

Exercise of Discretion by Public Decision-Makers: Common Pitfalls and How to Avoid Judicial Review

by
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Dr. Stephen Thomson is an Associate Professor and Director of the PhD and JSD Programmes at the School of Law, City University of Hong Kong. He is a Legal Adviser to the Ombudsman of Hong Kong, a member of the Constitutional Affairs and Human Rights Committee of the Law Society of Hong Kong, and an examiner on the Overseas Lawyers Qualification Examination. Dr. Thomson is the author of the leading text on 'Administrative Law in Hong Kong', and also the author of the only book to have been written on equitable jurisdiction in Scotland, which has been cited with approval in the supreme civil court in Scotland. He holds a Ph.D. in judicial review from the University of Edinburgh (UK), and has practical legal and commercial experience, having worked at a UK law firm and acted on a consultancy and advisory basis to law firms, private clients and public bodies in Hong Kong and the UK.

This course looks at the exercise of discretion (how to make decisions) by public decision-makers in the context of judicial review in Hong Kong. It begins by examining what discretion is and some of its underlying ideas and concepts.

The course then explores three main areas in which it is considered how public decision-makers should exercise discretion to reduce the likelihood of being successfully judicially reviewed. These are:

1. The role of policies, how they should be formulated and how they should be applied;
2. Relevance of considerations, failure to take into account relevant considerations and taking into account irrelevant considerations; and
3. Reasonableness, rationality and cogency of the exercise of discretion.

In each of these areas, we will consider common pitfalls that can lead decision-makers to violate one or more grounds of judicial review, and what decision-makers can do to minimise the likelihood of being successfully judicially reviewed.

While this is plainly of interest to practitioners representing or working for public decision-makers, it is also very useful for practitioners representing applicants for judicial review in terms of understanding the legal obligations of public decision-makers in this area. Your seminar leader will use accessible, easy-to-understand explanations and examples, and be pleased to answer your questions. All welcome.

Key points covered:

- What is discretion?
- The role of policies in decision-making
- How should policies be formulated?
- How should policies be applied?
- What are relevant considerations and how should they be folded into the decision-making process?
- What are irrelevant considerations and how should they be excluded from the decision-making process?
- What is unreasonableness and irrationality review? How does it work in practice?
- How can decision-makers exercise discretion in a way which minimises the prospects of being successfully reviewed on the basis of unreasonableness and irrationality?

Scan to Calendar



Code:	EVT000000323	Level:	Intermediate
Date:	15 July 2021 (Thursday) (Amended)	Language:	English
Time:	14:30 - 17:45 (Reception starts at 14:00)	Accreditation(s):	LSHK 3.0 CPD Points
Venue:	Online via Zoom	Request for Rerun:	Please Contact Us for Details



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