Human rights and minorities: Speech by Lord Woolf, Lord Chief Justice of England and Wales: The B'nai B'rith Anti-Defamation Commission Inc, Melbourne, Australia

Introduction

Despite the geographical gulf between us, Australia and the United Kingdom have more in common than divides us. One of the treasures we like to claim we have in common is Sir Zelman Cowen. He was, of course, a most distinguished Governor General of Australia. He has, however, spent a great deal of time in the United Kingdom. Both Sir Zelman and Lady Cowen are held in the highest esteem in the United Kingdom even though we do not see them as often as we would like. Indeed, so fond are we of Sir Zelman Cowen, I have little doubt that if the Queen usually resided in Australia and not in England, Sir Zelman Cowen would have been the Governor General of Great Britain. However, not being able to make Sir Zelman Governor General, we made him Provost of one of the most attractive colleges in Oxford and Oxford had also the good sense to make him Pro-Vice Chancellor of the University.

If there is one quality I associate with Sir Zelman, it is good judgment. However, I have to say that, in the invitation he extended to me for this evening, that judgment appears to have lapsed. The consequences are likely to be as painful for you as they are for me. Painful for you because you have to listen to me. Painful for me because I am following in a line of very distinguished orators. According to the Concise Oxford Dictionary (in Sir Zelman's company, I could not refer to any other dictionary) oratory consists of *"rhetoric, highly coloured presentation of facts; eloquent or exaggerating language"*. I have never, with good reason, claimed to be an orator, but, having regard to that definition, I now know that I was right not to do so.

Fortunately, there are others who are orators. One such was Martin Luther King Jr. He eloquently summed up his view of the role of law in relation to discrimination when he said:

"A law will not make a man love me but it will stop him lynching me and that is certainly an improvement I value."

That is, in part, how I see the role of law in relation to discrimination. I believe that laws can affect behaviour even though they cannot control an individual's mind. Speed limits on the road provide a simple example.

A further statement made by Martin Luther King Jr (and one which reveals his skill in the use of language) is that:

"The test of a man is not where he stands in time of peace and ease, but where he stands in time of turmoil and difficulty."

The same can be true of a nation and the statement has a special resonance at the present time. Both our countries are engaged, not only in war, but in protecting our citizens against the malevolent intent of terrorists who are prepared to kill themselves if they can and kill and maim others.

I would also like to quote a second orator, one of the greatest political orators, Winston Churchill. When a young Home Secretary in 1911, Churchill made one of the most enlightened remarks about prison conditions that any politician has made. I refer, of course, to his statement to the House of Commons that:

"The mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of the civilisation of a country."

Those eloquent words, I believe, could today be applied, not only to prisoners, but equally to immigrants, asylum-seekers and, even, those detained as suspected terrorists; in fact, to any minority that is reviled by the general public and so is in danger of being subject to discrimination.

These are difficult times for both our countries. Both are engaged in a war and, at the same time, are faced with very substantial moral problems. Problems which lead to forceful political debate. At times like this, it is critical that there should be laws which set the standards that we should observe. We have the advantage of our shared heritage, our shared tradition of tolerance and fairness, the fact that both countries have inherited the value of common law and that both are virile democracies. But, it is at times like the present which history teaches us that we have to be on our guard. Such times test not only our citizens but also our laws and courts. So far as our citizens are concerned, it is critically important that we have bodies like the B'nai B'rith Anti-Defamation Commission to combat racism and anti-semitism and promote co-operation between different communities. I congratulate the Commission on the very important work it is doing. So too, our justice systems have to be judged in these times by how they protect the rights of the individual. The role of the courts is not to legislate, not to determine policy, but to ensure access to the courts and to apply the law fearlessly.

It is no accident that it was after the end of the Second World War that the European Convention of Human Rights (ECHR) and other international HR conventions were born. These conventions were born to meet a need. A need not only to tackle the wilful discrimination of totalitarian regimes, but to combat the discrimination against women, religious and racial groups which was then the accepted norm in most democracies, including our own.

Fortunately we have progressed. It is now generally accepted, at least amongst the citizens of developed countries that observe the rule of law, that the observance of human rights values is a critical constituent of the rule of law and that the observance of the rule of law, and therefore human rights, is an essential part of the democratic process. It is appreciated that the observance of human rights values is a hallmark of a democratic society, because it demonstrates that the society values each member as an individual. Just as it is the essence of democracy that every individual has an equal right to vote, so each individual has the right to expect that a democratically elected government will regard it as its responsibility to protect each of its citizen's human rights. Human rights come with true democracy whether the government wants them or not. However, this liberal approach is of remarkably recent origin and therefore has to be regarded as fragile and never taken for granted. We have to see how it will stand up to the forces which the 21st Century has already set loose.

Until 2000, when the Human Rights Act (HRA) came into force in the UK, both our countries had in common the fact that we were among the few nations which did not have an entrenched Bill of Rights. Australia, unlike the UK, did have a constitution that protected certain civil rights, including freedom of religion. In addition, your High Court has held that your constitution contains implied freedoms of political communication, from detention of a penal or punitive character and a requirement of due process. I am aware that, as recently as 1985, Australia rejected incorporating the International Covenant on Civil and Political Rights into domestic law. I am confident that, if the United Kingdom had been asked in 1985 to do the same thing in respect of the European Convention of Human Rights, the initiative would have ended in the same way. Furthermore, at that time, a British Parliamentary Committee would have been likely to have made a similar assertion to that made by the New South Wales Parliamentary Committee which, I believe, indicated that, not only did Australia not need a Bill of Rights, but that to introduce one would positively harm the ability of government to govern.

The reason for that response would have been, not that our respective societies did not value human rights, but that we were satisfied that those rights were sufficiently protected by the common law and the laws passed by our respective parliaments and, in the case of Australia, by its written constitution. Indeed, in the period during which I have been a judge, it is quite remarkable the extent to which both our judiciaries have found, buried in the common law, principles such as 'equality before the law' and the 'right of all persons to be treated uniformly by the state, unless there is valid reason to treat them differently' to accompany the traditional right to do anything you like unless there is some law restricting that right.

However, although we (probably complacently) regarded the UK as a bastion of civil liberties, it was extraordinary how often the European Court of Human Rights found that, in fact, we were not protecting the rights of our citizens as we should and so were in contravention of the European Convention of Human Rights. That this should be the position was not the fault of the courts. Over the previous 20 years there

had been the most remarkable development in judicial review. There is now hardly any activity of a public body which could not be scrutinised by the courts on an application for judicial review. Yet, the courts were at a serious disadvantage in that they could not enforce a citizen's human rights directly. Instead, the courts could only enforce a public body's legal duties. Because the ECHR was not part of our domestic law, if our citizens wished to enforce their human rights directly they had to apply to the Court at Strasbourg alleging that the British government had breached rights to which they were entitled. Prior to the HRA coming into force, we were not entitled to claim that we were continuing, as in the past, to set an example to other nations as to human rights values.

With the coming into force of the Human Rights Act 1998 in October 2000, the ECHR became part of our domestic law. It is now possible for an application to be made directly to the UK courts for the protection of fundamental rights enshrined in the Convention.

In England, prior to the first Race Relations Act in 1965 and the development of a full doctrine of judicial review, there was no common law rule, policy or principle outlawing racial or other forms of illegitimate discrimination. [Endnote 1] There were instead, a few isolated areas in which specific non-discrimination principles had developed. When I think with pride of our past, I think of an 1803 case concerning the liability of an English parish to maintain a foreigner in which Lord Ellenborough referred to a common law of humanity "which is anterior to all positive laws, [and] obliges us to afford [foreigners] relief to save them from starving". [Endnote 2] I also remember that the common law had imposed, at the same time, a duty on common carriers, innkeepers and some monopoly enterprises such as ports and harbours to accept (and I emphasise) all travellers without discrimination. [Endnote 3]

These isolated instances apart, the common law was often a source of discrimination. The courts conceived of themselves as guardians of the principle of absolute freedom of contract as it applied to all types of dealing, including employment and the provision of basic public services. A necessary corollary of this absolute freedom of contract was the absolute freedom of employers and service-providers to discriminate against women, religious and racial groups and other minorities. As a result, it was not only employers who were guilty of discrimination. For some time even into the 20th century, our courts consistently held that the word 'person' did not cover women. This obstructed the extension of women's rights to attend university, [Endnote 4] vote [Endnote 5] and enter the professions. [Endnote 6]

The first anti-discrimination legislation properly so called, was passed in the late 19th century in the form of statutes entitling married women to retain property and, later, their wages. After the First World War, the Sex Disqualification (Removal) Act 1919 was passed providing that "a person shall not be disqualified by sex or marriage from the exercise of any public function" including any civil or judicial office or from entering any civil profession or vocation.

In the second half of the 20th century, Britain, like Australia, passed a series of Acts of Parliament which prohibited racial, gender and disability discrimination.

The resulting patchwork of anti-discrimination legislation has subsequently been overlaid by statutory codes of practice, providing guidance to employers and service providers on how to avoid discrimination and promote equality of opportunity. The codes are not binding in law and a failure to comply with them does not, of itself, give rise to liability. They are, however, admissible in evidence where a person claims that unlawful discrimination has taken place and the legislation and the codes have influenced what is the accepted practice and the attitudes of British society for the better.

However, we relied on a patchwork of statutes and codes which have justifiably been described as incoherent. By July 2000, there were in the UK no fewer than 30 Acts, 38 statutory instruments, 11 codes of practice and 12 EC directives and recommendations concerned with discrimination. [Endnote 7] More have been forthcoming since. [Endnote 8] In addition, as in Australia, [Endnote 9] the British courts developed the common law so that it provided better protection for fundamental human rights. Notwithstanding this and the volume of the legislation, many rights acknowledged as fundamental human rights in the European Convention remained unprotected in English domestic law.

English law did not, for instance, prior to the Human Rights Act, recognise a positive right to freedom of

thought and religion. Some, but not all, religious groups had been able to avail themselves of protection under the Race Relations legislation, but this had been because the act of religious discrimination complained of was also discriminatory on grounds of "colour, race, nationality or ethnic or national origins" and not because the law protected the sanctity of religious belief. Thus, in 1983, a court held that the refusal to admit a Sikh pupil because it would be contrary to school rules for him to wear a turban constituted indirect racial discrimination on the grounds that Sikhs are a community recognisable by ethnic origins. [Endnote 10] In that case, the House of Lords found that for a community to be recognisable by ethnic origins, it was essential that the group had a "long shared history" and a "cultural tradition of its own."

So Jews are also treated as a racial group within the meaning of the Race Relations Act 1976. In a 1987 case, the Court of Appeal held that questions to a Jewish job applicant about the nature of his faith, which discouraged him from continuing with an application for employment in the Middle East, were capable of amounting to discrimination under the 1976 Act. [Endnote 11] However, Muslims do not constitute a racial group and an employer's refusal to allow Muslim employees time off work to celebrate a religious festival has only been held in the UK to justify an award of compensation on the basis that it constitutes indirect racial and not religious discrimination. [Endnote 12]

This improvised method of protecting religious groups was better than nothing at all. While, for example, a "No Hindus" or "No Jews" rule would be unlawful under the Race Relations provisions, a "No Catholics" rule would not be. New religious groups were also left without any protection as, by definition, they cannot have "a long shared history" and "cultural tradition". Hence, it was held that Rastafarians did not constitute a racial group, as they have existed for only 60 years. [Endnote 13]

There was no legal right on the part of an individual to his or her own sexual preferences or his or her own sexual identity. Sexual orientation discrimination did not come within the scope of the Sex Discrimination Act 1975, this meant that homosexuals and transsexuals who suffered verbal abuse or were otherwise discriminated against had no legal protection.

Since the European Convention of Human Rights became part of our domestic law, the legal position in the United Kingdom is being transformed. Initially, it appeared that the effects would be limited, but it is becoming increasingly obvious that its influence is going to be greater than anticipated. It would be fair to say that human rights values have immersed the whole of our law.

Since coming into force, the Human Rights Act has been applied to enhance the rights of religious minorities. In one case, parents won the right to have their religious beliefs taken into account when applications on their child's behalf to particular schools were considered by their local council [Endnote 14].

Article 8 of the Convention, which guarantees respect for private and family life, has been held to confer a right on an individual to assert his sexual identity. Significantly, since the HRA, the Court of Appeal in the recent *Mendoza* case granted same-sex couples the right not to be discriminated against in important housing legislation by virtue of the HRA. [Endnote 15] The Court agreed that the words "husband" and "wife" are in their natural meaning limited to persons who are party to a lawful marriage but, in the words of Lord Justice Buxton, "Parliament having swallowed the camel of including unmarried partners within the protection given to married couples, it is not for the this court to strain at the gnat of including such partners who are of the same sex as each other" [Endnote 16]. This decision will impact upon a range of areas, such as pensions, social security and housing benefit, where homosexual couples have been discriminated against.

Recently, there have also been very significant developments, spurred by the European Convention, towards equality for the 5,000-strong minority of transsexuals in the UK. Following decisions of the European Court which found the UK government's policy on transsexuals to breach Article 8 and Article 12, the right to marry, the government has committed itself to introducing a Bill to formally recognise a transsexual's acquired gender including the right to marry in the acquired gender. [Endnote 17] The fact that this can only be achieved by legislation has been emphasised by a decision last week in the House of Lords.

Other areas where there have been significant changes brought about as a consequence of the combined

affect of the decisions at Strasbourg and the change in our domestic law are in relation to prisoners and asylum seekers.

There has been a rash of cases in relation to prison conditions and Churchill would, I think, approve of the outcomes. I give one example. No doubt for reasons of good administration, the prison service had a series of blanket policies which they applied to particular circumstances. One such policy laid down how many weeks a mother who gave birth to a child in prison could keep that child with her. The Court of Appeal held that greater flexibility was required in applying the policy so as to ensure minimal interference with each baby's welfare. An individually-based approach which accords with human rights was required.

In relation to mental health patients seeking release, the HRA has resulted in the reconsideration of policies as to the burden of proof and the speed with which applicants for release are heard.

Gypsies, a minority group regularly subject to discrimination, have also benefited from the HRA. The House of Lords has held that a planning inspector was prohibited under Articles 8 and 14 from taking into account a gypsy's refusal of an offer of conventional housing as a reason for refusing planning permission for a caravan on a different site. The council needed to consider in full the personal and surrounding circumstances, including the gypsies' attitudes to conventional housing and the role of their cultural background in precipitating those attitudes, and weigh these against the planning considerations in coming to a determination. [Endnote 18]

On the other hand, in *R v Home Secretary ex parte Farrakhan* [Endnote 19], a challenge to the Home Secretary's refusal to lift an exclusion order on the leader of the Nation of Islam who was alleged to have made malevolently anti-semitic remarks, based on his free expression rights under Article 10 ECHR was rejected. The High Court found that the Home Secretary's decision struck a fair balance between freedom of expression and the legitimate aim of the prevention of public disorder.

It is, however, in the immigration and asylum field that decisions have been given by our courts which have caused the most concern to the executive, despite the fact that many of the decisions have been in the government's favour. The sensitivity is due to the fact that, in these cases, the courts in England and Wales have had to balance the human rights of the immigrant or asylum-seeker with the government's policies designed to control the flow of immigrants into England or to detain those who are regarded a threat to National Security. Policies which are strongly supported by substantial sections of the public urged on by the tabloid media. Here, Article 5 of the ECHR, which limits the circumstances in which an individual can be detained is relevant. The European Court of Human Rights (ECtHR) at Strasbourg has recognised that it should extend a degree of latitude to member states (called a margin of appreciation) in this area. Our courts likewise extend a degree of deference or respect to the position of the government, but this latitude is not always enough to ensure the legality of the government's actions.

The 11 September 2001 attacks closely followed by the bomb in Bali rightly attracted worldwide outrage and sympathy for the victims. One consequence was the passage of the Anti-Terrorist Crime and Security Act 2001 through the British Parliament. The most controversial part of the Act gives the Home Secretary power to issue, in relation to an alien, a certificate as to the Home Secretary's reasonable belief that an individual's presence in the UK is a threat to national security and the individual is, therefore, a **suspected** terrorist. Under the Act, such a person may be detained and deported. However, because of Article 3 of the ECHR, some of the aliens so suspected cannot be deported because, if they were, they would be subject to torture in the country to which they would be sent. The new legislation enables the alien in these circumstances to be detained indefinitely without trial. This legislation is not without its echoes of internment during the Second World War. The Home Secretary recognised that in order to implement such a measure he would have to derogate from Article 5 of the HRA and the British government did so.

The Act certainly contains draconian measures which should never be tolerated in peacetime. However, it was subject to detailed Parliamentary scrutiny by the Joint Human Rights Committee and it has safeguards. The detainee can apply to a tribunal, the Special Immigration and Appeals Commission (SIAC), which includes two senior judges and which has the power to discharge the certificate. In addition the powers of detention have to be renewed annually by Parliament.

In a case called *A, X, Y & Ors v Secretary of State for the Home Department*, SIAC annulled the certificate of three aliens on the grounds that, since the Act applied only to aliens and not to nationals, it was discriminatory. It was argued that, since there could be equally dangerous British terrorists in the UK, there was no justification for singling out aliens. The Home Secretary appealed and the Court of Appeal, of which I was a member, allowed the appeal and upheld the validity of the legislation. The Court decided that there was, and always had been, a clear distinction between the position of aliens and nationals. The aliens could have been deported if the government had not held its hand to protect them from torture and, in these circumstances, it was reasonable to detain them until such time as they were prepared to leave the country.

I am aware of the Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002, but I believe that Bill goes further than the UK legislation, so the case of *A, X, Y & Ors* may not provide any precedent.

There has also been a series of cases in the UK where the Home Secretary's policy of depriving asylum-seekers of financial and other support to deter them from coming to the UK has been challenged in the courts. The legislation could leave individuals destitute and naturally the courts have scrutinised it with great care. First, it was held that such a draconian measure could not be implemented by subordinate legislation. Then, it was successfully argued that, while the newly-introduced primary legislation operated to exclude one right to benefit it did not exclude another, namely national assistance - the benefit of last resort. The most recent legislation deprives asylum-seekers of **all** support if they do not claim asylum immediately on arrival in the UK. Again, this legislation has run into trouble, because it was being applied unreasonably. It was suggested that this was an example of the HRA preventing the government from governing and of the courts interfering with the will of Parliament. In fact, the courts intervened because the legislation was being inadequately administered. I emphasise that our courts were not interfering because they disapproved of the policy. They did so, because it is the courts' duty to ensure that, particularly in the case of legislation which renders people destitute, the executive is strictly complying with the legal requirements.

While there has been a seismic change in the manner and degree of protection for minorities in the UK, the limitations of Article 14, which deals with discrimination, are noteworthy. The Article only prohibits discrimination by the State where the complainant can show that he has been discriminated against in relation to those rights and freedoms contained elsewhere in the Convention. Unlike the Bill of Rights of Canada, New Zealand or South Africa there is no general right in the UK not to be discriminated against on unjustifiable grounds. [Endnote 20]

In the UK Parliament, Lord Lester, following considerable consultation and research, has introduced the Equality Bill which, if passed, would introduce a free standing right not to be discriminated against and a single framework for the protection and promotion of that right. It would also establish an Equality Commission for Great Britain.

This would be a way of rationalising current anti-discrimination law. The issue is whether this is best achieved by legislation drafted to address specific areas of discrimination in detail or by the introduction of more general non-discrimination provisions, which the courts can apply and develop on a case-by-case basis. From my position, it may not surprise you to learn that I personally favour the latter approach, I do so not out of ambition for increased power for the courts, but because our experience in the UK has been that specific legislation has the potential to generate a raft of litigation over the details of individual provisions with some odd results. Consequently, I believe that, in countries which have the benefit of a well-established and mature judiciary, the objectives of such rights-based legislation are better achieved where the legislation is based on general rights, which can subsequently be overlaid with more detailed, persuasive but non-binding codes as to the application of those rights.

I also consider that a dedicated Human Rights and Equality Commission, effective models for which can be found here in Australia as well as in India and Northern Ireland, would be a valuable addition to our culture of equality and respect for the rights of individuals and minorities in the UK. [Endnote 21] A Commission would contribute substantially to the momentum with which the UK's human rights culture is developing. Bringing our various anti-discrimination commissions under one umbrella would mean their efforts and

expertise could be combined.

There is no doubt that the Human Rights Act provides solid foundations for the protection of our vulnerable minorities. That said, it is acknowledged that the introduction of the European Convention on Human Rights in domestic law provides a "floor not a ceiling" for the protection of human rights. It is of crucial importance that we continue to build upwards.

The advantages to be derived from the greater focus on human rights values far exceed the disadvantages. Just as the development of judicial review in the final quarter of the last century in England and Australia has improved administration in our increasingly complex societies, so will the existence of the HRA protect, in Britain, our individual interests, which are so easily lost sight of in meeting the demands of the global economy. The real test of the HRA arises when individuals or minorities attract the antagonism of the majority of the public. When the tabloids are in full cry. Then, the courts must, without regard for their own interests, make the difficult decisions that ensure that those under attack have the benefit of the rule of law. At the heart of the HRA, is the need to respect the dignity of every individual by ensuring he or she is not subject to discrimination.

Today we are confronted by dangers that may be as great or even greater than those which threatened our countries in 1939 when we offered succour to those fleeing from Nazism. There are now pressures posed by the need to protect the public from crime; pressures created by an unprecedented number of asylum seekers which can cause us to forget the extent to which the UK has benefited from immigration. As the Independent newspaper pointed out on 10 October last year: "historically this nation has been enriched by generations of asylum seekers from the Huguenots in the 17th century to the Jews in the 20th". This, I suspect, is even more true of Australia, but on the other hand there are pressures created by the need to protect both our countries from merciless acts of international terrorists. These pressures will test our countries' national fibre and, in the UK, this will test the HRA. But the HRA is not a suicide pact. It does not require the UK to tie its hands behind its back in the face of aggression, terrorism or violent crime. It does, however, reduce the risk of our committing an 'own goal'. In defending democracy, we must not forget the need to observe the values which make democracy worth defending. We must also remember there are other nations watching how we respond and perhaps all too ready to follow our example if we let our standards fall.

It is our respective Parliaments and governments that have primary responsibility for defending both our democracies and their shared values. Nevertheless, if Parliament or the government does not strike the correct balance between the rights of society as a whole and the rights of the individual, it is important in the UK that the courts, as they could not before the HRA, act as a longstop; not by striking down legislation, but by declaring it incompatible with the ECtHR. In doing so, as is their duty and as the law requires, the judiciary will make the difficult decisions involved in upholding the rule of law. Sometimes the judicial role will be unwelcome. If initiatives which have popular appeal are interfered with by the judiciary because of their adverse effect on the human rights of a minority, the judiciary will not be popular. But the temporary unpopularity of the judiciary is a price well worth paying if it ensures that Britain remains a democracy committed to the rule of law - a democracy which is therefore well worth defending.

What then would Martin Luther King and Winston Churchill say if they were alive today and able to call on their powers of oratory. I am sure that they would think that there are a great many ways in which our laws are influencing our societies' behaviour towards minorities for the better. Winston Churchill might, however, worry that, in Britain at any rate, the sunshine of fairness, tolerance and liberty was at risk of being obscured. Not by a gathering storm, but by no more than gathering clouds warning of possible storms ahead. We must at all times remain on our guard to protect the values for which our two countries have always stood.

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Endnotes

1. "English law has very little to say about discrimination" JAG Griffith, et al., *Coloured Immigrants in Britain* (1960), 171.
2. *R v Inhabitants of Eastbourne* (1803) 4 East 103
3. De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (1995), The Unreasonable Exercise of Power, 13-040
4. *Jex Blake v Edinburgh University* (1873) 11 M 784
5. *Nairn v St Andrews and Edinburgh University Courts* 1909 SC (HL) 10
6. *Bebb v Law Society* [1914] 1 Ch 286
7. *Equality: A New Framework - Report for the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Hepple, Coussey and Choudhury.
8. Hansard, House of Lords Official Report, Friday 28 February 2003 Vol.645, No.54, p.528 Col.2.
9. I have in mind, in particular, *Ah Hin Teoh* [1995] GA. 128 ALR 353

10. *Mandla (Sewa Singh) v Dowell Lee* [1983] 2 AC 548.
11. *Simon v Brinham Associates* [1987] ICR 596 [see 962-963 C&T]
12. *JH Walker Ltd v Hussain* [1996] ICR 291
13. *Crown Suppliers (Property Services Agency) v Dawkins* [1993] IRLR 284
14. *R v Newham London Borough Council ex parte K*, 9 February 2002, Collins J
15. *Mendoza v Ghaidan* [2002] EWCA Civ 1533
16. Ibid., paragraph 35
17. Goodwin v UK, I v UK 11 July 2002; Lord Chancellor's Department press release, 13 December 2002.
18. *Clarke v Environment Secretary* [2002] EWCA Civ 819
19. [2002] 2 WLR 481

20. Hence Protocol 12 to the European Convention has been introduced to create a strong and freestanding anti-discrimination provision. The UK, however, has yet to subscribe to it. See G Moon, *The Draft Discrimination Protocol to the ECHR: A Progress Report* [2000] EHLHR
21. I understand that, since its inception in the 1980s, the informed view is that Australia's national Human Rights and Equal Opportunities Commission has brought a number of advantages. Making one body responsible for the promotion of human rights has ensured a consistent and cost-effective approach and, as a result of its endeavours, the Commission has established a respected reputation nationally and on the world stage for the advocacy of human rights inside and outside Australia. See, for instance, Beckett and Clyde, *A Human Rights Commission for the United Kingdom: the Australian Experience*, 131 EHRLR 2000.

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