

PRINCIPLES OF NATURAL JUSTICE IN DISCIPLINARY HEARINGS



Having done many disciplinary hearings over the years, it is quite evident to this author that parties frequently envelope various arguments under the cover of natural justice in an attempt to set aside disciplinary tribunal decisions. This article seeks to give some simple insights as to what encompasses principles of natural justice in disciplinary hearings. To begin with, the principles of natural justice are not unique to disciplinary hearings. They apply to all manner of legal proceedings including arbitration proceedings.¹ The continued challenge for courts in Singapore is to determine which of the challenges genuinely fall within the ambit of breach of natural justice and, further, whether the breach would entitle the court to set aside the disciplinary

tribunal's decision. In analysing this issue, the author hopes that members of disciplinary tribunals would have a better idea of rules of natural justice and avoid straying from the accepted parameters of these rules in the adjudication process.

WHAT IS NATURAL JUSTICE?

These rules are concepts derived from English law and captured in two Latin maxims: *nemo iudex in causa sua*, which means the adjudicator must be disinterested and unbiased, and *audi alteram partem*, which simply means parties must be given adequate notice and opportunity to be heard.² The rules of natural justice can be recast as a duty to act fairly in all circumstances and includes

the rule against bias and the right to a fair hearing. The scope of the rules of natural justice is often not disputed, but the rules themselves as a concept are generally flexible in application³ and dispute arises in the application of the rules. Given the rise in arbitration proceedings, many of the cases relating to breach of natural justice relate to arbitration proceedings. In analysing this issue, the author has also examined cases involving parties' attempts to set aside arbitral awards on the grounds of breach of natural justice. In the author's view, the various issues that can be gleaned from an examination of these cases would be equally useful in the context of disciplinary tribunal proceedings.

SOME ALLEGATIONS OF BREACH OF NATURAL JUSTICE

Essentially, the factual circumstances under which an allegation for breach of natural justice may be raised are not closed. Members of the disciplinary tribunal should be mindful of their role to ensure that the respondent is given a fair hearing. Appended below are some examples of the accusations of breach of natural justice that may be raised against adjudicators and how, in a disciplinary tribunal setting, such accusations may be avoided.

(a) Rule against bias

Based on the author's experience, this accusation is often raised in an attempt to set aside the disciplinary tribunal decision. The key issue to bear in mind is that a decision made in breach of the bias rule **must** be set aside regardless of whether the bias was actual or apparent.⁴ The accusations of bias may relate to past dealings of the members of the disciplinary tribunal with the respondent which raise a suspicion of bias.⁵ From the author's experience, such accusations may even go as far back as when the respondent began medical practice. The accusation may also arise from the conduct of members of the disciplinary tribunal in the course of the hearing which showed an attitude of bias towards the respondent.^{6,7,8} Sometimes, the bias may have taken the form of predetermination or prejudgement which tainted the eventual decision.⁹ Members of disciplinary tribunals are therefore reminded that such accusations may not be limited to their conduct during the inquiry hearing but may also arise from their conduct outside of the disciplinary hearing. It is critical for all members of the disciplinary tribunal to avoid discussing or making any comments on the case at hand outside of the

hearing especially prior to the pronouncement of the findings of the disciplinary tribunal. Such comments or remarks may be relied on by a respondent in alleging bias against the member of the disciplinary tribunal or the disciplinary tribunal itself.

(b) Right to cross-examination

This accusation relates to the disciplinary tribunal depriving a respondent of a fair hearing by failing to enable him to fully exercise his right to cross-examination.¹⁰ There is a body of case law that provides that it is part of the principles of natural justice to afford the party a fair opportunity to challenge by cross-examination witnesses called by the other party or in the case of a disciplinary hearing, the prosecution. In short, a respondent whose livelihood or professional reputation is at stake should be given fair opportunity to cross-examine and/or challenge the evidence adduced to support the charge made against him. For members of a disciplinary tribunal, there may be a tendency to consider that certain lines of cross-examination undertaken by a respondent or his counsel is not relevant to the issues or matters at stake. In such a situation, the disciplinary tribunal should be careful not to prevent a respondent or his counsel from exercising his right of cross-examination. That does not mean that the tribunal should sit back and allow a respondent or his counsel to ask all manner of questions of the witnesses but a right balance must be struck. The respondent should not be placed in a position where he has not been given sufficient opportunity to challenge the evidence adduced against him. This accusation may be raised if the tribunal interjects unnecessarily or excessively while the respondent or his counsel is carrying out cross-

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examination or prevents the questions from being asked.

Notwithstanding this point, this does not mean that if the respondent chose to appear in person without legal counsel, the disciplinary tribunal would be obliged to afford him a higher standard of natural justice and would have to assist him in the cross-examination process or to warn him of the legal implications of not fully exercising his right of cross-examination.¹¹ As rightly noted by Lord Denning in *Pett v Greyhound Racing Association Ltd*,¹² "It is not every man who has the ability to defend himself on his own." However, the mere fact of the absence of cross-examination does not render the tribunal decision unfair or that there was breach of natural justice. The issue is whether the disciplinary tribunal had afforded the respondent a fair hearing. If there was fairness in the process, then the decision of the tribunal should not be impeached. Under Section 51(4) of the Medical Registration Act, it is noteworthy that the disciplinary committee is not bound by any written laws relating to evidence. This is consistent with the notion that disciplinary tribunals are masters of their own procedure, but this is still subject to the principles of natural justice.

(c) Omission to consider all evidence and submissions

The role of a disciplinary tribunal is to consider all the evidence and submissions presented by a respondent and his counsel as well as the prosecution before reaching a decision on the charge/complaint.¹³ Any failure or omission to do so may constitute a breach of natural justice for not giving the respondent a fair hearing. This can be a challenge where the respondent raises a myriad of different arguments, some of which are framed ambiguously or presented in a manner that is difficult to understand. If there is any uncertainty, it would be advisable for the disciplinary tribunal to clarify with the respondent or his counsel on the points of submission he wishes the disciplinary tribunal to consider and the evidence relied on in support. With this clarification, which should be noted, there is less likelihood of a disciplinary tribunal overlooking any submission raised. Having said that, even if there is a breach of natural justice in this regard, the court may not necessarily set aside the disciplinary tribunal decision. The respondent has to further establish that the breach was causally linked to the decision and would have led to a

different outcome had the submission or evidence been considered.^{14,15}

The author has emphasised the importance of considering all the submissions and evidence presented by the respondent. Equally, members of the tribunal must be mindful not to allow extraneous facts to influence or determine their decision. In disciplinary proceedings involving professionals, it is not uncommon for the members of the disciplinary tribunal (who are members in the same professional field) to have chanced upon information relating to the complaint/charge. Members of the disciplinary tribunal must avoid taking the information in question into account in their decision-making process. Unless the information is properly adduced as evidence in the inquiry hearing, they should be strictly excluded from the deliberations. Ultimately, any finding or decision of the disciplinary tribunal must be premised on the evidence properly adduced in the inquiry hearing and based on permitted inferences drawn from the evidence through logical reasoning. ♦

References

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