SUPREME COURT OF QUEENSLAND

CITATION:	*Ivers v McCubbin & Ors* [2004] QSC 342
PARTIES:	**DAVID JOHN IVERS** (applicant) **v** **KEITH McCUBBIN** (first respondent) **AND** **STATE OF QUEENSLAND** (second respondent) **AND** **JOHN BRITON** (third respondent)
FILE NO/S:	BS No 3238 of 2003
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	30 September 2004
DELIVERED AT:	Brisbane
HEARING DATE:	16, 20 July 2004
JUDGE:	Atkinson J
ORDER:	**The application for judicial review is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – STAY OF PROCEEDINGS – where applicant employed by Department of Primary Industries – where applicant was subject to disciplinary proceedings – whether disciplinary proceedings initiated under appropriate procedure – where applicant resigned prior to completion of disciplinary process – whether review futile or ineffective – whether during disciplinary process applicant was denied natural justice or procedural fairness *Judicial Review Act* 1991 (Qld), s 48, s 49 *Public Service Act*1996 (Qld), s 88, s 112 *Workers' Compensation and Rehabilitation Act* 2003 (Qld), s 32 *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, considered

Annetts v McCann (1990) 170 CLR 596, cited
Carey v President of the Industrial Court Queensland & Anor [2004] QCA 62, cited
Carter v NSW Netball Association [2004] NSWSC 737, cited
Chief Constable of the North Wales Police v Evans [1982] 3 All ER 141, cited
FAI Insurances Ltd v Winneke (1982) 151 CLR 342, considered
Kioa v West (1985) 159 CLR 550, considered
Pitman v State of Queensland [1999] 2 Qd R 71, considered
Re Solomon [1994] 2 Qd R 97, cited
York v The General Medical Assessment Tribunal & Anor [2002] QCA 519, cited

COUNSEL: A Vasta QC with T S Phillips for the applicant
M O Plunkett for the respondents

SOLICITORS: The applicant appeared on his own behalf
Crown Law for the respondents

[1] On 13 April 2004, David Ivers filed an Originating Application for a Statutory Order of Review. That application was amended on 16 July 2004. The respondents have applied pursuant to s 48 of the *Judicial Review Act* 1991 (the JR Act) to strike out the application, as amended, for a Statutory Order of Review on the ground that no reasonable basis for the application or claim is disclosed.

Background facts

[2] In order to understand whether or not the s 48 application should be successful it is necessary to consider the background facts to this case.

Employment of Mr Ivers by FACC

[3] Mr Ivers was employed by the Department of Primary Industries (DPI) as a team leader in the Fire Ant Control Centre (FACC) commencing on 27 August 2001. He was employed as a temporary general employee under s 112 of the *Public Service Act* 1996 (the PS Act). He was advised that his employment would terminate on 30 June 2004 or at any time subject to operational requirements or as a result of any disciplinary action. The FACC was set up in 2001 for a limited period to deal with the problem of fire ants in south east Queensland.

[4] A certified agreement known as the DPI Fire Ant Control Centre – Certified Agreement was made between the DPI and the relevant union and certified by Deputy President Bloomfield at the Queensland Industrial Relations Commission on 29 August 2003. Clause 3.18 provided that the range of penalties available to the FACC in dealing with disciplinary matters would include those (excluding transfer) prescribed by s 88 of the PS Act. The penalties ranged from a reprimand to dismissal.

Incident leading to investigation and report

[5] On 15 September 2003 an incident was alleged to have occurred at Toombul Shopping Centre at a time when Mr Ivers was acting as a team co-ordinator. It was

alleged that there was a verbal altercation between two members of the FACC team and a security guard employed by the shopping centre about whether they could sit and smoke on the landing leading to the upper car park. The guard said he intended to complain about their conduct to their employer and asked for their names. The two men concerned – Robert Absalom and John Supranowicz – refused to give their names so the guard asked the third person, who was relieving in Mr Ivers' team leader position at the time, Charmaine Kucks. She gave him their names.

[6] Both Mr Absalom and Mr Supranowicz subsequently drafted letters of complaint to the shopping centre management about what they described as the guard's offensive and arrogant manner. Mr Absalom's letter was dated 16 September 2003 (the "Absalom letter"). Mr Ivers typed and apparently edited Mr Supranowicz's draft letter which was dated 17 September 2003 and was sent later that week (the "Supranowicz letter"). The Supranowicz letter was sent rather than the Absalom letter. Ms Kucks alleged that she was bullied, coerced or misled into counter-signing the Supranowicz letter. Cara McNicol, a supervisor with FACC, heard of what had happened and asked Ms Kucks about it. Ms Kucks made two sets of handwritten notes about the incident on 24 and 25 September 2003 ("Ms Kucks' notes"). At this time, Mr Ivers was on leave. He was absent on leave from 25 September to 21 October 2003. By letter dated 26 September 2003, Mr Ivers set out his version of what had occurred ("Mr Ivers' 26 September letter").

[7] Another supervisor, Glen Stewart, spoke to Ms Kucks on a number of occasions about the incident at Toombul and as to whether or not there were other problems. A meeting took place between Ms McNicol, Mr Stewart and Ms Kucks on 7 October 2003 where notes were taken by Mr Stewart (the "7 October notes"). Ms Kucks apparently alleged numerous incidents of sexual and other harassment involving Mr Ivers from late 2001 until the date of the meeting. After Mr Ivers returned to work, on 23 October 2003, Mr Stewart requested Mr Ivers to provide a report to Ms McNicol about his movements on the previous day. That report was provided on 24 October 2003.

[8] On 27 October 2003 Mr Stewart hand delivered a letter (the "27 October notice") to Mr Ivers from Keith McCubbin, Director of FACC, telling him that allegations had been made by Ms Kucks that he had breached the DPI's code of conduct in that he had,

> "On numerous occasions demonstrated inappropriate conduct in the workplace with racist or sexist remarks to team members, including Ms Kucks. You have also failed to act in an appropriate, ethical way as Team Leader by failing to take action upon breaches of the Code of Conduct within your team.
>
> Behaved inappropriately by publicly embarrassing and humiliating Ms Kucks. You have also bullied, coerced and mislead Ms Kucks into signing a witness statement into particular events at Toombul. You have also made known to other team members certain confidential and personal information relating to Ms Kucks.
>
> On several occasions made remarks of a sexual nature to Ms Kucks, and/or failed to address and/or contributed to other team members' sexual innuendo and remarks to Ms Kucks."

The letter advised Mr Ivers that Mr McCubbin had determined to conduct a "full and thorough investigation" into the allegations which might render him "liable for disciplinary action" and had appointed Mr John Briton to conduct an investigation into the facts of the matter. Mr Briton was an external investigator.

[9] Mr Ivers has deposed that he made numerous requests after 27 October 2003 both orally and in writing to be provided with complete details of allegations against him, including all statements, records and interviews prepared by Mr Briton. Mr Ivers was apparently interviewed by Mr Briton on 13 November 2003 but indicated he was not prepared to answer any of his questions until he had all the allegations that had been made against him outlined in writing.

[10] In a letter dated 18 November 2003 Mr McCubbin referred again to his letter of 27 October 2003 which set out the allegations against Mr Ivers and also that Mr Briton had provided to Mr Ivers the 7 October notes which set out in detail all the allegations made against him. Mr McCubbin directed Mr Ivers to attend a meeting on 19 November 2003 with Mr Briton. After the interview of 19 November 2003 where Mr Ivers again apparently refused to answer any questions, a similar letter was sent by Mr McCubbin on 24 November 2003 to Mr Ivers directing him to attend a meeting with Mr Briton on 27 November 2003.

[11] Mr Briton completed his 72 page report (the "Briton report") on 22 December 2003. Its conclusions were as follows:

> "• Mr Ivers did not 'bully, coerce and mislead' Ms Kucks into signing the letter to the Toombul Shopping Centre management dated 17 September 2003. He did however give the letter his imprimatur by typing it and, in circumstances in which he knew her colleagues were upset with her for giving the security guard their names, conveyed his expectation she should sign it by typing her name on the bottom as a signatory. That showed very poor judgement on Mr Ivers' part and a reckless disregard both for the truth and Ms Kucks' feelings . . .;
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> • Mr Ivers threatened and attempted to bully Ms Kucks by phone on the afternoon of 24 September and in person on the morning of 25 September 2003. He put her under duress to write Ms McNicol a version of what happened at Toombul that was consistent with the version set out in the letter. He had a vested interest in securing that outcome lest his own reckless and fundamentally dishonest role in the episode of the letter be exposed . . .;
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> • there is no evidence capable of supporting a finding that Mr Ivers racially harassed Ms Kucks by making racist remarks to her and/or other team members . . .;
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> • Mr Ivers says he 'went to great pains' to explain to his team in late 2001/early 2002 that the STEP program 'was in place for a reason'. The fact is however that he made it plain he believed it was unfair that indigenous members of the team got training

opportunities that other team members didn't. He is entitled to his view, and whatever its merits it isn't racist when expressed in that way, but in all the circumstances Ms Kucks might well have felt angry and unsupported that he saw fit to express his views in that way. He was implicitly criticizing government and DPI policy, too. He should have kept his personal opinions to himself and the fact that he didn't shows a distinct lack of judgement . . .;

- there is no evidence capable of supporting a finding that Mr Ivers made remarks of a sexual nature to team members including Ms Kucks or otherwise sexually harassed her . . .;

- Mr Ivers failed to act in an appropriate ethical way as team leader by failing to take action upon breaches of the Code of Conduct within his team. He failed to address and in fact encouraged a workplace culture within the team that was deeply offensive to many members of the team, men and women. He was well aware of the behavior in question and, while he made episodic attempts to get the offenders to 'tone it down', he effectively condoned their behavior by his failure to be more proactive . . .;

- Mr Ivers received, stored, shared with selected colleagues and forwarded large volumes of offensive emails and email images over an unknown period of time but certainly in very recent times. He breached the department's policies in this regard and further encouraged a culture within his team that condones and accepts sexist behaviours . . .;

- there is no evidence capable of supporting a finding that Mr Ivers behaved inappropriately by publicly embarrassing or humiliating Ms Kucks or that he made known to other team members confidential information relating to Ms Kucks . . .; and

- there is as Mr Ivers says 'a lack of certainty as to date, time and place' but there is ample evidence nonetheless that Mr Ivers made a habit during 2002 and early 2003 of using his work vehicle for personal purposes in work time. He picked up and dropped off his son Jacob from school; he picked up and dropped off his wife from the airport and from the shops; and he picked up and took home items from roadside collections. He says he did these things only 'occasionally' but the balance of probabilities in my opinion is that he is under exaggerating and I believe significantly. . . .

I recommend accordingly that Mr Ivers be asked to show cause why he should not face disciplinary action."

The WorkCover claim

[12] On 3 December 2003, Mr Ivers commenced sick leave. His accrued sick leave and recreational leave entitlements were apparently used up on 8 January 2004 and Mr Ivers then applied for WorkCover.

[13] On 25 February 2004, LKA Group ('LKA") produced a detailed investigation report for WorkCover relating to Mr Ivers' application for WorkCover. It examined Mr Ivers' allegations that his medical condition of generalised anxiety disorder was caused or contributed to by the management of FACC in particular in relation to its handling of the allegations made against him by Ms Kucks. It is apparent that LKA was aware of at least some of the contents of the Briton report as it made reference to various allegations not having been substantiated.

[14] On 22 March 2004, WorkCover rejected Mr Ivers' application for compensation as it held that his condition fell within the exclusion to the definition of "injury" contained in s 32(5) of the *Workers' Compensation and Rehabilitation Act* 2003. Section 32, inter alia, sets out the following definition of "injury":

> "**(1)** an **"injury"** is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.
>
> . . .
>
> **(5)** Despite subsection (1) and (3), **"injury"** does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances-
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> (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
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> (b) the worker's expectation or perception of reasonable management action being taken against the worker;
>
> (c) action by an insurer in connection with the worker's application for compensation.
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> *Examples of actions that may be reasonable management actions taken in a reasonable way-*
>
> - action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker
> - a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment."

[15] The Claims Assessor and Senior Claims Assessor who wrote the reasons for the WorkCover decision considered that Mr Ivers suffered from an anxiety disorder and that his employment was a significant contributing factor to that injury. They were satisfied that his psychiatric condition arose out of, or in the course of, events which were "management action". They considered however that the management action was reasonable and taken in a reasonable way, particularly as some of the allegations against him had been confirmed and management were in the process of resolving those issues. This is a reference to the fact that the disciplinary process had not been completed. A number of allegations made by Mr Ivers, which were irrelevant to the matters referred to Mr Briton for investigation, were also traversed.

[16] The Claims Assessors concluded that s 32(5) operated to exclude Mr Ivers' condition from the definition of injury and that he was therefore not entitled to compensation under the *Workers' Compensation and Rehabilitation Act*. He was informed of his right to a review of the decision within 3 months by letter dated 22 March 2004. It was not until 26 July 2004 that Mr Ivers filed an application for review of the WorkCover decision. That application, should it be heard, would give Mr Ivers the opportunity to argue, if he wished to do so, that WorkCover was not entitled to consider the contents of the Briton report in the way in which it did. WorkCover is not a respondent to these proceedings. It is difficult to see why WorkCover would not be entitled to take into account the disciplinary proceedings that were taking place when Mr Ivers said that this was a cause of or contributed to his medical condition.

Action by FACC after the Briton Report

[17] As a result of the Briton report, Mr Ivers was asked by letter dated 12 March 2004 from Mr McCubbin, to show cause why disciplinary action should not be taken against him. Specific allegations, with particulars, were contained in the show cause letter together with a copy of the report by Mr Briton and various supporting documentation. Those additional documents were the Absalom letter, the Supranowicz letter, Ms Kucks' notes, Mr Ivers' 26 September letter, the 27 October notice and records of various telephone calls made by the applicant on his work telephone in September 2003.

[18] On 19 March 2004, Mr McCubbin wrote to Mr Ivers extending the time for him to respond to the show cause notice and setting out the reasons why he believed Mr Ivers had been afforded natural justice. He said in particular that he did not intend to give Mr Ivers access to the records of interview that Mr Briton took during the course of the investigation. That was because the report was very comprehensive and, where findings were made, they were supported by evidence. Where the evidence came from Mr Briton's interviews with other employees, the relevant statements were set out in the Briton report. An extension of time until 5 April and subsequently to 13 April 2004 was granted for Mr Ivers to respond.

Court action by Mr Ivers

[19] On 13 April 2004, the originating application referred to in paragraph 1 of these reasons was filed. The respondents were various FACC employees, Mr Stewart, Ms McNicol, Elinor Ratcliffe and Mr McCubbin, the Department of Primary Industries Fire Ant Control Centre and Mr Briton. As previously noted, an amended application was filed on 16 July 2004 where the respondents were changed to be Mr McCubbin, as first respondent, the State of Queensland, as second respondent, and Mr Briton, as third respondent.

Effect of resignation

[20] On 25 June 2004, the applicant resigned his position. As a result the disciplinary proceedings came to an end. The respondents have no power to proceed with any disciplinary action against the applicant as their relationship is at an end. There is a strong argument therefore that these proceedings are futile. As counsel for the

respondents submitted, the court will not exercise its discretion to grant relief where it is ineffectual or futile.[1]

[21] Mr Ivers argued that despite this, he could nevertheless seek judicial review for two reasons: first, because the Briton report had an adverse effect on his reputation and hence his future employment prospects in the Queensland Public Service; and secondly, because it had been taken into account in the decision to refuse him WorkCover. Such an outcome may mean that judicial review may be granted even if it can have no effect on the original decision of which review is sought. As Thomas J observed in *Pitman v State of Queensland,*[2] when granting a stay of judicial review of two decisions which awarded positions of one year's duration to other persons who had served out those positions:

> "It does seem that time has overtaken any practical purpose in maintaining the first two applications, save of course for the satisfaction of the applicant in obtaining a declaration (if he is entitled to one) that the particular decisions were invalid. There may well be cases where a genuine benefit may be seen in setting aside a wrong decision even when its effect has ended, or in eliminating an unfair matter of public record."

[22] Reputation is an interest capable of being protected by the rules of natural justice.[3] As Brennan J held in *Ainsworth v Criminal Justice Commission.*[4]

> "It is especially appropriate that judicial review should be available when the function conferred by statute is to inquire into and report on a matter involving reputation, even though the report can have no effect on legal rights or liabilities, for no remedy may otherwise be available to vindicate the damaged reputation. The judgment of [the High] Court in *Annetts v McCann* shows that where an inquisitorial power is being exercised without observing the rules of natural justice and reputation is at risk, the court may order that the rules of natural justice be observed and the court can thus, to an extent, protect the reputation at risk. In such a case, however, the protection is incidental to the constraints imposed on the proposed manner of performance of the statutory power."

[23] Judicial review may be available even in circumstances where the applicant has resigned from his position. In *Chief Constable of the North Wales Police v Evans,*[5] the House of Lords considered the availability of judicial review for a probationer constable who resigned from the police force. There were a number of unsubstantiated rumours concerning the probationer's personal life. Acting on them, the Chief Constable informed the probationer that if he did not resign he

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1 *Pitman v State of Queensland* [1999] 2 Qd R 71 at 74-75; *Carey v President of the Industrial Court Queensland & Anor* [2004] QCA 62 at [23]-[24].

2 [1999] 2 Qd R 71 at 74-75.

3 *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 578 per Mason CJ, Dawson, Toohey, Graudron JJ; *Annetts v McCann* (1990) 170 CLR 596 at 608.

4 (supra) at 585.

5 [1982] 1 WLR 1155; [1982] 3 All ER 141.

would be dismissed. He did not tell the probationer the allegations and rumours on which he based his decision nor did he offer him any opportunity to offer an explanation. The House of Lords granted a limited declaration. In doing so, Lord Brightman observed that:[6]

> "It would, to my mind, be regrettable if a litigant who establishes that he has been legally wronged and particularly in so important a matter as the pursuit of his chosen profession, has to be sent away from a court of justice empty handed save for an order for the recoupment of the expense to which he has been put in establishing a barren victory."

The appropriate remedy in such a case is a declaration that the action has been taken in breach of the decision-maker's duty to observe the rules of natural justice.

[24] The present case is distinguishable on its facts as the process had not been completed before the applicant resigned. The report and its findings however remain on the record and, although the question is finely balanced, I would not be prepared to dismiss the application summarily on the ground that the application has been rendered futile by his resignation.

Lawfulness of disciplinary proceedings

[25] The applicant argues that the decision made by Mr McCubbin to instigate an investigation was unlawful. He argues that a different procedure for investigating Ms Kucks' complaint should have taken place, that is the procedure set out in Directive No 4/03 – Grievance Resolution issued by the Office of Public Service Merit and Equity which applies where the aggrieved employee lodges a written grievance. Within two days of receipt of a written grievance alleging workplace harassment, the Public Service Commissioner must initiate mediation between the parties unless it is inappropriate. Various other procedures follow. Section 88 of the PS Act requires the employing authority to follow any relevant directive. The applicant submits that Ms Kucks lodged a grievance by the handwritten notes she prepared on 24 and 25 September 2003.

[26] It was, however, submitted by the respondents that no written grievance was received. No obligation is cast upon an employee in this situation to lodge a written grievance. An employee, to use the terminology of the directive, "may" do so. If an employee does so, then the procedures set out in Directive No 4/03 must be followed. If not, the directive does not apply. In my view, Ms Kucks' handwritten notes could be not considered sufficient to constitute a "grievance". They do not satisfy the requirements found in clause 5.8 of directive No 4/03, that it be in writing specifying the grounds on which the employee believes they have been adversely affected by an administrative decision or the conduct or behaviour of any employee, agent or contractor; the action which the claimant believes would resolve the grievance; and the attempts that the employee has made to resolve the grievances locally. Such a grievance must be lodged with the chief executive. Directive No 4/03 was not therefore a relevant directive as no grievance was received.

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6 (supra) WLR at 1172; All ER at 153: quoted with approval by Brennan J in *Ainsworth v Criminal Justice Commission* (supra) at 597.

[27] Mr McCubbin followed the disciplinary procedures set out in the DPI Human Resource Management Standards on Discipline and Workplace Harassment, being respectively DPI Corporate Standard HR.4.002 and DPI Corporate Standard HR.8.003. HR.4.002 sets out six stages in the discipline process being:

Stage 1:	Decide whether to initiate the Discipline Process;
Stage 2:	Notifying the Employee;
Stage 3:	Investigate;
Stage 4:	Show Cause;
Stage 5:	Consider Response, Make Finding and Advise Proposed Penalty;
Stage 6:	Advise Employee of Decision, Penalty and Appeal Rights.

[28] Having decided to initiate a discipline process, Mr McCubbin notified the employee, Mr Ivers, and appointed an external and disinterested investigator. Having received that report, he gave Mr Ivers the opportunity to show cause why disciplinary action should not be taken.

[29] There is nothing to suggest that the procedure followed by McCubbin was anything other than a regular and authorised procedure. It was not unlawful. If there is more than one possible procedure which is authorised, choosing one over the other cannot, without more, render the procedure chosen unlawful. Here no written grievance was received. There was, as I have said, no obligation on Ms Kucks to lodge a grievance. Her allegations were listened to and considered. Mr McCubbin decided to initiate the discipline process (stage 1) and notified the employee (stage 2). He appointed an investigator (stage 3) and called upon Mr Ivers to show cause (stage 4). Thereafter the process was interrupted by Mr Ivers' commencement of these proceedings and subsequently his resignation. The argument that the decision to appoint an investigator was unlawful is entirely misconceived and, in my view, bound to fail.

Natural justice

[30] Mr Ivers then argued that if the procedure chosen was lawful, the third respondent, Mr Briton, failed to accord him natural justice. If he was denied natural justice in the circumstances then a declaration to that effect could be made. As Brennan J held in *FAI Insurances Ltd v Winneke*:[7]

> "Where the exercise of a power is conditioned upon the provision of an opportunity to be heard, and there is a failure to prove such an opportunity, the consequence is that the purported exercise of the power is not efficacious, and the resulting ineffectiveness of the decision may be established by declaratory order."

[31] In particular Mr Ivers complained that he was not given access to every document seen by or information given to the external investigator. However, natural justice

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7 (1982) 151 CLR 342 at 419.

does not so require.[8] What is required is that person be made aware of what he or she is accused and by whom with sufficient particularity to be able to answer the allegations,[9] and be given the opportunity to answer the allegations.[10] As Mason J observed in the seminal decision of *Kioa v West*:[11]

> "It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is to be made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it: *Twist v. Randwick Municipal Council* (1976) 136 CLR 106, at p. 109; *Salemi* [No. 2] (1977) 137 CLR, at p. 419; *Ratu* (1977) 137 CLR, at p. 476; *Heatley v. Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487, at pp. 498-499; *F.A.I. Insurances Ltd v. Winneke* (1982) 151 CLR 342, at pp. 360, 376-377; *Annamunthodo v. Oilfields Workers' Trade Union* [1961] AC 945. The reference to 'right or interest' in this formulation must be understood as relating to personal liberty, status, preservation of livelihood and reputation, as well as to proprietary rights and interests."

[32] The applicant must have brought to his or her attention anything adverse to him or her upon which the decision-maker intends to act.[12] There is an obligation to bring to the applicant's attention the critical issue or factor on which the decision is likely to turn.[13]

[33] The requirements of procedural fairness or natural justice are not fixed but vary according to the circumstances.[14] As Brennan J held in *Kioa v West*:[15]

> "The principles of natural justice have a flexible quality which, chameleon-like, evokes a different response from the repository of a statutory power according to the circumstances in which the repository is to exercise the power. The variable content of the principles of natural justice was articulated by Tucker L.J. in an oft-cited passage in his judgment in *Russell v. Duke of Norfolk* [1949] 1 All ER 109, at p. 118:
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>> 'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which

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8 *Re Solomon* [1994] 2 Qd R 97 at 108.
9 *Carter v NSW Netball Association* [2004] NSWSC 737 at [121].
10 *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 350.
11 (1985) 159 CLR 550 at 582.
12 *Kioa v West* (supra) at 587.
13 *York v The General Medical Assessment Tribunal & Anor* [2002] QCA 519 at [27] per Jerrard JA.
14 *FAI Insurances Ltd v Winneke* (supra) at 350.
15 (supra) at 612-613.

> have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case'."

[34] The respondents did not submit that they were not obliged to accord natural justice to the applicant.[16] They quite correctly accept that they are so obliged.[17] Indeed, the principles of natural justice applicable to these circumstances are specifically recognised and set out in the DPI Corporate Standards referred to. HR.4.002, for example, mandates that any recommendations or decisions made during the discipline process must be in accordance with appropriate legislation and standards, supported by objective evidence which has taken all relevant matters into account, fair and just, and procedurally correct. Natural justice is correctly said to be a fundamental principle of administrative law which will apply to the process. It is said in these circumstances to require that:

> " • a person be advised of the factors to be taken into account in making a decision which affects them **and** that they be given an opportunity to respond to relevant information available to the decision-maker before any decision is made; and
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> • the decision-maker should have no personal interest in the matter to be decided that would render them not impartial, and must act in good faith throughout the process."

[35] A description of the requirements of natural justice are also set out in HR.8.003. The content of the rules of natural justice set out in the DPI Corporate Standard appear to be appropriate and adapted to the case under consideration. Moreover they appear to have been complied with.

[36] Mr Ivers was informed of the case against him with particularity and given the opportunity more than once to answer the allegations against him. That was not the end of the process. After the report was received, Mr Ivers' attention was drawn to anything adverse to him on which it was intended to act. He was invited to respond. Further, there is no evidence at all to support any assertion that the third respondent was biased. The applicant's argument that he was denied natural justice is entirely without merit.

Conclusion

[37] It follows in my view that no reasonable basis for the application has been shown and it should be dismissed pursuant to s 48 of the JR Act. No basis is therefore disclosed for the benefit of a costs order under s 49 of the JR Act and that should likewise be dismissed.

Reviewable decision under an enactment

[38] The respondents argued that no relevant decision was reviewable as it was not made under an enactment. It has not been necessary to decide that question as even if the

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[16] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 576.
[17] *Annetts v McCann* (supra) at 598.

decisions were made under an enactment, as it appears to me they were, that would not have made any difference to the outcome of this application. The material put before me was insufficient to make a final determination on that question and I prefer, therefore, not to do so.

Order

[39] The application for judicial review is dismissed.