
Fact Sheet LP03

Disciplinary Hearings



Law of Natural Justice

It is a general proposition of law that decisions affecting the rights of citizens must be reached only after a **fair hearing**. The law relating to a fair hearing are known as the **Law of Natural Justice** and its purpose to protect the rights of people accused of crimes and misdemeanours.

The Law of Natural Justice applies to all courts and tribunals, and will also apply to disciplinary proceedings held by sporting organisations.

Sport organisations, from time to time, are faced with the need to discipline players, coaches and officials for breaches of rules and codes of conduct.

Typical reasons to conduct a disciplinary hearing include:

- Doping (using performance enhancing drugs)
- Cheating
- Violent conduct
- Inappropriate behaviour (e.g. bad behaviour while on a representative tour)
- Breaching rules in regard to team or club sponsors.

In such situations where a sport organisation needs to conduct a disciplinary hearing, it must observe the Law of Natural Justice. The rights of the accused person are then protected in the following ways:

1. The person accused has the right to know **with what they are charged**.
2. The person accused has the right to a **fair hearing**.
3. Persons who make a decision whether a person is guilty or not, should **act in good faith**.

In order to ensure that the Law of Natural Justice is observed, the organisation needs to ensure that the accused person receives a fair hearing. This means that they have a fair opportunity to defend themselves. This also means that the organisation cannot make decisions about a person accused of a misdemeanour, before a fair hearing is conducted.

What is a fair hearing?

The concept of a **fair hearing** is extremely important.

The following rules should be observed

1. The accused must have **proper notice of hearing** (see Notification of Proceedings below).
2. All **evidence should be 'on the table'**, that is the accused person should be able to examine evidence and given time to prepare their defence (see Cross Examination below).
3. If tribunal proceedings bring out evidence suggesting **further charges** the hearing must **adjourn** until the accused can consider the ramifications of such additional charges.
4. Those who are appointed to sit in judgement of the accused person, must make an **unbiased decision**, and not be subjected to outside influence (see No Bias below)
5. **Proper penalties** should be imposed if the accused person is found guilty (see Proper Penalties below)

Example of a breach of Natural Justice.

The Queensland Supreme Court was asked to consider whether the expulsion of a bowls club member was valid. Green, the plaintiff, was a member of the Nanango Bowls Club. The secretary had received a number of complaints, including one from his sister, about his language to his sister while playing bowls with her. Green denied the allegations and had witnesses to support his version of the events. However at a meeting he was expelled. A special meeting held to re-admit him as a member was defeated in secret ballot. The court found the decision to expel him was void on the grounds of natural justice (Courier Mail 17.7.2002)

Notification of Proceedings

It is important to make sure that the person who is to appear before a disciplinary body is given every opportunity to attend. If a person who is to appear cannot attend for a good reason, and there is no need

to determine the matter quickly, it might be wise to adjourn the matter until he or she can be present.

A failure to tell a player that they are being investigated has been viewed as 'flagrant breach of the rules of natural justice' by courts.

The Right to Representation

Disciplinary hearings often run without any legal representation on either side. This significantly reduces costs. Provided disciplinary hearings are conducted in a fair way, courts are not likely to intervene if the accused party is prevented from legal representation.

Cross-examination

Both sides to any proceedings should generally be allowed to cross-examine (question) the witnesses of the other, unless this is excluded by the relevant rules. Material not available to both sides should not be used by the adjudicators in reaching a decision.

Disciplinary Committee

Before a disciplinary hearing takes place, a Disciplinary Committee must be in place. This will be a body of trusted people appointed to hear, make a decision, and if necessary impose a penalty if the accused is found guilty.

Proper Penalties

A range of penalties should be specified in the rules of an association. Once a person has been found guilty of a charge, there should be an opportunity for the accused person to address the tribunal on the question of penalty. When considering the appropriateness of penalty to a particular offence, the tribunal must consider fully the full effect of the penalty on the guilty party. A long suspension, for example, brings a loss of income to those paid by the match.

Typical penalties include:

- Exclusion (banning) of a player from a sport for a period of time or even permanently
- Fining (financial penalty)
- Loss of selection for a representative team

No bias

Members of a disciplinary tribunal or committee must enter into the hearing with an open mind. It would be improper for an adjudicator to give evidence in proceedings or to be the person who made the accusation.

If bias is suspected it must be proved e.g. a committee person of the tribunal told another person that they were going to 'get even' (with the accused).

Decision-Making

Two other principles to emerge from the cases are:

- Only those who are members of the Disciplinary Committee should be present when decision-making occurs.
- The Disciplinary Committee should not surrender its decision-making function or be influenced by any persons outside of the disciplinary committee.
- Decisions should be made on the evidence before the Tribunal - not past reputation.

Appeals

If an individual refuses to accept the decision of a tribunal, (i.e. decides to fight against the penalty imposed by the tribunal) they can take the matter to a law court.

However, courts of law are reluctant to intervene in decisions made by Disciplinary Hearings except when:

- The person found guilty suffers a loss of livelihood (income)
- There is a flagrant breach of natural justice
- An association does not comply with its own rules or interprets rules incorrectly
- A decision is made that is outside the powers of the association (Ultra Vires)

Courts have tended to become more involved as professionalism (the ability to earn substantial income through sport) increases.

Court of Arbitration for Sport

The Court of Arbitration for Sport (CAS) was created in 1984 to settle sports-related disputes through arbitration or mediation.

The CAS has a head office in Lausanne, Switzerland and two decentralised offices in Sydney, Australia, and New York, United States.

Any disputes linked to sport may be submitted, for example doping cases, loss of sponsorship case, disciplinary cases. Parties have to mutually agree to take a case to CAS and when a decision is reached it is binding on both parties from the moment it is communicated.

The Court of Arbitration for Sport cleared Australian Cyclist Sean Eadie of allegations of trafficking in drugs. Law enforcement authorities has intercepted and seized a package containing growth hormone that was sent to him in 1999.