

R (on the application of Darsho Kaur) v (1) Institute of Legal Executives Appeal Tribunal (2) Institute of Legal Executives [2011] EWCA CIV 1168

Case Overview

The *Kaur* case considers the issue of disciplinary panels and the appearance of bias. The matter concerned an Institute of Legal Executives (ILEX) student who was charged with disciplinary offences related to cheating in exams. Having exhausted the appeal process available to Kaur via ILEX, the claim was referred to the Court of Appeal on judicial review. The issues before the Court of Appeal was whether the disciplinary process, as operated by ILEX, indicated bias and therefore did not meet the requirements of due process owed to Kaur.

Background Facts

Kaur was an ILEX student who along with several other students was charged with disciplinary offences related to cheating in exams. Kaur's case was determined by a Disciplinary Tribunal, which was comprised of two lay members and two ILEX council members. One of the charges against Kaur was dismissed the other upheld and the Disciplinary Tribunal imposed the following sanction on Kaur: exclusion from ILEX for a minimum period of 5 years and costs in the sum of £1,700. Kaur appealed the decision to the ILEX Appeal Tribunal (IAT), the IAT was similarly constituted to the Disciplinary Tribunal. One of the members was the vice-president of ILEX. The IAT rejected Kaur's appeal. Having exhausted the ILEX appeal process Kaur brought her case to the courts by way of judicial review on the ground of apparent bias.

Outcome

The Court of Appeal considered the leading cases on apparent bias and the problems arising from professional self-regulation, and determined that the presence of the ILEX council members on the Disciplinary Tribunal and the ILEX vice-president on the IAT breached the doctrines of fair process as well as apparent bias, and quashed the decisions of both Tribunals against Kaur. It should be noted that the Court of Appeal's decision did not find any suggestion of actual bias of the tribunal members, but rather, the appearance of bias. The case suggests that if tribunals or panels convened for disciplinary proceedings do not appear independent, their decisions are at risk of dismissal or further review.