

Kelly & Co.

Tribunals and Disciplinary Proceedings

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Key Areas	Expertise
Governance	<p>We have extensive experience advising sporting organisations in relation to all aspects of corporate governance including drafting of constituent documents and advising on board structures and compliance issues. Our sports law practitioners are directors of several sporting organisations and understand the governance issues facing those organisations.</p>
Contracts	<p>We have extensive experience reviewing and drafting commercial agreements including sponsorship agreements, management agreements and player and coaching contracts. We review and draft employment contracts and negotiate contracts in relation to merchandising rights, endorsements and appearance deals.</p>
Litigation & Dispute Resolution	<p>Our services include enforcement of contractual obligations, acting in defamation claims, enforcement proceedings for misuse of trade marks and negotiating disputes. We are also experienced in providing advice in relation to the establishment and running of sporting tribunals and disciplinary proceedings.</p>
Intellectual Property & Media	<p>We provide advice to sporting organisations and sportspeople on protecting their brand by registering and enforcing trade marks and logos. We also register business names and domain names for clients. In addition, we provide advice in relation to advertising and publicity campaigns, dealing with the media and social media strategies.</p>

- Two types of disciplinary action:
 - Athlete/player – tribunal (breach of rules)
 - Club Member – disciplinary committee (breach of constituent documents)

- Properly drafted rules/constitution is imperative
- Need to follow procedures in rules/constitution
- Courts reluctant to interfere
- Courts interfere only if don't follow rules or no natural justice

Where does the power to discipline come from?

- Power to discipline a player/member comes from the constitution, by-laws and/or competition rules

How are players/members bound?

- Player/member and organisation bound to these rules by contract law
- Agree to be bound by contract in:
 - membership application form; or
 - competition entry form.

Contractual Framework



Declaration

I, the undersigned, am over the age of 18 years, and I agree, if accepted as a Member to abide by the Rules, Regulations and By-Laws of the Club. For members under the age of 18, a parent of guardian must accept these conditions on your behalf. By completing this application you are also agreeing to abide by the Rules of Golf.

Please note that in making application for Playing Membership of the Club, you acknowledge and accept that you will be subject to the Australian Golf Union Handicapping System and your handicap may be reviewed at the absolute discretion of the Golf Committee on the basis of any cards returned in any competition.

- Therefore it is critical that:
 - player/member agrees to the rules/constitution; and
 - rules are drafted carefully to set out the desired disciplinary measures and procedures.

- Courts reluctant to interfere with determination of private tribunals
- Tadgell JA in *Australian Football League v Carlton Football Club Ltd*:
 - courts have consistently refused to review on the merits decisions made by private or domestic tribunals that had been established to deal with disputes within organisations to which people had voluntarily affiliated, by contract or otherwise. ... The courts have not taken the view that a privately funded, privately managed organisation ... is necessarily to be subject to control by the courts. That is not to say that such an organisation may treat itself as above the law: it is merely to acknowledge that the courts will not discourage private organisations from ordering their own affairs within acceptable limits.

- If courts won't review the merits of the a tribunal's decision then when will they review?

- Courts will generally only interfere if:
 - organisation has not followed its rules; or

 - no natural justice.

Following the rules: *Cox v Caloundra Golf Club Inc*



Facts

- Cox made statements to the press which led to the publication of articles critical of the club and its management
- Club President sent her a "notice under R10 and R15(e)(iii)" of a meeting to hear the following charges:
 - that Cox conducted herself in a manner such as renders her unfit for membership of the Club; and
 - that, as an officer of the Club, she did acts prejudicial to the character and interests of the Club.
- R10 stated that the alleged offending conduct "shall be enquired into by the management committee" ..

Facts

- BUT special purposes committee heard the matter and then reported back the management committee
- Cox's membership suspended for 6 months and removed as Ladies' Captain

Decision

- Suspension from membership and removal as Ladies Captain void
- Rules contemplated that the management committee must itself perform the necessary enquiry and be present

Fair Hearing

- Right to be notified of the hearing and the charges
- Right to be heard and present evidence
- Right to have the evidence considered
- Right to have the tribunal turn its mind to the issue of penalty separate from the issue of guilt

Bias

- Reality is that the very nature of sporting organisations means that tribunal members are often not disinterested in the tribunal matter
- Bias if the person is incapable of rendering an unbiased decision
- Examples of bias:
 - person complaining of a grievance also sits on tribunal
 - prejudgment - “at its next meeting the Committee proposes to suspend your membership of the Club”
 - financial

Natural Justice (Bias):

Wilcox v Kogarah Golf Club Ltd



Facts

- Wilcox and the Club Captain had an argument
- Wilcox received notice to appear before the general committee to show cause why he shouldn't be suspended for conduct unbecoming
- Captain apologised to Wilcox
- Committee told Wilcox that they had already dealt with his complaint regarding the victimisation
- Committee required Wilcox to withdraw his accusations since they weren't substantiated. If he did they would take no further action
- Wilcox didn't withdraw and was subsequently suspended for 1 month
- Wilcox essentially alleged a failure of natural justice because the committee of the club was biased against him

Decision

- Suspension was only for 1 month and although it may have distressed and disturbed Wilcox it wasn't enough for the court to intervene
- No bias as Wilcox was given opportunity to present his case and opportunity to withdraw the allegation

Right to Legal Representation (at the Hearing)

- Denning LJ in *Enderby Town Football Club v Football Association Limited*:
 - Justice can often be done (in domestic tribunals) better by a good layman than a bad lawyer. This is especially so in activities like football and other sports, where no points of law are likely to arise, and it is all part of the proper regulation of the game.
- No right to legal representation if:
 - rules specifically exclude the right; or
 - (if nothing in rules) the practice is not to allow legal representation.

Right to Cross Examine

- No general right to cross-examine
- If do allow cross examination then must do so even-handedly (otherwise risk of bias)

Right to Reasons

- No general right to receive reasons for the decision
- If decide to give reasons they should be carefully worded and concise

Right to Appeal

- Just because have a right to be heard doesn't mean also a right to appeal
- Any rights to appeal should be set out clearly in the rules
- Include in rules who can hear an appeal and the grounds for appeal



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