

TIP OF THE ICEBERG LAW

THE MAJESTIC EQUALITY OF THE LAW

By **DyNAMC** Advisory Board Chair, Lee Bennett Esq.

As a gay man who has suffered discrimination due to my sexuality, I am well acquainted with just how difficult it can be to compete on an equal footing in business, the law, and in life, generally. I advise clients who have also suffered discrimination and prejudice due to their race, sexuality, and other grounds. Very little shocks me anymore. But one thing is clear to me; it is critical that those who discriminate should be exposed and pursued in court, as this is an important part of the attitude-changing process, and it sends a clear message to society generally: Everyone must be treated equally and discrimination will not be tolerated.

In the UK there are four types of discrimination that are outlawed: direct discrimination; indirect discrimination; harassment; and victimization. People are protected from such

discrimination at work, in education, as a consumer, when using public services, when buying or renting property and as a member or guest of a private club or association. The Equality Act 2010 makes it unlawful to discriminate against someone due to any of the

following protected characteristics: age, being or becoming a transsexual person, being married or in a civil partnership, being pregnant or having a child, disability, race, including color, nationality, ethnic or national origin, religion, belief or lack of religion/belief, sex, or sexual orientation.

I don't intend to rehearse the definitions, details, and case law relating to each of the above forms of discrimination. I will examine direct

discrimination, highlighting the possible negative effects on both the victim and discriminator. In doing so, I will focus on the challenges and difficulties a Claimant faces when commencing and pursuing a claim. I will do so by referencing my own discrimination claim that I brought against a London law firm, Bivonas LLP, and two of its partners Antony Brown and John Bechelet.



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The information I detail below about my case comes from the evidence that was given in open court, the judgments of the Employment Tribunal and Employment Appeal Tribunal, and other information that is in the public domain.

I strongly believe that if corporations and institutions implement effective anti-discriminatory policies as part of their overall business and communications strategies, then not only will they avoid the unwelcome consequences outlined below, but they will have a successful and flourishing team that feels valued, energized, and motivated; a team made up of diverse individuals striving for quality and increased productivity. As someone who has suffered discrimination and who also acts for clients who are either the victims of discrimination, or who seek advice to ensure they comply with the law and good practice, I am ideally placed to ensure that discriminators receive their just desserts, and that companies avoid discriminating (whether consciously or unconsciously) against others by adopting and implementing effective Diversity and Inclusion policies.

In 2010, I brought a claim for discrimination against the London law firm Bivonas LLP and two of its partners, John Bechelet and Antony Brown.



I won my discrimination claim, with the three Employment Tribunal judges unanimously giving judgment in my favor against all three Respondents and deciding that I had suffered unlawful discrimination on the grounds of sexual orientation in respect of (a) an aide-memoire or note written by John Bechelet in or about May 2008; and (b) the conduct of the grievance investigation carried out by Antony Brown. However, the Respondents appealed against the first judgment. But almost a year after the original trial, an Appeal Hearing took place before another three judges in the Employment Appeal Tribunal. The Equality Commission and Human Rights Commission

acted for me in the Appeal. Three months later, and about fifteen months after the original trial, the 3 Appeal Court judges unanimously upheld the original judgment against Bivonas LLP, John Bechelet, and Antony Brown.

In order to prove a claim for direct discrimination, a Claimant must show they have been treated less favorably because of a protected characteristic they have, or are thought to have, or because they associate with someone who has a protected characteristic. Although my own case centered on the protected characteristic of sexuality, one can easily substitute any other protected characteristic, like race, disability, etc. in its place and the core principles will be the same.

My knowledge of the facts giving rise to my claim arose when I was with a colleague reviewing archive material on a multi-billion pound confiscation case I was working on at the time. I came across a document in one of the case files that was written by John Bechelet, part of which read:

“Lee - takes out cases to his batty boy mate....”

“Lee completely wrong for VR within six months case would be with GO..... and the batty boy.”

When I saw this homophobic document written by John Bechelet about me, I was shocked. I was actually shaking. My colleague was

also visibly shocked. I found myself getting distressed. The term “Batty Boy” is a hateful term designed to insult gay people. Buju Banton, homophobic reggae singer, uses homophobic lyrics in his songs. My colleague advised me to photograph the file and the box that it was contained in.

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My lawyer wrote a letter to Bivonas, LLP complaining about homophobic remarks and describing the words “batty boy” as a pejorative sexual slur used to describe gay, bisexual and effeminate men. Shortly after, I was informed by a colleague that the “[expletive] was hitting the fan” following the correspondence from my attorney.

I spoke to the same colleague that evening. During the conversation, this colleague told me that Antony Brown had come into the office that morning, and said to some colleagues that there had been a security breach. The colleague said that Brown stated that I had stolen documents some time back, and that I was now putting them forward as I knew I was going to be made redundant, and that I was suing the firm for sexual orientation discrimination. Additionally, this colleague told me that Antony Brown stated that I was briefing a particular barrister in order to ‘shag’ him; and that he was going to fight the case.

We may have laws that purport to guarantee equality, but unless there is also an equality of access, which means an equality of arms, there will be no equality in reality. It is crucial for people to stand up against discrimination in all of its forms and degrees of seriousness in order to send a message that this conduct is not acceptable. It is when we allow the simplest acts of discrimination to continue unopposed, that we give encouragement to discriminators to continue their behavior, to think they can get away with it, and to allow them to inevitably graduate to more serious and damaging acts. It is critical to take action against discrimination and to publicly affirm

that such behavior is not acceptable and that there are consequences for those who discriminate.

Part of this process involves allowing people to bring claims against their discriminators. But the financial limitations of the most vulnerable in society, who are also most likely to be the very people who are at greater risk of discrimination, means that they find it extremely difficult to issue and sustain a claim, notwithstanding its merits. It appears that justice is not for everyone; just for those who can afford to pay the issue fee. In these circumstances, I am very much reminded of the words of Anatole France, the French poet, journalist, and novelist, who said “The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”



DyNAMIC Advisory Board Chair,
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