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Protections, Loopholes and the Employment Court

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Abstract

Analysis of the Employment Court's recent approaches to statutory workplace protections in the Equal Pay Act 1972, the Minimum Wage Act 1983, the Wages Protection Act 1983 and Part 6A, Employment Relations Act 2000 suggests that it currently lacks a consistent approach to the issue of protection. The Court appears to be overly vulnerable to the way that proceedings are presented and argued, and it fails to consistently privilege purposive over other approaches to the interpretation of statutory protections.

Key words

Employment Court, Employment Relations Act 2000, statutory protections, statutory interpretation, union funded litigation, employer funded litigation, individual litigation.

Introduction

A challenge of regulating future labour markets (for those members of the workforce classified as having little or no market power) lies in the phrase '*implementation and enforcement of statutory protections*'. This paper is based on the premise that effective enforcement of protections relies on consistency of approach by enforcement authorities because that is the means by which protections are embedded, accepted and institutionalised. The focus, therefore, is on the role of the Employment Court in the enforcement of statutory protections in the Equal Pay Act 1972, the Minimum Wage Act 1983, the Wages Protection Act 1983, and Part 6A, Employment Relations Act 2000. This paper examines the Court's recent consideration of proceedings concerning equal pay, minimum wage rates, unlawful wage deductions and transfers of undertakings involving vulnerable employees.

The method of analysis, given the relatively low number of proceedings that consider statutory protections (compared to proceedings about unjustifiable dismissal), compares the Court's approaches to the most recently enacted protection, Part 6A, to its more consistent position on older, less complex legislation: a distinction that applies also (more or less) to the collective or individual status of the employees seeking protection.

The proceedings at issue have been classified into three groups, again for the purpose of comparison. This arises from the existence of three categories of cases:

- proceedings funded by a union;
- proceedings funded by an employer; and
- proceedings funded by individuals.

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A description of the proceedings in each category will be followed by analysis of differing approaches to statutory interpretation. Comparison and some observations about the effects of the union and employer funded litigation will precede a conclusion about the way consistency could be improved.

I argue that the Court currently lacks a consistent approach to the issue of protection; that it appears to be overly vulnerable to the way that proceedings are presented and argued; and that it fails to consistently privilege *purposive* over other approaches to the interpretation of statutory protections.

Description of the Proceedings

Union litigation: Service and Food Workers Union funded claims

The Minimum Wage Act 1983 was the basis of challenge to sleepover remuneration arrangements that provided for a flat payment (with additions for work performed during the sleep period) to care staff employed overnight in community houses for the intellectually disabled. When the problem was first investigated in 2008,[1] that payment was $34 (for 8-10 hours workplace presence) and the relevant minimum wage was $12.50 per hour. A full Court was convened to decide whether sleepovers constituted *work* and, if so, whether the wages that care staff received for day-time work (that were higher than the minimum wage) could be averaged out to satisfy minimum wage requirements. The answers, upheld ultimately by the Supreme Court,[2] were yes to the work question and no to the wage issue.

Salaried employees undertaking sleepovers in school boarding establishments were held also to be entitled to the protections of wage orders made pursuant to the Act.[3]

When rest-home workers had the employer's contribution to their Kiwisaver schemes deducted from their wages, they received less than the minimum wage ($13.50 in 2012). The Court held that this breached s 6 of the Act.[4]

Statutory minimum entitlements also lay at the heart of proceedings by a relief care worker to be declared a *homeworker* under the Employment Relations Act 2000.[5] She provided relief care for disabled individuals normally cared for by (unpaid) family members, but her pay did not include statutory minima like the minimum wage for the hours worked or holiday pay. The proceeding was defended on the basis that she was not a homeworker because she was not working in her own home, but the Court applied a 1997 decision that professional carers relying on payment for their care services as income are homeworkers.

[1] *Dickson v Idea Services Ltd (Wellington)* [2008] NZERA 532.
[2] *Idea Services Ltd v Dickson* [2009] NZEmpC 58, at 129; *Idea Services Ltd v Dickson* [2011] NZSC 55.
[3] *Law, Colbert and others v Woodford House and Iona College Boards of Trustees* [2014] NZEmpC 25.
[4] *Faitala and Goff v Terranova Homes & Care Ltd* [2012] NZEmpC 199.
[5] *Lowe v Director-General of Health, Ministry of Health* [2015] NZEmpC 24, compare *Director-General of Health, Ministry of Health v Lowe* [2016] NZCA 369.

In each of these proceedings, the plaintiff/s represented a class of employees in similar circumstances. Except for the *Idea Services* sleepover case, they were female. In 2013, the facilities operated by Terranova Homes & Care Ltd paid its (predominately female) care assistants lower rates of pay than its (male) gardeners, a fact that emerged in a struggle over the basis for establishing pay rates for its workforce in the course of bargaining for a collective agreement. Proceedings alleging breaches of the Equal Pay Act 1972 were begun. The preliminary issue about whether the Act was intended to provide for pay equity (meaning *equal pay for work of equal value* – the union position) or simply *equal pay for the same (or substantially similar) work* – the employer position, was resolved by the Court (and upheld on appeal) in favour of the pay equity option.[6]

The union's involvement in proceedings about Part 6A (Transfer of Undertakings) concerned redundancy entitlements for transferred employees affected by downsizing of client requirements.[7] They were covered by a collective agreement that provided that no redundancy compensation was payable in that circumstance. The Court accepted they could still bargain for other redundancy entitlements. The Supreme Court upheld that position,[8] but, perhaps more importantly, held that subpart 1 of Part 6A is *designed to protect vulnerable employees*.[9]

Employer litigation: Pacific Flight Catering v LSG Sky Chefs

Pacific Flight Catering lost its catering contract to supply Singapore Airlines to another company, LSG, in late 2010. As part of a wider litigation strategy,[10] Pacific funded individual employees to take proceedings under Part 6A against LSG. The first, John Matsuoka, sought to be included with the employees transferred to LSG.[11] This required the Court to consider whether he was an employee to which the provision applied. It held he was, notwithstanding that he was also a shareholder of related companies, derived an income and benefits of over $100,000 per annum, was a former brother-in-law of Pacific's owner and had multiple roles in the company. To a submission that the provision was restricted to *vulnerable* employees, the Court held that this was not apparent from the wording of Part 6A.

William Tan, an equipment supervisor, also sought a transfer. Between hearing and decision, the Supreme Court's observation about vulnerability (cited above) became available. Conceding it was bound by this finding, the Court found another reason for dismissing the claim by holding that Tan's role was insufficiently connected to food catering services to qualify him for transfer.[12]

The third former Pacific employee to issue proceedings against LSG was a catering assistant who was accepted for transfer. Nisha Alim alleged she was constructively dismissed as a result of LSG's refusal to recognise her promotion to catering supervisor and some

[6] *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes & Care Ltd* [2013] NZEmpC 157; *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2014] NZCA 516.
[7] *Service and Food Workers Union Nga Ringa Tota Inc v OCS Ltd* [2010] NZEmpC 113.
[8] *Service and Food Workers Union Nga Ringa Tota Inc v OCS Ltd* [2012] NZSC 69.
[9] At [10].
[10] See Susan Robson "An orchestrated litany of litigation, the story of an airline food fight in 48 judgments" [2015] ELB 21.
[11] *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 44.
[12] *Tan v LSG Sky Chefs New Zealand Ltd* [2013] NZEmpC 35.

enhancements to other terms and conditions of employment that were bestowed upon her (and other transferred employees) shortly before the transfer occurred. The Authority determination that she was not so dismissed was upheld.[13]

Individual litigation

The Court has also considered the provisions of Part 6A, on the issue of coverage, in three other decisions, two of which concerned the same employer.[14] The cleaners in the earlier decision (*Gibbs*) were held not to come within the classes of employee with rights of transfer, but the cleaner in the later decision (*Doran*) did have that right.

The third proceeding was between two employers, notwithstanding that the issue concerned the right of parks maintenance staff to transfer to the successful tenderer for the new maintenance contract. The Court held that, although the staff had some cleaning duties, their work was not covered by the categories of work listed as attracting transfer rights.[15]

A recent decision of a full Court considered the protection from unlawful deductions of wages in the Wages Protection Act 1983.[16] Vineyard pruners employed by a company who deducted the cost of the tools they used did not receive the repayments they were due at the end of the season. They complained to the Labour Inspectorate. Compliance proceedings were begun when the problem could not be resolved. The Court took the view that the proceedings should have commenced in the name of the complainants; so one of them was joined as a plaintiff. The defendants took no part in the proceedings, so the Court appointed an amicus. Then, there was a problem with the definition of the employer (despite, or perhaps because of, a wide definition in the Act). The Court held that the defendants (office-holders in a company liquidated upon the commencement of the claim) were not the employer; so, the unlawful deductions remained the property of the defendants.

The Court's approaches to statutory interpretation

Minimum Wage

The first task for the Court in the *Idea Services* sleepover litigation was to define *work* in the absence of a statutory definition. It held itself to be bound by the purposive approach mandated by the Interpretation Act 1999, to take judicial note of the means by which the workforce and concepts of work have changed since the legislation was first passed in 1945 and to consider purposes additional to the need for a *bread wage*:[17]

> Recognising the inequality of bargaining power in the employment relationship, the minimum wage legislation forms part of what has been described as the "minimum code" aimed at protecting employees from exploitation. It fulfils this

[13] *Nisha v LSG Sky Chefs New Zealand Ltd* [2015] NZEmpC 171.
[14] *Gibbs v Crest Commercial Cleaning Ltd* [2005] NZEmpC 72; *Doran v Crest Commercial Cleaning Ltd* [2012] NZEmpC 97.
[15] *Lend Lease Infrastructure Services (NZ) Ltd v Recreational Services Ltd* [2012] NZEmpC 86.
[16] *Hixon (Labour Inspector) v Campbell* [2014] NZEmpC 213.
[17] *Idea Services Ltd v Dickson* [2009], above n 2, at [39].

> role together with other legislation such as the Holidays Act 2003, the Equal Pay Act 1972 and the Wages Protection Act 1983.

On what constituted *work*, the Court adopted a test advanced by the union that required analysis of the constraints on the employee, the employee's responsibilities and the benefit to the employer.

In a separate consideration, the Court went on to determine whether the statutory requirements were satisfied by *averaging* the wages for a period of work so that payment at less than the minimum rate for part of the period can be balanced against a greater rate for another part. The Interpretation Act was again called in aid, with the addition of Supreme Court and Court of Appeal citations, but the Court was divided, the majority adopting the union position and the minority the employer position.

The issue whether salaried employees were protected in *Law* was considered by reference to the origins of the Minimum Wage Act 1945:[18]

> For almost three decades after the end of the earlier cataclysmic world war and the establishment of the International Labour Organization, it had been recognised that fair and decent conditions of work were important to these objectives as well as to individual workers. It is no coincidence, then, that when nations came to formulate and adopt the Universal Declaration of Human Rights in 1948, work rights were among those proclaimed. Article 23(3) of the Universal Declaration provided, and continues to state that:
>
> > Everyone who works has the right to just and favourable remuneration ensuring for themselves and their family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> When combined with the right under art 23(1) of everyone to work, to free choice of employment, and to just and favourable conditions of work, the application of one of the manifestations of those rights in New Zealand (the MW Act) should be interpreted to give effect to those fundamental aspirations to which New Zealand not only committed itself, but indeed was instrumental in formulating. To adopt a narrow and niggardly interpretation of the MW Act in this regard would be to treat that fundamental international human rights declaration in similar fashion.

This passage was followed by excerpts from the ministerial speech at the Second Reading of the Minimum Wage Bill 1945, summarised by the Court as indicating intentions for its breadth and application. It helped to convince the Court of the potential for abuse of wage minima by salarising remuneration for employees expected to sleep over.

Cited in support of that position was New Zealand's ratification of the ILO Minimum Wage-Fixing Machinery in 1938,[19] the Court noting that it appeared only to have been considered judicially in its earlier decision, *Faitala*, where it held that the Convention prohibits

[18] *Law*, above n 3, at [37]–[38].
[19] Co26 (entered into force 14 June 1930).

abatement of minimum rates by individual agreement. The Court's approach, in *Faitala*, to the Act was consistent with that in the sleepover cases:[20]

> It is a statute that is designed to impose a floor below which employers and employees cannot go. It is directed at preventing the exploitation of workers, and is a statutory recognition of the diminished bargaining power of those in low paid employment.

The homeworker case, *Lowe*, was not required to consider the Minimum Wage Act in the Employment Court judgment[21] because the proceeding was limited to the preliminary question whether she was a homeworker. This required an exclusive focus on an earlier decision of the Court of Appeal under the Employment Contracts Act 1991 about homecare workers.[22] If she was a homeworker then wage minima would be relevant. The Court's approach, consistent with its other judgments about minimum wage issues, is apparent from its choice of the following passage from a 1997 case:[23]

> ...homecare workers are in a vulnerable position of the kind contemplated by those responsible for promoting the extended definition in 1987 if they are ineligible to receive the protections afforded to employees under the Employment Contracts Act and allied statutes. Although their position is quite different from outworkers engaged in piece work they are similarly vulnerable and susceptible of manipulation if allowed to be treated as in dependent contractors...they are very much...the type of worker who needs the protection of the Act by being deemed an employee notwithstanding a contractual description of "independent contractor".

Wages Protection

A different approach to purpose was adopted in *Hixon.* Its flavor can be detected from a contrasting approach to *old* legislation to that in *Idea Services*, *Law* and *Faitala*:[24]

> The Wages Protection Act is part of the so-called minimum code of employee rights and is employee-protective legislation. Some of its provisions are antiquated, for example the requirement to pay wages in money (coins and notes) and the narrow and structured exemptions to this requirement. On the other hand, as may be seen from the introductory quotation above, Parliament has in recent times moved to extend or otherwise amend the Wages Protection Act's provisions to deal with circumstances as they change or arise. It is not legislation that is caught entirely in an early to mid-20th century time warp.

Parliament's retention of the original definition of '*employer*'[25] meant that the third

[20] *Faitala*, above n 4, at [39].
[21] Since overturned by the Court of Appeal: see above n 5.

[22] *Cashman v Central Regional Health Authority* [1997] 1 NZLR 7.
[23] *Cashman*, above n 21, at [166] as cited in *Lowe*, above n 5, at [42].
[24] *Hixon*, above n 16, at [47].
[25] A person employing any worker or workers; and includes any manager, foreman, clerk, agent, or other person engaged on behalf of that person in the hiring, employment, or supervision of the service or work of any worker.

defendant, as the Business Manager who '*actively implemented*' the deduction policy,[26] could be sued personally. However, the Court took the view that the plain meaning of the Wages Protection Act definition could not be applied:[27]

> We agree that a plain words/plain meaning interpretation of the definition of "employer" in s 2, and as contended for by the plaintiffs in the circumstances of this case, leads to a counter-intuitive result. It would allow an employee to recover an unlawfully made payment or an unlawful deduction from a person (other than the employing entity) whose role with that employing entity fell within the broad extended definition of any manager, foreman, clerk, agent, or other person engaged on behalf of that person in the hiring, employment, or supervision of service or work of that worker. So, for example, the plaintiffs' interpretation would allow recovery from a wages clerk or a work supervisor although the employing entity is both identified and exists in a legal sense for the purpose of recovery against that employing entity. We were asked to question seriously whether Parliament would have intended such a result. The implication of this rhetorical question is that Parliament could not possibly have so intended and the definition of employer in a s11 claim must be interpreted accordingly.

It went on to hold that the fact that the (liquidated company) employer could no longer be sued did not require the Court to apply the statutory definition. To do so would force the third defendant (the wife of the director/major shareholder) to become potentially liable for the company's debts.

The Court's "rhetorical question" about Parliament's intentions was answered a few weeks later by the announcement of measures to strengthen the enforcement of employment standards:[28]

> Persons other than the employer – such as directors, senior managers, legal advisors and other corporate entities – will also be held accountable for breaches of employment standards if they are knowingly and intentionally involved when an employer breaks the law. These cases can be pursued even if the employer ceases to exist.

Equal Pay

In its preliminary determination of the purpose of the Equal Pay Act in the *Terranova* decision, the Court adopted the position (same wording, textbook and higher court citations) of the *Idea Service* judgments about the place of the Interpretation Act, with one significant addition – the necessity "*to put any preconceptions, even prejudices, about the subject matter to one side*".[29] In a wide-ranging inquiry about purpose, the Bill of Rights Act 1990

[26] *Hixon*, above n 16, at [12].
[27] At [108].
[28] Ministry of Business, Innovation and Employment "The strengthening of employment standards" [2015] ELB 31.
[29] JF Burrows and RI Carter *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 239 as cited in *Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes & Care Ltd* [2013], above n 6, at [30] (emphasis added).

prescription for statutory interpretation, the need to privilege interpretations consistent with its specified rights and freedoms, the Human Rights Act 1993 anti-discrimination provisions, and international conventions on equal pay and discrimination were called in aid, as were the Government Service Equal Pay Act 1960, the Commission of Inquiry into Equal Pay Report,[30] and the Equal Pay Bill 1972.

Part 6A

In the earliest of the Part 6A proceedings in *Gibbs* described above, the Court introduced the idea of rights to freedom of association as an interpretative device. It took the view that a flaw in the wording of the provision describing the types of transfer subject to protections for employees could be resolved by reference to the Bill of Rights Act 1990 and the common law:[31]

> The scheme of the new Part 6A purports to require, in effect, an employer to employ an employee or employees the subject of a restructuring in terms of the Act. It is to give employees an election whether to be employed by the new employer but gives that employer no right of veto…So a new employer has no entitlement to bargain about the terms and conditions of a new employment relationship, unlike the usually applicable position…Section 69H…removes employers' rights of choice and in bargaining.
>
> So a new employer under this legislation is required by law to associate with a new employee or new employees in a way unknown to the previous common law and, very arguably, prohibited by it. It is significant new law setting aside long-established common law. This is therefore a freedom of association issue. It is a long standing principle of employment law that no person may be compelled to engage and continue in an employment relationship with another. Where that involved compulsion of an employee, it once took the form of slavery or servitude.

In this case, freedom of association trumped a purposive approach to the problem, there being a plethora of material (cited in the judgment) suggesting that the cleaners were intended to be protected.[32]

The right to freedom of association for employers was conspicuously absent from the next consideration of the coverage provisions of Part 6A. In *Matsuoka*, the successful tenderer and the Service and Food Workers Union (as intervener) submitted that the protection was limited to vulnerable employees, but the Court was unable to accept that it should form part of the test of whether an employee should be protected by subpart 1:[33]

[30] Commission of Inquiry into Equal Pay *Equal Pay in New Zealand* (September 1971).
[31] *Gibbs*, above n 14, at [103]–[106].
[32] This intention was given legislative force by the Employment Relations Amendment Act 2006, s 6. It confirmed the Legislature's intention to protect the cleaners and undermined the distinction the Court drew between the *proponents* of the protection and Parliament.
[33] *Matsuoka*, above n 11, at [52].

> In the absence of such words appearing anywhere within the relevant parts of the Act, the sections under consideration cannot be limited to such persons. There would be also be a difficult issue as to what, precisely, the word meant. On the facts of this particular case, the plaintiff, with his substantial salary package and protection in the event of redundancy, might not have been regarded as "vulnerable", should that word have appeared.

Furthermore, this employee had rights capable of protection. Even though he had food catering duties of about an hour a day and the other work he performed for Pacific was not protected by Part 6A, the fact that he was a full-time employee wishing to transfer was sufficient to entitle him to do so. Ignored were the lengths Matsuoka went at an interview with LSG to ensure he would not be offered employment (no experience in shift work, duties mainly in transport, no management or large company experience, $42 hourly rate, high leave entitlements, imminent overseas holiday). Ignored also was the use to which he put this meeting. At its conclusion, his representative, paid by Pacific, put to LSG its options – employing or dismissing him or settling for the $75,000 redundancy provision in his employment agreement and holiday pay (said to exceed the redundancy amount).

Freedom to contract in employment did, however, form part of the justification for declining to find that park maintenance staff in *Lend Lease* were protected by Part 6A:[34]

> The effect of Part 6A is to require an employer to engage employees, over which the new employer has no control or choice – effectively strangers. It is, in this sense, an exception to the usual principles regarding the freedom to contract in employment.

But here, as in *Tan*, which followed this approach, it was the basis for finding that Part 6A protected a limited range of employees providing particular specified services and that extension of the categories of employee protected by this provision was for the Minister not the Court.

Individual freedoms or rights were subsumed by employer and employee collective interests in the *Service and Food Workers Union Nga Ringa Tota Inc v OCS Ltd* proceedings about redundancy entitlements. The Court considered the intention for Part 6A by citing two sets of objects in the Employment Relations Act: those concerning good faith and inequality of power in s 3; and that in s 69A to protect specified categories of employees from replacement by restructure by giving them a right to elect to transfer to a new employer and to bargain for redundancy entitlements. Additionally cited were the following aids to interpretation: the explanatory notes to the original amendment that resulted in Part 6A (2004) and a successor amendment (2006); a select committee report; the ministerial speech at the second reading of the 2006 amendment.

Litigation strategies compared

[34] *Lend Lease*, above n 15, at [81].

Protection, the object of both employer and union strategies, served opposing purposes. The union strategy, selection of claimant/s for the purpose of maintaining the Court's focus on the protection at issue rather than the characteristics of those seeking it, avoided the problem highlighted by the *Crest* employees. Complaints about the quality of their cleaning became part of the evidence against the *Gibbs* cleaners. They were regarded as the reason for the contract transfer. The opposite was the case in *Doran.* Doran was a vast improvement on his predecessor and the owner of the premises he cleaned wanted him retained. This good employee/bad employee dichotomy, apparently relevant in proceedings concerning cleaners but not for employers or employees in employer funded litigation, became a means of diverting the Court from a purposive to a rights-based approach to Part 6A.

The protection at issue in the Pacific funded and the *Lend Lease* litigation was of the out-going employer. It is possible that this was not initially clear to the Court. The former-employer's desire to off-load accrued but yet-to-be-claimed employee entitlements was never directly articulated as the basis of the Employment Court claims,[35] but it was an obvious inference. Perhaps it was the dropped pretence of employee as claimant that gave the game away in *Lend Lease.* Or the coincidence of timing[36] and counsel[37] in apparently unrelated litigation. Whatever the reason, the Court elected not to adopt its previous approach to *Matsuoka*'s grab for redundancy and holiday entitlements.

The fact, however, that the Court was able to be diverted into believing that Matsuoka was entitled to the protection of Part 6A, and the *Gibbs* employees not, suggests that its desire to protect the employers in *Hixon* from the ravages of the Wages Protection Act is not some odd one-off exception.

Also apparent from the judgments cited above are differences of emphasis on purpose in the advocacy of statutory protections. This accounts for the presence of material from the legislative process relevant to the purpose sought to be advanced in union litigation, and its relative absence in individual and employer funded litigation.

If the Court's approach to statutory purpose relies on advocacy, then this suggests acceptance of a more traditional judicial role than the provisions of s 189, Employment Relations Act, confer. Its power to "*accept, limit and call for such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not*" appears to have been restricted to offering intervenor roles, or appointing an amicus.[38]

Conclusion

The Court's apparent vulnerability to rights-based arguments in individual and employer funded claims concerning protective provisions can be contrasted with its consistent focus on employer obligations in union funded litigation. Rights-based arguments appear to have the

[35] It was the basis of litigation in the civil courts.
[36] Coincidence in time refers to the year in which the proceedings were heard (2012), not the month, week, day, hour or minute at which they were commenced and heard.
[37] Pacific's counsel, Anthony Drake, represented the outgoing employer (Lend Lease), and LSG's counsel, Garry Pollak, represented the incoming employer (Recreational Services).
[38] *Idea Services*, above n 2; *Hixon*, above n 16.

power to successfully divert its attention from, and purpose-based arguments reinforce, the statutory protection at issue.

This suggests what policy positions to the challenges of regulating future labour markets might appeal to those who support labour market protections. In the consistent enforcement of such provisions, the role of legal institutions may need to be reframed or refined, along with those of the collective interests (employer and employee) directly affected. If consistency is as reliant on advocacy and coherence of litigation strategy as is argued here, then it is in the interests of collectives to select the protections that require judicial input, and those that can be resolved by other means. That would mean that access to a future Employment Court would depend, for enforcement of protections, on the involvement or consent of the collectives whose interests are in issue.