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Article

Equality and the Workplace

No doubt a serious and successful determination and effort to remove discrimination, in the world of work, against women, gays, persons with a disability and other disadvantaged persons was long in coming. Thanks to the persistence of Women, Gay and Disabled Rights Associations, tremendous progress has been achieved and a framework of legislation is now in place that enables those disadvantaged to progress in a work environment that guarantees a legal right to equal opportunities and treatment. Not only has the MEA never opposed sensible equality and equal opportunities legislation, but it has been pro-active, among its member employers, to explain, beyond the principles of natural justice and decency, the fallacy of discrimination and the tangible social and economic advantages that behaviour in favour of equality and non-discrimination brings to the world of work.

Discrimination against females in employment, much as it is to be deplored, was in the past based on the way society was organised, assigning rigid roles to males, as providers, and females as family and child minders. No such explanation however exists to justify hostile discriminatory behaviour directed at gays. Now beyond the practically completed task of establishing an enabling legal framework, there is the challenge of enforcement of the rules that will allow whoever to make the choice to enter the world of work, progress in his / her career, and achieve due economic and social satisfaction.

The MEA has been and will remain committed to this phase of entry of disadvantaged groups into a world of work free of negative bias. The MEA shares this objective with Women's Rights Organisations and Gay Rights Movements and is prepared to do its part as there is still work to be done.

How can this alliance for a world of work free of negative practices against disadvantaged groups move forward? Certainly not by having particular persons in organisations misguidedly pushing for further unnecessary legislation that appears manifestly punitive, restrictive and unreasonably biased against employers. I am here referring to two Bills being proposed for Parliament's approval by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. The two Bills in question are "The Human Rights and Equality Commission Act" and "The Equality Act 2015".

To start off these Bills are based on that contested legal concept of placing the burden of proof on the presumed stronger party in a dispute. In practice this translates into the Employer being assumed guilty unless she / he manages to argue and prove her / his innocence of the accusations that a member of a disadvantaged group, an NGO, or a Commissioner, may opt to level against her / him. That is the Employer will always, "a priori", be considered to be a guilty party. In contrast, under civil and criminal law, as a normal citizen, an "Employer" will always be assumed innocent until proven guilty, beyond reasonable doubt.

Currently Employers and Employees are amply served and covered by the "Industrial Tribunal" in respect of problems and issues arising in connection with employment, including matters touching on discrimination and equal treatment and the MEA feels that this procedure should remain as is. The "Commission" Bill is now however introducing another parallel autonomous "Tribunal", euphemistically called a "Commission", headed by a Commissioner.

According to this Bill, on her / his own initiative, or following a complaint from a victim, or a complaint, with no victim, from an NGO, the Commissioner is being given incredible power of investigation. With a noticeable lack of proper checks and balances, as in normal Courts of Law, the Commissioner will commence investigations and will have the authority to summon and interrogate an "assumed guilty" Employer. If the Commissioner deems the Employer to be uncollaborative, she / he will have the power to impose a € 1,500 – fine and three months imprisonment. If the Commissioner considers it necessary for the performance of her / his duties, she / he is being given power to access all "places" of Employers without their consent, and without prior notification. Introducing a selective stroke of acute courtesy, if these "places" happen to be Government's, or those of a Public Authority, then the Commissioner will pre-advise the visit.

An extremely worrying aspect of this "Commission" proposal includes authority to the Commissioner to delegate any of her / his powers to persons holding office under her / him, including all powers in her / his judicial role. All of this when it is being proposed that this Commissioner will act simultaneously as Investigator, Prosecutor, Judge and Jury of Employers. In consolation, after what may turn out to be a vexatious intervention, an Employer will have a right to refer a Commissioner's decision to the Court of Appeal (Superior Jurisdiction).

The second Bill in question, the "Equality Act 2015", introduces an intricately defined long list of "offences" that Employers potentially may commit against disadvantaged groups and individuals. Among

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so many definitions there is a list of factors / features that may be quoted by a “victim” to claim a discriminatory injustice. These include philosophical beliefs, gender expression manifested, or as perceived by others, cultural background, secondary sex characteristics like muscle mass, hair distribution, breasts, stature etc., etc. No doubt this intricate detail in a law is unnecessary and wrong, as it diminishes the discretion and leeway needed by a Judge to interpret a law according to the prevailing circumstances of the particular case. Undeniably this detail does however strengthen the hand of a vexatious presumed “victim” who will point to the specific word in the law and demand justice. It is clear that this will increase the potential for unending vexatious behaviour towards Employers.

There is a further feature that is worrying in that without the need for a victim, a Commissioner, or an NGO, may solely on the basis, of “statistical evidence” target an Employer for any deemed “indirect” discrimination. In what seems a deliberate omission the Bill does not specify what this “statistical evidence” may consist of.

Furthermore current civil law, as it is impossible to quantify, does not contemplate or cover the concept of “Emotional Damage”. Now under these Bills an Employer will become liable to effect compensation in respect of any “emotional” damage deemed to have been caused to the “victim” and / or his relatives.

There is evidence of very aggressive lobbies at work, lobbies that do have clout and are achieving both valid objectives but also objectives of a dubious and erroneous nature. It is known that support seeking politicians do succumb to the “votes” virus and do concede to particular minority groups rights and privileges which detract from, and override, those of others.

As drafted, these Acts are not business friendly but business hostile, and will not pass the SME test devised by the Ministry for the Economy, Investment and Small Businesses. As drafted these Acts will prompt and encourage vexatious persecution of Businesses and Companies.

In conclusion the MEA is insisting that work and employment issues, even those concerning equality and discrimination, should not feature under the “Human Rights and Equality Commission Act” and the “Equality Act 2015”. Instead all matters concerning work should remain and continue to feature under a reformed Employment & Industrial Relations Act (EIRA), which includes an Industrial Tribunal.

Nevertheless the MEA will remain sympathetic to and will support the cause of disadvantaged individuals and groups, and will keep a positive focus on the promotion of equality and non-discrimination in

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employment. MEA considers this to be part of its commitment to the well being of a Private Sector that provides thousands of productive jobs, (just MEA's members provide over 60,000 jobs), and it is not wise to create difficulties to this complex task of maintaining and expanding sustainable employment.

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