

Enforcement: remedies, sanctions and solutions in discrimination cases

Equality bodies, NGOs, Public interest law firms ...



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Structure

1 Equality bodies – state actors

History and purpose. Civil servants or anti-discrimination advocates?

Effective advocacy requires trust

2 Public interest law - NGOs

Finding the “right” client

Class action or multiple cases

Situation testing as proof

3 Effective enforcement

Damages? Equitable remedies/court orders.

Courts – results. Settlements – win/win

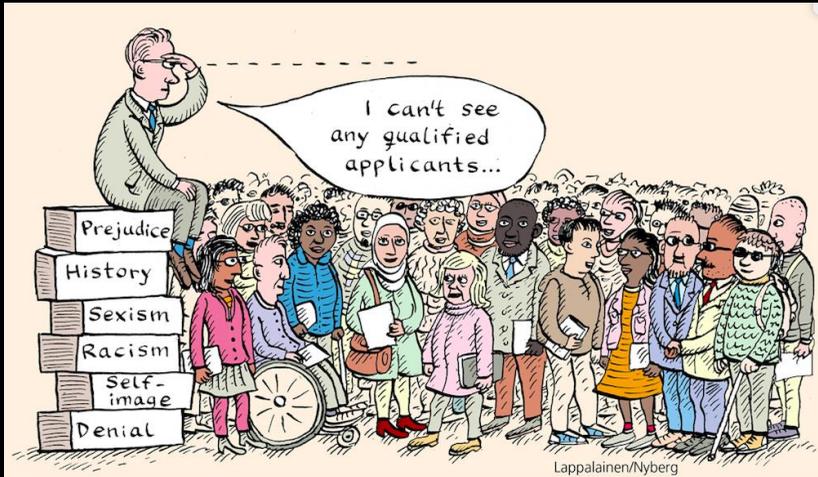
4 Power – strong advocacy both in court and outside

Awareness raising / fund raising anchored in community

5 Sample case – national exams and pupils with dyslexia

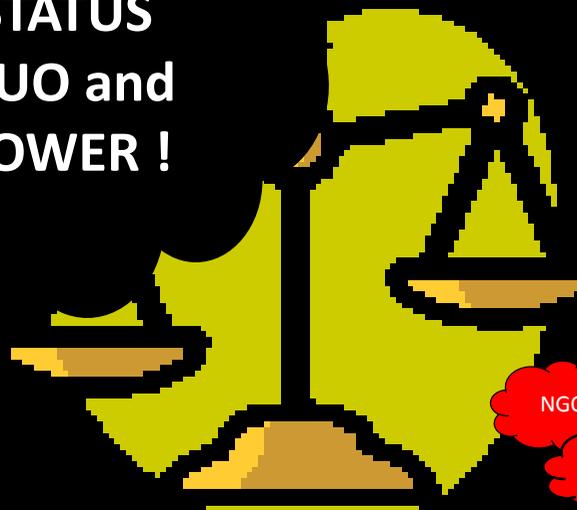
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How do you help him see?



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STATUS QUO and POWER !



Equality
bodies
NGOs
Policy-
makers
Research

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It is a sad historical fact that privileged groups have seldom given up their privileges voluntarily.

Martin Luther King



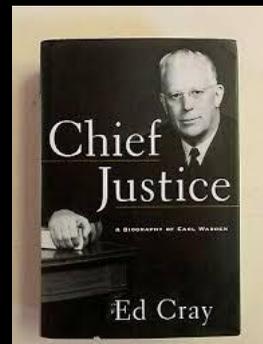
Changing attitudes or behaviour?

Many believed "that you cannot wipe out racial discrimination by law, only through changing the hearts and minds of men."

This is a "false credo. True, prejudice cannot be wiped out, but infliction of it upon others can."

Earl Warren – Chief Justice US S Ct 1953-1969

Lesson: Ensure that discrimination costs



1-Equality bodies – state actors

- History and purpose.
- Civil servants or anti-discrimination advocates?
- Can Equality Bodies be effective advocates?

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US enforcement



NAACP Legal Defense Fund

- Fair Employment Practices Comm
- EEOC – 1964
- Public interest law firms

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US EEOC > UK EOC > UK CRE

1964 Civil Rights Act and setting up of EEOC. 1972 right to go to court.

Healthy competition with civil society, public interest law firms and other private lawyers.



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Purpose of an equality body?

Provide some balance of power in re those with the power to discriminate



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EU directives (race / sex)



Race directive 2000/43/EC

Article 13

1. ... a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin...
2. Member States shall ensure that the competences of these bodies include ... providing independent assistance to victims of discrimination

Article 15

... sanctions must be ... effective, proportionate and dissuasive

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Confusion re role of EBs



EQUINET – These bodies have a distinct role from national governments and civil society orgs

- Investigating discrimination
- Building a culture that values equality ...
- Providing information and some support to victims
- Monitoring and reporting
- Conducting research / policy recommendations
- Engaging with public bodies, social partners, NGOs

HOW IS THIS DISTINCT FROM CIVIL SOCIETY?

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2 Public interest law - NGOs

- Finding the “right” client
- Class action or multiple cases
- Situation testing as proof

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Access to justice



Equality body – government agency

Unions

Other NGOs

Private lawyers

Legal aid / insurance

See Canadian Court Challenges Program – equality law cases financed by a government fund

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Will she really sue? Limited resources, loser pays.....

Does she take sugar?



No! But she studied disability law and she will sue you unless you speak directly to her!

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US – key civil society cases

- Shifted burden of proof - McDonnell
- Indirect discrimination - Griggs
- Harassment - Williams

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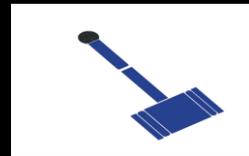
3 Effective enforcement



- Loser pays? Small claims?
- Trust in your attorney – Can a public sector lawyer can be a problem?
- Right to bring an action
- Potential effect? Many clients? Class action? Separate but parallel cases?
- Money damages? Equitable remedies? If a defendant wants to pay, should that be accepted?
- Can a settlement deliver more than a judgment?

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4 Power – strong advocacy even outside the court



Newspaper articles, social media campaigns, demonstrations

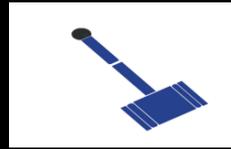
- Might affect the court
- Even if you lose, if a loss on the merits, the outside advocacy may influence public opinion and policymakers
- Could help in fundraising to pay for the case or increase interest in the relevant NGO

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5. Sample case

National school agency requires local schools to give national exams. Guidelines require

the removal of assistance devices from pupils with dyslexia by the schools.



Local governments responsible for the schools. Thousands affected.

Three separate cases found in different regions. Small claims. All filed on the same day, joint press conference.

Two cases lost, one won, in the trial courts. Three appeals cases lost. All appealed to S Ct. Parallel case against national government.

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