

## Natural Justice Vs Introduction of Bias - Hong Kong Dental Association and Dental Council of Hong Kong

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### Abstract

About 90% Hong Kong registered dentists joined the Hong Kong Dental Association, registered dentists nominated by this Association are appointed by the Chief Executive to the Dental Council of Hong Kong.

“Observe the rules of natural justice”, “act impartially and even-handedly towards both the complainant and the registered dentist being complained against”, “Disciplinary proceedings of the Dental Council are governed by the Regulations and cannot be disposed of by settlement between the complainant and the dentist” were mentioned in the complaint form of Dental Council of Hong Kong.

10% registered dentists in Hong Kong not interested in joining the Hong Kong Dental Association, did/do not know there was/is a mediation service, not complied with the Regulations, provided by Patient Complaints Mediation Committee since Jan 1, 2003 which was only announced in the internal newsletter not available to others. It caused serious bias between members and non members. Dentists do not join the Hong Kong Dental Association are vulnerable due to different opinions and the bias actively introduced by. The principles of natural justice embody fundamental notions of procedural fairness and justice. Natural justice is not observed by the Dental Council of Hong Kong.

**Keywords:** *Natural Justice; Introduction of Bias; Dental Council of Hong Kong*

### Natural Justice

In English-language jurisprudence, ‘natural justice’ usually denotes the rules associated with a court’s or tribunal’s procedures-specifically that in a dispute between litigants the court should hear both sides (*audi alteram partem*) and that an adjudicator between litigants should be disinterested, impartial and unbiased (*nemo iudex in causa sua*) [1].

The principles of natural justice embody fundamental notions of procedural fairness and justice. As applied to administrative decisions, these principles seek to ensure that such decisions are only taken after fair and equitable procedures have been followed. In essence, natural justice tries to guarantee that the parties who will be affected by the decisions receive a fair and unbiased hearing. By required adherence to standards of procedural fairness, not only is justice seen to be done, but also these principles assist administrative decision-makers to reach substantively correct decisions. If the principles are observed, decisions are reached only after the tribunals have been informed of facts relevant to their determinations and decisions are reached on an objective evaluation of the evidence and not on any grounds of personal interest or hostility or favouritism to particular parties [2].

### Dental Council of Hong Kong

The Dental Council of Hong Kong is established under the Dentists Registration Ordinance, Chapter 156, Laws of Hong Kong [3]. The Council is responsible for the registration of dentists, the conduct of the Licensing Examination, the maintenance of ethics, professional standards and discipline of the profession [4].

There are 12 people in the membership list of Dental Council of Hong Kong, 6 of them were nominated by the Hong Kong Dental Association [3].

- 6 registered dentists to be appointed:
- From a panel of not less than 12 such registered dentists nominated by the Hong Kong Dental Association (HKDA).

### Hong Kong Dental Association

90% of the registered dentists in Hong Kong are members of Hong Kong Dental Association [5]. Most of the information are not available for the non-members. e.g. The committee members of previous years and the newsletters [5].



Figure 1: Newsletter only available for the members of Hong Kong Dental Association [5].

### Complaint form against registered dentists

Patients, dentists and the general public can complain against the registered dentist to Dental Council of Hong Kong. “Observe the rules of natural justice”, “act impartially and even-handedly towards both the complainant and the registered dentist being complained against”, “Disciplinary proceedings of the Dental Council are governed by the Regulations and cannot be disposed of by settlement between the complainant and the dentist” were mentioned in the complaint form of Dental Council of Hong Kong [6].

### Composition of the preliminary investigatory committee

The preliminary investigatory committee is made up of 3 members. Its composition is as follows - (a) 1 member of the Dental Council elected by the Council, who shall be the Chairman of the Committee; (b) 2 registered dentists who are not members of the Council and who shall be appointed by the Chairman of the Council - i) from a panel of not less than 12 such registered dentists nominated by Hong Kong Dental Association [7].

**1. Jurisdiction of the Dental Council**

The power of the Dental Council to regulate the professional conduct of registered dentists comes from the Dentists Registration Ordinance, Chapter 156, Laws of Hong Kong (“the Ordinance”). In exercising that power, the Dental Council must:

- operate within the power given to it by the Ordinance;
- follow the disciplinary procedures set out in the Regulations;
- observe the rules of natural justice;
- act impartially and even-handedly towards both the complainant and the registered dentist being complained against.

Please note that unlike private litigation between you and the dentist, disciplinary proceedings of the Dental Council are governed by the Regulations and cannot be disposed of by settlement between the complainant and the dentist. If any person attempts to dissuade or prevent you from giving truthful evidence at the inquiry, that person commits an offence of perverting the course of public justice.

**Figure 2:** Relevant paragraphs in the information and complaint form against registered dentists [6].

**Procedure of preliminary investigatory committee**

Complaints or information received against registered dentists touching on matters of unprofessional may normally be handled under the following procedures (a) initial consideration by the Chairman of the Council’s Preliminary Investigation Committee (PIC) who must, unless it appears to him that the complaint is frivolous or groundless and should not proceed further, direct that the case be referred to the PIC for consideration [7].

From the composition of the Preliminary Investigatory Committee [7] and the Dental Council [3], 8 people nominated by the Hong Kong Dental Association take part in the disciplinary procedures.

**Complaints received and dismissed by the chairman of preliminary investigatory committee**

2004 Dr Wong Tin-chun. PIC Chairman, Dental Council member 2004-2005, President of Hong Kong Dental Association 1989 - 1990, Out of the 104 cases received in 2004, 67 were dismissed by the Chairman [5,8].

2005 Dr Wong Tin-chun. PIC Chairman. Out of the 97 cases received, 65 were dismissed [5,8].

2006 Dr Tso Wei-kwok, Homer. PIC Chairman up to 4.10.2006, Dental Council Chairman since 5.10.2006, President of Hong Kong Dental Association 1991 - 1993, and Dr Ho Chi-wai. 2006 PIC Chairman, Dental Council member 2006-2009 (since 5.10.2006), Honorary Secretary, Hong Kong Dental Association, Subcommittee on improvements to the medical complaints Legislative Council, 2001. Out of the 126 cases received, 99 were dismissed [5,8].

2007 Ho Chi-wai. PIC Chairman. Out of the 124 cases received, 78 were dismissed [8,9].

2008 Dr Ho Chi-wai. PIC Chairman (up to 4.10.2008), Dr Sun Yee-wah, David PIC Chairman since 5.10.2008, Dental Council member 2006-2009. Out of the 120 cases received, 81 were dismissed [8].

2009 Dr Sun Yee-wah, David. PIC Chairman. Out of the 151 cases received, 78 were dismissed [8].

Disciplinary proceedings cannot be disposed of by settlement between the complainant and the dentist was clearly mentioned [6].

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Similar proportions of cases dismissed in each year from 2010 [8-11].

**Mediation provided by the Hong Kong dental association**

The Patient complaints Mediation Committee of Hong Kong Dental Association provides mediation service for its members. However, 10% registered dentist, non members of Hong Kong Dental Association did/do not know the existence of it. General public also do not know it.



**Figure 3:** Patient complaints mediation committee mediation notice published in newsletter in March 2007. Dr Haston Liu, President of Hong Kong Dental Association sent this page to the author on Sept 6, 2019 for enquiry of another issue [10].

**Natural Justice vs introduction of bias**

Though Disciplinary proceedings “cannot be disposed of by settlement between the complainant and the dentist”, mediation service and newsletter were/are only provided for the members of Hong Kong Dental Association, unknown to others. The chairmen of Preliminary Investigatory Committee dismiss the cases at the beginning. The majority of the panel during the inquiry are nominated by Hong Kong Dental Association. 8 registered dentists nominated by the Hong Kong Dental Association take part in the different stages of disciplinary. This causes unusual and unacceptable bias to dentists in Hong Kong.

## Conclusion

10% registered dentists in Hong Kong not interested in joining the Hong Kong Dental Association, did/do not know there was/is a mediation service, not complied with the Regulations, provided by Patient Complaints Mediation Committee since Jan 1, 2003 which was only announced in the internal newsletter not available to others. It caused serious bias between members and non members. Patients always seek second and third opinions. Dentists do not join the Hong Kong Dental Association are vulnerable due to different opinions and the bias actively introduced by the Association. The principles of natural justice embody fundamental notions of procedural fairness and justice. Natural justice is not observed by the Dental Council of Hong Kong.

## Declaration of Conflict of Interest

This article is double-blind reviewed. The author is a registered dentist and an editor of this journal, was a member of Hong Kong Dental Association from 1994 to 2000.

## Disclaimer

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