Injunctions and Trade Unions

by

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I. Introduction

The purpose of this paper is to examine the deficiencies in the present law relating to the granting of injunctions against industrial unions, to propose in outline a suggested reform of this law, and to describe some of the difficulties involved in effecting a reform of the law concerning a highly contentious political issue — the powers of trade unions. The problem of how to reform a situation where the law plays a role subordinate to other considerations will also be discussed.

The major part of the paper will be devoted to a discussion of the problems created by the present unsatisfactory laws and the injustices perpetrated by the continued use of those laws. The final part of the paper will deal with the possible means of reforming the law in this area. Different rules apply to reform of controversial matters than to reform of lawyers' law, and the means of effecting reform may be limited by this fact.

II. The Nature Of Strike Action

Injunction actions in industrial relations are usually brought to force striking workers back to work. In Britain, trade unions[1] have been protected from actions based on the industrial torts since the Trade Disputes Act was passed in 1906. New Zealand workers are not so protected, but oddly enough, use of common law remedies by employers to prevent or curtail strike action by workers has not been widespread[2] in this country. Recently, however, employers have taken advantage of the relatively weak legal position of trade unions and

[1] For the purposes of this paper, the terms "trade union" and "industrial union" are used synonymously.

[2] Some exceptional cases are: *Hughes* v. *Northern Coal Miners' Union* [1936]

have used the injunction procedure to stop strikes.[3] In addition to the common law bases for injunctions against striking workers, it now appears that concerned members of the public will be able to prevent strike action by attaching injunction proceedings to actions based on statutory torts.[4]

In order to appreciate the need for the protection of strike action, a brief discussion of the nature of this means of industrial warfare is necessary. Before 1973, strike action by a registered industrial union was illegal in any situation,[5] the overall scheme of the Industrial Conciliation and Arbitration Act 1954 being, of course, to solve industrial disputes by conciliation and arbitration without resort to direct action. The Industrial Relations Act 1973, without clearly stating that strikes are legal, does not contain provisions equivalent to sections 191(8) and 192(1) of the old Act making strike action *per se* illegal. Strikes are now illegal only in certain conflict situations specified by the Act.

A strike is defined by section 123 of the Industrial Relations Act.[6] This definition obviously includes other "lesser" forms of direct action such as "go-slows", rolling stoppages and working to rule. Leaving aside legal definitions, a strike is a negotiating weapon used by workers to force employers to accept certain terms. When a contract is negotiated, employers are obviously in a stronger bargaining position than individual workers, especially in times of high unemployment. Because individual workers have no power to improve conditions, workers form trade unions, whose collective strength is an effective bargaining weapon. When conciliation and arbitration fail as a means of making an agreement, workers sometimes use direct action to force an employer to agree to their terms, just as sometimes the

N.Z.L.R. 781; *P.T.Y. Homes Ltd.* v. *Shand* [1968] N.Z.L.R. 105.

[3] See, for example, *Pete's Towing Services* v. *Northern Drivers' Union* [1970] N.Z.L.R. 32; *Flett* v. *Northern Drivers' Union* [1970] N.Z.L.R. 1050; *Northern Drivers' Union* v. *Kawau Is. Ferries* [1974] 2 N.Z.L.R. 617.

[4] *Harder* v. *N.Z. Tramways Union* [1977] 2 N.Z.L.R. 162.

[5] See ss.191(8) and 192(1) of the Industrial Conciliation and Arbitration Act 1954; cf. the finding of Speight J. in *Pete's Towing,* supra.

[6] As amended by s.2 of the Industrial Relations Amendment Act 1976 No. 7 which substitutes the following section:
"123(1) In this Act the term 'strike' means the act of any number of workers who are or have been in the employment of the same employer or different employers —
(a) In discontinuing that employment, whether wholly or partially, or in reducing the normal performance of it; or
(b) In breaking their contracts of service; or
(c) In refusing or failing after any such discontinuance to resume or return to their employment; or
(d) In refusing or failing to accept engagement for any work in which they are usually employed; or
(e) In reducing their normal output or their normal rate of work —
the said Act being due to any combination, agreement, common understanding, or concerted action, whether express or implied, made or entered into by any workers; but does not include a stopwork meeting authorised by an employer."

employer points to his books, which the unions are not entitled to examine, to support his claims that he cannot afford to pay increased wages.[7]

In a system of industrial relations where the right to withhold one's labour is heavily fettered by statute, it seems unfair to weaken further the bargaining position of workers by subjecting their actions to attack in the civil courts by employers and members of the public with questionable motives. Reform of the law is necessary to equalize the positions of employers and workers in our industrial relations system, and this reform must go some way towards recognizing that to deny workers their right to strike or withdraw their labour is to create a situation of slavery.

III. The Place Of The Law In Industrial Relations

Before examining the deficiencies of the present law relating to the granting of injunctions in industrial relations, the overall role of the law in industrial relations must be put into perspective. The Industrial Relations Act itself is a code which lays down procedures to lessen conflict between the protagonists in the industrial relations system, and to that extent it serves a useful purpose. But this is so only as long as the protagonists agree to work within the legal framework. Szakats has said[8] that the Act is a "container" for industrial relations, and "it must never be forgotten that the container is less important than the contents".

It is submitted that the law is an inept tool for dealing with industrial conflict, and the example of the civil courts granting injunctions to prevent or curtail strike action is one of the most striking illustrations of this. The "main object of labour law . . . has always been . . . to be a countervailing force to counteract the inequality of bargaining power which is inherent . . . in the employment situation".[9] Unions can function without the law, but labour laws must always be subject to the qualification that their effectiveness depends entirely upon union acceptance.

In the light of these observations it is clear that the place of common law rights and remedies developed for use against trade unions last century in the field of industrial relations must be questioned. A common law which conflicts with the main object of labour law and thus encourages unions to disregard the law must be reformed. It is now necessary to examine these laws and the ways in which they are used.

[7] Industrial Relations Act 1973, s.77(10).
[8] Szakats, *The Law and Trade Unions : The Use of Injunctions,* Victoria University I.R.C., Occasional Paper No. 12, (1975).
[9] Otto Kahn-Freund, *Labour and the Law* (1972), 8.

IV. The Substantive Law: The Industrial Torts

Injunctions used to stop strike action are usually tied to substantive causes of action based on the industrial or economic torts, of which there are three. They are:

(i) *Conspiracy*
This consists of either an unlawful action by one or more people to injure the plaintiff, or action which would be lawful by one person that becomes unlawful if carried out by several people. This tort is difficult to prove because of the wide defence of justifiable self-interest which is open to the defendant. In injunction proceedings, however, this defence will not be argued.

(ii) *Intimidation*
This is made out when someone threatens to do an unlawful act (usually to strike) with intent to disrupt the plaintiff's relationship with a third party.

(iii) *Inducement of breach of contract*
This occurs if the defendant either directly induces the breach by threat or persuasion, or does so indirectly by unlawful means. Justification is also a defence here, but rather than self-interest, the defendant must show that the purpose of his or her action was compliance with some moral duty.

A typical industrial tort situation occurs when the actions of the union involved do not put direct pressure on the plaintiff, but on some third party with whom the plaintiff has a trade relationship, for example, of supply or carriage. By causing the third party to end his or her relationship with the plaintiff, the union harms the plaintiff. Recently it seems that a fourth basis for preventing strike action may be available by attaching injunction proceedings to statutory torts.[10]

It can be difficult for a plaintiff to prove fully that these torts have been made out.[11] In reality this difficulty causes few problems, because the industrial torts are not often the subject of a full trial, but are used as substantive causes of action to which injunction proceedings may be tied. The employer is usually more interested in stopping strike action than in getting damages for economic loss. Herein lies the injustice of the common law situation — the union is not allowed a defence in an application for an interim injunction which may be far more damaging to it than an action for damages.

A brief examination of the nature of injunction proceedings in these cases will show the truth of the statement that the "common law,

[10] *Harder* v. *N.Z. Tramways Union* [1977] 2 N.Z.L.R. 162; *Gouriet* v. *Union of Post Office Workers* [1977] Q.B. 729 (C.A.).
[11] See, for example, *Pete's Towing*, supra.

highly though we prize it, has had an utterly woeful record in dealing with trade unions".[12] The employer usually asks the court for an interlocutory injunction framed in prohibitory terms. In an application for an interim injunction, it is not clear how far the plaintiff must establish his cause of action. The House of Lords' judgment in *American Cynamid* v. *Ethicon*[13] that there need only be shown to the court's satisfaction that there is a serious question to be tried, appears to conflict with its earlier judgment in *Stratford* v. *Lindley*[14] and the approach of our own Court of Appeal,[15] namely that the applicant must establish a prima facie case. In the case of injunctions based on industrial torts, however, this conflict is not of practical significance, because the court appears to weigh up the merits of each side's case *before* it determines the extent to which the plaintiff must establish his or her case. If the plaintiff is unlikely to suffer substantial permanent damage if the injunction is not granted, it may have to show a prima facie case. But if substantial permanent damage is likely to occur, then the plaintiff need only show that there is a serious question to be tried.

An interim injunction is a discretionary remedy to preserve the status quo until the issue comes to full trial, and is granted according to where the balance of convenience lies. The courts in New Zealand and Britain have taken a narrow view of the defendant union's interests in deciding this. Adopting traditional tests, the courts can easily identify possible economic loss which could accrue to the plaintiff employer — contracts may be broken, production halved, and relations with suppliers damaged. This loss is often classified as irreparable. But by using an economic loss test to decide where the balance of convenience lies, the courts fail to take into account the workers' property rights in their job, their right to strike, the nature of strike action and the fact that the timing of strike action may be crucial to the success of this means of industrial warfare. The need to preserve the status quo is inapplicable here, but is acted on, while the real dispute is never discussed.

The same sort of considerations weigh against unions in statutory tort cases brought by members of the public. The problems created by these sorts of cases may have been solved by the House of Lords' judgment in *Gouriet's* case.[16] If breaches of provisions such as section 125 of the Industrial Relations Act are not statutory torts, it may not be necessary to protect unions from these actions. But in view of the recent actions of the citizens' organization of "Strike Free", it seems

[12] Peter Pain, "The Industrial Court — A Missed Opportunity" (1972) 1 I.L.J. 5.
[13] [1975] A.C. 396.
[14] [1965] A.C. 269.
[15] *Northern Drivers' Union* v. *Kawau Is. Ferries* [1974] 2 N.Z.L.R. 617.
[16] [1977] 3 W.L.R. 300 (H.L.).

that it might be as well to include in any sort of legislative protection for direct action by unions, a clause prohibiting "Harder-type" actions.

To summarise the situation, there are four main areas in which injunction proceedings against industrial unions fail to work justice:

(i) The union has no opportunity to present a defence and the issue seldom reaches full trial;
(ii) The balance of convenience test;
(iii) The emphasis on preserving the status quo discriminates unfairly against unions;
(iv) The real dispute, which may be the fault of the employer, is never discussed.

In addition, the civil courts are just not equipped to deal successfully with labour disputes. It is submitted that the reasoning of Supreme Court judges is not appropriate in the field of industrial relations and that those judges are not trained in weighing issues important to unions such as collective action and job ownership. In situations of industrial conflict, "the remedy of the old common law — the injunction — is about as appropriate to the modern age as the horse and buggy",[17] and recourse to the Supreme Court by employers to prevent strike action can only bring that court into disrepute in the eyes of the workers. Nor has the common law any place in undermining the scheme of the Industrial Relations Act, which tries to give more muscle to unions in a bargaining situation than they might otherwise have, by granting injunctions which tip the scales in terms of industrial strength, to the employers' advantage. It is submitted that the law must be reformed to redress the balance.

IV. The Nature Of The Reforms

The Labour Party's solution to these problems is to "bring New Zealand industrial law into line with well-established British law by banning injunction proceedings against unions in ordinary courts".[18]

British attempts to deal with the problem are a useful starting point in trying to find a solution to the New Zealand problem. After the notorious *Taff Vale* case,[19] in which the House of Lords found that a union could sue or be sued in its own name, and was liable in tort, the Trade Disputes Act 1906 was passed, removing the substantive bases on which actions for injunctions and damages could be brought when allegedly tortious acts were committed in furtherance or contempla-

[17] Farmer, "Law and Industrial Relations : The Influence of the Courts", (1969-1972) 2 Otago Law Review 275.
[18] *The New Zealand Herald*, 11 May 1978, 4.
[19] [1901] A.C. 426.

tion of a trade dispute. Thus, until 1964 the outcome of injunction actions in Britain depended on how the courts interpreted the words "trade dispute". In the late 1950's and 1960's these words were being interpreted extremely narrowly, and the force of the Act was further weakened by the decision in *Rookes* v. *Barnard*[20] where it was held that the Act did not cover certain aspects of the tort of intimidation. A further Act was passed in 1965 to cover this loophole.

In 1971 the British Industrial Relations Act was passed, partly in response to the increasingly hostile attitude of the British courts to direct action by workers. This Act set up the National Industrial Relations Court, which has almost exclusive jurisdiction to decide whether or not injunctions will be granted in labour disputes.[21] In the first few months of its operation, the court followed largely the approach the High Court had followed, and in *Heaton's Transport* v. *T.G.W.U.*,[22] the court said it was to look at the case and decide whether or not a prima facie case of unfair industrial practice existed.

But gradually the court has come to take a wider view of the implications of granting injunctions in these areas, and instead of simply looking at the legality of union action, it seeks to provide some means of settling the actual dispute causing the direct action. In *Shipside (Ruthin) Ltd.* v. *T.G.W.U.*,[23] the court said:

> [i]f a court or tribunal are [sic] known to be ready, able and willing to remedy any genuine grievance . . . most workers would gladly . . . cease to take industrial action. However, they can see neither justice nor equity in a court ordering them to cease taking industrial action without investigating and remedying any underlying grievance . . . .

In that case, despite the illegality of the strike action, the court refused to grant interim relief and managed to solve the dispute itself. Even where the court itself has no jurisdiction to hear the dispute, it has often solved it by referring it to another tribunal with that jurisdiction.

Thus the British example gives us many ideas on how to effect reform in New Zealand. First, a New Zealand Trade Disputes Act could be passed to prevent injunctions and damages being granted for torts committed by unions, because these actions could not be tied to a substantive cause of action if committed within the course of a trade dispute. The original definition of a trade dispute in the 1906 U.K. Act covered all disputes "connected with the employment or the terms of employment, or with the conditions of labour of any person". If such an Act were to be effective, it would not only have to prevent injunction and damages actions being tied to the industrial torts, but would

[20] [1964] A.C. 1129.
[21] The Trade Union and Labour Relations Act 1974-1976, s.14.
[22] [1972] I.C.R. 308.
[23] [1973] I.R.L.R. 244, 245.

also have to prevent members of the public bringing injunction actions on the analogous ground of statutory torts.

There is a substantial body of British case law on the question of what disputes fall within and without the Act. Unfortunately, the courts there have interpreted the words "trade dispute" very narrowly. If such an Act were to be effective here, it would have to contain a watertight and liberal definition of a trade dispute, covering such matters as demarcation disputes, since experience has shown that the civil courts apparently cannot be relied upon to give a "fair, large, and liberal" interpretation to these sorts of statutes.

This solution is attractive for many reasons: first, it has been found to work; secondly, and perhaps more importantly, it does not prevent a trade union member from bringing an action against its union to restrain it from acting ultra vires or illegally. It has been argued, however,[24] that this legislation puts unions above the law. In reply to this, it is submitted that not only is it illogical to say that unions are above the law when they are specifically protected by the law, but also in the sphere of industrial relations it must be pointed out that unions will only work within the law if it is fair to them; and if there is no advantage to working within the law, nothing can prevent unions abandoning the legal framework of the Industrial Relations Act and working to their own rules. "The first and overriding responsibility of all trade unions is to the welfare of their own members. That is their primary commitment; not to a firm, not to an industry, not to the nation".[25] To this one might add, "nor to the law or the legal system".

Another possible solution to the problem would be legislation preventing injunctions *per se* being granted against unions, and also declarations and possibly specific performance. However, to ensure internal trade union democracy, such legislation would also have to define clearly the parties prohibited from bringing injunctions, so that trade union members would still be able to prevent their unions taking wrongful action.

To draft such legislation may be an impossible task, and besides, this solution seems unnecessarily drastic. Another difficulty is that this measure does not prevent unions being sued for substantial amounts of damages. The *Taff Vale* case itself resulted in a large award of damages being granted against the union, which had to be paid out of union funds. On the whole, the Trade Disputes Act solution, which prevents damages being granted in certain cases, seems to be a preferable solution; though to prevent all damages actions against

[24] I.T. Smith, "The Use of Injunctions in Industrial Law" [1974] N.Z.L.J. 432.
[25] Flanders, "What are Trade Unions For?", *Trade Unions*, (1972), 17-27.

unions is not as draconian as it sounds, when one considers that most contracts between employer and employee have a *force majeure* clause absolving one party from liability for breach of contract caused by a strike; whereas to leave actions for damages by employers available could cripple trade unions financially.

Both the Trade Disputes Act solution and the "no injunction" solution would effectively prevent strike action by unions being impeached in the civil courts. To many people such methods are unacceptable constitutionally. While it is felt that the concern to protect trade union strength must be realistic, Parliament could be unwilling to effect reforms with such a far-reaching effect on existing legal principles.

A compromise solution would be to leave both substantive law and remedies intact, but to transfer jurisdiction to the Arbitration Court. As Smith[26] points out, this solution eliminates the problem of unqualified people dealing with specialist problems, and puts them in the hands of a body experienced in giving weight to union interests. A working example is the success of the British National Industrial Relations Court. But Smith also states that the basic premise of this reform is that the ordinary courts are unsympathetic to union interests, and citing *Pete's Towing,* he says that this is just not so. Examples to refute this objection are too numerous to cite here,[27] and even with the most sympathetic of judges, it is also the common law, applied by these judges, which is unsympathetic to unions.[28] Without a change in the substantive law in this area, no court, however sympathetic to unions and however experienced in dealing with industrial relations, can depart from binding and traditional injunction considerations i.e. the need to preserve the status quo and to calculate the balance of convenience in terms of economic loss. Nor could the court hear the union's full defence to the alleged tort, especially if the direct action complained of is prima facie illegal under the Industrial Relations Act 1973. Above all, even to consider an injunction to force striking unionists back to work turns attention away from the underlying dispute, which may be the fault of the employer and not the union, and works against an amicable solution of that dispute.

In order to protect trade unions effectively from injunction proceedings at the suit of employers and "busy-bodies", it is urged that a three-fold reform is necessary:

(i) A Trade Disputes Act must be passed in New Zealand. Thus, where strike action is used as a legitimate negotiating weapon, the employer cannot weaken the union's position by going to court,

[26] *Loc. cit.,* 437.
[27] See, for example, *Martin* v. *Attorney-General* [1970] N.Z.L.R. 158.
[28] See *Flett* v. *Northern Drivers' Union,* supra.

but where the strike is not so used, it can be stopped. (This reform might be more readily accepted if power were given to the Government to stop a strike which would jeopardise public safety.)

(ii) Jurisdiction to grant any injunction against a union in the residual cases not covered by the proposed Act must be exclusively that of the Arbitration Court, so that only a qualified body would be able to hear cases where the union's freedom to act may be more important than the economic loss of the employer.

(iii) The Arbitration Court should have the power to discuss the merits of a dispute, and to try and effect a solution to it or to transfer resolution of the dispute to a mediation or conciliation body, or to a grievance committee.

Such legislation should provide that the court shall only grant an injunction if it is satisfied that the union is acting unfairly, that justice can be done in no other way, and that the employer has explored all alternative channels to try to solve the dispute before coming to court. The onus of showing this would be on the employer. Thus, where a union is genuinely pursuing the interests of its workers, the employer must not be allowed to side-step the issue. Where, however, the union is acting out of malice, the employer has a remedy.

V. The Means Of Reform

If Parliament will not effect reforms in this area, then the possibility of judicial law reform is not a dead letter. If the judgment of Mahon J. in the recent Bakers' dispute[29] is indicative of the future practice of Supreme Court judges in these cases, it may gradually become more difficult for employers to obtain injunctions forcing striking workers back to work. Judges could:

(i) Require employers to make out a strong prima facie case before considering the action;

(ii) Test the balance of convenience by taking into account the freedom to strike as well as the possibility of economic loss to the employer;

(iii) Refuse equitable remedies if employers came to court without clean hands, for example, if they have provoked the dispute.

The process of judicial law reform is, however, long and protracted, and is likely to be stopped short by a change in the political climate. Judicial law reform in this area could also have adverse effects on the availability of injunctions in other areas of the law, for example, in the field of environmental law, where citizens and pressure groups

[29] *Pacific Continental Bakery Ltd.* v. *N.Z. Baking Trades I.U.W.* 25 November 1977, Supreme Court, unreported.

with valid claims to injunctive relief, could be prejudiced. For this reason, judicial law reform should only be a backstop. Also, it must be remembered that it cannot be effected without the co-operation of the judiciary.

On the other hand, the issue of trade union powers is not an area of law likely to occupy the attention of any of our standing Law Reform Committees, not only because there is no committee experienced in industrial law as such, but also because industrial relations can be a highly controversial matter, and one cannot expect basically conservative bodies to embark on reform of politically contentious matters, particularly when to do so could lessen the little political kudos they have at the moment.

Should law reform bodies deal with these matters? In New Zealand, law reform has been gradual and piecemeal, with no underlying philosophy or purpose. Such reform can never cater for the reforms needed in areas such as industrial relations. Given that the present committees are part-time bodies with inadequate funding, does this absolve them from avoiding controversial issues? It would be an ambitious committee which presented a proposal for reform of the law relating to injunctions against industrial unions to Parliament. But this very fact highlights two deficiencies in our present system of law reform. First, that the standing committees will never deal with controversial matters — these matters are designated as "policy" matters, not appropriate for "legal" treatment. Secondly, that without a philosophy of law reform designed to reform through the law injustices and inequalities in society, law reform will continue to be a piecemeal process.

> Laws and legal problems do not exist in a vacuum; they are reflections of community values and objectives and of social problems respectively. By inquiring where the values of the community and of its members are being damaged most, one might proceed to identify the causes of harm . . . .[30]

Unless this is recognized, law reform agencies will never get to grips with problems like those involved in granting injunctions against industrial unions.

The possibility of a Royal Commission of Inquiry into this area being set up is nil; governments do not go to that much trouble for trade unions. And it is probably unrealistic to expect that a law reform proposal and draft legislation in this area would be accepted readily by any Minister of Justice. Real reform in this area can only come about in two ways. The first is through public demand — something which depends on educating the public in matters such as the right to withdraw labour and the inequality of bargaining power in industrial relations. To depend on this would delay reform indefinitely. The

[30] Lyon, "Law Reform Needs Reform" (1974) 12 Osgoode Law Journal 421, 430.

second is the election to power of a government which supports trade union principles. In New Zealand, this seems to mean a Labour Government.

No party wins or loses votes by reforming the law on contractual mistake. But a reform relating to trade unions' powers strikes at the heart of the difference between our two major political parties. A law reform to increase trade union powers is certainly not just an academic exercise which may win or lose passage through Parliament on its merits. It is a political issue. Its success depends on the nature of the government of the day.

An examination of the National Government's legislation in the field of industrial relations shows clearly that not only is it totally opposed to increasing trade union powers, but also that it has implemented legislation to decrease that power, by redefining the word "strike",[31] by making provision for ballots on the issue of voluntary unionism,[32] and by introducing the notorious anti-strike provisions into the Commerce Act.[33] Accepting, then, that a mere consideration of law reform in this area depends solely upon which party, National or Labour, comes to power in an election year, how is the reform to be effected? It is here that the fragile nature of law reform relating to politically controversial issues becomes apparent, for the acceptance of a more radical reform than that now proposed by the Labour Party does not depend on the effectiveness of our present methods of law reform, through the Law Reform Council and the Standing Committees. At this point, a law reform issue becomes a matter solely of politics, which is outside the scope of this paper.

VI. Conclusion

Law reform may change its essential nature sometimes and become something more than simply reforming the law. Reform depends on something more than just pinpointing the problem areas in the law, subjecting them to analysis, and making recommendations accordingly to the Minister of Justice. Reform becomes a matter of politics depending more for its success on the views of those in political power rather than on its merits.

Several questions remain unanswered by the author's attempted analysis of the problems involved in granting injunctions in the field of industrial relations, and what she sees as the solution to those problems. The scope of this paper does not permit discussion of those remaining questions; but in order to put the problem into perspective,

[31] Industrial Relations Amendment Act 1976 No. 7, s.2.
[32] Industrial Relations Amendment Act 1976 No. 2, ss.13-16.
[33] Commerce Amendment Act 1976, s.36.

they should be mentioned. First, the election of a Labour Government is not the end of the process of law reform in this area, it is merely the beginning, or the right environment for reform. Reforms must be pushed all the way through to caucus level before there is any chance of those reforms being introduced into Parliament. Secondly, the whole nature of strike action, which is ideologically central to the reform proposed, has only been touched on. Thirdly, no mention of the results of law reform in this area has been made. One result could be that small companies boycotted by "strong" unions could be forced into liquidation if they are unable to carry on business. This question raises the inevitable conflict between the right to withdraw one's labour and the right to trade freely. The author has serious doubts whether this problem would become widespread. Even if it did, one of those rights must always be subordinate to the other in a system of private enterprise. Because the abolition of the right to withdraw one's labour creates a situation analogous to slavery, the author feels compelled to give that right a higher priority than the right to trade. The author also feels compelled to state that, were our political, economic, and industrial system not based on the private enterprise principle, the conflict between those two rights, and indeed the whole question of the use of injunctions and their effect on industrial relations, might not arise.