

# RadcliffesLeBrasseur



**Employment Briefing**

**December 2009**

## Case of the Month

In *Grainger PLC v Nicholson* [UKEAT/0219/09] the Employment Appeal Tribunal (EAT) considered the application of discrimination law to beliefs. The belief involved attracted much media attention because it was a philosophical belief in combating man-made climate change. The Daily Mail fulminated about "green zealotry" and said that the law has, in effect, recognised environmentalism as a religion. Many other papers followed suit. They were wrong.

Distinct philosophical beliefs have been protected by our discrimination laws since 2003. Such beliefs may be entirely different from a religion and the original requirement that they be "similar" to a religion was dropped in 2006. What this case did was to decide as a preliminary issue that such a belief was capable of coming within the protection of the law. The claimant will have to go back to the tribunal and prove that he holds this belief, exactly what the philosophy consists of and whether it had anything to do with the reason he was made redundant.

The protection of employees from discrimination on the grounds of religion and belief gives all advisors a headache because neither religion nor belief are clearly defined. This case has analysed the ingredients the courts will look for before holding a belief is protected. The judge decided that the cases heard under the European Convention on Human Rights are relevant. These relate to Article 9 of the Convention which provides the right to freedom of thought conscience and religion.

The cases have held that the convictions of the individual have to be "worthy of respect in a democratic society" and must be "compatible with human dignity". The belief must relate to matters "more than merely trivial" and possess "an adequate degree of seriousness and importance." These features were all applied by the EAT to the alleged philosophy of the claimant and potentially passed the test. In addition the belief has to be genuinely held. Any manifestation of a belief will fail the test if it is unworthy of respect and this will exclude racist or homophobic beliefs. Other commentators have identified humanism, pacifism and veganism as examples of potentially qualifying beliefs.

So this case has not changed the law and does not equate belief in the need to fight climate change with a religion. What it does do is help explain when a court will extend the protection of existing law to a particular belief.

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## Further Information

If you would like further information or to comment in general regarding this case, please contact



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