



SPORT | Issue No. 12 | *What is so natural about natural justice?*

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Whether it is football, AFL, Rugby, Rugby League, Tennis, Athletics or any competitive sport there is a disciplinary regime. We hear expressions such as red cards, yellow cards, suspended sentences, points carryover and loading, suspensions and disqualifications. Around the time of football finals, the eligibility of key players or the ineligibility of key players due to suspension can have a massive effect on the outcome for the team.

Whether it is shoulder charges or throwing a water bottle at an opposing player, competitions seek to maintain the behaviour and the integrity of their competition by imposing penalties on those that fail to meet acceptable standards or fail to play within the rules.

In some football codes now, we have a situation where a person can accept a penalty or attend a hearing. All of these hearings held under Australian law must provide to the defendant what is called natural justice or the more modern terminology, procedural fairness.

The tribunals which determine these matters are not courts of law and whilst they may have some of those characteristics, they are what is more generally referred to as domestic tribunals. Domestic refers to the fact that they are “in-house”.

Unlike the court of law, the rules of evidence generally do not apply and the tribunal is entitled to determine how the proceedings (or how the matter) will proceed and what they will consider in making their determination. Needless to say, in most professional sport there is an endless amount of video footage. However, unless the conduct is in the middle of the action, it is amazing how often the video camera misses the crime.

Each disciplinary tribunal will have its own rules and an important rule is whether or not the individual is entitled to be represented, or for that matter legally represented, at such hearings. You might be surprised to hear that the right to representation is not a fundamental right of

natural justice and is only allowed if permitted by the rules.

Personally, I see nothing to fear from allowing people to be represented. I feel it ensures the person has every opportunity to put forward their case. The representation should also contribute to a fair process and an appropriate outcome.

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The basic elements of natural justice are that, first of all, the person is entitled to be heard and, secondly, the person is entitled to know what rules they have breached and what they have allegedly done to breach these rules.

Very often we see disciplinary processes which tell the person that they have breached the rule but it doesn't specify their precise conduct which was in breach of that rule. Providing “particulars” is a key element of natural justice.

The final and perhaps the most important element, is that they are entitled to be heard by a tribunal without bias and that the tribunal hasn't predetermined the matter prior to hearing the material put before it and the arguments put in defence of the individual.

We occasionally see decisions which are perceived by the general public as being “home town decisions” or decisions which smack of bias.

Generally speaking however, the standard of most professional disciplinary tribunals is very high. A lot of amateur sports do it well, and for some there is room for improvement. Getting it right doesn't mean making it complicated or complex, indeed the simpler these matters can be kept, the better for all involved.

Some disciplinary processes have the right of an appeal, but an appeal opportunity through an appeals tribunal is not a requirement of natural justice. Where you don't have an appeals tribunal, the defendant's only right of appeal then is to the Supreme Court.

Participants and supporters of sport want to see their sport played and their spectators behaving in an acceptable manner. Disciplinary tribunals play an important and necessary role in maintaining high standards of behaviour in sport.



John Mullins

Partner

Mullins Lawyers

t +61 7 3224 0210

jmullins@mullinslaw.com.au