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## Sheehan v Tin Can Bay Country Club [2002] FMCA 95 (9 May 2002)

Last Updated: 15 March 2005

### FEDERAL MAGISTRATES COURT OF AUSTRALIA

*SHEEHAN v TIN CAN BAY COUNTRY CLUB* [\[2002\] FMCA 95](#)

HUMAN RIGHTS – disability discrimination – discrimination on the basis of restriction on assistance dog - access to premises

[Disability Discrimination Act 1992](#) (Cth) [ss. 5, 6, 9, 23, 24, 27, 28](#)  
[Human Rights and Equal Opportunity Commission Act 1986](#) (Cth) [s.46PO\(3\)](#)

*Purvis v State of New South Wales (Department of Education & Training)* [\[2002\] FCA 503](#)

Applicant:	PHILIP JOHN SHEEHAN
Respondent:	TIN CAN BAY COUNTRY CLUB
File No:	BZ 582 of 2001
Delivered on:	9 May 2002
Delivered at:	Brisbane
Hearing Date:	9 May 2002
Judgment of:	Raphael FM

### REPRESENTATION

Counsel for the Applicant: Mr Bourke

Solicitors for the Applicant: Welfare Rights Centre of Stones Corner  
Counsel for the Respondent: Ms Callaghan  
Solicitors for the Respondent: Jeffrey, Cuddihy and Joyce, Solicitors of Gympie

## ORDERS

- (1) The Respondent permit the applicant to attend the Club and its premises and grounds with Bonnie and that Bonnie may remain unleased whilst in the direct control of the applicant.
- (2) The Respondent pay the Applicant, by way of damages for the hurt and distress that he has suffered, the sum of \$1,500.
- (3) The Respondent pay the Applicant's costs in accordance with Rule 20.10 of the Federal Magistrates Court Rules.

## FEDERAL MAGISTRATES COURT OF AUSTRALIA AT BRISBANE

**BZ582 of 2001**

**PHILIP JOHN SHEEHAN**

Applicant

And

**TIN CAN BAY COUNTRY CLUB**

Respondent

## REASONS FOR JUDGMENT

1. The applicant in this matter, Philip John Sheehan, complains to this Court that he was the subject of unlawful discrimination at the hands of the respondent. He alleges that the respondent in its conduct has breached [ss. 5, 6, 23, 24, 27](#) and [28](#) of the [Disability Discrimination Act 1992 \(Cth\)](#) ("the [Act](#)"). The allegations arise out of the treatment of Mr Sheehan by the respondent in respect of his bringing to the club his dog Bonnie. Mr Sheehan is a war veteran and is the recipient of a pension for the effects of his war service in Vietnam. It is accepted by the respondent that he is a person under a disability for the purposes of the [Act](#).
2. The symptoms of Mr Sheehan's disability include a concern about meeting people and a concern about the way in which people will react to him. He therefore sought, in approximately 1997, to relieve these symptoms by training a dog to be an animal assistant. He thought that utilising the dog to break the ice between himself and people he would meet for the first time would enable him to overcome the concerns which he felt. The use of the dog in this manner would qualify the dog to be an "assistance dog" within [s.9](#) of the [Act](#), see [s.9\(1\)\(f\)](#):

*"... any other animal trained to assist the aggrieved person to alleviate the*

*affect of the disability, or because of any matter related to that fact."*

3. Mr Sheehan trained the dog Bonnie himself and he described to the Court a number of ways in which the dog assisted him, both as I have previously described and also in other matters. Also in 1997 Mr Sheehan began to attend the Tin Can Bay Country Club which is situated in the area in which he lives. He used the club for the purposes of playing golf and for social activity. By 1998 he began to take the dog to the club and says that there was no complaint about this. In 1999 he mentioned the fact that he wished to bring Bonnie to the club to a Mr Low, who was at that time Acting President. Mr Low told him that it was perfectly all right for him to bring the dog to the club provided that the dog was kept on a lead.
4. It is accepted that Mr Sheehan continued to bring the dog to the club thereafter but did not put the dog on a lead. Mr Sheehan described what occurred when he brought the dog to the club. It would seem that generally speaking the dog accompanied Mr Sheehan to the club but did not go inside the club premises. Mr Sheehan gave evidence that the dog did go inside the club premises from time to time and I have no reason to disbelieve that, but he did not sit with Mr Sheehan when Mr Sheehan was at the bar or drinking in the club. At that time the dog would usually be outside and kept in eye contact with Mr Sheehan through the window.
5. Apparently, when Mr Sheehan moved around the bar premises in the club the dog would follow him from outside so that the dog would be required to move from one area outside the club to another when Mr Sheehan moved. The dog would also come to the door of the club when Mr Sheehan was leaving. The dog did not accompany Mr Sheehan on the golf course and at all times he remained unleashed.
6. In the year 2000-01 Mr Sheehan was, for a short period of time of about five months, the Treasurer of the club. There was at the time a matter of concern to the club relating to a claim regarding discrimination by another member. There were opposed views about the way in which this matter should be dealt with. Mr Sheehan and Mr Low, now the President of the club, were on opposing sides. Mr Sheehan eventually resigned as Treasurer but remained a member of the club. Shortly after he resigned as Treasurer and on 16 March 2001 a letter was sent to him from the Secretary of the club. The letter was in the following form:

*"Dear Phil,*

*At the last board meeting, 16 March 01, a motion was tabled to write to you in regard to your dog. After previous verbal warnings, in regard to by-law 13 of the Tin Can Bay Country Club Inc. which says:*

*No member or guest shall bring any animal into the clubhouse or on the club grounds without special dispensation.*

*You are hereby formally advised that if you continue to do this, you will receive immediate suspension from the country club and the board will consider further action at its next meeting.*

*Yours faithfully .."*

7. It is the sending of that letter which is the act of discrimination complained of. The letter effectively prohibits Mr Sheehan from attending the club with his dog. The letter sparked some correspondence between Mr Sheehan and the club, and it is accepted by the parties that when the letter was sent and until the first response was received from Mr Sheehan on 5 April, the club was unaware that Mr Sheehan was a disabled person. When the club became aware the Mr Sheehan was a disabled person it did not withdraw the letter but it wrote to him again on 27 April in the following form:

*"Dear Phil,*

*In reply to your letter dated 7 April 2001 concerning the board's action if*

*you bring your dog on to club property, I have been instructed to reply as follows.*

*You brought two points to their attention: that prior dispensation to bring the dog on to the premises, and the [Disability Discrimination Act](#) of 1992. Firstly, you originally told my President, Neil Low, that he would allow you to bring the dog on to the club grounds while you were in the clubhouse as long as the animal was tied up. You agreed to this, however, you did not tether the dog while you had a dog on the club premises. This was mentioned to you by the President to which you replied, "she will not take the chain." You were then told that you could not bring the dog on to club grounds. Secondly, the [Disability Discrimination Act](#) does not appear to have relevance as you have not presented any physical evidence to the board why this should apply to you. The board has no prior knowledge of any disability you may have and certainly no facts were ever presented to it regarding your dog in relation to your disability."*

8. That letter is somewhat odd because I believe that between the time of the first complaint and 27 April, the evidence seems to be that Mr Sheehan did explain to the club that he was a disabled person. Very shortly after the 27 April letter was received Mr Sheehan made a complaint to the Human Rights and Equal Opportunity Commission, and that Commission conducted investigations, correspondence passed and eventually it made a decision. Mr Sheehan then brought these proceedings under [section 46PO\(3\)](#) of the [Human Rights and Equal Opportunity Commission Act 1986 \(Cth\)](#). Mr Sheehan gave evidence and he called in support of his claim a Ms Wyllie, and a Dr Gelb. In the course of his evidence, Mr Sheehan said that he didn't always have the dog with him; that the dog did not come to the club at night; that the dog did not accompany him when he played golf; that the dog had not accompanied him on a visit to Sydney when his mother had died and the dog had not accompanied him on a recent week-end away with his partner. He explained his need for the dog and in particular he referred to the possibility of panic attacks and the assistance that the dog could give him.
9. It was Mr Sheehan's view that the dog did not run on the club premises.
10. Ms Wyllie had prepared a report which was essentially an investigation into the status of the training of the dog Bonnie. The dog passed with flying colours. There is no doubt from that report, and I do not cavil in any way with Ms Wyllie's expertise, the dog is well trained as an assistance dog. There were situations which Ms Wyllie did not see. She did not see the dog at the club and she did not see the dog at Mr Sheehan's home but I am prepared to accept the evidence given by her in relation to this matter, however, Ms Wyllie also said that, in her view, assistance dogs shouldn't be outside and away from the handler and that it was her view that a dog who was in that situation might well run to find out where the handler was.
11. She also said that most dogs, when given a command, will run but it depends upon their training. She did say that she believed that some dogs acted better to not being put on a lead than to being put on a lead. When I say "react better", I mean that they evidenced more capacity to undertake the tasks for which they have been trained.
12. Dr Gelb is a consultant psychiatrist who appears to be a treating doctor to Mr Sheehan. He was not totally aware of the extent to which Mr Sheehan used the dog. He wasn't aware that the dog didn't always accompany Mr Sheehan. He explained that Mr Sheehan's condition was variable and fluctuating and that some days he may feel more competent than others and may need the dog more at some times than at other times. Dr Gelb accepted that the dog was not required at all times as an assistance animal. He didn't think that there would be any problem if the dog was left outside on a lead, although he did say that Mr Sheehan would have to be comfortable with the dog being held on a lead, which Mr Sheehan made it plain he was not.

13. Finally, Mr Sheehan called a Mr Ron Sollaye whose evidence was taken over the telephone on subpoena. Mr Sollaye was a member of the country club committee and he was the President of the men's bowling club. Mr Sollaye said that there had been no complaint about the dog, he knew the dog, he did have some concerns when the dog had been left unleashed because they had a lot of bowlers in a confined space and he was worried that people might trip over her, but he did say that no one did trip over the dog to his knowledge. He assumed the dog went with Mr Sheehan all the time but he was unable to say that definitely. He did say that he never saw Bonnie inside the clubhouse and he was there most days, but he couldn't say that he was there 24 hours of every day.
14. The respondent's evidence consisted of an affidavit from Mr Low who was also cross-examined. His evidence was very similar to that of Mr Sheehan's, although strangely, to my mind, he said he never really saw the dog on the premises. He said that people had told him that Mr Sheehan was bringing the dog to the club and some people were complaining that it was unfair that Mr Sheehan was allowed to bring his dog to the club and no one else was. He gave firm evidence that in the conversation with Mr Sheehan that he had deposed to, Mr Sheehan had said to him words to the effect that the dog would not take the chain. This was denied by Mr Sheehan.
15. Mr Low also said that he had seen the dog running between one part of the club and the other on the outside when Mr Sheehan had gone to the toilet inside. He confirmed that no incident had come to his notice regarding the dog and that no complaints were listed in the complaint book about the dog. He denied that the motivation for the letter was that Mr Sheehan had fallen out with the committee. He said that it was done because there was a concern that someone might trip over the dog. It is established law that motive for discrimination is not a relevant matter, so I do not propose to investigate this area further.
16. Although the applicant claims that the actions of the respondent consisted of what is described as "direct discrimination" it is my view that on the evidence given to me and the recent cases and in particular that of *Purvis v State of New South Wales (Department of Education & Training)* [2002] FCA 503, a decision of the Full Bench of the Federal Court of 24 April 2002, that it is impossible for me to find any direct discrimination against the applicant.
17. It is the essence of the respondent's case that no discrimination has taken place because the actions of the respondent were very speedily limited to a requirement that Mr Sheehan bring the dog to the club on a lead and keep her on a lead, which the respondent argues is reasonable having regard to the circumstances of the case. This takes the matter out of the definition of indirect discrimination under [s.6](#) of the [Act](#). The parties did not suggest that this test, found in [s.6\(c\)](#) of the [Act](#), was not applicable to [ss. 9, 23, 24, 27](#) or [28](#) and I proceeded on that basis.
18. I will say immediately that I do not see how [section 28](#) can apply to previous conduct because that relates to sporting activities and Mr Sheehan has admitted that he didn't take the dog with him when he played golf.
19. It is important to remember that the letter and then the variations of the condition upon which Mr Sheehan and his dog were allowed to go into the premises were never restricted to any part of the premises. So in a way, there really is very little necessity for me to consider the reasonableness of putting the dog on a lead outside the club as opposed to putting him on a lead inside the club. The discrimination, if it is such, went against both activities, indeed any activity with the dog in the club or in the club's grounds.
20. The treatment of Mr Sheehan as a disabled person with an assistance dog can only be regarded as a breach of the [Act](#) if the dog is an assistance dog. In my view, when the dog is outside the premises not in the direct control of Mr Sheehan and not being utilised by Mr Sheehan for his aid and comfort, it cannot be an assistance dog. So any condition that might be applied to that dog when he is not in the direct

- control of Mr Sheehan would seem to me not to represent a breach of the [Act](#).
21. I say this notwithstanding Mr Sheehan has indicated that there are times when he needs the dog for companionship or assistance if he has, for example, a panic attack when he is in the bar and the dog is outside. But that seemed to me to require a form of eye contact that would just be impossible for any reasonable person to sustain and I don't believe that Mr Sheehan really did sustain it. He couldn't have eye contact with his dog when he was talking to somebody in the bar; he couldn't have eye contact with the dog when he was talking to the barman, facing the bar and away from the dog, and he certainly couldn't have eye contact with the dog when the dog was asleep under the bench which Mr Sheehan gave evidence he quite often was.
  22. So, to the extent that the dog was outside, I don't believe that he was an assistance dog. This finding would have been important if the argument had been that there had been discrimination in the Club's conduct before the letters. But in fact, when you analyse what occurred in this case, that isn't really the complaint. The complaint is that Mr Sheehan got a letter which said, "You cannot come into the club with the dog unless the dog is on a leash". I am more troubled with the situation when Mr Sheehan is in the club premises because the letter would prevent the dog from going inside the club premises without a leash. All the evidence that I have heard indicates that the dog would not be in any way a menace to anybody in those circumstances.
  23. Ms Wyllie's evidence is that the dog was very well trained and obedient and under the control of Mr Sheehan. Mr Sheehan could have asked the club to permit him bring the dog inside unleashed. He chose not to do so, but he could have done so and the letter prevented him from doing so. If he had done so, one has to consider whether or not it was reasonable in all those circumstances for the dog to be tethered. I think not. I think that the evidence of Ms Wyllie allows me to come to the conclusion that this dog Bonnie would not react much more differently from that of a trained guide dog and no one suggests that a blind or other sight-disabled person would have to spend his or her entire time holding a guide dog, particularly in a situation in a club.
  24. There must be occasions when a sight-disabled person takes his hand off the guide dog's harness. No one expects a guide dog to be tethered. Given the evidence of the training of Bonnie, I don't think that the conduct of the club passed the reasonable test in requiring her to be tethered whilst under Mr Sheehan's direct control. I am of the view that the club did breach the [Act](#) by requiring the applicant to comply with a requirement (leashing his dog) with which a substantial proportion of persons without his disability are able to comply, which is not reasonable having regard to the circumstances of the case and with which the applicant does not comply ([s.6](#)). Also the actions of the Club are a breach of [s.23\(1\)\(b\)](#) and (e) and [s.9\(1\)\(f\)](#) of the [Act](#).
  25. The question is now what relief should be given? These cases are always difficult. They often excite strong feelings on both sides. The law is not so clear that people cannot be allowed differing views as to what is permitted and what is not and no doubt in a small community, this type of dispute can be exaggerated and cause concern. That is why both the Human Rights and Equal Opportunity Commission and this Court encourage people to attempt to mediate matters. I am not clear what attempts were made in that regard in this case. Obviously they didn't succeed. In my view the appropriate way of dealing with the breach of the [Act](#) is as follows. I shall make a declaration that the Tin Can Bay Country Club Inc is in breach of the [Disability Discrimination Act](#) in requiring the applicant not to attend the Club with his dog, Bonnie, unless Bonnie is kept on a lead.
  26. To my mind the question of costs has not been changed by my seeing a copy of a letter of 1 March 2002. The discriminatory conduct, namely, the refusal of the Club to allow Mr Sheehan to remain on the premises whilst his dog was unleashed is

repeated in that letter and I therefore think that the costs should follow the event.

27. I order that:

- (1) The Tin Can Bay Country Club Inc permit the applicant to attend the Club and its premises and grounds with Bonnie and that Bonnie may remain unleashed whilst in the direct control of the applicant.
- (2) The Tin Can Bay Country Club Inc pay the applicant, by way of damages for the hurt and distress that he has suffered, the sum of \$1500.
- (3) The respondent pay the applicant's costs in accordance with Rule 20.10 of the Federal Magistrates Court Rules and I certify that the applicant was entitled to an advocate under 20.15.

**I certify that the preceding twenty-seven (27) paragraphs are a true copy of the reasons for judgment of Raphael FM**

Associate:

Date:

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