



10 DOWNING STREET

PRIME MINISTER

This letter from the President of the Law Society embodies a criticism of Clause 17 of the Employment Bill which - I am told - the Solicitor-General feels very strongly about. He has sent a copy to Mr. Prior.

I suggest that we ask Mr. Prior for his comments; and then, if you wish, you can consult the Solicitor-General privately.

Agree?

Yes no

*Duty Clerk
pp TL*

20 June 1980

FROM: THE PRESIDENT OF THE LAW SOCIETY

220



TELEPHONE: 01-242 1222

cc 19 ✓

PRESIDENT'S ROOM
THE LAW SOCIETY'S HALL
CHANCERY LANE
LONDON WC2A 1PL

18 June 1980

Dear Prime Minister,

Employment Bill, Clause 17

It is not customary for any President of the Law Society to address the Prime Minister upon what some may regard as a party political issue, but I have an intense desire to ensure that the high importance and dignity of the Law is maintained.

The one really depressing event in my year of office has been the awful spectacle of the Law being held up to public ridicule in the sphere of "picketing". The subject has since been debated in public and in Parliament but with what result?

I have read with incredulity the Employment Bill as printed on 13 June and I asked myself whether Clause 17 is intended by the Government to grant rights or to limit immunities; the political intent can only be inferred from the construction of the Clause as a whole.

It may be thought from the opening words of Clause 17(1) that the intention of the Clause is to restrict the area of immunity from liability in tort for those involved in an industrial dispute; the Clause, however, then goes on to recognise and, indeed, endorse the right to indulge in secondary action of the widest nature; moreover, it appears to me to re-import the subjective test (recognised in the McShane Case) of what is the purpose, means and likelihood of success of the secondary action. Indeed, it seems to me to require no ingenuity on the part of any Trade Union to ensure that secondary action of the most vicious nature is rendered lawful.

18 June 1980

- 2 -

I envisage that it will be quite impractical for the Courts under Clause 17 to place any effective restriction on "the purpose" referred to in 3(a); the means referred to in 3(a) and 6(b) and "the likelihood" referred to in 3(b).

It follows that any attempt by aggrieved parties to invoke the jurisdiction of the Courts will re-create the ugly spectacle of the ridicule of the Law.

That is a matter, I believe, of vital concern not only to my profession but to the whole nation.

I have noted the amendments put down and conditionally withdrawn in the House of Lords by the Lords Orr Ewing, Spens and Renton designed, no doubt, to avoid the awful prospective consequences to which I have referred. The political decision is for the Government but I beg that this important matter should be urgently reconsidered by the Cabinet while there is yet time.

I am taking the liberty of sending a copy of this letter to Mr. James Prior and to the Law Officers and my colleague Mr. Peter Taylor, Q.C., Chairman of the Bar.

Yours ever,

DM

Rt. Hon. Mrs. Margaret Thatcher, ~~MP~~,
House of Commons,
London SW1.

to its responsibilities and then we can truly earn the headline which was prominent last week and we can say: "Lords to the Rescue". I beg to move.

10.8 p.m.

Lord SPENS: I want to support this amendment. I hope to claim some credit for its construction. When our group were thinking about what we should do about Clause 16, it was rather opportune that a letter appeared in *The Times* signed by Mr. Alan Campbell Q.C. which, if I may quote from his introduction, said:

"An examination of the complex provisions of Clause 16 of the Employment Bill reveals an intention to reflect the "first supplier first customer" concept; to entrench the legality of all industrial action within this ambit; also to legalise the "repercussive" effect of such action against third parties".

That is a letter of 27th May. That letter confirmed the views that I had taken about this clause, that it is much too complicated as it has been drafted and, much more than that, I dislike the way that it appears to entrench positively in statute law immunities for the trade unions. I do not believe that they have been so far entrenched positively before. If one looks at subsection (3) it says:

"Secondary action satisfies the requirements of this subsection if . . ."

and subsection (4) is similar. Subsection (5) is similar. These entrenchments are being made by a Conservative Government, and that to my mind means that—

The Earl of GOWRIE: If I may, I should like to make the point that the kind of immunities the noble Lord referred to have been entrenched in law ever since the Liberal Government of 1906.

Lord SPENS: Yes, I realise there have been entrenchments, but what worries me is that these entrenchments are about to be made by a Conservative Government, because once a Conservative Government has made these positive entrenchments it is going to be extraordinarily difficult ever to get them altered. No future Labour Government will want to alter them, and it is going to be very difficult to find a future Conservative Government who will want to alter them. Therefore it seemed to me that this entrenchment of immunities was a dangerous thing and so I set about trying to draft a much simpler

clause and I gave it to my noble friend Lord Orr-Ewing. At the same time he was having similar thoughts on the subject, and together we produced the amendments that are now before your Lordships.

If I may just indicate the effect, Clause 16 will now read:

"Nothing in Section 13 of the 1974 Act shall prevent an act from being actionable in tort on a ground specified in subsection (1)(a) or (b) of that section in any case where—

- (a) the contract concerned is not a contract of employment, and
- (b) one of the facts relied upon for the purpose of establishing liability is that there has been secondary action as defined, and
- (c) the person claiming the benefit of this section is not a party to the dispute".

Subsection (2) we leave as it is; and we take out, or hope to take out, subsection (3), (4), (5) and (6).

Having tabled these amendments and I was delighted to read a letter on Tuesday of this week in the *Daily Telegraph* from Edward Grayson, saying:

"These amendments to Clause 16 provide with the most admirable simplicity and clarity that Section 13 of the Trade Union Relations Act 1974 will not apply, and a person will therefore be able to pursue his common law rights when he is

- (a) suing for interference with a contract other than a contract of employment (e.g. a commercial contract);
- (b) relying upon secondary action as defined in subsection (2) of the existing Clause 16, and
- (c) himself not a party to the dispute".

So we have got a positive acclaim from Mr. Grayson that we have done what we had hoped in the form of making Clause 16 simple and also, I think, more effective than the present Clause 16 will be. I therefore support the amendment.

Lord HANKEY: I should like to support my noble friends in putting forward these amendments. I see great difficulty in the present text of Clause 16. I have had to spend years of my life arguing with foreigners about the meaning of various texts of treaties and so on. My experience is that people are confused whenever anything is very complicated. In particular, the French always make rings round everybody else, and so do the Russians. It is true that we do not deal with the French and the Russians, but when you mislead a lot of people by the

Mich-ers
ways for
you.

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File

DSG

20 June 1980

I am writing on behalf of the Prime Minister to thank you for your letter of 18 June about Clause 17 of the Employment Bill. I have placed your letter before the Prime Minister and a reply will be sent to you as soon as possible.

T. P. LANKESTER

Sir John Stebbings.

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Mr J. STEBBINGS

23 June, 1980

Your Secretary of State will have received a copy of the enclosed letter from the President of the Law Society. The Prime Minister would be grateful for comments on it, and for a draft reply.

J. P. LANKESTER

R Dykes, Esq
Department of Employment

888

FROM: THE PRESIDENT OF THE LAW SOCIETY



TELEPHONE: 01-242 1222

PRESIDENT'S ROOM
THE LAW SOCIETY'S HALL
CHANCERY LANE
LONDON WC2A 1PL

Dear Mr. Kaufman,

R.

J.P.

27 June 1980

Employment Bill

Thank you very much for your letter of 20 June.

I do not wish to trouble the Prime Minister with any reply to my letter. As she knows, there is no need for her to discuss the problems with us unless indeed we can be of any help.

My colleague, the Chairman of the Bar, has kindly sent to me a copy of his letter to her dated 25 June and I understand that Mr. Tom Morison, Q.C., has also written.

As long as the Prime Minister is aware of our fears for the future of the law and hopefully can meet the points which have been raised, our approach will have been worthwhile and certainly require no acknowledgement.

I am sure you will understand that it is in no way our wish as Heads of our respective professions to enter the political discussion which must ensue.

Yours sincerely,

Tom Stammers

T. Lancaster, Esq.,
Private Secretary,
10 Downing Street,
London SW1.