



Zaiwalla & Co

Chancery House, 53-64 Chancery Lane,
London W/C2A 1QS
Tel: +44 (0)20 7312 1000
Fax: +44 (0)20 7404 9473
info@zaiwalla.co.uk
www.zaiwalla.co.uk

Mike Hennessy
Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
7 Millbank
London SW1P 3JA

2 October 2013

By Post and Email: jchr@parliament.uk

Dear Sirs

Re: Human Rights Judgment – Call for Evidence: *Jivraj v Hashwani* UKSC 40

We welcome the Joint Committee on Human Rights' commitment to increase parliamentary involvement in deciding the appropriate response to Court judgments about human rights.

We wish to bring to your attention the case of *Jivraj v Hashwani* [2011] UKSC 40 (Copy attached) which was decided by the Supreme Court of the United Kingdom on 27 July 2011. Following this judgment our client, Mr. Sadruddin Hashwani, has made a complaint to the European Commission alleging that the United Kingdom (Supreme Court) has infringed Article 267 of the Treaty of the Functioning of the European (TFEU) by failing to adopt the proper application and uniform interpretation of the EU Council Framework Directive 2000/78/EC of 27 November 2000, which provides a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards to employment and occupation. A copy of Mr Hashwani's complaint to the EU Commission is attached.

Mr Hashwani's complaint has been accepted by the EU Commission and the Commission will be contacting the UK Authorities in relation to the complaint (please see the attached correspondence). The complaint exposes the United Kingdom Government to a claim by the European Commission for failure to implement the above EU Directive.

In this case the Supreme Court, in our view wrongly, narrowly interpreted the term 'Employment' in the Equality Act 2010 and held that a self employed person, who is not in a relationship of subordination to the person who receives their services, are not covered within the definition of 'Employment' under the Equality Act.

Following this Judgment of the Supreme Court, self-employed people working in the United Kingdom will not be able to claim protection from discrimination under the provisions of the Equality Act 2010. The decision of the Supreme Court thus leaves many sectors of the working

class exposed to discrimination. These include solicitors, plumber, accountant, doctors and arbitrators.

Rt. Hon Sir Richard Buxton, Former Lord Justice of Appeal, describes the effect of the Supreme Court Judgment in his Article (copy attached) as follows:

"It is however less clear what the effect the case will have in practice, over and above the immediate outcome of permitting parties to London arbitration agreements to agree, that neither of them will appoint as arbitrator a woman, a Jew, or a homosexual. It may be said that in the year 2012 parties to a house purchase or commercial transaction are not going to agree that neither of them will use advisers who are of afro-Caribbean origin; any more than a company inviting applications for appointment as its auditors is going to say that no partnership with female members need apply. There however remain significant concerns about the wider implications of the decision of the Supreme Court"

On the basis of the above we invite the Joint Committee on Human Rights to consider the larger effect which the Judgment of the Supreme Court will have on British Society and if it considers necessary to make appropriate recommendation to the Parliament for taking remedial action.

We regret that we were unable to make these submissions to you by 27 September 2013. The delay was because the Joint Committee on Human Rights initiative only came to our attention on 26 September 2013. We sincerely hope the Joint Committee on Human Rights will excuse the short delay in making these submissions. We apologise for any inconvenience this may cause you.

One of our representatives would be happy to give evidence before the Joint Committee on Human Rights if requested.

If you need any further information and/or documents on the above mentioned case, please feel to contact Mr. Sarosh Zaiwalla or Mr. Kartik Mittal at s.zaiwalla@zaiwalla.co.uk or kmittal@zaiwalla.co.uk or by telephone at 020 7312 1000.

Yours faithfully



Zaiwalla & Co LLP

Encl.