

June 2023

## Internal disciplinary processes: A basic guide



### Introduction

The recent Singapore High Court decision in *Lawrence Li See Kit v Debate Association (Singapore)* [2023] SGHC 154 ("**Lawrence Li See Kit**") serves as a useful reminder that maintaining a fair and impartial disciplinary procedure within organisations is critical for fostering trust, respecting the rights of individuals, and ensuring a productive work environment.

Central to this is the concept of natural justice, a legal principle and requirement emphasising fairness, equality, and impartiality. For private organisations that may wish to conduct private disciplinary inquiries and hearings, the development and implementation of fair rules and procedures helps to ensure natural justice is adhered to.

### Understanding natural justice



The principles of natural justice originated from English common law and are integral to administrative law globally. They serve to safeguard individuals from arbitrary or unfair treatment during administrative or disciplinary proceedings. The rules of natural justice represent what an ordinary person would expect and accept as fair procedure for conflict resolution by a decision-making body which affects his/her interest.

#### The two pillars of natural justice:

##### 1. *Audi alteram partem* (Hear the other side):

Every person has a right to be heard and to present their case fully before a decision is made that might affect their rights. Otherwise known as the fair hearing rule, this is the principle that no person should be judged without a fair hearing in which each party has the right to know the case, reasons for the dispute, have a hearing, and be given the opportunity to respond to evidence against them.

The fair hearing rule is generally engaged where the nature of the exercised power calls for it, for instance where a board is exerting powers to grant or revoke licences, permits, or memberships. Additionally, certain types of subject matter may call for the use of the fair hearing rule. Examples of decisions or interests which invoke the fair hearing rule include dismissal of employment, suspension, expulsion from professional bodies, property rights, and reputation.

##### 2. *Nemo iudex in causa sua* (No-one should be a judge in their own cause):

Decisions must be made without bias, and the decision-maker must be impartial. Otherwise known as the rule against bias, this serves the purpose of militating against a possible scenario where the decision-maker is biased or prejudiced in a way which "precludes of genuine and fair consideration being given to the arguments or evidence presented by the parties", as per *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 ("**Kay Swee Pin**") at [7].

The test which the courts use to determine apparent bias was stated in *BOI v BOJ* [2018] 2 SLR 1156 ("**BOI**") and cited in the recent case of *Lawrence Li See Kit*. It is an objective test which inquires as to "whether there are circumstances which would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer". The observer is both informed – aware of all relevant facts which members of the

public would have knowledge of, and fair-minded – not complacent or unduly sensitive and suspicious.

While the observer is akin to a non-judicial member of the public, they will also be expected to "know the traditions of integrity and impartiality that administrators of justice have to uphold and would not jump to hasty conclusions of bias based on isolated episodes of temper or remarks taken out of context".

A related rule is that of prejudgment, which may amount to apparent bias. To establish this, a fair-minded, informed, and reasonable observer must, after considering the factual matrix, suspect that the decision-maker had reached their final and conclusive decision before seeing all relevant evidence and arguments which parties wished to present, and approached the matter with a closed mind. This was set out in BOI at [108] – [109].

In *Lawrence Li See Kit*, the Debate Association (Singapore) issued a permanent ban of his membership right to attend events ("**Ban**") and notified their partner organisations to prevent him from entering any events co-organised by the defendant ("**Notice to Partners**"). These acts were not within the scope of powers provided for in the Association's Constitution and also breached the rules of natural justice. Consequently, the High Court held that declarations should be ordered that the actions were unlawful. The Ban and the Notice to Partners were to be set aside.

### Implementing procedures to ensure natural justice



To adhere to these principles and prevent breaches of natural justice during internal disciplinary processes, it is suggested that organisations adopt the following strategies:

#### Clear and concise disciplinary policies

Organisations should have clear, well-communicated disciplinary policies and procedures in place. These should define what constitutes misconduct, the stages of the disciplinary process, potential disciplinary measures, and employees' rights during the process. Courts generally hesitate to imply terms into unincorporated associations' Constitutions, so disciplinary procedures may be held to be ultra vires (i.e., in excess of authority) and hence unlawful if the articles are not clear in defining the scope of the powers, and the procedures to be followed.

Exclusions, terminations, or suspensions which are of a penal or punitive nature can only be imposed where the associations' Constitution has set out their power to do so in "clear and unambiguous language", as reiterated at [62] of *Lawrence Li See Kit*. This was also explained in *Singapore Rifle Association v Singapore Shooting Association and others* [2019] SGHC 13 at [37] as required because the consequences of certain types of disciplinary action may be severe and drastic, and "it is only fair that members of the association have assurance that the power to impose such consequences are clearly defined and limited".

#### Right to be informed

Before any disciplinary proceedings, individuals must be informed of the accusations against them, as well as the investigations carried out. This notification should include the nature of the misconduct, evidence, and the possible consequences. This provides an opportunity for the individual to prepare their defence adequately.

There should also be adequate notice given so that the individual can have a true opportunity to prepare and subsequently defend himself. As espoused in *Stansfield Business International Pte Ltd v Minister for Manpower* at [26], the party should be "told of the case he has to meet and of the allegations made against him".

#### Opportunity to respond

Every individual should have an opportunity to present their case and rebut any allegations made against them. This could be in the form of a disciplinary hearing where the person can respond to the allegations, present evidence, call witnesses, and cross-examine any witnesses against them.

The party must be given not only a "fair opportunity to put forward his own case", but also a "fair opportunity to correct or contradict the case and the allegations of the other party".

### Impartiality in decision-making

The decision-maker in the disciplinary process must be impartial. This requires the absence of bias, whether actual, imputed, or apparent. A separate and impartial person or committee not previously involved should conduct the inquiry or hearing.

The court's decision in *Lawrence Li See Kit* at [92] that the defendant had prejudged the deceased stemmed from the fact that the defendant did not ask for or consider any evidence from the deceased before reaching its decision. The prejudgment was held to amount to apparent bias, since no exceptions to the application of rules of natural justice applied in the case.

At [165] of *Lawrence Li See Kit*, the court opined that the mention of an "independent audit" and "comprehensive report of the findings" suggested that the statement published was deliberated and duly considered. It is hence recommended that the two separate processes of investigation and decision-making be conducted by different individuals where possible.

### Right to representation

Where applicable and permitted by organisational policies, the individual should have the right to be accompanied or represented during the disciplinary process. This could be by a colleague, trade union representative, or in some cases, a legal representative.

### Consistency in treatment

Similar offences committed under similar circumstances should be treated in a consistent manner to ensure fairness. Any perceived inconsistency in treatment may lead to accusations of unfairness or bias.

### Right to appeal

After the conclusion of disciplinary proceedings, individuals should be given the right to appeal the decision. This allows an upper body or authority to review the process and the decision made. The right to appeal is an important element when the courts determine the fairness of the disciplinary process, since even the common law exception to the fair hearing rule in situations of urgency is still subject to the possibility of subsequent appeal. The appeal or review process should be available, with appeals being directed to a higher authority, and the availability process must be expressly communicated to the individual.

### Conclusion



By implementing these procedures, organisations can ensure their internal disciplinary processes align with the principles of natural justice. This not only protects the rights of individuals but also contributes to a transparent, fair, and respectful work culture.

Generally, when determining which rules to abide by or what procedures to adopt, erring on the side of caution would be a better choice, since [6] of *Kay Swee Pin* stated that fairness is determined by the courts as a matter of law, and not up to the discretion of the decision-maker or the organisation.

Where the issues are complex, it would be advisable to engage legal counsel to supervise or run the disciplinary process to ensure the organisation's decisions and acts are irreproachable and not subsequently set aside by the court as in *Lawrence Li See Kit*.

For further information and enquiries, please contact the Virtus Law investigations team.

## Contact us



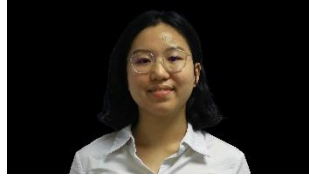
### Terence Seah

Partner

T: +65 6602 6605

M: +65 9489 3975

E: [terence.seah@shlegalworld.com](mailto:terence.seah@shlegalworld.com)



### Gi Sing Teo

Intern

E: [gising.teo@shlegalworld.com](mailto:gising.teo@shlegalworld.com)

---

The Singapore law aspects of this article were written by lawyers of Virtus Law (a member of the Stephenson Harwood (Singapore) Alliance).

Stephenson Harwood is a law firm of over 1300 people worldwide, including 190 partners. Our people are committed to achieving the goals of our clients – listed and private companies, institutions, and individuals.

Our headquarters are in London, with eight offices across Asia, Europe, and the Middle East. In addition, we have forged close ties with other high quality law firms. This diverse mix of expertise and culture results in a combination of deep local insight and the capability to provide a seamless international service.

The Stephenson Harwood (Singapore) Alliance (the "**Alliance**") is part of the Stephenson Harwood network and offers clients an integrated service in multi-jurisdictional matters involving permitted areas of Singapore law. The Alliance is comprised of Stephenson Harwood LLP and Virtus Law LLP. Court litigation services in Singapore are provided by the Singapore law firm, Virtus Law LLP.