

IN THE MATTER OF THE PROPOSED EU DIRECTIVE ON EQUAL  
TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR  
BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION (2008/0140)

**Summary of legal advice of Mr James Dingemans QC, 20 October 2008**

**Impact of the Directive on Christians**

It might be thought that the Directive would enhance religious liberty. However, the implementation of the 2000 Employment Discrimination Directive has given cause for concern. As a result of the Directive, a bishop of the English national Church was successfully sued by a homosexual after not being given a position as a youth minister. A British Christian charity was successfully sued for refusing to promote an atheist support worker. (Paras. 10 & 11)

The religious belief that “monogamous heterosexual marriage is the form of partnership uniquely intended for full sexual relations” has been recognised by the UK courts as an orthodox religious belief and worthy of recognition in a modern democratic society. (Para. 2)

*“[I]t is essential that those respective views, beliefs and rights are balanced, otherwise well meaning Directives such as the Proposed Directive can themselves become instruments of discrimination or oppression”.* (Para. 15)

*“It seems to me that the legal answer when there are rights which are engaged which are not immediately compatible with the rights of others is that the rights of one section of the community should not be permitted to override and exclude the rights of the other section of the community”.* (Para. 20)

The decision in the Canadian case of *Ontario Human Rights Commission v Brockie* [2002] 22 DLR (4th) 174, shows that modern human rights law protects people from having to promote an activity which they believe to be sinful. (Para. 23)

*“It was not an answer in Brockie to say that those who hold the relevant religious belief should not be free to offer commercial services unless they were prepared to act inconsistently with the relevant religious belief. Such an approach would lead to withdrawal of persons holding the relevant religious belief from society...”* (Para. 24)

**Christians engaged in commercial activities**

The Directive makes no attempt to balance the rights of differing communities. (Para. 25).

Religious exemptions in the Proposed Directive do not extend to individuals or religious organizations carrying out professional or commercial activities. (Para. 26).

*“There is a risk that the Proposed Directive will force individuals holding the relevant religious belief who are in business as a printer to print materials completely inconsistent with their core religious belief. Similarly a carpenter of one religious organization would not be entitled to decline building work creating a Temple for another religious organization, even if the relevant carpenter believed that the construction of the building or relevant item would be, for the carpenter, a sin. This*

would be an unfortunate side effect of a Proposed Directive whose aim is to increase rights available to, among others, those with religious beliefs". (Para. 27)

### **Harassment**

*"...the definition of harassment, in the context of the provisions or goods and services, has the potential to have a chilling effect on freedom of speech". (Para. 28)*

The mere explanation of the relevant religious belief to a homosexual could be interpreted as amounting to harassment (Para. 30).

In paragraphs 34 to 46 Mr Dingemans considered some scenarios we put to him. Even in the scenarios where he thinks a harassment claim against a religious organization should fail, he points out that the contrary has been argued in the employment sphere.

### **Religious exemptions**

Article 3 of the draft Directive contains exemptions for religious schools and churches and other organisations based on religion or belief. (Para. 31)

However, it is not clear whether the exemption for religious organisations is aimed only at protecting *existing* laws that guarantee religious freedom, or whether it allows Member States to introduce *new* protections when implementing the Directive. The definition of religious organizations protected by the exemptions is also unclear. (Para. 32)

Where church-based groups hire facilities to enable them to run social activities, the religious exemptions will not protect them. (Para. 42).

Where religious organizations provide welfare and care, a claim for discrimination could be made against the organization for refusing to condone same sex activities e.g. refusing a double room in a Christian care home to a same-sex couple. (Para. 46).

### **Enforcement of the Directive against Member States**

An EU Member State could be liable for failing to implement the Directive into national law. The European Court of Justice can order a Member State to compensate for damages caused to an individual who has been his denied rights under EU law. (Paras. 37. 38)

Unanimity of the EU Member States is required before this Directive can become law (Para. 47). An individual Member State could veto the proposal.

### **Conclusion**

*"It does seem to me that, without mechanisms permitting the balancing of rights, the Directive becomes internally inconsistent by creating (at least indirect) discrimination against religious believers. This may, of itself, give rise to questions about the compatibility of the Proposed Directive with the ECHR and the Charter [of Fundamental Human Rights of the European Union]". (Para. 48)*

*The Christian Institute*  
5 December 2008