THE LAWS RELATING TO STAFF DISCIPLINE AT MALAYSIAN UNIVERSITIES

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I: OVERVIEW OF REGULATORY & DISCIPLINARY POWERS

The powers of the University to regulate and discipline its "employees" are derived from many laws and regulations, among them -

- Akta Badan-Badan Berkanun (Tatatertib dan Surcaj) 2000 (Akta 605). This is the primary law.
- Other general laws of Malaysia like the Universities and University Colleges Act 1971, Universiti Teknologi MARA Act 1976, Contracts Act, Government Contracts Act 1949, Statutory and Local Authorities Pensions Act 1980, Pensions Adjustment Act 1980, Employees Provident Fund Act 1991, Employees Social Security Act 1969, Employment Act 1955, Trade Unions Act 1959, Industrial Relations Act 1967, Public Authorities Protection Act 1948, Anti-Corruption Act 1997, Penal Code and the Official Secrets Act 1972 all have an indirect bearing on the university's powers, procedures, duties and immunities. One must also bear in mind that the supreme Constitution's safeguards must be deemed to be written into every piece of legislation. Any subsidiary legislation enacted under a parliamentary law applicable to the university is also binding on the University.

Directives of the Ministry: The formal provisions of the law are supplemented by periodic directives from the Government and by informal understandings, usages and traditions that "supply the flesh to clothe the dry bones of the law". Some of these traditions may be common to all universities in the country. It is noteworthy, however, that directives, circulars, instructions and schemes framed by the JPA are not automatically binding on the University because we are a separate statutory body and are not part of the "public services of the Federation" as defined by Article 132(1) of the Federal Constitution[1]. Only such directives from the JPA are applicable as are adopted by the University's Board of Directors/Governors.

General Orders not applicable: University employees are not "government servants" and are not part of the public services of the Federation as defined by Article 132 of the Federal Constitution. The General Orders of the federal government do not apply to us unless adopted by our Board of Directors/Governors.

Definition of "employee": Act 605 in s. 4 mistakenly uses the term "officers" for "employees" of the University. The term "officers" is actually narrower than employee. Not all officers are employees and not all employees are officers. Laws like AUKU and the UiTM Act specify who is an "officer" of the University.

Under the Constitution of the Universiti Sains Malaysia 2009, for example, the term "employee" is defined in section 2 to mean "any person employed by the University under this Constitution or any Rules". The term would cover the Vice-Chancellor, Deputy Vice-Chancellors, the head of a Branch Campus, the Registrar, the Bursar, the Internal Auditor, the Chief Librarian, the Legal Adviser, the Complaints Officer, the Dean of a Faculty or School, the Head of an Institute, Academic Centre, Research Centre or Academy, all academicians, post-doctoral fellows, trainee lecturers and other employees.

[1] Ramalingam v Chong Kim Fong [1978] 1 MLJ 83 – involving FELDA officers

The definition of "employee" obviously excludes the Patron, Chancellor, Pro-Chancellors, the Chairman of the Board, other members of the Board except the Vice Chancellor and all alumni. Students are obviously not employees but are subject to discipline under Act 30 and subsidiary laws.

Regulation of employees other than through disciplinary proceedings: Besides the power to commence disciplinary proceedings under Act 605, the University has many other options to deal with an errant employee. These are discussed in sections II, III and IV below.

II: UNIVERSITY'S POWER TO DEAL WITH ERRANT EMPLOYEES OTHER THAN THROUGH DISCIPLINARY PROCEEDINGS[2]

Disciplinary action is only one of several options available to the University to deal with errant staff. Under the law of contract and under the common law several other options are available to the employer. More often than not, disciplinary action is a matter of last resort.

1. LETTER OF REMINDER OR CAUTION/SURAT PERINGATAN

As an alternative to commencing disciplinary proceedings, the Head of the Department concerned or the Vice-Chancellor (if he has been informed) may send to an employee of the University a written "reminder" or a "letter of caution" to rectify some unsatisfactory aspect of his character or performance.

There is some difference of opinion amongst lawyers about whether the letter should be titled "Peringatan" or "Amaran Pentadbiran". It is submitted that as "amaran" is a disciplinary punishment (and must be accompanied by prior hearing under Act 605 and must be issued by the appropriate disciplinary authority), it is safer to use the terminology of Peringatan. Issuing "cautions" is in line with human relations theories that in the workplace, it is better, prior to a show cause notice or a disciplinary measure, to send a Surat Peringatan to ask a worker to improve his conduct. However it must be emphasized that in serious cases there is no need to resort to "cautions" and disciplinary proceedings will be perfectly legal. There is no law that "peringatan" or "amaran pentadbiran" must precede a show cause letter.

Who should send this letter - the Head of the Department, the Vice Chancellor or the Chairman of the Disciplinary Committee? It is recommended that the Chairman of the Disciplinary Committee should not get involved at this stage.

2. LATERAL TRANSFER

The university is empowered to transfer an employee laterally within the same scheme of service. This power is derived from the employment contract signed by all employees. The power can also be said to be part of the "employer's prerogative".

In the law relating to public authorities, a lateral transfer does not amount to a punishment or to a reduction in rank. For this reason the procedural rights available to those facing a disciplinary charge under Regulations 32-34 of Schedule II are not available to transferees. Thus, a lecturer may be transferred from one campus to another or from one faculty to another. As long as his salary and terms of service are not affected adversely, he need not be given a prior hearing. His consent to the transfer order is not required. He can be transferred against his wil1. Failure to comply will amount to "insubordination". In the public sector, challenges to transfer orders have very little chance of success: *Pengarah Pelajaran v Loot Ting Yee* [1982] 1 MLJ 68 and *Aria Kumar v KP Jabatan Hasil Dalam Negeri* [1994] 3 AMR 49:2572. In the private sector, however, questions of mala fide behind arbitrary transfers are raised often. Complaints of constructive dismissal are often upheld. Will Malaysian public law one day learn from private employment law?

[2] In this essay "disciplinary proceedings" refer to proceedings under Act 605, Second Schedule, sections 32-39 that may lead to punishments in sections 40-44.

3. REVERSION TO FORMER POST

What if an Associate Professor who was appointed as the Dean of his Faculty is summarily (without a prior hearing) and with a humiliatingly short notice reverted to his former post? He loses prestige, power and perks. Is he entitled to a prior hearing before his reversion takes effect? On the state of existing law, there is a distinction between "reversion" and "reduction". Reversion to a former post from a higher but temporary post does not amount to a reduction in rank and there is no right to a prior hearing: *Munusamy v PSC* [1967] 1 MLJ 199; *Badrul Ahmad v Govt* [1987] 2 MLJ 178; *Loot Ting Yee* [1982] 1 MLJ 68 .

4. CONTRACTUAL TERMINATION OF EMPLOYMENT

Employees who are not on permanent establishment but are hired for a contract period may be terminated by giving them the required contractual notice as laid down in the contract of employment or a month's salary in lieu of notice. Termination may be for any reasons whatsoever (which reasons need not be stated). On the present state of the law, no disciplinary proceedings or opportunity to explain one's conduct are necessary.

However, looking to the horizon, one takes note that the principle of "legitimate expectation" and the "duty to act fairly" are taking roots. If allegations of misconduct are made as the basis of termination, then principles of natural justice will apply. A hearing, an opportunity to exculpate himself, ought to be given. Though the case will not proceed as one of disciplinary proceedings, there will be some openness, fairness and impartiality to guard against abuse of power. We must remember that the terms of a "private contract" cannot displace the public law principles of natural justice. Further, a litigant may argue that "livelihood" is part of the constitutional right to "life" and cannot be deprived "save in accordance with law". "Law" includes "natural justice". The case of *Dr Chandra Muzaffar v University of Malaya*[3] indicates that any abuse of power in this area may result in an award of damages.

5. NON-CONFIRMATION OF PROBATIONARY OFFICER

In relation to employees who are not yet confirmed, the University has a number of choices.

- First, confirm the employee.
- Second, extend the employee's probationary period.
- Third, give to a probationary employee prior notice that at the end of the probationary period the University does not wish to continue with his/her services. The employee must be given adequate time to respond to the University's notice. After considering the officer's reply, the University may terminate the employee's service. No reasons need to be assigned. Such a termination does not amount to dismissal. However, if the refusal to confirm and the subsequent termination are based on unsatisfactory conduct

[3] [2002] 5 MLJ 369. See however, Haji Ariffin v Pahang [1969] 1 MLJ 6; Abd Rauf Alif [203] 1 MLJ 18

of the employee or on any charges of misconduct against him, then natural justice demands that a disciplinary trial must be conducted. A word of caution about an existing practice: some universities slavishly adopt the Public Officers Conduct & Discipline Regulations and proudly quote civil service regulations in giving notice and calling for a response. This gives rise to the false belief that all civil service regulations are applicable. It is recommended that we should avoid mentioning civil service regulations and rely instead on our desire to act with openness, fairness and impartiality and the principles of natural justice.

- A fourth alternative is to neither confirm nor terminate at the end of the probation period. Will silence be deemed as confirmation? The courts are divided. Our opinion is that silence does not amount to automatic or tacit confirmation if all pre-announced pre-requisites for confirmation, as laid down by the University, have not been satisfied.

6. TERMINATION IN THE PUBLIC INTEREST

This power, previously known only to the public services[4] under the General Orders, has now been made available to us since November 2000 by section 9 of Act 605. It can only be exercised "in the public interest". What these words mean has nowhere been defined and is a matter of interpretation.

The initial decision to terminate is made by the Board of Governors (and not by the Jawatankuasa Tatatertib). The papers are then submitted to the pensions authority for further processing.

Before an officer is terminated in the public interest, he has a right to be heard: section 11.

Termination in the public interest does not amount to dismissal: section 12. This means that an officer terminated in the public interest will still be entitled to his pension.

It must also be noted that statutory termination in the public interest under sections 9-12 is distinguishable from (a) termination under contract of a contractual officer, and (b) termination of a probationary officer during or after the probationary period.

7. COMPULSORY PREMATURE RETIREMENT

In lieu of disciplinary proceedings, it may be desirable for the Disciplinary Committee to recommend to the Lembaga that the Lembaga should, with the consent of the pensions authority, require the employee to retire compulsorily under section 13 Act 605 and paragraph 10(5)(d) of the Statutory and Local Authorities Pensions Act 1980 (Act 239).

This power, always available to the government under the General Orders against members of the "public services", has now been made available to us by section 13 of Act 605.

[4] Rajasingam V S Rasiah v Govt [2002] 1 MLJ 7

The power to retire an employee compulsorily does not belong to the disciplinary authority but to the Board.

The Lembaga can apply to the pensions authority to compulsorily retire an employee prematurely. The retirement will be regulated by the provisions of paragraph 10(5)(d) of the Statutory and Local Authorities Pensions Act 1980 (Act 239).

Unlike section 11 (on termination in the public interest) which mandates a prior hearing, section 13 says nothing about the procedure to be followed. It is submitted that equality before the law under Article 8 of the Federal Constitution and principles of natural justice will still apply and a prior notice with a right to make representation must be given.[5]

8. INVITATION TO OFFICER TO APPLY FOR OPTIONAL RETIREMENT

Sometimes the university, when faced with the delinquency of a senior officer or employee, is reluctant to act against him and, out of compassion, invites him to submit his papers for optional retirement. This is a risky move and can land the University in potentially embarrassing situations.

- For example, the employee may apply for optional retirement first but later as an afterthought withdraw his application. Is he allowed to withdraw? He may claim threat, duress and undue influence! If the disciplinary proceedings are revived the employee may claim double jeopardy or condonation or estoppel.
- Sometimes adverse facts emerge after the staff was invited to apply for early retirement.
- In some cases JPA puts it foot down and the staff is not allowed to leave prematurely. In such a circumstance, the university falls into the dilemma that if it revives tatatertib proceedings, its letter of recommendation to JPA will work against the University.

9. IMPOSITION OF AN ORDER OF SURCHARGE

The purpose of the law on surcharge is to enforce financial responsibility, honesty and efficiency. Another aim is to compensate the university for losses suffered as a result of an officer's negligence, dereliction of duty, dishonesty, carelessness or inefficiency. The law's purpose is to empower the university, in lieu of, or in addition to disciplinary proceedings, to request the Lembaga for proceedings for surcharge to be commenced under sections 14-22 of Act 605.

Who is liable to an order of surcharge? Any employee or ex-employee of a statutory body may be subjected to an order of surcharge. A person who has retired, resigned or been terminated or dismissed may be liable in the same manner as a serving officer: s. 14.

Who has authority to issue order of surcharge? The Board (and not the Jawatankuasa Tatatertib) is the authority to order imposition of the surcharge: s. 15

Grounds for surcharge: Under section 14 the following acts of commission or omission can trigger the law on surcharge:

- Failure to collect any monies owing to the university when it was the officer's

[5] *Syed Mahadzir v Ketua Polis* [1994] 3 MLJ 391 – in compulsory retirement on medical grounds, though the law is silent on the giving of hearing, natural justice applies.

responsibility to do so. Possible examples here are: failure to collect fees from students while permitting them to pursue the academic programme; failure to initiate procedures against violators of scholarship agreements; failure to collect fines: section 14(a).

- Improper payment of monies: section 14(b).
- If claims are approved or project-payments are authorized without proper scrutiny or supervision or without determining whether contractual obligations have been complied with, or for corrupt motives, these may well be grounds for surcharge.
- Payment of monies not duly approved: section 14(b).
- Causing, whether directly or indirectly, any deficiency in or destruction of any money.
- Accounting officer failing to keep proper accounts: section 14(d).
- Accounting officer failing to monitor accounts and records: section 14(d).
- Failing to make any payments due from the university: section 14(e).
- De1ay in the payment of monies due from the university: section 14(e).

Procedure for surcharge: The Board shall serve a written notice on the officer concerned: section 15. The Officer concerned has 14 days to show cause in writing: section 16. No oral hearing is required (but there is no legal bar if the Lembaga wishes to permit an oral hearing).

The Board shall deliberate on the written reply of the officer and make a decision: section 16.

The decision on the surcharge must be communicated in writing to the officer: section 17.

No appeal to the Minister or to the courts is allowed. However, the subject of the order can always apply to the Board for reconsideration and the Board has the power to (i) withdraw any order (section 18) or to reduce the amount of surcharge.

Amount of surcharge: The amount of surcharge that can be imposed depends on the nature of the act or omission.

Act or Omission	**Amount that can be surcharged**
1. Under section 14(a)	Amount not collected.
2. Under section 14(b)	Amount of improper payment.
3. Under section 14(c)	Value of the deficiency or value of property destroyed
4. Under section 14(d)	Such sum as Board deems fit.
5. Under section 14(e)	Such sum as Board deems fit.

Recovery of surcharge: A surcharge is a civil debt owed by the officer to the university: s. 20. It can be recovered in the following ways:

- Deduction from salary by equal monthly installments not exceeding one fourth of the total monthly salary.
- Deduction from pension by equal monthly installments not exceeding one fourth of the total monthly pension.
- Civil suit in a court of law.

Surcharge does not bar disciplinary action: An order of surcharge does not bar concurrent or subsequent disciplinary proceedings: section 22.

10. REPORTING OF OFFENCE TO POLICE OR BPR OR THE SYARIAH AUTHORITIES

In lieu of, or in addition to disciplinary proceedings, an officer's case can be brought to the attention of the police, BPR, the syariah authorities or any other enforcement agency. This is because the powers of the university are inadequate to deal with the investigation of a criminal charge. For instance in cases of attempted rape, arson, theft, embezzlement, assault, corruption or drug peddling, the university is better advised to file a criminal report against its errant employees with the relevant authorities.

One disadvantage of filing a criminal report is that once criminal "proceedings are instituted", Regulation 29(1) mandates that no disciplinary action can be taken till the criminal case is completed. Further, whether our report will result in prosecution or not is outside our control. Mere suspicion is not enough. If an investigation produces no evidence or insufficient evidence, the public prosecutor will not launch a prosecution. This means that till the police close the file, or till the case results in acquittal, discharge or conviction (a process that may take months or years), the university cannot launch its disciplinary proceedings. However, when it does, the rule against double jeopardy will not apply: *Wong Kim Sang v AG* [1982] 1 MLJ176.

III: ADMINISTRATIVE ACTION AGAINST OFFICERS WHO ARE THE SUBJECT OF CRIMINAL PROCEEDINGS

1. INTRODUCTORY

In relation to employees facing criminal proceedings, the University has powers, duties as well as disabilities. The powers and duties vary depending on the stage at which the criminal proceedings are. The main disability is that once a criminal proceeding is instituted (i.e. a person is brought to court) a disciplinary charge *on the same ground* as the criminal charge cannot be instituted till the employee is either acquitted, discharged or convicted: Reg. 29(1).

"Crimes" are wrongs against the state for which the prosecution is commenced by public authorities. In strict theory, the words "criminal law" refer not only to the penal code, the law relating to drugs, corruption and arms control but also to the law relating to syariah offences, traffic offences, littering and violations of health and environmental regulations.

2. ACTION DURING THE CRIMINAL INVESTIGATION

There is a difference between "being arrested" and "being charged". The arrestee may subsequently be released without any charges being laid against him. In cases in which an employee is arrested but not yet charged in a court of law, the university is not required to take any disciplinary action under Reg. 27(4).

However, if the facts and circumstances surrounding the arrest are serious, it is legally

possible, in extreme circumstances, to charge the employee under Akta 605, Jadual Kedua, Peraturan 3(d) with "berkelakuan dengan sedemikian cara sehingga memburukkan atau mencemarkan nama badan berkanun". Such a course of action should be resorted to only in exceptional cases because the employee may object that he is being subjected to "double jeopardy". We can resist such an allegation on the ground that the disciplinary charge under Peraturan 3(d) and the criminal charge are not one and the same and, therefore, no double jeopardy under the Federal Constitution's Article 7(2) results.

It is also notable that Peraturan 29(1) implies that disciplinary proceedings need not wait till after completion of criminal proceedings. While the criminal case is being investigated by the police, the university has a number of options available to it.

- After making the police report or receiving information that a police report has been made against an employee, the university may leave the matter entirely to the police and take no further action
- The university may commence disciplinary action. If the police take no further action, the disciplinary proceeding can continue. But if criminal proceedings are instituted, the university will have to suspend the disciplinary trial. This is because of Regulation 29(1) which states that where criminal proceedings have been instituted and are still pending, no disciplinary action can be taken against the officer *based on the same grounds* as the criminal charge. Disciplinary action on other grounds is not forbidden e.g. bringing the statutory body into disrepute (Reg. 3(2)(d)).

3. ACTION IF THE OFFICER IS CHARGED WITH A CRIMINAL OFFENCE

If an employee is charged with a criminal offence, i.e. the officer is brought to court and a formal charge is read out to him, the following procedures apply:

The Head of Department concerned shall obtain from the relevant Court all necessary information and forward it to the appropriate Disciplinary Committee together with a recommendation as to whether the employee should be interdicted from duty: Peraturan 27(2) and 27(3).

The university may wait for the trial to be concluded and act only after the verdict of guilt or innocence is delivered.

Alternatively the university may interdict the employee from his duties without disciplinary proceedings. This means that though he is still on the pay roll, in the university's discretion, he may not be allowed to report for duty: Reg. 27(2), 27(3), 27(4) and 46(6). Interdiction on this ground has no time limit. Such interdiction can, in the university's discretion, be on "not less than half of his emoluments": Reg. 46(6). That means no more than half the salary and allowances can be withheld. Full salary is permissible. No prior hearing or trial is needed.

It is noteworthy that interdiction is of two types**.**

Interdiction for purpose of investigation	**Interdiction in case of criminal proceedings or in case of disciplinary proceeding with a view to dismissal or reduction in rank**
1. **Duration:** Interdiction shall not exceed	**1. Duration:** Interdiction is not confined

two months (Peraturan 45(1).	to any definite period
2. **Emoluments:** Full emoluments during period of interdiction (Peraturan 45(4). However, if interdiction is under Reg. 46(1)(b) – disciplinary proceeding with a view to dismissal or reduction – then the officer must receive not less than half his emoluments.	2. **Emoluments:** The University may withhold no more than half of the emoluments unless the officer is suspended: Peraturan 46(6).
3. Commencement: Interdiction under Peraturan 45 can commence on a date to be determined by the Disciplinary Committee.	3. **Commencement:** Interdiction in case of criminal proceedings under Reg. 46(1) may be effective from the date an officer is arrested or a summons is served on him: Reg. 46(2).
	4. Interdiction in case of disciplinary proceedings may be made effective from such date as determined by the Disciplinary Committee: Peraturan 46(3).

It is noteworthy that despite an interdiction during the pendency of the criminal proceedings, the University is not barred from instituting disciplinary action: Peraturan 29(2). However, no disciplinary action shall be taken for the same charge as in the the criminal proceeding.

4. ACTION IF THE OFFICER IS ACQUITTED OR DISCHARGED

If an employee who is charged with a criminal offence is acquitted or discharged and there is no appeal by the Prosecutor, all rights of the employee are restored: Peraturan 27(7). He may resume his duty. Emoluments withheld must be returned to him. However, the officer who is acquitted in the criminal court, may still be tried for indiscipline. This will not amount to double jeopardy provided that the disciplinary charge is not the same as in the criminal court: *Mohamed Yusoff Samadi v AG Singapore* .

Same would be the situation if the employee wins his appeal in the courts. All his rights are restored. However, there is no bar to a subsequent disciplinary trial on a charge different from the criminal charge: *Mohamed Yusoff Samadi v A* G *Singapore.*

5. ACTION IF THE PUBLIC PROSECUTOR APPEALS AGAINST ACQUITTAL

If there is an appeal against the acquittal, the Disciplinary Committee may, in its discretion, interdict or (if there already was an interdiction) continue the interdiction of the employee: Peraturan 27(8).

If on appeal, the employee is convicted, he shall be suspended on no salary: Reg. 27(6) and 27(10).

6. ACTION IF THE OFFICER IS CONVICTED

If the officer is convicted (found guilty), the university has to follow the following procedures. First, subsequent to the conviction, the Head of the Department must make recommendations to the Disciplinary Committee whether the employee should be-

- dismissed
- reduced in rank
- subjected to some other punishment, or
- no punishment should be imposed.

The Disciplinary Committee may make any one of the above decisions.

Second, disciplinary proceedings for dismissal or reduction in rank may also be commenced: Regulations 27-28. The disciplinary proceeding subsequent to a criminal trial does not amount to double jeopardy provided that the charge is not the same as in the criminal case. It must be a disciplinary charge under the Second Schedule - for instance a charge of acting irresponsibly or dishonestly or using one's official position for personal advantage or bringing disrepute to the University: *Mohamed Yusoff Samadi v AG Singapore* [1975] 1 MLJ l. Also Article 7(2) of the Federal Constitution.

Third, no disciplinary trial or fair hearing is required as the court conviction is sufficient evidence of wrong-doing: Reg. 32(2)(a) & 28(3).

Fourth, it must suspend the officer from the date of conviction: Regulation 27(6) and 27(10). Such suspension will be on no emoluments. Suspension, as opposed to interdiction, is on no salary: Peraturan 47(3)(b). In relation to suspension, it is noteworthy that Peraturan 47(1)(a) contradicts Peraturan 27(6) and 27(10). In 47(1)(a) there is

discretion to suspend. In Peraturan 27(6) and 27(10), there is a DUTY to suspend an officer who is convicted.

7. ACTION IF THE OFFICER APPEALS AGAINST CONVICTION

If an employee appeals, and wins his case, all his rights are restored. However, even if on appeal there is an acquittal, there is no bar to subsequent disciplinary proceedings on other grounds: *Yusoff Samadi v A.G.* and Article 7(2) of the Federal Constitution.

IV: ACTION AGAINST OFFICER SUBJECT TO DETENTION OR RESTRICTION ORDER

If an officer is subjected to an order of preventive detention, supervision, restricted residence, banishment or deportation, the University is permitted, without a hearing or trial**,** to take the following actions against the officer:

- dismissal
- reduction in rank
- imposition of a lesser punishment, or
- imposition of no punishment : Peraturan 31(2) & 47(1)(b).

The exclusion of a right to a hearing is provided by Peraturan 32(2) (a).

V: DISCIPLINARY PROCEEDINGS UNDER AKTA BADAN-BADAN BERKANUN (TATATERTIB DAN SURCAJ) 2000 - AKTA 605

This is the main law relating to staff discipline at universities. It is quite comprehensive. However, life is always larger than the law. The Act does not cover every aspect of a university's relationship with its staff.

1. PENDING PROCEEDINGS

Despite the repeal of the previous laws on discipline of university employees, proceedings pending on November 1, 2000 are required to continue under the old law: section 29(1), Act 605.

If proceedings begin after November 1, 2000, but the charge relates to events before November 1, 2000, then the accused must be given the option to choose whether he wishes to be tried under the previous law or the new 2000 statute: s. 29(3), Act 605.

2. PRELIMINARY DECISIONS FOR THE JAWATANKUASA TATATERTIB

Prima facie case: Does the complaint against the accused indicate a *prima facie* case to answer?

- If there is no *prima facie* case, the file may be closed.
- If there is a *prima facie* case, other preliminary decisions below need to be made.

Non-Disciplinary Measures Against Errant Employees: These were discussed in Sections II, III and IV. The Committee has to decide whether to proceed with disciplinary proceedings or rely on the various non-disciplinary measures.

Nature/Gravity of the offence: The Chairman of the Disciplinary Committee should make a preliminary decision under Regulation 33, Second Schedule whether the offence complained of is of nature that warrants -

(i) a punishment of dismissal or reduction in rank, or
(ii) a punishment lesser than dismissal or reduction in rank.

Appointment of Investigation Committee: In cases meriting dismissal or reduction in rank, the Disciplinary Committee may decide to establish an Investigation Committee under Regulation 35(5), 36, 37, 38 and 39.

Interdiction under Reg. 45(1) & 45(4): Pending the investigation, an officer may be interdicted for a period not exceeding two months on full salary.

Interdiction under Reg. 45(3) & 46(6): If criminal proceedings have been instituted against the officer or disciplinary proceedings have been instituted with a view to dismissal or reduction in rank the officer can be subjected to interdiction on half salary till proceedings are completed.

Drafting of Charges: The disciplinary Committee must decide on the charges to be framed and communicated to the accused.

Notice: Subject to exceptions provided in Regulation 32(2), the accused should be given written notice of the charge: Regulation 32(1); 34(1). The notice must permit him at least 21 days to make his *written* reply: Regulation 34(1), 35(2)(b).

Punishment contemplated: The show cause notice must indicate whether the punishment of dismissal or reduction in rank, or a lesser punishment is being contemplated. With all due respect this provision of the law appears to pre-judge the matter.

3. THE INVESTIGATION COMMITTEE

Appointment: Previous to Act 605, investigation committees were appointed administratively and informally to assist the Jawatankuasa Tatatertib to determine the facts and sort out the evidence. Previous investigations were, often, confidential, behind the back of the accused and informal. Now the law and procedure have become quite formal.

In cases meriting dismissal or reduction in rank, the Staff Disciplinary Committee may establish an Investigation Committee under Regulations 35(5), 36, 37 and 38 of the Second Schedule of Act 605. While the discretion is clearly conferred by the law, failureto use his poer reasonably ay incur judicial review: *Kerajaan Malaysia v Tay Chai Huat* [2011] MLJ 161.

It is open to questioning whether even today, informal, internal and secret investigations outside of Act 605 can be conducted on the orders of the University or the Disciplinary Committee.

Role: The Investigation Committee's job is not to prosecute or defend the suspect or to determine his guilt or innocence. The Investigation Committee's task is to determine, in an impartial manner, the facts of the case, clarify issues and report to the Jawatankuasa Tatatertib.

Terms of Reference: The Investigation Committee's terms of reference will normally be contained in its letter of appointment. As a general guideline, the Committee's function is not to frame the charges or recommend punishment. Nor is it its role to prosecute or defend the suspect or to determine his guilt or innocence. The Committee's task is to -

- Determine the background circumstances in which the alleged act(s) took place.
- Determine the facts as alleged or as denied. Sometimes, the facts clash. In such a case the Committee can, in an impartial way, sum up the facts on both sides.
- Clarify any issues referred to it by the Jawatankuasa Tatatertib.
- Report any additional facts brought to light.

Composition: Under Regulation 36, Schedule II, the Investigation Committee shall be comprised of not less than two employees of the University. The employees shall be higher in rank than the employee under investigation. The Head of Department of the (accused) employee shall not be a member of the Committee.

Contestable issue: If the Disciplinary Committee is dissatisfied with the findings of the Investigation Committee (IC), it can instruct the IC to re-visit the issues. What is not so clear is whether the university can reject the findings of the Investigation Committee and appoint another Investigation Committee to examine the issue *de novo*?

4. STATUTORY & COMMON LAW PROCEDURES

Multiplicity of procedures: There are several different procedures:

- Proceedings with a view to dismissal or reduction in rank are regulated by Regulations 32 and 35 of the Second Schedule.
- Proceedings in cases not with a view to dismissal or reduction in rank are regulated by Regulation 34 of the Second Schedule.
- The Investigation Committee is generally required to give an oral hearing: Reg. 37. However, the Disciplinary Committees and the Disciplinary Appeal Committees merely permit written representation.
- The Investigation Committee as well as the Disciplinary Committee must be guided by the ideals of "openness, fairness and impartiality". They are bound by the twin principles of natural justice - *nemo judex in causa sua* and *audi alteram partem.*

Procedures & Guidelines for the Investigation Committee: The Second Schedule to the Act provides formal law and procedures for the appointment and procedures of an Investigation Committee. The Investigation Committee's procedure is quasi-judicial and principles of natural justice will apply.

- The officer under investigation has a right to a prior notice of the date when the question of his dismissal or reduction in rank is being discussed. Notice must be adequate in time though no specific time frame is supplied:
- Despite the lack of an absolute duty in Reg. 37(2) on the part of the Committee to allow the officer to exculpate himself, it must be accepted that the officer concerned will have a reasonable right to make written and oral representations in his defence
- He has a right to obtain all incriminating evidence: 37(4)
- He has a right to be represented by an officer of the university or in exceptional cases by a lawyer. The Committee will have to act equally towards both parties: 37(6).
- The officer has a right to bring witnesses, and
- He has a right to cross-examine prosecution witnesses: Regulation 37(3).
- As the Committee is a quasi-judicial and not a full-fledged judicial body, it is not bound by the strict rules of evidence or civil or criminal procedure.
- Its proceedings need not be adversarial (where two adversaries argue out their cases before a detached and impartial judge). As its job is to discover facts or clarify issues, the committee should be inquisitorial in its approach. It can probe, invite, question and cross-examine - but always in such a way that the substance and appearance of impartiality are not compromised.
- If the officer fails to show up, the Committee can (i) proceed with the case or (ii) adjourn the case.
- The Committee's findings shall be submitted in a Report to the Jawatankuasa Tatatertib: Regulation 37(8). The Committee's Report will enjoy "qualified privilege"

in the law of defamation. This means that the members of the Committee will be immune from civil suit as long as they acted without malice and in a duty-interest relationship with the Jawatankuasa Tatatertib. The members of the Committee are advised not to discuss the proceedings with any one else other than the Jawatankuasa.

- Our law is silent on whether the accused and the witnesses must be paid travel and other allowances. This is a matter requiring further discussion with the Pejabat Bendahari.

Procedures for the Disciplinary Committee: As with the Investigation Committee, the Disciplinary Committee is bound by statutory procedures and natural justice requirements. The main difference in procedure is that unlike the Investigation Committee, the accused has no right to be present in person before the Disciplinary Committee. It is not improper, however, if the Disciplinary Committee allowed all accused an opportunity to be present and to make oral representations.

The accused must be given a proper notice of the charge and must be informed of the facts of the disciplinary offence and of the grounds on which action against him is proposed: Peraturan 32(1), 34(1), 35(2)(a).

It must be made clear whether dismissal or reduction in rank is in contemplation.

The accused has a right to all the incriminating evidence including the report of the Investigation Committee.

He must be given 21 days from the date he receives the charge to make written representations: Peraturan 34(1), 35(2)(b). Note, however, that 32(1) is broad enough to permit an oral hearing.

Natural Justice - Nemo judex in causa sua - the rule against bias: Members of the Committee must not be suffering from bias. Bias can be of two types. (1) Pecuniary or Financial Bias and (2) Personal Bias.

The rule against financial bias is very strict. The adjudicator should not have any direct financial interest in the outcome of the proceedings. It does not matter how small the interest is; it does not matter how unlikely it is to affect his judgment: *Dimes v Grand Junction (1852).*

As to personal bias, the test is that the adjudicator must not be 'reasonably suspected' or show a 'real likelihood' of bias: *Govinda Raj v President MIC* (1984).

For both pecuniary and personal bias, there is no need to prove that the bias was actually present. All that needs to be proved is that the bias-situation was present. It is also noteworthy that the bias of a single member may invalidate the decision of the entire Committee.

Natural Justice - Audi Alteram Partem - the rule of hearing[6]: This rule has two

[6] There are literally hundreds of cases on this point. For a selection see Shad Faruqi, *Document of Destiny*, 2008, pp. 493-507

aspects.
(1) The requirement of prior notice.
(2) A fair opportunity to make representations in one's defence.

***Prior Notice*:** Notice must be adequate in time: *Phang Moh Shin v Commissioner (1967).* What is 'adequate' depends on the facts of each case. But if a statute has laid down a time limit then the statutory time limit applies. Our law relating to the Investigation Committee in Regulation 37(1) does not lay down a time limit. It merely states that the Committee shall inform the officer of the date (and place) when the charge or charges that could lead to the officer's dismissal or reduction in rank will be brought before the Committee. Depending on the complexity of the case, one or two weeks' notice will be sufficient.

Notice must also be adequate in terms. The case which the accused has to meet must be notified to him in sufficient detail so that he can answer it adequately. The notice should describe the alleged offence briefly. The grounds for the proceedings must be communicated in writing. It is not enough for the notice to state the charge. The facts of the breach of discipline must be supplied. In *Abdul Rahman lsa v PSC* [1991] the appellant's alleged involvement in a conspiracy was not made known to him though the involvement weighed heavily with the Committee of inquiry in its recommendation to dismiss.

There are several exceptions to the requirement of prior notice:

(1) Need for secrecy in certain situations that may affect security, public order and national economy.
(2) If the number of persons affected is so large that giving of notice would be impractical.
(3) If delay would make it impossible to take remedial action.

***Fair opportunity to make representation*:** This refers to a varying combination of the following rules:

Right to a prior hearing: Whether hearing should be oral or written depends on the statute in question. Under Regulation 37(2) the Investigation Committee has been given a discretion to allow the employee to be present in person or to require him to make written submissions. However under Regulation 37(1)(b), 37(3) and 37(5), there appears to be a right to an oral hearing. It is recommended that in all cases the Committee should allow the employee to be heard orally. This would be in keeping with the emerging trend in administrative law. Also even if the statute is silent on the need to give a hearing, the right must be presumed to exist: *Kumar a/l Gurusamy v Kooperasi* [2011] 2 MLJ 147

Hearing to be real must be prior to the Committee's Report and not subsequent to it.

The accused must make use of the opportunity afforded to him. If he refuses to be present or to make representations, he cannot complain later that natural justice was breached: *AG* v *Lee Keng Kee.* Under Regulation 37(7), if the employee fails to appear on the appointed date and no ground or insufficient ground is shown for adjournment, the Committee may, in its discretion (a) adjourn to another date, or (b) proceed to consider the case.

Right to obtain incriminating evidence: All incriminating evidence available to the Committee must be made available to the accused. The accused must know what evidence has been given and what statements have been made affecting him. However if evidence was withheld from the Committee, then the accused has no right to it. The general rule is that the court or tribunal or Committee must not take into consideration evidence not raised at the hearing or evidence which the accused was not allowed to rebut: *Surinder Singh Kanda v Govt. (1962).*

'Evidence' is not restricted to evidence admissible in a court of law. Any material from any source made available to the committee or the adjudicator must be communicated to the accused: *Shamsiah bte Ahmed Sham* [1990] *and Abdul Rahman lsa v PSC* [1991].

Under Regulation 37(4) no documentary evidence shall be used against an employee unless the officer has been (a) previously supplied with the evidence or (b) given access to it.

Under Regulation 37(1)(b) and 37(3), if any witnesses are summoned, the officer has a right to cross-examine them.

Must incriminating evidence be supplied automatically or must the accused make a specific request for it? On this issue our statute is silent. But principles of natural justice will apply and all evidence, written or oral, that implicates the accused must be made known to him automatically to enable him to rebut it.

An important exception to the rule requiring disclosure is the doctrine of 'public interest privilege'. Materials, the disclosure of which would be detrimental to the public interest, may be withheld from the accused: *Mak Sik Kwong v Minister* (No. 2) (1975). For example, in some circumstances like drug trafficking or other serious wrongs, the names of informers should not be disclosed. If a document is protected by the Official Secrets Act or has been validly declared by the University to be Sulit or Terhad, the document should not be supplied. To enable the accused to make his defence, a summary or gist of the "privileged information" may be supplied to the extent that it relates to the charge.

Under Act 605 the requirements of natural justice relating to prior hearing can be bypassed in several circumstances:

- Prior to interdiction if criminal proceedings have commenced: Peraturan 46(1)(a).
- Suspension if the officer has been found guilty: Peraturan 27(6), 27(10), 47(3)(b), 33(2)(a).
- Dismissal or reduction in rank without a hearing if the officer has already been convicted of a criminal offence: Peraturan 28(3), 32(2)(a)
- Dismissal or reduction in rank without a hearing if the officer has been preventively detained or restricted: Peraturan 31(3) dan 32(2)(a). Notice how this law puts staff in lesser position than students under AUKU.
- Interdiction for purposes of investigation: Peraturan 45(1).
- For the very wide grounds permitted in Peraturan 32(2)(b).

- On ground of national security: Peraturan 32(2)(c)

Witnesses: At the oral hearing, the accused and the accusers have a right to call witnesses or to submit testimony of witnesses in writing. The Investigation Committee, on its own, may call and examine any witnesses: Regulation 37(1)(b). The number of witnesses is not fixed by the law. A reasonable number must be allowed. The Chairperson can refuse to admit witnesses if their aim is to repeat or reconfirm testimony already received.

Cross-examination of witnesses: This is allowed by Regulation 37(3).

Representation**:** The Investigation Committee has discretion to permit the accused officer to (a) present his case in person or (b) be represented by an officer of the statutory body, or (c) in exceptional cases, by an advocate and solicitor. It is humbly submitted that in domestic enquiries of this sort, lawyers must not be allowed. If representation is allowed under (b) and (c), then it must be granted equally to all parties: Regulation 37(5) and 37(6).

Permission granted may be withdrawn but subject to a reasonable adjournment to enable the accused to present his case in person.

5. THE DOCTRINE OF ULTRA VIRES

The Investigation Board as well as the Disciplinary Committees have a duty to (i) act legally i.e. to stay within the legal limits of their powers (ii) act rationally i.e. to use their power but not to abuse it, avoid mala fide, irrationality and unreasonableness, (iii) to observe all statutory and procedural rules of fair procedure, and (iv) act with a sense of proportionality. [7]

[7] *Rasidi Ahmad lwn Ketua Polis Daerah* [2011] 8 MLJ 271

VI: DISCIPLINARY OFFENCES

Under the Second Schedule of Act 605 a Code of Conduct is prescribed and a large number of misconducts are described. They may be c1assified into the following separate categories.

Breaching the duty of loyalty: Peraturan 3(1), Jadual 2

Under Regulation 3(1) it is provided that "An officer shall at all times give his undivided loyalty to the Yang di-Pertuan Agong, the country, the Government and the statutory body".

The words "undivided loyalty to ... the Government" were inserted into our law only in the year 2000. It would now be a disciplinary offence to be a public critic of the government or of the university. Though the word "government" is distinct from the words "ruling party", all staff are now under a general duty not to appear in public as critics of the government or of the university while on its pay roll. This duty is further reinforced by Regulations 18 and 20.

Prohibition on making public statements that embarrass the University or the Government: Regulation 18

Under the previous law, university lecturers had a much wider right to take part in public debates and discussions. But the new Regulation 18 of 2000 lumps together university academicians with employees of all other statutory bodies and imposes severe restrictions on public expression of views. Regulation 18 provides:

(1) An officer shall not either orally or in writing or in any other manner -

(a) make any public statement that is detrimental to any policy, programme or decision of the statutory body or the Government on any issue;
(b) make any public statement which may embarrass or bring disrepute to the statutory body or the Government;
(c) make any comments on any weaknesses of any policy, programme or decision of the statutory body or the Government;
(d) circulate such statement or comments whether made by him or any other person.

Clause (2) bans any comment on any policy, programme or decision of the Government or of the university and forbids the giving of any information about the exercise of the functions of the university or of any incident or report relating to the university except with the permission of the Minister.

The gist of the law is that no public questioning or criticism is allowed when we speak to the press or the public or at public lectures or express opinions in broadcasts or in publications. Any critical comments about the Government or the university must be made internally or with permission of the Minister.

Prohibition on taking active part in politics: Regulation 20

Officers in the Managerial and Professional group are not forbidden from joining any political party as ordinary members: Regulation 20(5). However they must not-

- take "active part" in political activities
- wear a political party emblem
- make partisan political statements in public
- publish or circulate politically partisan materials
- canvass support for national, state or party elections
- act as election or polling agent
- contest for or hold any post in a political party

Officers in Managerial and Professional Group who are on leave prior to retirement may, with leave of the Board, take part in politics, provided the Official Secrets Act is not breached.

Officers in Support Group may, with permission of the Board, contest elections and hold political office.

General misdemeanours: Peraturan 3(2)

This Regulation describes a large number of acts that may form the basis of a disciplinary charge. It requires that an officer shall not -

- subordinate his duty to the statutory body to his private interest;
- conduct himself in such a manner as is likely to bring his private interests into conflict with his duty to the statutory body;
- conduct himself in any manner likely to cause a reasonable suspicion that he has allowed his private interests to come into conflict with his duty to the statutory body so as to impair his usefulness as an officer of the statutory body; or he has used his position as an officer of the statutory body for his personal advantage;
- conduct himself in such a manner as to bring the statutory body into disrepute or to bring discredit to the statutory body;
- lack efficiency or industry;
- be dishonest or untrustworthy;
- be irresponsible;
- bring or attempt to bring any form of outside influence or pressure to support or advance any claim relating to or against the statutory body, whether the claim is his own claim or that of any other officer of the statutory body;
- be insubordinate or conduct himself in any manner which can be reasonably construed as being insubordinate; and
- be negligent in performing his duties.

Sexual misconduct or sexual harassment are not specifically mentioned but can easily fall under one of the sub-categories of Regulations 3(2).

Financial improprieties

- Outside employment without permission: Peraturan 4
- Receiving gifts for the performance of his official duties: Peraturan 7
- Giving or receiving entertainment for performance of official duties: Peraturan 8
- Failure to declare property and assets: Peraturan 9
- Maintaining a standard of living beyond emoluments and legitimate private means: Peraturan 10
- Borrowing money from persons with whom one has official dealings : Peraturan 11

- Serious pecuniary indebtedness: Peraturan 12-13
- Lending money on interest: Peraturan 14
- Invo1vement in the futures market: Peraturan 15
- Holding or organizing or participating in raffles or lottery except for charity: Peraturan 16.

Personal improprieties/Kesalahan-kesalan peribadi

- Violating dress etiquette: Peraturan 5
- Involvement in prohibited drugs: Peraturan 6

Misuse of classified official information: Peraturan 17

An officer shall not publish any book etc. based on official, classified information.

Prohibition on acting as editor of any publication: Peraturan 19

An officer shall not edit, manage or finance any publication other than official or professional publications, non-political voluntary publications or publications in relation to which he has obtained prior permission from the Vice Chancellor.

Absence without leave (AWOL)

- "Absence" means failure to be present for any length of time at a time and place required: Reg. 22.
- For A WOL, disciplinary action can be commenced: Reg. 23-24.
- If found guilty, all emoluments for the period of absence must be forfeited: Reg. 26. The Disciplinary Committee has no discretion in the matter. In addition, the officer may face any of the disciplinary punishments under Regulation 40.
- The order of forfeiture must be in writing. Forfeiture is not regarded as a punishment: Regulation 26.
- Must the order of forfeiture wait till after the disciplinary proceeding or can it be immediate? It is submitted that in view of Regulation 26, the forfeiture order must be made immediately as soon as AWOL is reported.
- If the officer cannot be traced then special procedures apply to dismiss him without trial under Regulation 25. An Officer who is AWOL for 7 consecutive working days and cannot be traced can be dismissed without a trial but subject to the following procedures.

    - Letter must be sent by personal delivery or A.R. by Head of Department to officer's last known address.
    - The Disciplinary Committee shall publish a notice in one daily newspaper in B.M. asking officer to report for duty within 7 days.
    - Failure to report shall result in dismissal from date of absence.
    - Dismissal must be gazetted: Regulation 25(7).

These procedural requirements look manifestly oppressive.

VII: DISCIPLINARY COMMITTEES & APPEAL COMMITTEES

Disciplinary Committees: Act 605 has created five separate disciplinary committees.

1. Committee to try the Vice-Chancellor, his Deputies, Top Management Group, Management and Professional Group and Group A under the Cabinet Committee Report 1976 with a view to dismissal or reduction in rank.
2. Committee to try the Vice-Chancellor, his Deputies and Top Management Group, not with a view to dismissal or reduction in rank.
3. Committee to try the Management and Professional Group and Group A under the Cabinet Committee Report 1976 not with a view to dismissal or reduction in rank.
4. Committee to try the Support Group and Groups B, C and D under the Cabinet Committee Report 1976 with a view to dismissal or reduction in rank.
5. Committee to try the Support Group and Groups B, C and D under the Cabinet Committee Report 1976 not with a view to dismissal or reduction in rank

Appeal Committees: Under Act 605, five appeal committees exist. Two are headed by the Menteri. Two are headed by the KSU and one by the V.C.

The time limit for filing an appeal is 14 days from the date of the communication of the result to the accused: Peraturan 20(1) Jadual Ketiga. The appeal must be filed through the Head of Department. The filing of an appeal does not suspend the sentence or the punishment.

Once the appeal is determined by the Appeal Committee, there is no further recourse to any one - the Minister or the courts. However, we all know that the absence of appeal does not bar the supervisory power of the High Court to issue certiorari etc. If there is breach of natural justice (bias or lack of hearing) or ultra vires (illegality, irrationality, procedural impropriety or proportionality) the possibility of judicial intervention cannot be discounted.

VIII: DISCIPLINARY PUNISHMENTS

One or more of the following punishments may be imposed on officers who are found guilty of a disciplinary offence: Reg. 40. There is no limit to the number of penalties that may be combined.

- Warning: Regulation 40(a).

- Fine - maximum 7 days' emolument; for subsequent fines in any calendar month, the aggregate should not exceed 45% of salary: Regulation 40(b), 41(2) and 41(
- Forfeiture of emoluments - in cases of AWOL, for the actual period of absence: Regulation 40(c), 41(4) and (5) and 26.
- Deferment of salary movement for a period of 3 to 12 months: Regulation 42, 40(d).
- Reduction of salary horizontally in the same salary level, not exceeding three movements and lasting between 12 and 36 months: Regulation 43, 40(e).
- Reduction in rank to a lower grade m the same scheme of service: Regulation 40(f).
- Dismissal: Regulation 40(g).

Note that the university has no power to compel staff members to go for psychological counseling.

IX: COMMENTS AND CAUTIONS

Inadequate right to be heard: Act 605 is seriously deficient on the right to be heard. First, there is only a qualified right to be heard orally at the investigation stage. We must interpret this law in such a way as to expand the right to adequate representation. Second, at the real trial, there is no right to face to face representation but only a right to written representation. This situation will not go unchallenged. It runs counter to recent judicial trends that in some circumstances hearing to be real must be oral. Third, Act 605 puts university staff in a worse position than university students in the matter of procedural rights in disciplinary proceedings! Act 605 lags behind procedural safeguards for private sector employees.

Need to read laws in the context of the Federal Constitution: Act 605 needs to be constitutionalized. Though the Federal Constitution has not yet become the chart and compass and sail and anchor of our endeavours, the trend in litigation is to challenge more and more laws as falling short of the standards of our nation's *grundnorm.* It is likely that some provisions of Act 605 and some administrative practices may soon be challenged as violative of the supreme Constitution.

Among the contentious clauses are those that exclude full and fair hearing. They may one day be challenged as inconsistent with Article 5's promise of "liberty" and Article 8's guarantee of equality. The trend in public law is that "natural justice" is being linked with the Constitution's Articles 5 and 8 so that any exclusion of *audi alteram partem* is potentially unconstitutional.

Some provisions of Act 605 restricting freedom of speech and expression and freedom of association may well be questionable under Article 10.

Inconsistencies in the matter of granting a hearing: There is no rational basis for distinguishing situations when the right to a fair hearing is granted and when it is denied; when oral hearing is allowed and when only written representation is permitted.

It is noteworthy that for serious "punishments" such as suspension, interdiction, termination under contract, reversion to former post, transfer (lateral or horizontal) and compulsory retirement, there is no right to any hearing at all even though these actions may touch on our constitutional right to life (and as a corollary to livelihood)! For relatively lesser punishments like reprimands, fines, deferment of salary movement there is a right to a trial.

Where does centre of gravity lie? Creation of high powered disciplinary boards and appeal boards but at the same time depriving employees of a right to oral hearing at the trial stage, has come to mean that the centre of gravity of the disciplinary process has shifted to investigation committees.

Given these drawbacks, all legal advisers have the challenge and responsibility of interpreting Act 605 in such a way as to bring it closer to our ideals of procedural justice.

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