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### Right to be Heard — A Fundamental Principle of Natural Justice

It is a fundamental principle of natural justice that every person should be accorded the right to be heard before being subjected to any sanction by the courts. This principle has existed since time immemorial and is encapsulated in the Latin maxim, *audi alteram partem*, which means “let the other side be heard”.

In the recent Federal Court decision of *Dr Lourdes Dava Raj*,<sup>1</sup> lawyers from Messrs [Lee Hishammuddin Allen & Gledhill, Lambert Rasa-Ratnam](#) and **Chan Mun Yew**, successfully set aside an adverse court order that was made against their client, a medical practitioner, in breach of his fundamental right to be heard. Despite being a person directly and personally affected by the reliefs sought in a judicial review, the practitioner was never made a party to the judicial review proceedings or even informed about it.

As a consequence, an adverse order was made against him by the Court of Appeal in his absence. To seek justice, the practitioner was advised to file a motion to intervene in the Court of Appeal proceedings for the purpose of setting aside the adverse order. The motion was dismissed by the Court of Appeal on essentially the following grounds:<sup>2</sup>

- (a) Based on the Federal Court’s decision of *Staghorn*,<sup>3</sup> an application for leave to intervene in proceedings must be made before an order/judgment has been entered into in that proceedings. Otherwise, the proceedings would be deemed concluded and there is no longer a proceeding in existence for a person to intervene; and

<sup>1</sup> *Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Malaysian Medical Council* [2020] 5 MLJ 185 (FC)

<sup>2</sup> *Dr Milton Lum Siew Wah v Malaysian Medical Council (Dr Lourdes Dava Raj a/l Curuz Durai Raj — Proposed Intervener)* [2018] 8 AMR 105; [2018] MLJU 1018 (CA)

<sup>3</sup> *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 (FC)

- (b) The issue of waiver, estoppel and *res judicata* prevented the practitioner from setting aside the impugned order.

On appeal, the Federal Court agreed with submissions by the practitioner's counsel and held:

- (a) The adverse order is a nullity for breach of natural justice. The principles of natural justice are not satisfied by mere reason of the practitioner having the opportunity to defend himself in the domestic inquiry proceedings. The right to be heard extends to all stages of proceedings which affected him, including the judicial review proceedings in the High Court and the Court of Appeal;
- (b) The principle in *Staghorn* does not apply to court orders which are null and void, as that would be unjust to persons aggrieved by such orders;
- (c) The issue of waiver, estoppel and *res judicata* do not arise in view of the factual matrix of the case and the miscarriage of justice suffered by the practitioner.

The Federal Court's decision is a timely reminder that the right to be heard is a fundamental rule of natural justice, which should not be disregarded by litigants and legal practitioners. While legal practitioners have a duty to act in the best interest of their clients, it must always be remembered that there is an overarching duty towards the courts and the administration of justice.

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