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Former ILEX student successfully quashes cheating claims

20 October 2011 | By Katy Dowell

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The Court of Appeal has reversed the decision of an Institute of Legal Executives (ILEX) disciplinary hearing, ruling that the body's disciplinary process was not independent enough to serve its purpose.



Giving his substantive ruling, Lord Justice Rix said that while ILEX had changed its governance structure to make its regulatory arm ILEX Professional Standards (IPS) an independent body, the outcome of a hearing that found a student guilty of cheating should be quashed. Costs have been ordered against ILEX.

The case was brought by former ILEX student Darsho Kaur, who was one of five students accused of cheating in their exams and against whom disciplinary proceedings were brought by ILEX in its disciplinary tribunal.

Kaur was banned from ILEX for five years and ordered to pay costs of £1,700 after she was found guilty of cheating in one of her exams. A subsequent appeal in the ILEX Appeal Tribunal (IAT), which saw Kaur object to the make-up of the original disciplinary panel, was turned down. In particular, Kaur objected to the fact that ILEX's deputy president was on the panel.

Kaur took her objections against the make-up of the panel to the High Court, instructing Marc Beaumont of Windsor Chambers under the Bar Public Access scheme, to launch judicial review proceedings.

At issue was whether ILEX's disciplinary proceedings prior to the changes implemented under the Legal Services Act in January 2010, when IPS began to be run as a separate entity, were sufficiently independent of the body.

The JR application was rejected by Mr Justice Simon in the High Court last year. Lord Justice Elias allowed the subsequent appeal on paper only for Mr Justice Foskett to reject the proceedings. Lord Justice Lloyd allowed the appeal to the CoA, with Lord Justices Rix, Sullivan and Lady Justice Black sitting at the latest hearing.

39 Essex Street's Gregory Treverton-Jones QC was instructed by Russell Cooke to respond for ILEX.

The allegations were that while the panel members were not actively involved in the investigation and prosecution of Kaur they were actively involved in the total governance of ILEX and so were responsible for its regulatory policies.

Beaumont argued that under ILEX rules council members, including the vice president, were disqualified from sitting on disciplinary panels. He stated that the fact ILEX had changed its rules in January 2010 to cut off its regulatory arm was evidence that there was insufficient insulation between the bodies prior to this point.

According to the judgment Beaumont argued that when council members heard Kaur's proceedings "they were not acting within an insulated environment but were inevitably bringing to their task their own interest as council members and directors, or as the case may be as the vice-president, in regulation and the prosecution of disciplinary charges".

The judges unanimously upheld the appeal, stating that judges in such proceedings should recuse themselves even if there is the merest appearance of bias.

"The authorities suggest that in this area of the law careful judgments may have to be made which depend on a given tribunal member's particular status and history. However, it is my opinion that the same conclusion would embrace all such council members and directors," Rix LJ's judgment read.

"The fact that the president or vice-president were required by the rules to sit on appeal tribunals (and council members generally were required to sit on the disciplinary tribunals) to my mind demonstrates the interest that ILEX continued to take in the process of self-regulation, disciplinary matters, and the promotion of professional standards."

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In a statement IPS chief executive Ian Watson said the body would consider a further appeal in the case. He said: "It's largely of historic significance as the rules under which the case was heard originally, which were adopted in 2002, were replaced in 2010 to meet the requirements of the Legal Services legislation.

"The decision rests on the issue of apparent bias. We are pleased that there was no claim that the decisions of the IPS tribunals were actually biased or that process under the disciplinary rules was applied unfairly."

Readers' comments (4)

Anonymous | 20-Oct-2011 4:09 pm

This is an important decision for all regulators and how they manage disciplinary panels. Far too many of these decisions are taken in secret or without publication. That Ilex is "pleased" with such a disappointing result speaks volumes.

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Anonymous | 21-Oct-2011 10:54 am

Whilst this is an important decision for regulators, it is absolutely correct to say that it is largely of historical significance for ILEX/IPS. It should be borne in mind that new rules were adopted by IPS in 2010 in order to comply with the requirements of the Legal Services Act 2007. ILEX/IPS decisions are reported. The old rules, under which this case was heard, had been approved by the then Master of the Rolls. The decision rested on the issue of APPARENT bias. There was no claim, let alone finding, that the IPS tribunal decisions were actually biased nor that the disciplinary rules were applied unfairly.

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Anonymous | 21-Oct-2011 11:12 am

I agree this is an important decision for all regulators, however, if you consider the time at which this occurred, many professional bodies, not just in the law, probably operated in a similar way. The fact that ILEX now has stringent procedures in place to comply with the LSA, and has had such procedures approved by the Legal Services Board, speaks volumes.

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anonymous | 23-Oct-2011 8:50 am

This is a vital, landmark decision. It extends the law of apparent bias and the rule that no man may be a judge in his own cause, into any territory in which there is an unhealthy closeness between the prosecuting regulator and members of the decision-making tribunal. There are other (often clandestine) ways in which undue influence is exercised by regulators. This must now cease. The Legal Services Board concerns itself with ensuring that the prosecutor is independent of the representative arm of the regulator. But it ought also to ensure that the disciplinary panels are independent of the prosecutor. Otherwise more legal challenges will follow - a process facilitated by this Court of Appeal decision.

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