

LYONS v STATE OF QUEENSLAND (B16/2016)

Court appealed from: Court of Appeal of the Supreme Court of Queensland
[2015] QCA 159

Date of judgment: 28 August 2015

Special leave granted: 11 March 2016

Ms Gaye Lyons is profoundly deaf. Although she can lip-read, the primary and most reliable method of communication for her is Australian Sign Language (“Auslan”).

When Ms Lyons was summonsed for jury service, she informed the Deputy Registrar of Ipswich Courthouse that she would require two Auslan interpreters. The Deputy Registrar then decided to exclude Ms Lyons as a potential juror (“the Exclusion”). This was on two bases: (1) there was no provision in the *Jury Act 1995 (Qld)* (“the Jury Act”) for an interpreter to take an oath of secrecy; and (2) it was not possible to have a person in the jury room during the jury’s deliberations other than the jurors and a bailiff. Upon a request by Ms Lyons for a further explanation, the Deputy Registrar informed Ms Lyons that she had been excluded by reason of s 4(3)(l) of the Jury Act, which provides that persons not eligible for jury service include “a person who has a physical or mental disability that makes the person incapable of effectively performing the functions of a juror”.

Ms Lyons then filed a complaint with the Queensland Civil and Administrative Tribunal (“QCAT”), claiming that the Exclusion constituted both direct and indirect discrimination under ss 10 and 11 respectively of the *Anti-Discrimination Act 1991 (Qld)* (“the AD Act”). That complaint was dismissed, upon a Member of QCAT finding that the Exclusion was based on the problems posed by an interpreter being present in the jury room, not on the fact that Ms Lyons required an interpreter due to her disability.

An appeal by Ms Lyons was dismissed by QCAT’s Appeal Tribunal, on the basis that the Deputy Registrar’s approach was supported by a judgment of the Supreme Court of Queensland (*Re: the Jury Act 1995 and an application by the Sheriff of Queensland* [2014] QSC 113). In that judgment, Justice Douglas held that a deaf juror was ineligible for jury service by virtue of s 4(3)(l) of the Jury Act, as no legislative provision facilitated the use of an Auslan interpreter to assist a juror in jury room discussions. The Appeal Tribunal nevertheless proceeded to address Ms Lyons’ grounds of appeal based on the reasons of the Member (who had not applied the Supreme Court judgment).

Ms Lyons applied for leave to appeal.

The Court of Appeal (Holmes & Gotterson JJA, Mullins J) unanimously dismissed Ms Lyons’ application. Their Honours held, in respect of indirect discrimination under s 11 of the AD Act, that the Appeal Tribunal had not erred by agreeing with the Member’s finding that the Exclusion had not involved the imposition of a condition on Ms Lyons that she communicate by conventional

speech. In respect of direct discrimination, the Court of Appeal held that the Appeal Tribunal had not misapprehended the test, under s 10(4) of the AD Act, involving “a substantial reason” for the Deputy Registrar’s treatment of Ms Lyons. This was because the Member had found that Ms Lyons’ deafness was not a reason for the Exclusion at all. The Court of Appeal also held that the Member, in applying s 10(5) of the AD Act, had appropriately considered as a notional comparator a hypothetical person who required the assistance of a non-juror in the jury room rather than a hypothetical person who required no such assistance. Their Honours found that on the present state of the legislation “it is difficult to see how jury members could discuss the case in the presence of an interpreter without breaking their oath”.

The grounds of appeal include:

- The Court of Appeal erred in finding that there was no unlawful indirect discrimination because it misconstrued s 11 of the AD Act by finding that the Respondent had not imposed a term on Ms Lyons to the effect that she be able to communicate by means of conventional speech in its refusal to allow her to participate in the jury selection process.
- The Court of Appeal erred in finding that there was no unlawful direct discrimination pursuant to s 10 of the AD Act by:
 - a) failing to find that Ms Lyons’ impairment was the reason or a substantial reason within the meaning of s 10(4) of the AD Act for the Deputy Registrar’s decision to exclude Ms Lyons from the jury selection process;
 - b) misconstruing s 10(5) of the AD Act in finding that Ms Lyons’ requirement for the special service of an Auslan interpreter was to be taken into account by imbuing the notional comparator as a person who required an additional person in the jury room; and
 - c) by reason of the misconstruction of s 10(5) as set out in b), finding that the Respondent did not treat Ms Lyons less favourably than another person is or would be treated in circumstances that are the same or not materially different.