

力求個案得到公平處理

Ensuring fairness in the handling of cases

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議會處理個案時，要考慮的事情超乎多數人所想。

There are more considerations than most people think when the TIC handles cases.

舉證標準

熱

愛法律驚險作品的人，不管是小說也罷，電影、電視劇也罷，都必定對一些歸納了重要法律原則的用語非常熟悉，例如「無罪推定」、「毫無合理疑點」、「有疑點則信之」等等。由於那些作品幾乎全都涉及刑事罪行，以致往往只有適用於刑事案件的法律原則才得以普及，結果就是與民事案件相關的法律原則經常受到忽視。

以「毫無合理疑點」這一用語為例，雖然人人都好像知道要令疑犯定罪，控方就要證明案件毫無合理疑點，但其實這一舉證標準通常只適用於刑事訴訟程序。對於民事案件來說，舉證標準並沒有那麼嚴格，只要衡量正反證據的相對可能就夠了，即案件發生的可能高於沒有發生的可能。

正反證據的相對可能

議會目前有四個委員會負責處理紀律或投訴個案，即規條委員會、消費者關係委員會、導遊及領隊審核委員會、購物事宜委員會。這些委員會所使用的舉證標準大致和民事案件相同，即衡量正反證據的相對可能。

假如你問道，議會為甚麼不用更加嚴格的舉證標準，例如「毫無合理疑點」標準？答案很簡單，那是因為議會缺乏必要的資源、人力和法律賦予的權力，無法展開深入調查，所以無法以這個最嚴格的標準去處理個案。不過，假如你以為「衡量正反證據的相對可能」這一標準很寬鬆，那你就錯了。

假設有旅客投訴導遊，說他沒有在珠寶店購物，所以導遊就罵他。議會入境旅遊部在處理投訴時，除了聽取旅客的投訴外，還要有其他旅客獲取

Standard of proof

Fans of legal thrillers, be they novels, films or TV dramas, must be very familiar with such terms, many of them summarising important legal principles, as “the presumption of innocence”, “beyond a reasonable doubt”, “the benefit of the doubt” and many more. As legal thrillers almost always involve criminal offences, only those legal principles applicable to criminal cases tend to be popularised, with the result that those principles relevant to civil cases are often neglected.

Take, for example, the term “beyond a reasonable doubt”. Whereas everyone seems to know that to convict a suspect, the prosecution has to prove its case beyond a reasonable doubt, such a standard of proof, in fact, normally only applies to criminal proceedings. As for civil cases, the standard of proof is less rigorous, and merely requires proof on the balance of probabilities, which means that the case is more likely to be true than not true.

Balance of probabilities

The TIC now has four committees to handle disciplinary or complaint cases, namely the Compliance Committee, the Consumer Relations Committee, the Tourist Guide and Tour Escort Deliberation Committee and the Committee on Shopping-related Practices, and **the standard of proof used by them is roughly the same as that used in civil cases, which is proof on the balance of probabilities.**

If you ask why a more rigorous standard of proof, such as the “beyond a reasonable doubt” standard, is not used in cases handled by the TIC, then the answer is very simple: a lack of necessary resources, manpower and legal authority to conduct in-depth investigations has rendered the TIC incapable of using this highest standard in its handling of cases. But if you think that the “balance of probabilities” standard is very lax, then you are wrong.

Suppose a visitor complains that his tourist guide has told him off for not buying anything at a jewellery shop. The TIC’s Inbound Department responsible for handling the complaint, apart from listening to what he has to say about his case, will have to obtain supporting testimony from other visitors. Failing that, the Compliance Committee will most likely find the complaint unsubstantiated because the visitor


支持證供，否則規條委員會就很可能認為投訴不成立，因為旅客和導遊各執一詞，證據無法達到「衡量正反證據的相對可能」的標準。

議會雖然人力物力都有限，但仍然竭力採取所有可行的措施，以保證各紀律委員會的決定都公平公正。舉例而言，處理個案的小組會議都必須有過半數的業外成員，而涉及領隊或導遊的個案，都必須有最少一名領隊或導遊代表出席會議。此外，提交給小組會議的文件，都必須把旅行社、領隊或導遊的名字遮蓋。更為重要的是，紀律委員會所做的決定，都可以由一個獨立單位複審。

上訴權利

上述的獨立單位，就是《議會會章》訂明的上訴委員會。有誰要是不滿紀律委員會的決定，就可以向上訴委員會提出上訴。上訴委員會開會處理上訴時，必須有五名成員，其中三人是業外人士，其餘兩人是議會業界理事，務求公平公正。此外，上訴委員會還會以口頭聆訊的方式去處理個案，即上訴人可以親身陳詞，不像紀律委員會那樣只靠書面文件下判斷。

上訴委員會的運作方式和上訴法庭並不相同，例如在處理上訴個案時，不會辨別爭議的事情究竟是「法律觀點」還是個案中的事實。因此，上訴委員會的聆訊更像重新審理個案，而不是重新考慮紀律委員會有沒有正確引用規例，也因此，上訴委員會的決定有時可能會異於紀律委員會：在過去三年間，每年平均有三十一個個案(百分之九點二)提出上訴，其中二點三個已成立的個案(百分七點五)被推翻。

紀律委員會使用的舉證標準是個微妙的課題，因為舉證標準並沒有清晰明確的定義，而且實際運用時難以完全一致。譬如說，普通個案會衡量正反證據的相對可能，但在一些更嚴重的個案中，例如導遊面臨的處分可能是導遊證被暫停，因而影響生計，那時就可能用上更嚴格的標準了。不管怎樣，上述種種措施和考慮的主要目標，是要保證所有個案都以公平公正的方式處理，而且要盡可能免除人為錯誤。 

and his guide will then be each telling their own version of the story, thus making the evidence fail to reach the “balance of probabilities” standard.

Despite its limited resources and manpower, the TIC has put in place every possible measure to ensure that the decisions made by its disciplinary committees are fair and impartial. For example, the panel meetings which handle cases must have a majority of non-trade members, and cases where tour escorts or tourist guides are involved must have at least one tour escort or tourist guide representative to be present at the meetings. Apart from that, the names of travel agents, tour escorts and tourist guides must be concealed in documents submitted to the meetings for deliberations. More importantly, all the decisions made by the disciplinary committees are subject to review by an independent body.

Right to appeal

That independent body is stipulated in the TIC's M&A in the shape of the Appeal Board. Those who are dissatisfied with the disciplinary committees' decisions may file an appeal with the Appeal Board. When it meets to hear appeals, there must be five members, three of them being non-traders and the remaining two being trade directors of the TIC, in order to ensure fairness and impartiality. Apart from that, **oral hearings are conducted when it considers appeals; in other words, the appellants can argue their case in person, as contrary to cases deliberated by disciplinary committees where decisions are based on written submissions only.**

Since the Appeal Board does not function like a court of appeal, there is no distinction in its handling of appeals, for example, between whether the matter in dispute is a “question of law” and whether there are facts in dispute. As a result, appeal hearings are more like a re-hearing than a reconsideration of whether the rules are accurately applied, and therefore the Appeal Board may sometimes make decisions different from the disciplinary committees: during the past three years, an average of 31 cases (9.2%) were handled by the Appeal Board in a year, of which 2.3 substantiated cases (7.5%) were overruled.

The standard of proof as used by disciplinary committees is a delicate matter because there is neither a clear definition nor uniform application of it in actual cases. For instance, whereas the “balance of probabilities” standard is used in ordinary cases, in cases of a more serious nature such as when a tourist guide may see their Tourist Guide Pass suspended, thus affecting their livelihood, a more rigorous standard may be called for. Nevertheless, the main purposes of all these measures and considerations are to ensure that all cases are handled in a way that is fair and impartial, and to eliminate human error as far as practicable. 