involve a determination of how far wrong the employer was with respect to notice or the conclusion that he or she had just cause. The activity - termination - is permitted as long as it is done for cause or with reasonable notice. The damages then clearly have a limit, that is, the amount necessary to provide the money equivalent of reasonable notice.

A clear principle for the establishment of outer limits to remedies is not present in the case of violations of status rights. That is, one cannot set a limit on damages by asking how much money will it take to make it right? Unlike the common law contract which can be terminated at

the right price, there is no right price for breaches of a status right. Because it is a status right, no amount of money a priori would legalize the violation. This suggests that the only proper measure of damages is the actual loss subject to an obligation to mitigate. As we will see below, this problem of capping of damages has concerned the tribunals responsible for enforcement of employment legislation.

The nature of status rights in not being susceptible to quantification of the money value of a violation also encourages remedies other than damages as a response. In the case of righting individual wrongs, this may, for example, involve reinstatement orders. The concern with advancing the underlying policy of the legislation may encourage remedies which attempt to place individuals where they would have been but for the violation, rather than compensating them in money. The fear is that compensation and money will be perceived as a license fee for violations.

Both logic and policy considerations dictate that remedies for individual loss of status rights should be based on principles that are fundamentally different than those established for breaches of contract. Aside from the fact that they may arise out of the employment relationship, they are fundamentally different and should be so treated.

Remedies in cases of labour and employment legislation are also supposed to further the legislative purpose. This second purpose also dictates responses which are not subject to the same principles as those that apply in contract-based employment cases. As in the case of remedies directed to the individual, problems about setting limits arise in the case of furthering legislative objectives.

The connection between the violation or breach and the remedy in traditional employment law is clear. The rights to be protected are easily discernable. The remedies available to protect them are well developed. Relating the remedy to the breach is not difficult.

When concerns with furthering the policy of a statute arise in creating remedies, problems of limit also arise. How far should a tribunal go beyond what is necessary to remedy the individual's complaint? How far can efforts to deter others affect the remedy granted in an individual's case? At what point does a remedy which seeks to promote the policy of the legislation become punitive rather than compensatory?

It is submitted that, as long as the remedy is promoting the underlying policy of the legislation and is getting at the conduct or attitude which gave rise to the violation, it should be allowed. The directness of relationship between breach and remedy which would apply in the case of contract breaches should not be expected in the case of remedies attempting to enforce status rights. To require a direct connection between remedy and breach would undermine the ability of tribunals to design remedies to further the objectives of the statute.

## **II. LABOUR RELATIONS BOARD**

Both federal and provincial Labour Relations Boards in Canada have been granted broad remedial authority to deal with unfair labour practices and violations of the Act. The Ontario legislation which is typical of that found in many of the other provinces provides as follows:

*[W]here the Board is satisfied that an employer, employer's organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employer's organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, notwithstanding the provisions of any collective agreement, any one or more of*

- (a) an order directing the employer, employer's organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;*
- (b) an order directing the employer, employer's organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or*
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate in lieu of hiring or reinstate for loss of*

*earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employer's organization, trade union, council of trade unions, employee or other person jointly or severely.<sup>6</sup>*

The following often-cited quotation illustrates the interests which Labour Relations Boards feel that they must consider in the development of remedies:

*It is trite to say that all rights acquire substance only insofar as they are backed by effective remedies. Labour law represents no exception to this proposition. An administrative tribunal with a substantial volume of litigation before it faces a great temptation to develop boiler plate remedies which are easy to apply and administer in all cases. This temptation must be resisted if effective remedies are to buttress important statutory rights. An important strength of administrative tribunals is their sensitivity to the real forces at play beneath the legal issues brought before them and there is no greater challenge to the application of this expertise than in the area of developing remedies. To be effective, that remedy should be equitable; they should take account of the economics and psychology permeating the situation at issue; and they should attempt to take into account the reasons for the statutory violation. The remedy should also be sensitive to the interests of innocent bystanders. This means then that the Board should try and tailor remedies to each particular case. It is equally true, however, that the Ontario Labour Relations Board cannot police the entire labour relations arena. As important as it is for this Board to safeguard the substantive rights it administers, ultimately, compliance with the Act depends upon the vast majority of unions and employers according at least minimal respect to the legislation, the Board and the Board's directives. With its limited resources and the time that must be taken to adjudicate fairly issues of controversy, the Board must rely on the co-operation of employers and trade unions in the day-to-day administration of the Act. For this reason, the Board cannot get too far ahead of the expectations of the parties it regulates. It must be concerned that its decisions are perceived, in the main, as reasonable and fair to attract as much self-compliance as possible. It has therefore been said that the ideal Board order must be both an instrument of education and of regulation. See generally St. Antoine, a touchstone for Labour Board remedies, 1968, 14 Wayne Law Review 1039; Ross, Analysis of Administrative Process Under Taft-Hartley [1966] Lab. Rel. Yearbook 299.<sup>7</sup>*

In exercising the broad remedial authority granted to them Labour Relations Boards have attempted to fashion remedies which recognize concerns about the individual and the collective bargaining system as illustrated by the following:



1. Compensating unions for organizational, bargaining, legal and other expenses associated with attempts to acquire and pursue bargaining rights and a collective agreement.<sup>8</sup>
2. Compensating employees for loss of employment as a result of a closure motivated by anti-union animus.<sup>9</sup>
3. Where it concluded that the movement of a company out of the geographical area covered by the bargaining unit was in part motivated by anti-union animus, the Board reimbursed employees for transportation or commuting expenses or temporary housing for up to a year and also for permanent moving and relocation costs at any time within two years.<sup>10</sup>
4. The reimbursement of trade unions for costs of attempting to organize company's plants for a year as a result of the Board concluding that the move to a new location was motivated by anti-union animus.<sup>11</sup>
5. The posting of notices to employees advising them of their rights under the Act and including an assurance that the employer would not interfere with those rights.<sup>12</sup>
6. Providing the trade union with assistance in organizing where the Board concludes that the right to organize has been seriously interfered with, including providing access to the Company's premises for meetings with employees, providing access to Company bulletin boards for the posting of union literature and requiring the Company to provide lists of employees' names and addresses for use by the union.<sup>13</sup>

Given the broadly expressed remedial authority granted to Labour Relations Boards, Courts have been restrained in interfering with the exercise of that authority by the Boards. The limit on the innovation and the development of remedies by Labour Relations Boards seems to be that:

1. The remedy cannot cross over the line from being compensatory to being punitive; and

2. The remedy must be connected to the underlying policy of the legislation.

As to Ontario Divisional Court put it in the *Tandy Electronics* case,

*So long as the Award of the Board is compensatory and not punitive; so long as it flows from the scope, intent and provisions of the Act itself, then the Award of damages is within the jurisdiction of the Board. The mere fact that the Award of damages is novel, that the remedy is innovative, should not be reason for finding it unreasonable.*<sup>14</sup>

The Supreme Court of Canada in the *National Bank*<sup>15</sup> case had an opportunity to comment on the Labour Relations Board's remedial authority. In that case, the Board found that the Bank had closed one of its branches, which had been unionized, for reasons which had an anti-union element. The Canada Labour Relations Board ordered the Bank to create a trust fund to be jointly administered by the employer and the union. The funds were to be used to further the objectives of the Code amongst employees of the Bank. The Board also ordered that a letter under the signature of the Chairman and Chief Executive Officer of the Bank be forwarded to employees advising them of the creating of this trust fund. The letter also contained an acknowledgement of the Bank's wrong doing in the closure of the Branch. Other remedies were granted by the Board and not challenged by the Bank.

The Supreme Court set aside both remedies. The trust fund remedy was set aside on the basis that there was insufficient connection between the remedy and the consequences of the breach. That is, that the remedy was attempting to encourage the unionization of other employees of the Bank when, in the view of the Supreme Court, the fact that the Bank's other employees were not unionized was not a consequence of the closure of the Branch. This conclusion has been criticized.<sup>16</sup>

Whether or not one agrees generally with Labour Relations Boards' views regarding the responsiveness of the employment relationship and the chilling effect which employers' actions

can have, the Court's basis for rejecting the trust fund remedy is not very satisfactory. The Court appears to be demanding a kind of directness between remedy and breach which would undermine the ability of Tribunals to further the objectives of their statutes through the use of their remedial authority. The Supreme Court's formulation seems to have been that, since the fact that the Bank's employees were not unionized was not a direct result of the closure of the branch, providing a trust fund which would encourage unionization is not a remedy which flows from the breach. The analysis of the Canada Labour Relations Board on the other hand seems to have been that the closure of the Bank branch would convey to employees the message that if you engage in unionization this will be the consequence, thus discouraging unionization throughout the Bank's branches. Given the Board's view, the remedy of a trust fund to promote unionization does flow from the breach. It is submitted that the decision of the Supreme Court of Canada in the *National Bank* case is an example of the Court's inappropriately applying the kind of thinking that may make sense in cases of contractual breach to those situations where status rights (and the policies underlying statutes supporting status rights) are being remedied. The Court has failed to recognize that tribunals have a legitimate concern in crafting remedies, with not only the immediate consequences of the breach in mind but also the future effects.

The Court set aside the letter that the Board had required the Chairman and Chief Executive Officer to issue on the basis that it was tainted with the announcement of the creation of the trust fund. While this was the expressed basis for setting aside the letter, Mr. Justice Beetz in his supporting judgment described the letter as totalitarian. The letter, aside from the mention of the trust fund, in terms of its content does not vary significantly from the notices which the Labour Relations Board in Ontario requires employers to post regularly. The major difference is that the notices posted and signed by Management as required in the Ontario decisions clearly indicate that they are posted by order of the Board. In the *National Bank* case, the Board was purporting to order the Chairman to issue the letter as if it was coming from him unprompted by the Board.

The vehemence of the Court's response to the requirement that the Chairman send a letter to employees is difficult to understand. In terms of justifying it as a remedy, it would appear to

be a direct response to the breach and a direct attempt to remove from the Bank the benefit of its breach. Accepting the Board's finding that the Bank had closed the branch for anti-union reasons, what better remedy and what more direct remedy was available? Again, it is submitted that the Supreme Court exhibited thinking that was not in tune with the underlying concerns for fashioning remedies for the protection of status rights. If there is any criticism to be made of the decision of the Board in the case it was, perhaps, not allowing the Bank to indicate in the letter that the letter was being sent at the direction of the Board. Aside from that, in terms of remedy, it directly addressed the violation.

Labour Relations Boards have generally done a good job in developing remedies for breaches of their legislation which provide both for the individual employees affected and for the furtherance of the objectives of their legislation. The remedies have been characterized by innovation, restraint, individualization and sensitivity to the dynamics of the employment relationship. Generally speaking, the Courts have, quite properly, not interfered with the Boards' exercise of their remedial authority.

### **III. HUMAN RIGHTS TRIBUNALS**

Like Labour Relations Boards, Human Rights Tribunals in Canada both at the federal level and in the provinces have been given broad remedial authority. For example, in Nova Scotia, under section 34(8) of the *Human Rights Act*,

*A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefore.*<sup>17</sup>

Some Acts provide specifically for the payment of damages for mental anguish where it is concluded that the infringement has been engaged in wilfully or recklessly.<sup>18</sup>

The underlying policy being promoted by Human Rights legislation is generally explicitly expressed in the preambles to the legislation or in purpose clauses. This provides the Tribunals responsible for the enforcement of legislation with a direct source for determining the underlying policy which they are intended to implement.

Under Human Rights legislation, the focus is the individual. Therefore, while the advancement of policy is a concern it arises in the context of the protection of individual rights.

Non-monetary remedies by boards of inquiry have included the following orders, as summarized by one author:

1. To make a written apology to the complainant;
2. To offer the complainant an opportunity to apply for the next job opening [...];
3. To reinstate an employee;
4. To place advertisements for employment [...] with minority group organizations or newspapers, or to submit advertisements to the Commission for approval;
5. To post a copy of the Ontario *Human Rights Code* in the place of employment [...]; and
6. To desist from breaching the Code.

More recently, there has been a trend towards orders that, while not precisely affirmative action programs, require respondents to take positive steps to dispel discriminatory practices.<sup>19</sup>

The appropriate method for determining damages for loss of income as a result of a violation of Human Rights legislation is a matter of some controversy. Conflicting decisions have been reached by tribunals hearing cases under the Ontario Code and the federal Act.

There appears to be agreement that claims for wage losses as a result of violations of the Code are not subject to the standards of wrongful dismissal at common law but, rather, are subject to their own set of principles. As one Ontario Board of Inquiry put it:

*With respect to the claim for lost wages, I find that the law has established as a general principle that human rights remedies are intended as full and complete compensation of the complainant's loss and harm suffered, and that liability under the Code is a unique form of statutory liability which is not governed by principles established in other areas of the law; Re Airport Taxi Association and Piazza (Ont. C.A.), 1989; Robichaud, supra. Principles and concepts adopted in other areas of the law may be relevant as guidelines, but are not binding on a board of inquiry.<sup>20</sup>*

In the Ontario Court of Appeal's decision in the *Airport Taxicab* case, the Court commented as follows:

*Professor D.A. Soberman, sitting as a board of inquiry under the Human Rights Code has occasion to consider this issue in Whitehead v. Servidine Canada Limited (1987) H.8 CHRR D/3874. Professor Soberman discussed at some length the difference between the remedy for wrongful dismissal at common law and the remedies available under human rights legislation. In paragraph 30689, he commented as follows:*

*If this reasoning is sound, then the usual measure of economic loss in contract law for wrongful dismissal-lost wages during a period of reasonable notice - is not the correct measure to compensate an aggrieved complainant under the Human Rights Code. While there may be circumstances where the quantum of damages for wrongful dismissal in contract coincide with the compensation for breach of Section 4(1) of the Code, such circumstances are merely fortuitous. More often, the contract measure will be inadequate to compensate the complainant and also to carry out the purposes of the Code.*

With respect, I agree with this conclusion.<sup>21</sup>

The issue which has arisen with regard to damages for loss of income involves the problem of the establishment of a limit. That is, if an employee is terminated for a reason which is found to be in violation of the Code is there any limit on how long the employer is responsible for the loss of employment suffered by the employee? The limit which appears to have been accepted in Ontario is the limit of reasonable foreseeability. As the Board of Inquiry put it:

*I would express this as saying that a respondent is only liable for general damages for a reasonable period of time, a reasonable period of time being one that could be said to be reasonably foreseeable in the circumstances by a reasonable person if he had directed his mind to it. That is, what is the duration of time in which mitigation would reasonably be expected to have been achieved even though it could not be in the particular situation given the unique, exceptional situation of the aggrieved complainant.<sup>22</sup>*

Placing a cap on damages on the basis of reasonable foreseeability has been specifically rejected in at least one case before the Canadian Human Rights Tribunal. In *Keewatin Air Limited*,<sup>23</sup> the Tribunal took the position that based upon the use of the word "compensation" in what is now section 53 of the federal legislation, employees should be compensated for the actual loss suffered with no limitation other than the duty of the employee to mitigate.

It would not seem that the difference in approach can be explained based on the differences in the wording of the respective statutes. In the case of the Ontario statute the relevant word is "restitution".<sup>24</sup> There would seem no reason why the use of the term "restitution" as opposed to compensation should lead to a different result.

In terms of giving effect to the policies underlying Human Rights Codes, there would seem to be a greater connection with requiring the violator to bear the full cost to the injured party than giving the violator the benefit of a concept as illusive as reasonable foreseeability. Damages or other remedies for protection of status rights should not be based on thinking which arises out of contractual notions about the employment relationship. These notions are, in part, based on the desirability of predictability in business affairs, that is, the ability to quantify in advance the cost

of the action to be taken. It is sound policy to allow for quantifying in advance the cost of terminating an employee on a basis that the law permits, that is, upon giving reasonable notice. To create in advance a price tag for violation of a status right by applying a limit on damages based upon foreseeability is not, it is submitted, consistent with the underlying purpose of the legislation. In the case of status rights, predictability should come in the area of what it takes to comply with the legislation not what it costs to breach the legislation.

#### **IV. WORKERS' COMPENSATION TRIBUNALS/RETURN TO WORK RIGHTS**

One of the more recently created statutory rights afforded workers is the right to return to work following an absence because of injury. At least three provinces have such legislation. The remedial authority of the Tribunals enforcing the legislation varies among the provinces. Quebec<sup>25</sup> and New Brunswick<sup>26</sup> have given their respective Tribunals relatively broad grants of remedial authority. In both cases, the Tribunals have the authority to award damages for loss of income as well as to direct reinstatement of the employee. The Tribunals are given the ability to develop remedies to prevent continued discrimination or reprisals.

The remedial authority granted in the case of the Ontario Tribunal is much narrower. Under Ontario legislation, where the employer is found to have failed in its obligations the Tribunal can:

*Levy a penalty on the employer of a maximum of the amount of the worker's net average earnings for the year preceding the injury.*<sup>27</sup>

Such payment does not go to the worker. The worker is entitled to payment under the general workers' compensation scheme for a maximum of one year "as if" the worker had been entitled under the scheme.<sup>28</sup> That is the extent of the remedial authority.



The Ontario legislation is hard to understand from the perspective of the purpose of remedies in protecting status rights. The legislation is of interest as an example of legislation which limits a tribunal's remedial authority.

The Quebec and New Brunswick legislation allows for remedies that right individual wrongs and further the policy objectives of the statute. Scope for remedies to respond to individual situations is available.

The Ontario legislation by contrast fails to support what must surely be one of the policy objectives of workers' compensation legislation - reintegration of the worker into his or her workplace. The Ontario legislation may not even meet the basic objective of righting the wrong suffered by the worker, that is, actual loss suffered in terms of loss of employment will, in many cases, exceed what the legislation allows to be paid to the employee. The legislation puts an easily determinable price tag on the status right it grants. That is, the employer is able to determine how much it costs to violate the legislation. In some cases, this may be a deterrent but in others it will be a license fee. It is submitted that one of the characteristics of remedies to protect status rights that is offended by the legislation is that before-the-fact determination of the costs of a breach should not be easy.

The remedy available to the employee under the Ontario legislation and the penalty assessable against the employer allow for very little flexibility in remedial response. An employee who has been employed by a company for twenty years has no greater remedy available to him or her than an employee employed for five months. The breadth of the remedy and magnitude of the breach are not connected.

The legislation's limit of one year as a basis for calculating the remedy suggests a residue of contractual thinking being applied to status rights. It is hard to understand a limit of one year's remedy unless it is tied to some notion of the right of the employer to terminate on giving notice.

The legislation is not satisfactory from the employer's perspective. It is blunt. It does not allow for the development of remedial responses that take into consideration the needs, resources or limitations of the employer. The only decision is does the employer pay or not pay? It does not encourage the development of innovative solutions.

Unlike the other examples dealt with in this paper there is very little correspondence between the rights granted and the remedies available to protect those rights in the area of reinstatement rights in Ontario. The legislation purports to give a right of reinstatement but so limits the remedy available to enforce that right that there is a large area of right that is not protected by remedy. This lack of congruity between right and remedy is the fundamental flaw in the legislation. It is a good example of how a legislature fails to protect rights which it confers.

## **CONCLUSION**

Status rights created by legislation are different than rights created by contract. Because of the difference, remedial responses to breaches of status right should not be confined to concepts which have developed under the regime of contract-based employment relationships. Employment and labour tribunals should be given room by the Courts to right individual wrongs and further the policy underlying the statutes without requiring the relationship between remedy and breach to exhibit the directness that may be characteristic of remedies in contract.

## FOOTNOTES

1. R.O. McDowell, "Law and Practice Before the Ontario Labour Relations Board" (1977-78) VII Advocates Q. 198 at 224.
2. New Brunswick, Quebec and Ontario have such legislation.
3. *Workers' Compensation Act*, R.S.O. 1980, c. 539, s. 54b(13).
4. Mr. Justice W.Z. Estey, "The Law of Remedies - An Overview", in *New Developments in the Law of Remedies, Special Lectures of the Law Society of Upper Canada*, (Toronto: De Boo, 1981) 2.
5. H. McGregor, *McGregor on Damages* (London: Maxwell and Sweet, 1988) at 714 para. 1167.
6. *Labour Relations Act*, R.S.O. 1980, c. 228, s. 89(4).
7. *United Steelworkers of America and Radio Shack* (1980), 1 Can. L.R.B.R. 99 at 129-130.
8. *Ibid.*
9. *Communication Workers of Canada and Academy of Medicine Toronto Call Answering Service* (1978), 1 Can. L.R.B.R. 183.
10. *United Electrical Radio and Machine Workers of America and its Local 504 and Westinghouse Canada Limited* (1980), 2 Can. L.R.B.R. 469.
11. *Ibid.*
12. *Supra* note 7. The requirement to post the notice was upheld by the Divisional Court in *Re Tandy Electronics Ltd. and United Steelworkers of America* (1980), 30 O.R. (2d) 29. Posting of such notices has become a regular feature of remedies granted by the Ontario Labour Relations Board unfair labour practice cases.
13. *Supra* note 7.
14. *Re Tandy*, *supra* note 12 at 47.
15. *Bank and Finance Workers' Union, Local 4 of the Service, Office and Retail Workers' Union of Canada on behalf of N. Rolland v. National Bank of Canada* (1984), C.L.L.C. 14,327, original Canada Labour Relations Board decision *National Bank of Canada and Retail Clerks' International Union* (1982), 3 Can. L.R.B.R. 1.

16. T.A. Cromwell, "The Courts and Labour Law Remedies - Some Problems of Principle" (paper presented at Canadian Bar Association Conference, Winter 1989).
17. *Human Rights Act.*, R.S.N.S. 1989, c. 214.
18. For example, the Ontario *Human Rights Code, 1981*, S.O. 1981, c. 53 s. 40(1)(b); *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 53 (3).
19. J. Keene, *Human Rights and the Law* (Toronto: Carswell, 1983) at 309-310.
20. *Gohm v. Domtar Inc.*, 90 C.L.L.C. 16,268 at 16,277.
21. *Airport Taxicab (Malton) Association and Giurdey S. Man v. Lucy Piazza and the Ontario Human Rights Commission* (1989), 10 C.H.R.R. D/6347 at D/6348 (Ont. Div. Ct.).
22. *Rand v. Sealy Eastern* (1982), 3 C.H.R.R. D/938 para 8507.
23. *Rinn v. Keewatin Air Limited* (1988), 9 C.H.R.R. D/5106.
24. Ontario *Human Rights Code*, *supra* note 18 at s. 40(1)(b).
25. *Industrial Accidents and Occupational Diseases Act*, R.S.Q. c. A-3.01, ss. 257, 259 and 261.
26. *Workers' Compensation Act*, R.S.N.B. 1973, c. W-13, s. 42.2.
27. *Workers' Compensation Act*, R.S.O. 1980, c. 539, s. 54b(13)(a).
28. *Ibid.* at s. 54b(13)(b).