

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

by

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Stephen Thomson is an Assistant Professor at the Chinese University of Hong Kong (CUHK), where he leads teaching in administrative law. Dr. Thomson holds a Ph.D. in judicial review from the University of Edinburgh (UK), where he previously taught constitutional and administrative law on a part-time basis. In addition to his experience in the field of administrative law, Dr. Thomson is the leading authority on equitable jurisdiction in Scotland where he has written the only book on that subject. Dr. Thomson has practical legal and commercial experience, having worked at law firms and barristers' chambers in the UK and Channel Islands. He has acted on a consultancy basis to law firms, private clients and public bodies in Hong Kong and the UK. Dr. Thomson is also a Legal Adviser to the Ombudsman of Hong Kong.

This is an intermediate level course on the exercise of discretion by public decision-makers in the context of judicial review (administrative law) in Hong Kong. It will begin by examining what discretion is and some of its underlying ideas and concepts.

The course will then explore three principal areas in which it will be considered how public decision-makers should exercise discretion to reduce the prospects 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 prospects of being successfully judicially reviewed.

While this is plainly of interest to practitioners representing or working for public decision-makers, it is also useful for practitioners representing applicants for judicial review in terms of understanding the legal obligations of public decision-makers in this area.

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Contents

- 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 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:	EVT000000192	Level:	Intermediate
Date:	13 October 2017 (Friday) (Amended)	Language:	English
Time:	14:30 - 17:45 (Reception starts at 14:00)	Accreditation(s):	LSHK 3.0 CPD Points (LSHK Allocated Number: 20172769)
Venue:	Kornerstone Institute 15/F, Hip Shing Hong Centre 55 Des Voeux Road Central Central, Hong Kong	Request for Rerun:	Please Contact Us for Details



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