

June 1984

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Recommended Citation

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CANCER AS A PROTECTED HANDICAP IN ILLINOIS

LYONS V. HERITAGE HOUSE RESTAURANTS, INC.
89 Ill. 2d 163, 432 N.E.2d 270 (1982)

KENNETH J. GALVIN*

Section 19 of the 1970 Illinois Constitution guarantees to persons with a physical or mental handicap¹ freedom from discrimination in the sale or rental of property and freedom from discrimination unrelated to ability in the hiring or promotion practices of any employer.² Section 19 does not define "handicap." A subsequent Illinois law, the Equal Opportunities for the Handicapped Act (EOHA)³ defined handicap in a somewhat circuitous manner as follows: The term "physical or mental handicap" means a handicap unrelated to one's ability to perform jobs or positions available to him for hire or promotion or a handicap unrelated to one's ability to acquire, rent or maintain property.⁴ Lacking a definition of handicap in the Constitution and given the vagueness of the definition included in the EOHA, "the (Illinois) appellate courts have devised and applied their own definitions based on analogies to other Illinois statutes and administrative rules, Federal law and the law of other States"⁵ in order to determine exactly which encumbrance or disability is a covered handicap in this state.

In *Lyons v. Heritage House Restaurants, Inc.*,⁶ plaintiff Elaine Ly-

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1. The word "handicap" is thought to derive from the phrase "hand i cap" or "hand in the cap" which is the name of a sport played in seventeenth century England. One challenger would offer something of his own in exchange for an article belonging to another. An umpire determined how much boot would be given in the exchange, and the parties held the forfeit money in their hands in a cap pending the umpire's decision. In the eighteenth century, the procedures of this sport were applied to the process of an umpire determining the extra weight to be carried by the superior horse in a horse race. This idea of "handicapping" the superior competitor was gradually applied to other sports, and since about 1850, the word "handicap" has been applied to any encumbrance or disability that weighs upon effort and makes success more difficult. See R. L. BURGENDORF, JR., *THE LEGAL RIGHTS OF HANDICAPPED PERSONS* (1980).

2. ILL. CONST. art. I, § 19 states: "All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."

3. ILL. REV. STAT. ch. 68, ¶¶ 1-101-9-102 (1983).

4. ILL. REV. STAT. ch. 68, ¶ 1-103(I) (1983).

5. *Lyons v. Heritage House Restaurants, Inc.*, 89 Ill. 2d 163, 166, 432 N.E.2d 270, 272 (1982).

6. *Id.* at 163, 432 N.E.2d at 270.

ons was dismissed from her job as kitchen manager for the defendant in July of 1978. One month prior to this dismissal, Lyons and her doctor had notified Heritage House that Lyons had been diagnosed as having cancer of the uterus.⁷ Lyons brought suit under the Illinois Constitution and the EOHA for loss of her salary, life and health insurance benefits and use of the company car alleging that she was dismissed because her employer had learned of her cancer and that her discharge was a discriminatory action based on her employer's perception of her as "handicapped." The Illinois Supreme Court held that cancer was not a handicap within the meaning of the Constitution or the Act.⁸

The supreme court failed to see that a distinction cannot be maintained between a "real" and a "perceived" handicap.⁹ The essence of Lyon's complaint was *not* that she was discriminated against because she was handicapped, but that she was discriminated against because she was *perceived* to be handicapped. Since ultimately the discriminatory effects on a person with a "real" or a "perceived" handicap are the same, Lyons argued that the protection accorded each should also be the same. The court rejected this argument.

This case comment focuses on the question of whether cancer of the uterus and, by implication, all forms of cancer, should be considered a "handicap" within the meaning of the Illinois Constitution and statutes. In answering this question it is also necessary to consider whether the constitution and the statutes were designed to protect a person with cancer who may not be considered handicapped by objective standards but who is nonetheless perceived by his employer to be handicapped. It is recommended that in order to effect the purpose of typical discrimination statutes—"to guarantee freedom from discrimination in hiring and promotion practices of any employer"—persons

7. The cause of cancer arising in the uterus is unknown but the associated factors include obesity, diabetes mellitus and childlessness. The tumor grows locally with gradual invasion of the muscular walls of the uterus and ultimately the cancer may spread to other areas of the body by way of the blood stream. The average age at which cancer of the uterus is diagnosed is about 55 years, and the chief presenting system is post-menopausal bleeding. The agreed-on definitive therapy is total hysterectomy and removal of fallopian tubes; this operation is sometimes preceded by the application of radium within the uterus or the administration of other forms of irradiation to the pelvis. Many studies report a 10-year survival figure for women with cancer of the uterus. See 4B R. N. GRAY M.D., *THE ATTORNEYS TEXTBOOK OF MEDICINE*, Ch. 290.95.

8. 89 Ill. 2d at 171, 432 N.E.2d at 274.

9. See Gittler, *Fair Employment and the Handicapped: A Legal Perspective*, 27 DE PAUL L. REV. 953 (1978) for a discussion of real and perceived handicaps. Gittler notes that whether the individual is actually handicapped or perceived to be handicapped, the same stereotypes are operative. "To condone one situation but not the other creates an inherent contradiction." *Id.* at 984.

with a "real" handicap and persons "perceived" to be handicapped must be accorded the same protection.

Historical Background

Section 19 of the Illinois Constitution, which protects handicapped persons from job discrimination, was adopted in 1970; at that time, no other state had a comparable provision.¹⁰ At the constitutional convention, delegate Richard M. Daley, one of the sponsors of section 19, responded on inquiry about his definition of physical handicap: "Well, I would say polio victim, loss of one arm, a leg, finger, one eye—things like this."¹¹ There also exists in the record of the proceedings of the convention a few references to other disabilities—speech defects, epilepsy, shortness, hemophilia and infantile paralysis.¹²

There is evidence that some delegates to the convention considered the meaning of "handicap" to be more extensive than disabilities associated with an arm, a leg or an eye. Delegate Joan Anderson noted that with regard to employment situations, individuals may have handicaps of two distinctly different origins.¹³ The first type of handicap is due to the individual's physical, mental, emotional, educational and social makeup. The other is imposed by society through lack of understanding and information. "Of the two kinds of handicap," Anderson remarked, "that imposed on the individual by society is in most cases more disabling and fundamentally crippling than that which arises out of the individual's makeup."¹⁴

Background information relating to the Illinois legislature's perception of the word "handicapped" in the EOHA is nonexistent.¹⁵ However the purpose of the EOHA and the Fair Employment Practices Act of Illinois is identical.¹⁶ The Fair Employment Practices Commis-

10. ILL. CONST. art. I, § 19 (1970). Most states have now enacted laws covering discrimination against handicapped individuals. For a listing of federal and state laws and the scope of their coverage, *See The Law And Disabled People, Selected State and Federal Laws Affecting Employment and Certain Rights of People With Disabilities*, U.S. Government Printing Office, 1980.

11. 5 Record of Proceedings, Sixth Illinois Constitutional Convention 3679 (1970).

12. These comments were not made in reference to the question of what was meant by "handicap," "although the context in which they were made supports an inference that the delegates considered these classes of disabilities to be covered by" Section 19. *Advocates For The Handicapped v. Sears Roebuck and Co.*, 67 Ill. App. 3d 512, 515, 385 N.E.2d 39, 42 (1978), *cert. denied*, 444 U.S. 981 (1979).

13. 5 Record of Proceedings, Sixth Illinois Constitutional Convention 3681 (1970).

14. Delegate Anderson was reading from "a couple of things" sent by the Illinois Governor's Committee on Employment of the Handicapped titled *The Problem of Imposed Handicap*. *Id.* at 3681.

15. *Lyons v. Heritage House Restaurants, Inc.*, 89 Ill. 2d 163, 166, 432 N.E.2d 270, 272 (1982).

16. The difference between the Acts is that the EOHA created a private cause of action for

sion Guidelines relating to the definition of handicap state that a handicapped individual is one who has a physical or mental handicap, as defined in the Guidelines, *or* has a record of such a handicap.¹⁷ The phrase, "has a record of such a handicap" was included because it was recognized that the attitudes of employers toward a previous impairment may result in an individual experiencing difficulty in securing, retaining or advancing in employment.¹⁸ "The mentally restored, those who have had heart attacks or cancer often experience such difficulty."¹⁹

Advocates for the Handicapped v. Sears, Roebuck and Co.,²⁰ the controlling case in Illinois with regard to the definition of "handicap," was relied upon extensively by the *Lyons* court. The plaintiff in *Advocates*, Dennis Klapacz, had nephritis²¹ for ten years before he applied for employment at Sears. The plaintiff had undergone a kidney transplant, and when he applied for work, he was qualified to do everything but heavy lifting. He was turned down for employment by Sears because he was "an uninsurable risk under Sears' self-insurance program."²² The *Advocates* court held that the plaintiff did not have a protected handicap within the meaning of the constitution or the EOHA.²³

Because the legislature had failed to provide a specific definition of "handicap" in the statutes, the *Advocates* court felt obliged to look to the ordinary and popular definition of the term in order to determine if

individual citizens (ILL. REV. STAT. ch. 38, ¶ 65-29 (1977)) while the Fair Employment Practices Act (FEPA) (ILL. REV. STAT. ch. 48, ¶¶ 858-867 (1977)) set up an administrative mechanism to process unfair employment practices. Since the statutes are identical in purpose it is proper to construe one statute by reference to the other for purposes of ascertaining legislative intent. *Peterson v. City of Naperville*, 9 Ill. 2d 233, 133 N.E.2d 371 (1956). After the events in the *Lyons* case took place, the EOHA and the FEPA were repealed and incorporated into the Illinois Human Rights Act, ILL. REV. STAT. ch. 68, §§ 1-101 -9-102 (1983). For a discussion of the Illinois Human Rights Act and its potential impact on the question of "perceived" handicap, see *infra* text accompanying notes 106-111.

17. FEPC GUIDELINES ON DISCRIMINATION IN EMPLOYMENT, art. III, § 3.2 (1976).

18. *Id.* at § 3.2 (E).

19. *Id.*

20. 67 Ill. App. 3d 512, 513, 385 N.E.2d 39, 41 (1978), *cert. denied*, 444 U.S. 981 (1979). "Advocates" is a not-for-profit corporation, established for the purpose of promoting "the common needs of the handicapped through advocacy, public education and coordination of effort." The organization is composed of handicapped individuals, parents of handicapped individuals and professionals involved in the rehabilitation of handicapped people. *Id.* at 513, 385 N.E.2d at 41. The plaintiff, Dennis Klapacz, was a member of the organization.

21. Nephritis is an inflammation of the kidney or a deterioration of the tissue forming its delicate structure. The inflammation may be caused by bacteria, poisons, alcohol, etc. 2 Schmidt ATTORNEY'S DICTIONARY OF MEDICINE, 1983.

22. 67 Ill. App. 3d at 513, 385 N.E.2d at 41 (1978).

23. *Id.* at 518, 385 N.E.2d at 44.

the plaintiff was indeed handicapped.²⁴ Underlying this obligation, however, was the court's belief that the legislature had in mind "objective criteria" for determining what physical or mental conditions constitute handicaps.²⁵ The *Advocates* court believed that without "objective criteria" to judge what is and what is not a handicap, the EOHA would be transformed into a "universal discrimination law."²⁶ To prevent this potential transformation, the *Advocates* court suggested the following as its first definition of handicap: "a class of physical and mental conditions which are generally believed to impose severe barriers upon the ability of an individual to perform major life functions."²⁷

The plaintiff in *Advocates* argued that the ordinary and popularly understood meaning of the word "handicapped" should be taken from its dictionary definition: ". . . a disadvantage that makes achievement unusually difficult; esp: a physical disability that limits the capacity to work."²⁸ In light of this definition, the plaintiff argued that Sears' denial of employment fulfilled the requirement of the definition that the physical condition "makes achievement unusually difficult" since achievement *is* difficult if a person is unable to get a job. The plaintiff also argued that the phrase "limits the capacity to work" means simply that an employer has acted upon a physical condition and denied employment to an individual, another requirement which Sears fulfilled.

The *Advocates* court appeared to agree with the dictionary definition of the word "handicap" and the court recognized that this definition had been relied upon by the Wisconsin courts in resolving issues similar to the ones then before the *Advocates* court.²⁹ However, the *Advocates* court believed that the plaintiff's suggested interpretation of the definition was too broad, and the court chose to interpret the definition from the perspective of the plaintiff's ability to work rather than from the perspective of his ability to find work: ". . . the phrases [in the definition] 'limit the capacity to work' and 'makes achievement unusually difficult' more properly refer to an individual's ability to perform job-related tasks and not to the fact that he has been denied employment."³⁰ In light of this interpretation, the *Advocates* court sug-

24. *Id.* at 515, 385 N.E.2d at 42.

25. *Id.* at 516, 385 N.E.2d at 43.

26. *Id.*

27. *Id.* Implied here is that by judging every disability in light of its effect on an individual's "major life functions," the courts would have objective criteria for determining what is a handicap.

28. WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY (1976).

29. 67 Ill. App. 3d at 516, 385 N.E.2d at 43 (1978).

30. *Id.* at 517, 385 N.E.2d at 43.

gested a second definition of handicap: "the disability is one which is generally perceived as one which severely limits the individual in performing work-related functions."³¹ Because the plaintiff's nephritis did not prevent him from performing work-related functions, he was not handicapped, according to the court.³²

The *Advocates* approach was utilized in *Kubik v. CNA Financial Corp.*³³ In *Kubik*, the plaintiff alleged that he had a malignant tumor on his colon which was successfully removed, and that doctors would not consider him cured until five years had passed without a recurrence. The plaintiff stated that he was "physically handicapped in that his physiological condition limited and is regarded as limiting certain of his major life functions."³⁴ The plaintiff had worked for CNA for a number of years, and when he returned to work after the tumor was removed, his employment was terminated.

The court in *Kubik* held that the plaintiff's condition did not come within the class of physical conditions which are generally believed to impose severe barriers upon the ability of the individual to perform major life functions, and thus did not constitute a handicap.³⁵ Relying on the dictionary definition of "handicap" used in *Advocates*, the *Kubik* court noted that there was nothing in the record from which it could be inferred that the plaintiff's condition was "a disadvantage that makes achievement unusually difficult" or "a physical disability which limits the capacity to work."³⁶

The *Advocates* approach to defining "handicap" followed by the Illinois courts had not been followed by the state of Wisconsin which also had a discrimination statute that did not contain a definition of "handicapped."³⁷ The *Advocates* court was aware that its interpreta-

31. *Id.* Again implied here, is that by judging every disability in light of its effect on the performance of "work-related functions," the court would have objective criteria for determining what is a handicap.

32. *Id.* at 518, 385 N.E.2d at 44.

33. 96 Ill. App. 3d 715, 422 N.E.2d 1 (1981).

34. *Id.* at 716, 422 N.E.2d at 3.

35. *Id.* at 719, 422 N.E.2d at 4.

36. *Id.*

37. WIS. STAT. ANN. § 111.31 (1984) which states: Subject to §§ 111.33-111.36, no employer, labor organization, employment agency, licensing agency or other person may engage in any act of employment discrimination as specified in § 111.322 against any individual on the basis of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record. In 1984, the statute was amended to include a definition of "handicapped": A handicapped individual is defined to mean "an individual who: (a) [h]as a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work; (b) [h]as a record of such an impairment; or (c) [i]s perceived as having such an impairment. WIS. STAT. ANN. § 111.32(8) (1984). This definition codified Wisconsin case law as found in *Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Wisconsin*, 62 Wis. 2d 392, 215 N.W.2d 443

tion of handicapped placed it in conflict with the reasoning of the Wisconsin courts.³⁸ However, the *Advocates* court believed that Wisconsin had adopted the approach suggested by the plaintiff in *Advocates*.³⁹ In the decisions in Wisconsin concerning what is and what is not a handicap, the courts have gotten away from the "objective criteria" interpretation followed by *Advocates* and have utilized instead the concept of a "perceived handicap." An understanding of this concept is necessary for a thorough understanding of the *Lyons* decision and, accordingly, a short discussion of the Wisconsin cases follows.

In *Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Dep't of Industry, Labor and Human Relations*,⁴⁰ the railroad appealed a lower court decision to reinstate an employee who was fired because of his asthma. The employee had been hired as a common laborer in the railroad's diesel house. Prior to beginning work, the employee revealed to the company doctor during the course of a physical examination that he had a prior history of asthma. Two weeks after starting work, the employee was dismissed although his work had been done to the satisfaction of his foreman.⁴¹

The court in *Chicago Milwaukee* held that "handicap" as used in the Wisconsin statute must be defined as including such diseases as asthma which make achievement "unusually difficult."⁴² In so doing, the court relied on the same dictionary definition of "handicap" used in *Advocates*. Additionally, the court noted that the Wisconsin statute restricted the employer's right to discriminate against those individuals who, though handicapped, could function efficiently on the job.⁴³ The court added that if a handicapped individual could function efficiently on the job, the mere fact that he was different from the average employee could "not be used as a basis for discrimination."⁴⁴

(1974) and *Dairy Equipment Company v. Dept. of Industry, Labor and Human Relations*, 95 Wis. 2d 319, 290 N.W.2d 330 (1980). See Rice, *The Wisconsin Fair Employment Act and the 1982 Amendments*, WISCONSIN BAR BULLETIN, August, 1982, page 17.

38. 67 Ill. App. 3d at 517, 385 N.E.2d at 43 (1978).

39. *Id.* at 518, 385 N.E.2d at 44.

40. 62 Wis. 2d 392, 215 N.W.2d 443 (1974).

41. *Id.* at 394-95, 215 N.W.2d at 444.

42. *Id.* at 398, 215 N.W.2d at 446.

43. The court stated:

If an individual were a paraplegic and were able to efficiently perform the duties of the job, then he would be protected under (the statutes), but if an individual were asthmatic or suffered from migraine headaches, though able to efficiently perform the duties of the job, no protection against discrimination would be found under the statute. The legislative policy of encouraging the employment of *all* properly qualified persons would not be served under such a statutory construction.

Id. at 397, 215 N.W.2d at 445.

44. *Id.*

In *Chrysler Outboard Motor Co. v. Dep't of Industry, Labor and Human Relations*,⁴⁵ the Wisconsin Circuit Court held that acute lymphocytic leukemia was a handicap within the meaning of Wisconsin's Fair Employment Act. Chrysler admitted that the company refused to hire an applicant who had leukemia because he ran a high risk of infection from normal or minor injury, a risk of prolonged recuperation from such injuries and a risk of complications from injuries or the disease itself.⁴⁶ At no time did Chrysler contend that the applicant was unable to perform at the standards set by Chrysler.

Relying again on the dictionary definition of "handicapped," the court in *Chrysler* noted that if an employee's illness or defect makes it more difficult for him to find work, then it certainly operates to make "achievement unusually difficult."⁴⁷ Chrysler's refusal to hire the applicant because of his illness was a "classic example of how such an illness operates as a handicap."⁴⁸

The Wisconsin Supreme Court appears to have gone one step further than *Chrysler* in deciding *Dairy Equipment Company v. Dep't of Industry, Labor and Human Relations*.⁴⁹ In *Dairy*, employee Michael Wolf was given a pre-employment physical at which time he revealed that he only had one kidney and that the other one had been surgically removed some time earlier. Wolf started work and performed satisfactorily; three days later his employer received the medical report and terminated him.⁵⁰ The medical report stated that Wolf "was acceptable for any kind of work for which he was qualified."⁵¹

The court affirmed the lower court's ruling that the employer should cease and desist discriminating against Wolf. The lower court ruled that Wolf was handicapped because he had a perceived sensitivity to injury in the future. The supreme court agreed with this conclusion and added that it would be "ironic" if the legislative intent in providing the protection of the Fair Employment Act were afforded to persons who *actually* have a handicap, but the same protection were denied to those whom employers *perceive* as being so handicapped.⁵²

It is precisely this "irony" which has been overlooked by the Illinois courts in *Advocates*, *Kubik* and *Lyons*. In these three cases, the

45. 14 FEP Cases 344 (1976).

46. *Id.* at 344.

47. *Id.* at 345.

48. *Id.*

49. 95 Wis. 2d 319, 290 N.W.2d 330 (1980).

50. *Id.* at 321, 290 N.W.2d at 331.

51. *Id.*

52. *Id.* at 330, 290 N.W.2d at 335.

employers have been permitted to refuse to hire or to terminate the plaintiffs because of their handicaps, and then to argue in the courts that the same plaintiffs were not handicapped within the Constitution and the statutes. This anomaly has been permitted because the Illinois courts have chosen to look at "objective criteria" in determining what is a handicap rather than at the employer's perception.

Lyons v. Heritage House Restaurants, Inc.

Facts of the Case

Elaine Lyons was hired by Heritage House Enterprises, Inc. in 1966 in a supervisory capacity. In 1972, Lyons⁵³ became a management employee of Heritage House as its kitchen operations supervisor; her duties included hiring and training kitchen personnel, menu preparation and general supervision of kitchen activities for eight restaurants owned by Heritage House.⁵⁴

During the summer of 1978, the plaintiff was diagnosed as having cancer of the uterus. She was advised by her physician that it would be necessary to undergo five weeks of radiation therapy, together with a surgical procedure to remove her uterus.⁵⁵ The radiation was administered in July of 1978, and it was scheduled so that the plaintiff would not be absent from work.⁵⁶ The plaintiff and her doctor notified Heritage House of the plaintiff's medical condition.⁵⁷

On July 28, 1978, an officer of Heritage House⁵⁸ informed the plaintiff that she was being removed from the corporate payroll for a six-month period, that her insurance benefits were being cancelled, and that the company-owned automobile was being taken from her. The officer told the plaintiff that her job would not be held open for her after the six-month period, and that a lesser position could not be guaranteed to her.⁵⁹

The plaintiff alleged that she was dismissed because her employer had learned of her cancer, and that her discharge was a discriminatory action based on her physical handicap. She brought suit under the Illinois Constitution and the 1977 EOHA for loss of her salary, life and

53. Hereinafter referred to as plaintiff.

54. *Lyons v. Heritage House Enterprises, Inc.*, 92 Ill. App. 3d 668, 669, 415 N.E.2d 1341, 1342 (1981), *rev'd*, 89 Ill. 2d 163, 432 N.E.2d 270 (1982).

55. *Id.*

56. *Id.* There is no indication, in either the appellate opinion or the supreme court opinion, that the radiation therapy incapacitated the plaintiff in any way.

57. *Id.*

58. Leonard W. Lambert included as a defendant in the case.

59. 92 Ill. App. 3d at 669, 415 N.E.2d at 1343 (1981).

health insurance benefits and use of the company car.⁶⁰ Heritage House filed a motion to dismiss arguing that the plaintiff's purported ailment was not a physical handicap.⁶¹ The trial court agreed with Heritage House and dismissed the plaintiff's complaint for failure to state a cause of action,⁶² the appellate court reversed⁶³ and the Illinois Supreme Court reversed the appellate court and held that cancer was not a handicap within the meaning of the Constitution or the Act.⁶⁴

Reasoning of the Appellate Court

The appellate court in *Lyons* expressly declined to follow the ruling of *Advocates*.⁶⁵ The court noted that according to the second definition in *Advocates*, the determination of whether a person is handicapped depends on whether the character of the disability is one which is perceived as severely limiting a person in performing work-related functions.⁶⁶ However, under the EOHA, such a fact situation would not be actionable because the statute expressly applied only to discriminatory practices which are based on physical conditions *unrelated* to one's ability to perform work-related tasks.⁶⁷ Similarly, the appellate court concluded that if a person is not handicapped, he is precluded from maintaining an action under the statute based on a handicap that does not exist.⁶⁸ The court implied here that the only effective way to argue under the EOHA is to (1) claim a handicap which is unrelated to the ability to perform one's job *or* (2) to allege that the employer perceived the employee to have a handicap which is unrelated to the ability to perform the job. In the court's opinion, the plaintiff's complaint was sufficient to allege a "physical condition which can be equated with a physical handicap" and "the allegations also support[ed] the conclusion that the defendants considered plaintiff's physical condition to be a physical handicap" which controlled their decision to terminate her employment.⁶⁹ It would appear that the

60. *Id.*

61. *Id.*

62. This hearing took place in the Circuit Court of Sangamon County.

63. 92 Ill. App. 3d 668, 415 N.E.2d 1341 (1981).

64. 89 Ill. 2d 163, 171, 432 N.E.2d 270, 274 (1982).

65. 92 Ill. App. 3d 668, 672, 415 N.E.2d 1341, 1344-45 (1981). The appellate court stated: "The trial judge did that which he was required to do even though we ultimately reject the precedent which resulted in dismissal of the complaint." *Id.* at 674, 415 N.E.2d at 1346.

66. *Id.* at 672, 415 N.E.2d at 1344-45. The *Lyons* appellate court did not consider *Advocates'* "first" definition.

67. See *supra* text accompanying notes 3 and 4.

68. 92 Ill. App. 3d at 672, 415 N.E.2d at 1345 (1981).

69. *Id.* Note that the court's use of the word "considered" appears to be synonymous with general usage of the word "perceived."

court's holding would fit both (1) and (2) above.

As support for its conclusion, the appellate court relied on the Federal Rehabilitation Act of 1973⁷⁰ which "specifically includes cancer in its list of handicaps."⁷¹ Additionally, the court noted that the Fair Employment Practices Commission Guidelines also consider cancer to fall within the ambit of handicaps as defined by the statutes.⁷² The appellate court reversed and remanded the case to the district court for further proceedings.⁷³ The defendant then appealed to the Illinois Supreme Court.

Reasoning of the Supreme Court

The supreme court in *Lyons* considered the first definition of "handicap" set forth in *Advocates*, a "class of physical and mental conditions which are generally believed to impose severe barriers upon the ability of an individual to perform major life functions" to be a "fair" one.⁷⁴ The court based its decision that Lyon's cancer was not a handicap on the above definition.

For assistance in determining what "major life functions" were, the supreme court relied on Fair Employment Practices Commission Guidelines⁷⁵ and on guidelines promulgated by the United States Department of Health and Human Services.⁷⁶ The Fair Employment Practices Commission Guidelines define "life activities" to include communication, self care, socialization, education, employment and transportation.⁷⁷ The U.S. Department of Health and Human Services defined major life activities to include activities such, "as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."⁷⁸ According to the court in *Lyons*,

70. 29 U.S.C. §§ 701-796 (1982) which states at § 706(12):

The term severe handicap means the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe.

71. The Illinois Supreme Court disagreed with this statement. *See infra* text accompanying notes 80-82.

72. *See supra* text accompanying notes 17-19. The supreme court discounted the appellate court's interpretation of the FEPA. *See infra* text accompanying notes 83-84.

73. 92 Ill. App. 3d at 674, 415 N.E.2d at 1346 (1981).

74. 89 Ill. 2d at 168, 432 N.E.2d at 273 (1982).

75. ILL. REV. STAT. ch. 48, ¶¶ 851-867 (1977).

76. 45 C.F.R. 84.3 (Subpart A - General Provisions) (1983).

77. 89 Ill. 2d at 170, 432 N.E.2d at 274 (1982).

78. 45 C.F.R. 84.3 (j)(2)(ii) (1980).

since "the plaintiff has not alleged that her cancer has substantially hindered her in any of these activities or any other activities or that her employer perceived her condition as causing such a hindrance,"⁷⁹ the plaintiff was not handicapped.

The court in *Lyons* disagreed with the appellate court's belief that the Rehabilitation Act of 1973 "specifically included cancer in its list of handicaps."⁸⁰ The Rehabilitation Act, in defining "severe handicap" includes disabilities which require extra services and which *result from* blindness, cancer, cerebral palsy and a variety of other conditions.⁸¹ The court noted that the Rehabilitation Act "does not call cancer by itself a handicap."⁸²

Similarly, the court in *Lyons* discounted the appellate court's reliance on Fair Employment Practices Commission Guidelines concerning cancer as a handicap:⁸³ "[The Guidelines] offhandedly mention recovered cancer victims as persons who sometimes have experienced trouble readjusting to employment because of their record of a handicap. Nowhere does the Commission say that cancer victims necessarily come within the definition of the handicapped."⁸⁴ Even if the Rehabilitation Act and the Guidelines had included cancer as a handicap, the court in *Lyons* noted that it would not be bound by the interpretation since the Illinois Constitution and the Equal Opportunities for the Handicapped Act both predate the laws discussed above.⁸⁵

Finally, it must be noted that the supreme court in *Lyons* did not extensively consider the second definition of "handicapped" suggested in *Advocates*: a disability "which is generally perceived as one which severely limits the individual in performing work-related functions."⁸⁶ The court appeared to agree with the appellate court's concept that according to the above definition, a person would be handicapped only if he was unable to perform work-related functions.⁸⁷ However, the court

79. 89 Ill. 2d at 170-71, 432 N.E.2d at 274 (1982). This statement by the supreme court is true as far as it goes. The plaintiff's complaint was that she was "not limited in doing her work by reason of her cancer, but the defendants, through lack of understanding or lack of information considered her to be handicapped and terminated her." *Answer Brief of Plaintiff Appellee*, No. 54655, Filed September 16, 1981, page 6. *Implied* in this complaint is that the plaintiff's employer perceived her cancer as constituting a hindrance in performing major life activities.

80. 89 Ill. 2d at 169-70, 432 N.E.2d at 273.

81. 29 U.S.C. § 706(13) (Supp. II 1981) (emphasis added) See *supra* note 70.

82. 89 Ill. 2d at 170, 432 N.E.2d at 273 (1982).

83. FEPC GUIDELINES ON DISCRIMINATION IN EMPLOYMENT, art. III, § 3.2 (E) (1976). See *supra* text accompanying notes 17-19.

84. 89 Ill. 2d at 170, 432 N.E.2d at 273 (1982).

85. *Id.*

86. 67 Ill. App. 3d at 517, 385 N.E.2d at 43 (1978).

87. 92 Ill. App. 3d at 672, 415 N.E.2d at 1344 (1981).

recognized that the above definition "would nullify the force of the law entirely" because under both the EOHA and the Constitution, handicaps that interfere with the applicant's ability to do the job are expressly exempted.⁸⁸

Analysis

Objective Criteria: Irrelevant and Misleading

The supreme court in *Lyons* stated that the plaintiff had not alleged that her cancer had substantially hindered her in the performance of major life functions or that her employer perceived her condition as causing such a hindrance.⁸⁹ It appears, however, that the court overlooked several important factors.

First, the court fails to equate "major life functions" (the first definition in *Advocates*) with "work-related functions" (the second definition in *Advocates*). If the plaintiff had alleged that one of her major life functions had been impaired by her cancer but that this impairment did not affect her ability to perform her job, the court, could conceivably have found discrimination. However, by arguing the impairment of a major life function, the plaintiff would be bringing herself very close to arguing the impairment of a work-related function. The U.S. Department of Health and Human Services defined major life functions to include such activities as caring for one's self, performing manual tasks, walking, seeing, hearing and speaking.⁹⁰ If *Lyons* had argued that her cancer affected her ability to perform one of the above activities, Heritage House would have argued that the activity was necessary for satisfactory performance on the job. Both the appellate court and the supreme court recognized that if the plaintiff had an impairment which affected her ability to do her job, the situation would not be actionable.⁹¹ What the supreme court did not recognize, however, is that impairment of any of the "major life activities" or "major life functions" listed by the court would, most likely, also be an impairment of a work-related function.⁹²

Secondly, the appellate court in *Lyons* effectively concluded that if

88. 89 Ill. 2d at 168, 432 N.E.2d at 272 (1982).

89. *Id.* at 170, 432 N.E.2d at 274 (1970). See also *supra* note 79.

90. 45 C.F.R. 84.3 (j)(2)(ii) (1980).

91. 89 Ill. 2d at 168, 432 N.E.2d at 272 (1982). See also 92 Ill. App. 3d at 672, 415 N.E.2d at 1345 (1981).

92. As a particular disability is measured against an increasingly broadened range of functions, the chances increase of finding a function the performance of which the disability will impede. Erf, *Potluck Protections for Handicapped Discriminatees: The Need To Amend Title VII To Prohibit Discrimination On The Basis Of Disability*, 8 LOY. U. CHI. L.J. 814, 840 (1977).

a person is not handicapped, he is precluded from maintaining an action⁹³ based on a handicap which does not exist.⁹⁴ Because of the difficulty in arguing the impairment of a "major life function" which does not impair a "work-related function," and because a plaintiff who is not handicapped is precluded from maintaining an action, it appears that the most effective way to argue under the Illinois statute is that a plaintiff has a "perceived handicap." In alleging a "perceived handicap," a plaintiff is, in effect, saying that he is not *in fact* handicapped but is considered by his employer to be handicapped. In other words, the handicap exists only in the employer's perception, but not in substance. Proof of an employer's perception of an impairment should, therefore, replace the need to ascertain an actual impairment⁹⁵ as was required by the supreme court in *Lyons*. When a plaintiff is arguing a perceived handicap, any consideration by the court of "impairment" of major life functions would appear to be, at least, irrelevant, and quite possibly misleading.

The supreme court, in deciding *Lyons*, has presupposed that a certain amount of objectivity is inherent in the concept of "handicapped." It appears, however, that one of the most important elements in deciding who is and who is not handicapped revolves around social considerations: arguably, a person truly qualifies as handicapped only as a result of being so labeled by others.⁹⁶ In deciding that the Illinois Con-

93. 92 Ill. App. 3d at 672, 415 N.E.2d at 1345 (1981).

94. Illinois law differs here from the law of other states. See, e.g., *Barnes v. Washington Natural Gas Company*, 22 Wash. App. 576, 591 P.2d 461, 462 (1979): "The issue here is narrow: May a plaintiff claiming not to be handicapped sue under the Act on the grounds that he was discriminatorily discharged under the erroneous belief he suffered a handicap? We answer in the affirmative"

95. See *The Rehabilitation Act of 1973: Who Is Handicapped Under Federal Law*, U.S.F.L. REV. 677 (1982), for a discussion of proof requirements under the Rehabilitation Act of 1973 for a handicap that "exists only in the employer's mind." See also Belton, *Burdens of Pleading and Proof In Discrimination Cases: Toward a Theory of Procedural Justice*, 34 VAND. L. REV. 1205, 1252 (1981) for a discussion of the "but-for" or "substantial factor" test as a means of showing causation in discrimination cases. According to Belton, discrimination must, in most cases, be inferred from circumstantial evidence. *Id.* at 1254.

96. For an excellent discussion of the result of "labeling" as it affects the determination of who is handicapped, see Burgdorf, *supra* note 1, § C, "Society as a Creator of Handicap." See also Burgdorf, M. and Burgdorf Jr. R., *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a "Suspect Class" Under the Equal Protection Clause*, 15 SANTA CLARA LAW. 857 (1975):

Moreover, a person whose condition need not be a substantial impediment may become "handicapped" if he or she is labeled and treated as "handicapped" by members of society. Educators and psychologists use the term "self-fulfilling prophecy" to describe a process whereby persons assigned stigmatizing labels tend to conform to the expectations created by such labels. This effect may be magnified when, as in the case of handicapped persons, the label has practical and legal ramifications.

Id. at 858.

stitution and the EOHA protect only those people who can be considered to be handicapped by objective standards (such as a consideration of impairment of "major life functions"), the court has created an inherent contradiction. Whether the individual is perceived to be handicapped or actually handicapped, the same stereotypes are operative and the same discrimination will be suffered.⁹⁷ To condone one situation and not the other would seem to result in an unfair and uneven application of a discrimination statute.

Physical Disability v. Medical Condition

There is one further problem with the supreme court's consideration of impairment of "major life functions" as a means of determining who is handicapped: Whereas a consideration of impairment of "major life functions" might be appropriate for determining whether a physical disability constitutes a handicap, it does not appear to be appropriate when the courts are confronted with a medical condition such as cancer. The State of California's experience with its Fair Employment Practices Act⁹⁸ illustrates this point. The California statute prohibited discrimination by an employer because of a physical handicap.⁹⁹ Physical handicap under the statute "includes impairment of sight, hearing, or speech . . . or impairment of physical activities . . . or any other health impairment."¹⁰⁰

After the initial adoption of the Fair Employment Practices Act, the California legislature decided that "medical condition" as distinguished from "physical handicap" warranted special protection and amended the Act to forbid discrimination because of "medical condition."¹⁰¹ "Medical condition" means any health impairment . . . related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured."¹⁰² In *American National Insurance Company v. State of California Fair Employment Practice Commission*,¹⁰³ the

97. Gittler, note 9 *supra* at 984.

98. CAL. CODE § 12940 (West 1980).

99. *Id.*

100. *Id.* at § 12926(h) (West 1980). Note the similarities between the impairments as described by California and the impairments of "major life functions" suggested by FEPC Guidelines and used by the Illinois court in deciding *Lyons*.

101. CAL. LAB. CODE, § 12940 (West 1980).

102. CAL. LAB. CODE, § 1413-h (West 1980) as amended by Stats. 1975 c.431, p. 923. ACCORDING TO THE LAW AND DISABLED PEOPLE: SELECTED FEDERAL AND STATE LAWS AFFECTING EMPLOYMENT AND CERTAIN RIGHTS OF PEOPLE WITH DISABILITIES, U.S. Government Printing Office, 1980, page 69. California is the only state which mentions "cancer patients" in its affirmative action and anti-discrimination in employment laws.

103. 114 Cal. App. 3d 1008, 170 Cal. Rptr. 887 (1981).

plaintiff alleged that he had been dismissed from his job because he had been diagnosed as having high blood pressure. Because the alleged discriminatory action had taken place prior to the amendment of the California statute to include "medical condition," the plaintiff was forced to argue that his high blood pressure was a physical handicap.¹⁰⁴ The court held that high blood pressure was not a physical handicap because it did not impair any bodily functions as required by the statute. The court remarked that the intent of the legislature was made clear when "medical condition" was added to the statute: physical handicap had not been intended to encompass a "medical condition."¹⁰⁵

It seems reasonable to assume that cancer is more similar to a "medical condition," such as high blood pressure, than to a physical handicap. The *Advocates* definition, however, requires a consideration of impairment of major life functions whether the handicap is "physical" or a "medical condition." In light of the California experience, it appears that a consideration of impairment may be inappropriate when the courts are attempting to determine whether a "medical condition" such as cancer is a handicap.

Changes Under the Illinois Human Rights Act

It must be noted here that after the events in the *Lyons* case occurred, the EOHA and FEPA were replaced by the Illinois Human Rights Act (IHRA).¹⁰⁶ The IHRA defines handicap in the following manner:

"Handicap" means a determinable physical or mental characteristic of a person . . . the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:

(1) . . . is unrelated to the person's ability to perform the duties of a particular job or position.¹⁰⁷

Although the definition contains a clause concerning "perception," the

104. 170 Cal. Rptr. 887, 890 n.2 (1981).

105. High blood pressure does not fit within the classification indicated by that definition [of physical handicap]. Each of the conditions listed in the definition is an impairment of some bodily functions. High blood pressure does not impair function in any way analogous to . . . the impairment of sight, hearing or speech. The closing phrase of the definition "any *other* health impairment . . ." confirms the view that "handicap" refers to an impairment of function, as distinguished from a medical condition which has a lesser effect.

170 Cal. Rptr. at 888 (1981).

106. ILL. REV. STAT. ch. 68, §§ 1-101 -9-102 (1983).

107. *Id.* at §1-103(I).

“perception” must be of a “determinable physical characteristic.” It would be difficult to fit cancer into this description since in most cases cancer is internal and would not result in a “determinable physical characteristic.” If, however, “characteristic” is meant to be interpreted more broadly as a “quality” or “peculiarity,”¹⁰⁸ cancer may be covered under the IHRA as “the history of such characteristic.” At this time, no cases concerning cancer or disease or medical condition have been tried under the IHRA.

It is interesting to note that the appellate court in *Lyons* stated that “it is clear that plaintiff’s alleged physical condition would fall within the definition of handicap as set forth in the IHRA.”¹⁰⁹ Alternatively, the Illinois Bar Journal has commented that the definition of handicap included in the IHRA appears to be modeled on the interpretation of handicapped adopted in *Advocates*.¹¹⁰ If this is true, and if the supreme court in *Lyons* interpreted *Advocates* correctly, then it would seem evident that cancer would not be a protected handicap under the IHRA.¹¹¹

Other Considerations

The courts in Illinois have recognized that in view of the similarities between the Illinois and federal fair employment enactments, the federal experience can serve as a useful guide in cases involving Illinois’ FEPA.¹¹² The courts in *Advocates* and in *Lyons* did not extensively use the “federal experience” as a guide and, of course, were not bound to do so. The federal government’s Rehabilitation Act of

108. WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY (1976).

109. 92 Ill. App. 3d at 674, 415 N.E.2d at 1346 (1981).

110. Davis and Murchy, *The Illinois Human Rights Act: Revision of Illinois Law Concerning Discrimination in Employment*, 69 ILL. B.J. 218, 224 (1980). But see *Risk Oriented Employment Screening*, 59 TEX. L.R. 999, 1055 n. 235 (1981): “The Illinois Legislature apparently agreed with the plaintiff in *Advocates*, for it enacted a new Human Rights Act, effective July 1, 1980, which set forth a definition of handicap similar to that in the Rehabilitation Act of 1973. . . .”

111. If the Illinois legislature intended a disease such as cancer to be covered under the IHRA, “handicap” could have been more clearly defined as follows:

Handicap means (1) a determinable physical or mental characteristic of a person, (2) the history of a physical or mental characteristic or (3) the perception of a physical or mental characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic: . . . is unrelated to the person’s ability to perform the duties of a particular job or position.

Clause (1) above would cover those people who have an actual handicap. Clause (2) would cover those people who formerly had a handicap but have since recovered. Clause (3) would cover those people who are not *in fact* handicapped but are perceived as having a physical or mental characteristic which constitutes a handicap. Cancer would be covered under clause (3) in this definition.

112. See, e.g., *Schoneberg v. Grundy County Special Education Cooperative & Board of Education District No. 54*, 67 Ill. App. 3d 899, 385 N.E.2d 351 (1979). See also *supra* note 16.

1973,¹¹³ which forbids discrimination against the handicapped by any employer holding a contract with the government in excess of \$2,500, specifically includes cancer as a handicap¹¹⁴ and persons who are thought of as handicapped although not actually handicapped.¹¹⁵ Although the *Lyons* court did use the federal definition of "severe handicap" in its analysis,¹¹⁶ it appears that the court either overlooked or chose to ignore the federal interpretation.

Other aspects of the problem of handicap discrimination which warrant consideration are 1) whether an employer may terminate a "handicapped" employee because of the possibility that his condition may worsen in time¹¹⁷ and 2) whether an employer may refuse to hire or retain a "handicapped" employee because of a potential increase in insurance costs.

With regard to the first consideration above, it would appear that to the extent that fair employment legislation is generally written in the present tense, as is Illinois', there should be no room to argue that future considerations that do not affect present performance may be allowed to affect the employer's decisions.¹¹⁸ One commentator has stated that, "it is . . . important that an employer be able to prove the complainant's inability existed at the time of the adverse employment decision, and that the employer's decision had nothing to do with either a past inability or a potential future inability to perform."¹¹⁹ Although the courts appear to lean toward disallowing any consideration by the

113. 29 U.S.C. §§ 701-796i (1982).

114. Appendix A to Affirmative Action Regulations on Handicapped Workers, 41 C.F.R. § 60-741 (1981) as discussed in THE EQUAL EMPLOYMENT COMPLIANCE MANUAL, Ch. 6, § 6.02, which states:

Any person who has recovered from a previous handicap, such as cancer, heart attack or mental illness, is also treated as handicapped. This group has been included because the attitudes of employers, supervisors and co-workers may interfere with their ability to obtain and retain employment. For similar reasons, persons who are thought of as handicapped although not actually handicapped are covered under the Act.

At this time, no cases concerning cancer have been decided under the Rehabilitation Act of 1973.

115. Congress has compared persons who are thought of as handicapped to persons who are discriminated against because of race although the person is not in fact a member of a minority. See S. REP. NO. 1297, 93rd Cong., 2nd Sess. 38, reprinted in (1974) U.S. CODE CONG. & AD. NEWS 6373, 6389.

116. 89 Ill. 2d at 170, 432 N.E.2d at 273 (1982).

117. See, e.g., *Rogers v. Campbell Foundry Co.*, 447 A.2d 589 (New Jersey 1982) in which Campbell Foundry refused to hire the plaintiff because he had a "hilar shadow on his left side." *Id.* at 590. The company believed that because of the silica dust present in the foundry, persons with scarring on their lungs would have a significant predisposition to contract silicosis or pneumoconiosis on the job. The court agreed with the New Jersey Director of the Division of Civil Rights that the foundry's decision not to hire Rogers was "unjustifiable." *Id.* at 590.

118. Erf, *supra* note 92 at 843.

119. Burstein, J. and Foster, T., *Handicap Discrimination: The Available Defenses*, 7 EMPLOYEE RELATIONS L. J. 672, 677 (1982).

employer of future aggravation of a medical condition,¹²⁰ they have not been unanimous in this regard.¹²¹ It is also important to recognize that if aggravation is allowed to enter into an employer's decision, the question would then arise as to the degree of medical certainty that would be required with respect to a prognosis of future degeneration of an employee's condition.¹²²

In general, the courts have refused to consider the potential for increased insurance costs to be a valid reason for refusing to hire or for terminating employment. In *Chrysler Outboard Motor Company v. Dep't of Industry, Labor and Human Relations*,¹²³ Chrysler stated that the company had made a "sound business decision" in not hiring a person with leukemia because of the "higher risk of absenteeism and increased insurance costs." The court replied: "[o]nce again the petitioner [Chrysler] misapprehends the intent of the statute. An employer's refusal to hire a person solely on the basis of a handicap operates to discriminate against him regardless of the intent of the employer."¹²⁴ In *Sterling Transit Co. v. FEPC*,¹²⁵ the employer had justified its practice of refusing to hire all persons having nondisabling abnormal backs on the grounds that such practice decreased its risk of undetermined future increases in the cost of doing business.¹²⁶ The court noted that such practice may be in an employer's economic interest, but "such a blanket exclusion eviscerates the legislative policy by erecting employment barriers more difficult to scale than Mount Ranier."¹²⁷

The *Advocates* court recognized one strong public policy argument when it rejected the plaintiff's broad interpretation of the word "handicap." The court stated that since virtually every consideration upon which an employer is likely to evaluate a prospective or current employee may be classified as either a mental or physical condition, the

120. See, e.g., *Providence Journal Co. v. Mason*, 13 FEPC 385 (1976) (aggravation may not be considered).

121. See, e.g., *Clark v. Milwaukee Road*, 12 FEPC 1102 (1975) (aggravation may be considered).

122. In Wisconsin, a "reasonable probability" standard has been adopted for proving that job duties and working conditions would be hazardous to an employee's health in the future. This standard is in essence a balancing test, weighing the right of a handicapped individual to obtain gainful employment against the risk of harm to the handicapped individual. For a discussion of the "reasonable probability" standard, see Rice, *The Wisconsin Fair Employment Act and the 1982 Amendments*, WISCONSIN BAR BULLETIN 59, August, 1982.

123. 14 FEP Cases 344 (1976). See *supra* text accompanying notes 45-48.

124. *Id.* at 345.

125. 28 FEP Cases 1351 (1981).

126. *Id.* at 1352.

127. *Id.* at 1355.

Act would be transformed into a universal discrimination law.¹²⁸ While this argument has some merit, it must be balanced against the intent of the legislature in enacting any discrimination statute. If the legislature intended that a certain class of persons be protected against discrimination, it is the responsibility of the courts to ensure this protection, regardless of how "universal" the protected class may be. It is of little comfort to a person perceived to be handicapped that his or her employer's perception is erroneous. To such a person, the employer's perception is as important as reality. It should be apparent to the courts that the "perception" and the "reality" warrant the same protection.

Conclusion

Cancer is not a protected handicap in the State of Illinois. The *Lyons* court, and the *Advocates* court before it, failed to recognize that the intent of the legislature in guaranteeing freedom from discrimination to handicapped persons can only be carried out by protecting equally those people with actual handicaps as determined by a consideration of objective criteria *and* those people perceived to be handicapped.

Whether cancer will *ever* be a protected handicap in Illinois remains an open question. Since the Illinois Human Rights Act includes "perception" and a "characteristic . . . which may result from disease" as a means of identifying handicaps, the chances, hopefully, are greater that cancer may be found to be a protected handicap in the future in Illinois.

128. 67 Ill. App. 3d 512, 516, 385 N.E.2d 39, 43 (1978).