

The Court's Approach to Judicial Reviews of Disciplinary Proceedings

New procedures regarding disciplinary proceedings of architects have been considered for the first time by the Court of Appeal in *Leung Siu Kwong v. An Inquiry Committee Established under s 22 of the Architect's Registration Ordinance, Cap (408)*. In the case there are numerous statements of both principle and practice which are of interest in the reasons. The appeal arose out of an order which had been made against the appellant architect, Leung following disciplinary proceedings brought against him under part IV of the Architects Registration Ordinance, (Cap 408). The order itself had required Leung's name to be removed from the relevant register for a period of six months although that order was suspended for two years and thus would not operate unless Leung committed another offence.

The complaint and hearing

The disciplinary proceedings arose out of a letter sent by the Television Entertainment Licensing Authority (TELA) to the Registrar of the Architects Registration Board dated April, 1991 alleging some discrepancies in some 20 layout plans certified by Leung in support of applications for amusement game centre licenses. On May 12th, 1992, TELA lodged a further complaint in respect of 11 more cases of such discrepancies and on July 18th, 1992 two more cases. It was not until approximately a year later, on June 25th, 1993, that Leung was informed that disciplinary proceedings were being taken. A charge was laid which referred to the complaints by TELA. If substantiated they would amount to disciplinary offence under s 21(1)(a) of the Ordinance; further, that an Inquiry Committee had been formed and that Leung was required to respond to the charges.

At the first meeting of the Inquiry Committee Leung informed them that some staff members and officers of TELA along with some others had been arrested for corruption offences and that they included one draftsman employed by Leung. Subsequently some of those arrested pleaded guilty while Leung's draftsman was convicted after the trial. The charges against these individuals pertained to falsification of applications for amusement game centre licenses and the accompanying layout plans. Plans, it may be noted, like those

which Leung was being charged in respect of. Leung's main defence was that the signatures on the plans were not his. Upon conclusion of the hearing Leung was found guilty of misconduct regarding four allegations, namely: certifying plans which had a series of discrepancies in dimensions as indicated by TELA; failing to show that he had kept records; failing to comply as an authorised person with all requirements of TELA's application forms; and failing to supervise activities within his office in respect to all 30 cases which had been brought against him. The order set out above was made and then sent to the Review Committee. As a result of that review it was held that Leung had not been charged with misconduct in respect some of the charges. The matter was returned by the Review Committee to the Inquiry Committee and they concluded that of the original 30 disciplinary offences, only three had been made out; however, the same suspended order of removal from the register was confirmed. It was from this order that Leung appealed.

The Court's approach

The Vice-president, Justice Litton, after reviewing the legislative framework of the legislation set out what the Court's approach should be to appeals from the disciplinary proceedings:2 '...a point must be emphasized; Disciplinary proceedings against a registered architect under Part IV of the

Ordinance takes place within a professional context. An Inquiry Committee, composed of members of the Hong Kong Institute of Architects, is not a court of law. The Disciplinary Rules, made to regulate disciplinary proceedings, are not carved in tablets of stone. They are there to ensure efficiency and fairness in the conduct of the proceedings [and after quoting Rule 28 and the scope for discretion open to the Committee continued]..what it boils down to is this; the Court of Appeal, in entertaining an appeal under s 29(1) of the Ordinance, must not be too rigid in its approach, and should be slow to criticise the manner in which the proceedings have been conducted; accepting that the exercise of discretion concerning procedural matters is generally the best left to the judgment of the Inquiry Committee. Breach of the Disciplinary Rules does not necessarily mean that the proceedings have not been conducted fairly though, where this happens, it will naturally cause this court to scrutinise the proceedings with even greater care. It is only where this court is satisfied that the basic requirements of fairness have not been observed that it will interfere'.

Conclusion on the appeal

Justice Litton set out what in his view were the fundamental grounds for impeaching the order of the Inquiry Committee: procedural unfairness; insufficient proof in the three remaining cases that the documents were genuine; and that the charge itself was unclear. In his lordship's view there could not have been a due inquiry by the committee: "Whilst , in ordinary circumstances, an Inquiry Committee may be entitled to take a robust view and rely upon the apparent regularity of original documents, this was not an acceptable approach in the

circumstances in this case. The Committee's own finding, in dismissing 27 out of the 30 cases, is tacit acceptance of the appellant's case that, overall, there were grave doubts concerning the authenticity of the documents; namely whether they might have been tampered with, whether signatures have been forged etc.'³ It came out in the evidence that the Inquiry Committee had put documents to Leung and sought his opinion as to the authenticity of his apparent signature. All Leung had offered in evidence was the statement that the signature 'appeared genuine'. For the Court of Appeal, an admission such as this, unsupported in any other way was viewed as grossly unfair. In the end that was the unfairness that tainted the Committee's findings. The failure of the Committee to seek to particularise the charge with reference to three cases which remained was also significant and another reason for allowing the appeal.

In summary, for both those conducting as well as those appearing before disciplinary proceedings, the Court of Appeal will be slow to overturn findings of Inquiry Committees in appeals from disciplinary hearings. However, where findings are made during the course of those hearings which contravene legal norms in respect of fairness, or sufficiency of proof the Court will intervene to grant a remedy.

1. CA No 254 of 1996, unreported, CA.
(Now reported as *Re Leung Siu Kwong Christopher* (1996) HK PLR 277, CA)

2. *Ibid*, 4.

3. *Ibid*, 25.

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