

SECTION 3: INDEPENDENT TRIBUNAL AND APPEALS BOARD PROCEDURES FOR TRIBUNAL AND APPEAL BOARD MEMBERS

IMPORTANT: The relevant rules and regulations contained earlier in the VCFL Handbook (“the VCFL rules”) are to be adhered to at all times. The following information is designed to assist in the application of the relevant VCFL rules. Where a provision in these guidelines is inconsistent with a provision in the VCFL Rules, the provision in the VCFL Rules shall prevail to the extent of the inconsistency.

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1.0 INTRODUCTION

We live in what is an increasing litigious world, that is, people in all walks of life are quick to resort to legal action to seek redress of what they see as a wrong done to them. With greater awareness of their rights and a greater access to legal aid, this greater readiness to go to law will continue to increase. One of the adverse aspects of this tendency is that well-meaning, honorary and amateur Tribunal members are at greater risk of finding themselves unwittingly engaged as Defendants in traumatic, time-consuming, and costly, Supreme Court litigation.

So it behoves those in our community who give of their time and goodwill in accepting honorary positions on Tribunals to take care and to become aware of what is expected of them when they give up a couple of hours on a Tuesday night to hear the case of Player X seeking a clearance from Club Y to Club Z or to hear the case of Player A charged with striking Player B with a clenched fist to the face.

The law expects certain standards of justice from those who accept the challenge of acting as Tribunal members and if one is not prepared to accept a little education in the area of ones responsibilities, it is best that the appointment not be accepted.

It is important that all leagues look at their constitutions to ensure that the Tribunals, are set up in the correct way, are given wide powers and that their powers are beyond legal challenge in terms of delegating power to that Tribunal and to make sure the tribunal is set up in such a way so it can effectively execute its powers, responsibilities and duties accordingly.

The Law does not expect Tribunal members to be expert in the intricacies of criminal law, contract law or administrative law. What the Law expects is that Tribunals will act fairly and responsibly and in accordance with what are commonly called the rules of natural justice. These rules of natural justice are not enshrined in any Act of Parliament which can be read and understood.

They have evolved over centuries of our law and basically can be summed up as meaning that all parties before the Tribunal must be given proper opportunity to be heard, to call all witnesses they desire to call, to question evidence called against them and to have the questions before the Tribunal determined only on the evidence before it and determined without bias or prejudice.

It is important to ask the player and his advocate whether they are satisfied that they have been given

the opportunity to lead and give all evidence in the matter.

It is the Tribunal's responsibility to enforce the rules under which the sport is administered and therefore it is imperative that Tribunal members become familiar with the VCFL rules and their particular league Constitution and Rules, in so far as they affect the issue before the Tribunal.

Remember, it's the Tribunal members who will make the decision which is subject to challenge – not the League Secretary. It is not for a Tribunal to say “Well that rule's pretty silly”, so in this case well just ignore it and make the decision we think is the fairest.

It's the Clubs who have joined together to make Leagues, who in turn join together to make up the VCFL. By their own Constitutions and Rules, they have decided how they will be governed. Just as the Courts of Law must interpret the laws which are made by our elected Parliament, and then enforce those laws as they apply to the facts of a case as determined by the Court – so also must a Tribunal decide the facts contested before it, and then apply the laws of the local league and VCFL, as interpreted by the Tribunal, to those facts.

The VCFL rules lay down the procedures to be followed in the hearing of charges and clearance appeals.

To those dedicated people who are members of the Independent Tribunals of affiliated leagues of the VCFL, the VCFL extends its appreciation for your significant contribution to our game in this most important role.

The VCFL trusts the contents of what follows will be of benefit and assistance to you in discharging your onerous responsibilities.

2.0: LEAGUE INDEPENDENT TRIBUNAL

2.1: Relevant VCFL Rule(s)

(Refer Appendix 1 for sample Tribunal Running Sheet)

The rules and regulations relating to the establishment, jurisdiction and procedure of a League Independent Tribunal are contained in VCFL rule 7.0.

2.2: League Independent Tribunal Procedure

Tribunal Procedure – Charges against Players and Officials etc.

The following provisions, which provide guidance for the conduct of a Tribunal hearing, have been

prepared by the VCFL Rules Sub-Committee and shall be adopted by all Affiliated Leagues. For convenience, the guidelines make reference to a "player" as being the person appearing before the Tribunal, however the guidelines do apply to and should be read as applying to any other person appearing before a Tribunal.

NOTE: All Tribunal Hearings shall be tape recorded and such tapes shall be kept for at least two (2) months.

1. A copy of the Umpires' report complying with the format of AFL/VCFL (Umpires Report Form) must be lodged with or be mailed to the League Secretary not later than midnight on the second day after the match, or as determined by the local league. If the report is not mailed or lodged as stated above, the charge shall lapse and not be heard unless otherwise determined by the Tribunal.

2. Upon assembly and after the Tribunal has selected a Chairman (if necessary), the Umpire and his advocate (if any), the players and their advocates (if any) shall be summoned before the Tribunal. Advocates may be delegates or officials of clubs but shall not be a barrister or solicitor.

The Chairman and Members of the Tribunal may ask questions of any person as they desire at any time throughout the hearing.

3. The Umpire's/Investigation Officer's written report is read by the Chairman who shall be in possession of the team sheets and any other relevant correspondence.

4. At the outset of the Hearing, the Chairman shall:

- (a) ask the player's advocate whether he has any objection to any member of the Tribunal hearing and determining the matter; and
- (b) read and table the Report and ask the player's advocate if he has any objections or submissions in respect of that report.
- (c) ask the umpire or his advocate if he now seeks to amend his report.
- (d) if an objection is raised on an issue, it should be appropriately dealt with by the tribunal.

5. The Tribunal Chairman asks the charged player if he was

No. of the Football Club on the day stated and also asks the same question of any player or players also mentioned in the Umpires report. The Umpire, charged player and all advocates shall remain and all other parties will retire until recalled.

6. The charged player is then asked to plead guilty or not guilty.

7. After the player pleads, the Umpire is asked to amplify his report and may be questioned by his advocate and the player and the players advocate. The Umpire may then call his witnesses if any.

8. The other player mentioned in the report is then recalled and asked to give his version of the incident and may be questioned by his advocate, the Umpire and his advocate, the charged player and the advocate.

9. The charged player is then asked to give his version and may be questioned by his advocate and the Umpire and the Umpires advocate.

10. The charged player may then call his witnesses. Once a witness is called to give evidence, he must remain in the room until the case is finished. Each witness is asked to give his version of the incident and may be questioned by the advocates as desired.

11. After all evidence is given, both advocates are given the opportunity of summing up their cases and when the Tribunal is satisfied that it has all the evidence it needs to enable it to come to a decision, the Tribunal will consider the case and record a finding based on what it believes to be the facts.

12. When this is done, all the parties to the hearing re-assemble and the Chairman announces the finding. If the player is found guilty, his advocate will, on behalf of the player be given the opportunity by the Chairman to make a submission on the question of sanction. The Tribunal Chairman asks Tribunal Secretary of the guilty player's tribunal record. The findings are then determined and recorded and signed by all members of the Tribunal.

13. Players reported for a field offence must attend the next scheduled hearing of the Tribunal. The player cannot play until the case has been heard. Where the tribunal deems that the player has reasonably been unable to attend the hearing and therefore adjourns the matter the player shall be eligible to play pending resolution of the matter.

14. Phone evidence may be allowable at the Tribunal Chairman's discretion.

NOTE: In the absence of an advocate, the player and/or Umpire as the case may be, takes the place of the advocate.

The umpire is required to be present at the tribunal hearing into the charge(s) he has laid against player(s). If, due to unforeseen and urgent extenuating circumstances it is not possible for the umpire to be present at the hearing, and, subject to the agreement of the tribunal to proceed with the hearing in the umpires absence, the following rules shall also apply:--

- (a) The Umpire shall forward to the Secretary of the League in addition to the brief written report of the incident, a detailed statement setting out the particulars of the incident in full together with such other relevant information as in the opinion of the Umpire would be of benefit to the Tribunal in enabling it to reach a decision.

If the detailed statement is not received by the Secretary of the League at least eight hours prior to the time set down for the Tribunal hearing the charge shall lapse and not be heard unless otherwise determined by the Tribunal.

- (b) After the brief report has been read as before and the player has pleaded, the detailed statement of the Umpire is then read and at the same time a copy of his statement made available to the reported player by the Tribunal Chairman.
- (c) The Tribunal then hears any witnesses called on behalf of and at the request of the Umpire. These witnesses may be questioned, in turn, as in 10 (as previous).
- (d) The other player is heard as in 8 (as previous).
- (e) The player then gives his version of the incident and may be questioned as set out in 9 (as previous).
- (f) The players may then call witnesses and these, in turn, may be questioned as in 10.
- (g) Then the hearing proceeds as set out in 11 and 12.

A player shall not be permitted to play with any team during the time of suspension.

In the case of a charge made at an interleague, night or practice match, the Tribunal hearing the charge shall have sole discretion in imposing the sanction and if a suspension is imposed, determining to which matches any suspension will apply.

A suspension shall terminate at midnight immediately after the round of matches in which the player's final match of the suspension period is completed.

Note: All Tribunal and Appeal hearings to be audio taped.

2.3: Practice Match Arrangements

Where a practice or pre-season match is played and a registered field umpire reports a player at or during the match, the following shall apply:-

- (a) The player who is reported must appear before the League Tribunal of the host club or organising League conducting the match.

Such League Tribunal shall hear and determine the matter on both the question of liability and sanction.

- (b) Where the practice or pre-season match is hosted by a VFL or VAFA Club, the League Tribunal of the VFL or VAFA, as the case may be, shall hear and determine the issue of liability only. If a report is found proven against a player, the matter shall be referred to the player's League Tribunal on the question of sanction.

2.4: Set Penalties

All VCFL affiliated Leagues shall adopt set penalties for reportable offences and such set penalties shall contain the following provisions. (Refer VCFL Rule 12.0 – Set Penalties)

3. INVESTIGATION OFFICER

3.1: Relevant VCFL Rules VCFL Rules 5.1 and 5.2

(Refer VCFL Rule 5.0 Conduct Unbecoming)

(Refer Appendix 2 - Recommended Role and Procedure of Investigation Officer)

4. PLAYER CLEARANCE APPEALS – AREA APPEAL COMMITTEE

4.1: Relevant VCFL Rules

The relevant rules and regulations relating to player clearance appeals are contained in VCFL Rules 7.0 and 8.0) – Refer Appendix 3

4.2: Player Transfers VCFL Solicitors Advice

Mr. Jeff Browne (BA,LLB)

We note that the incidence of players threatening legal action against Clubs and Leagues for refusing transfers is regrettably on the increase and in those circumstances it is important to ensure that the decision making bodies act properly and in accordance with law, in deciding whether or not to grant or refuse clearances. Footballer's and their Clubs are under the law, in an employer/employee relationship and the restraint of trade doctrine established in the case of Nordenfelt vs. Maxim Nordenfelt Guns & Ammunitions Co. (1894) A.C.535 provides that an employee should be free to choose his own employer and any restriction upon that is against public policy. That has been modified to the point where restraints are permissible but only to the extent that such

restraints can support the protection of a higher interest.

In the case of football competitions, it is an accepted principle of law that it is a legitimate object of a sporting organisation to ensure that the teams in the competition are strong and well matched – see *Buckley vs. Tutty* (1971) 125C.L.R. 353.

Another legitimate object which has been recognised by the Courts is the development and control over the administration and organisation of a sporting competition and in the case of *Kim Hughes vs. Western Australian Cricket Association* (1986-87) 69A.L.R. 660 the Court accepted that the Cricket Council had a legitimate object in ensuring the orderly playing of cricket in Western Australia.

A further principle supported by the Court in the case of *Foschini vs. VFL and South Melbourne Football Club Ltd.* is the right to structure rules so as to ensure that there are sufficient young players coming from junior levels. In other words junior development underwrites the future of the competition by maintaining a base from which future players are chosen.

It follows therefore that any country football league can have as its legitimate objects and seek to achieve:-

1. An even and well matched competition.
2. A properly organised and well administered structure.
3. A junior development program designed to support the main competition.

It follows that in any analysis of rules restraining the freedom of players to move between Clubs, the only justification for restriction is that those restrictions promote the legitimate objects of the League.

For example, if all of the good players wish to play for the best team, the League could argue that that would be harmful to the competition and promote rules designed to restrict transfers. If not the competition would collapse.

It is important that each of the Leagues have effective appeal procedures so that there is one body which can determine whether or not a player should transfer notwithstanding that the club has refused that transfer.

The law would have it that the Tribunal determining the players right to transfer should start from a presumption that players should be free to move between Clubs unless there are sufficient policy reasons to restrain him.

The Tribunal must take into account the additional benefits offered to the player at the transferee Club in those cases to deny a clearance would result in financial hardship.

If the financial considerations are the same, the Tribunal is entitled to consider the interest of the player in playing in a higher grade for another team, i.e., if a reserves player for a top team could obtain selection in the senior grade team of a Club lower down the list, then that opportunity ought to be recognised as being valuable to the player.

Conversely the Tribunal must consider the effect of the loss of the player on the transferor team so that a star player in a weaker Club might be refused a clearance on the basis that to do so would leave the transferor Club languishing on the ladder and create unevenness in the competition by allowing one of the more successful Clubs to increase its advantage over other Clubs in the competition.

Another matter which is highly relevant to the consideration of any Tribunal in determining whether or not a player should be cleared is the length of the service that the player has given to the transferor Club. It is fair to say that a player who has given many years of service to one Club should be free to transfer and conversely players who have given only a short period of service may be restricted again on the basis that Clubs are entitled to protect their base of young and inexperienced players.

As you can see from the above there are circumstances in which Tribunals can justify refusing clearances.

A refusal is only justified if in doing so, the Tribunal is protecting legitimate interests of the League and not unduly interfering with the Common Law rights of the player. The balancing of interests is not easy.

In any guidelines given to Tribunals charged with the responsibility of determining whether or not to grant clearances, that Tribunal must be directed to take account of the interests of:-

1. The player having regard to:-
 - (a) the difference between the benefits and opportunities available to the player at the Club which he wishes to join and those available at the Club which he wishes to leave including other employment opportunities outside of football and the opportunity to better develop the skills of the player as a footballer and to improve or maintain his standard of living.
 - (b) the service that has been provided by the player to his present Club.

(c) the desirability of playing football for a well administered and organised Club.

2. The League having regard to:-

(a) establishing and maintaining an evenly matched competition between competing Clubs.

(b) ensuring sufficient stability in the membership of Club teams to enable team spirit and public support to be maintained and enhanced.

(c) preventing the stronger Clubs from obtaining an unfair proportion of players from weaker Clubs so as to prejudice the competitiveness of the weaker Clubs.

(d) encouraging Clubs to expend time and effort in the development of junior footballer's.

(e) ensuring that the competing Clubs are able to obtain a blend of young players and experienced players in their teams.

3. The Club from which the player proposes to transfer having regard to:-

(a) the time and effort spent by the Club in developing the player and assisting him to improve his skill as a footballer.

(b) any benefits and opportunities which have been given or provided to or made available to the player by the Club.

(c) the effect of the loss of the player on the competitiveness of the Club's team and the effect of the same on the competition.

(d) the effect of the loss of the player on the ability of the Club to earn income and generate revenue.

4. The interest of the Club to which the player proposes to transfer having regard to:-

(a) the need to improve the playing strength of that Club's teams.

(b) the need to improve that Club's ability to earn income and generate revenue.

(c) the effect of the acquisition of the player's services on the competitiveness of the Club's teams in the competition.

If upon consideration of all of the above matters, a Tribunal charged with the responsibility of determining whether or not a player should be cleared to another Club within the competition determines that to refuse a clearance would assist the League in the achievement of its legitimate objectives and would not impose hardship upon the player, then a Tribunal can justifiably refuse to grant a clearance.

Where however players are offered increased benefits at other Clubs and provided that any one clearance application is not part of an overall process of players from lower or middle Clubs applying to join the stronger and wealthier Clubs than in general terms, clearances should be granted.

The matter is complicated and we apologise for not being able to provide a quick solution to the problem. If however your various Tribunals can understand the principles involved and then with common sense, weigh up the various interests starting always from the presumption in favour of granting a transfer, then it is more likely that those Tribunals can resist any action taken by an aggrieved player or Club, seeking to attack the position of the Tribunal.

Player Clearance Appeals – Summary

There was a time when considerable weight was given to the desire of a Club to retain its player particularly when that player may have come up through the ranks of the Club and it seemed the player owed a duty to give further of his services as repayment for his football education. And it does not seem so long ago that the very prospect of a player leaving or wishing to leave one Club for financial gain would have guaranteed the failure of his appeal.

All Tribunal and Area Appeal Committee members must clearly understand that this is no longer the case. The law clearly recognises the right of a human being to advance himself financially by the use of his skills and a sporting skill is one which may be plied to the advantage of its owner.

That is not to say that every player is entitled to a clearance at all times purely because he stands to make a financial gain by transfer. A Tribunal has to consider the potential advantage which may flow to the player if his transfer is approved; it also has to consider the well-being of the League and the effects the particular transfer and its potential effect may have on the Clubs concerned and the League in general.

However, in general terms, it would be dangerous for a Tribunal to refuse a Clearance where increased benefits will be available to the player if the Clearance is granted and provided that the particular application is not part of an overall process of players from lower Clubs applying to join the stronger Clubs in a particular League.

5. VCFL LEGAL CHALLENGE PROCEDURE

The VCFL recommends that when an affiliated body is threatened with Legal action against it, relating to its direct affiliation to the VCFL, the following action be taken:

- (i) Immediately notice is received of any legal threat, the Club shall immediately advise the VCFL through the local VCFL Area Manager, of the legal threat, and provide to the VCFL any papers, letters, summonses, statements of claim, affidavits, or any other legal papers together with the advice from its own Solicitor, at the time of advising the VCFL.
- (ii) The VCFL may arrange for its own advice on the legal threat, to enable comparison with the legal advice referred to in (i) above.
- (iii) An affiliated body should take no action to defend or settle, until approved by the VCFL administration and no party shall purport to act for or bind the VCFL, except where a person is specifically authorised in writing, to do so.
- (iv) This procedure is not applicable for action which does not involve or relate to the Rules & Regulations of the VCFL as applicable to affiliated bodies.

The objective of implementing this procedure, is to protect the VCFL Rules from unnecessary challenge by ensuring that the best and expert legal advice is available to concerned parties at all times.

The VCFL's policy of not financing Club and League legal defences will continue to apply unless this procedure is followed and the VCFL agrees to support action, prior to its implementation.

APPENDIX 1 - SUGGESTED LEAGUE INDEPENDENT TRIBUNAL "RUNNING SHEET"

1. CHAIRMAN

This session of the
Football League's Independent Tribunal is now
open. Mr. Secretary, would you make the
introductions.

2. SECRETARY

The Chairman for this hearing is
.....

The Panel Members are
.....
and

The reported player is

His advocate is

The offended player is

His advocate is

The reporting umpire is

His advocate is

3. CHAIRMAN

Are you player number of
..... Football Club, the reported player?

Are you umpire
the officiating and reporting umpire?

4. CHAIRMAN

Would the offended player and all witnesses please
vacate the room until called.

5. CHAIRMAN

Reads umpires report sheet.

Asks player's advocate – do you object to any
member of the Tribunal hearing this matter or the
report.

6. CHAIRMAN

Player number of,
you have heard the charge. How do you plead,
guilty or not guilty?

7. PLAYER

Responds.

8. CHAIRMAN

Umpire,
would you please enlarge on your written report.

9. UMPIRE

Responds.

10. CHAIRMAN

Asks questions of the umpire, then asks the other
panel members if they have any questions of the

umpire. The charged player's advocate is then asked
if they have any questions of the umpire.

(Order for Questions) Chairman and Panel.
Umpire's Advocate. Charged Player's Advocate.

11. CHAIRMAN

Asks Secretary to admit the offended player.

12. CHAIRMAN

Player number of,
would you give the tribunal your version of why
you think the umpire reported player number
..... of

13. PLAYER

Responds.

14. CHAIRMAN

Any questions of the offended player:

Chairman and Panel. Offended Player's Advocate.
Umpire's Advocate. Charged Player's Advocate.

15. CHAIRMAN

Asks the charged player: Are you player number
..... of,
would you give your version of the reported
incident.

16. PLAYER

Responds.

17. CHAIRMAN

Any questions of the charged player:

Chairman and Panel. Charged Player's Advocate.
Umpire's Advocate.

18. CHAIRMAN

Ask for any witnesses to be called and may be
questioned by all parties. Charged player's
witnesses to be called before any witness for the
offended player. The Independent Tribunal should
carefully consider the status and independence of
witnesses giving evidence when assessing the
weighting of the credibility of the evidence given.

19. CHAIRMAN

Asks for parties if they have any more questions of
anyone.

20. CHAIRMAN

To ensure natural justice to all parties concerned,
you are reminded of Rule 8.6 of the VCFL
Handbook.

21. CHAIRMAN

Reads VCFL Rule 8.3.

22. CHAIRMAN

Asks if all parties are satisfied that all the available evidence has been presented to the tribunal.

23. Asks for summing up by:

Umpire Advocate. Advocate for offended player. Advocate for charged player.

24. CHAIRMAN

Asks all parties, including tribunal secretary, to vacate the room.

25. * * *

Panel considers evidence and having reached a verdict asks all parties to resume.

26. CHAIRMAN

Player of would you stand.

27. CHAIRMAN

We have carefully considered the evidence as presented and find you as charged. (Guilty or Not Guilty).

28. CHAIRMAN

If found guilty: Advocate for the charged player, do you wish to enter a plea on behalf of your player?

29. ADVOCATE

Responds.

30. CHAIRMAN

Asks Tribunal Secretary for the guilty player's tribunal record.

31. CHAIRMAN

Asks all parties, including the tribunal secretary, to vacate the room.

32. CHAIRMAN

Recalls all parties. The penalty decided on is (matches in which your club plays for premiership points).

The Chairman should be aware that this procedure applies also to players on permit as per VCFL Rule 2.1.

The Chairman should also refer to Rule 8, 7.1.1.

33. CHAIRMAN

This case is now closed and I thank you for your attendance.

Guidelines for Player Advocates

Role of a players advocate.

Guidelines to assist with preparation and presentation of a case before tribunal hearings.

The following notes are intended solely as a practical guide to tribunal hearings in general and are not to be construed as laws to follow. For further

and more detailed information a study of laws of the game and available text books is recommended.

Players Advocate:

Duties:

It has been suggested that every advocate has a duty to the following:

Case Preparation

- (i) Preparation
- (ii) Presentation
- (iii) Evidence to be led
- (iv) Summary

Preparation

The successful advocate will begin his preparation long before he is to appear before the tribunal, in fact he has a duty to prepare himself, generally by studying the various documents in his possession and by endeavouring to gain a good knowledge of relevant statements.

In addition he must:

Know his brief. His Player/witness.

In relation to the brief, consider the following matters:

- (1) Is the proper date on charge sheet.
- (2) Is the charge properly laid.
- (3) Is there a more appropriate charge.
- (4) Are all your witnesses available.
- (5) Are they listed to be called in the most advantageous order.

Study

Read the laws of the game, know what is required of umpires when making reports, this is necessary if you are to do justice to yourself and the player/club you are representing.

Consider the Witnesses

Meet them before the case, put them at ease; see if they are nervous by their attendance at the tribunal. See if you can alleviate this.

Do not call witnesses in illogical sequence to the detriment of your case.

Presentation

In presenting your case you should pay attention to the following matters:

Dress appropriately. Be alert, Speak clearly, concisely. Don't mumble.

“Stand up – speak up – wake up” your bearings and manner or speech will have a marked effect on your success as an advocate, try to appear confident, speak loudly, clearly, and conduct yourself with dignity. At all times remain alert, take notes observe

everything said and done by others. Take notes of everything said including what the chairman says, when delivering his penalty.

Appearance at Tribunal

“Be respectful always”. This cannot be stressed too often, as we frequently find heated arguments developing in tribunals. It matters not that others become heated, the advocate must at all times keep his emotions in check.

Should you or your witness be criticised by the tribunal do not allow yourself to be provoked in making remarks you may regret later.

However, tact and discretion should remove any cause for unpleasantness and your bearing, manner and behaviour will have a marked impression on those in the tribunal so “be respectful always”.

Evidence

Introduction

Under the VCFL system, the onus is on the umpires to prove the guilt of the player. The proof of a charge against any player can be established only by the production of evidence in support of the charge.

In discharging the burden of proof, only that evidence which is logically relevant to the facts in issue may be introduced. Evidence can be given orally, only by witnesses who are competent.

A plea of guilty is an admission of the truth of the charge, but not necessarily of the truth of the evidence in support of it. Sustained questioning on the facts may illicit provocation, or other elements to be considered by the tribunal when determining penalty.

Nature of Evidence

As a general proposition it can be said that evidence consists of:

Facts, Testimony, Documents and Physical Exhibits which may be admitted in order to prove or disprove the facts under inquiry.

Sources of Evidence

The following are the sources from which the advocate may obtain evidence to rebut the charge:

- (i) Examination of charge sheets.
- (ii) Interview of player/witness.
- (iii) Information received from club officials, members of public, officials at game.

Charge Sheet

Your most important document. Read it line by line looking for mistakes.

Check List: Correct date? Correct charge? Is it signed by umpire? Right player named? Right

player number? Right clubs named? What quarter incident?

Every document tells a story, it is to your advantage, don't take for granted that it will be right.

Documentary Evidence

If a photograph or a medical report is tendered at the hearing by someone other than the photographer or medical practitioner then the Tribunal must satisfy itself that such photograph or report is valid. Eg Have the photographer available if needs be, have the medical report provided on letter head.

Video Evidence

- (1) The tribunal and or Area Appeals Committee should admit video evidence if such evidence is available.
- (2) The club which intends to rely on the video evidence (“The Club”) must provide a copy of such evidence to the league secretary at least 24hrs prior to the hearing.
- (3) At the hearing the league secretary must provide opportunity for all interested parties to view the video evidence prior to the commencement of the hearing.
- (4) It shall be a condition of admissibility of the video evidence that the club shall make available the person who recorded the video of the incident for examination by the tribunal and any interested party.
- (5) Subsequent to the viewing of video evidence but prior to the commencement of the hearing, the reporting official may elect to withdraw the report.

Evaluating the Evidence

- (a) Consider the charge(s) laid or possible charge(s) arising from the allegation being heard.
- (b) Analyse the charge(s) to establish the proofs which have to be satisfied to sustain this charge(s).
- (c) Consider what evidence is available and what must be sought to satisfy those proofs.
- (d) Determine what evidence we have available for cross- examination of umpire witnesses.

Qualities required of a Witness

- (1) He must have seen or heard something.
- (2) He must be able to remember what he said or heard.
- (3) He must have a degree of moral sense in that he must understand the duty of telling the truth; otherwise his evidence is valueless.

Appreciation of a Witness's Evidence

Memory is based on the ability to:

- (a) Observe
- (b) Retain what is observed
- (c) Recall what has been retained

The power of memory varies from person to person and in accordance with the circumstances under which the observation was made. There are occasions when a person makes a conscious effort at controlled visualisation and other occasions when the mind is free wheeling and the observation is not recorded.

A witness may have observed an incident for a few fleeting seconds and has the ability to recall the event in accurate detail which will depend on a number of factors.

Weather – fine – raining. Distance from incident. Obstructions, blocked view, etc.

The purpose of questioning is to try and demonstrate to the tribunal that the witness fails to satisfy one or more of these demands, that is to cast a doubt on his evidence.

Questioning of Witnesses

Basic Questioning

In any hearing, the advocate seeks the answers to questions concerning the matter under inquiry. If all of the right questions are asked, at least some of the right answers will be obtained. If none of the right questions are asked none of the right answers will be forthcoming.

Basic questions are: What? When? Where? How?

Extensions of the above are

What

What happened, what was the motive? What, height, weight, build?

When

When did the incident occur? When did you observe it? When did you decide to report it?

Where

Where did the incident occur? Where were you/distance/vision? Where were the players? Where were the other umpires?

How

How did it happen/describe?

The art of questioning can only be developed from long experience and practice, however, if the average advocate observes a few rules we can achieve a fair standard of efficiency. The basis of good questioning is simple.

Know what you want – when you get it sit down.

The effect of many good questions diminishes greatly if, after asking them, you then potter along with a series of ineffective questions which, perhaps weary and even irritate the tribunal/chairman.

When Questioning

- (1) Be brief.
- (2) Never ask a question to which you do not already know the answer.
- (3) Listen to the answer.
- (4) Do not quarrel with the witness.
- (5) Avoid one question too many.

Warning

Never take anyone's word as to the contents of a written exhibit or as to the appearance of that exhibit. Examine all exhibits yourself, it is your responsibility.

Through research and self application advocates can develop the proper attitude and skills necessary to prepare notes and a brief to present before a tribunal with confidence and competence.

APPENDIX 2 - RECOMMENDED ROLE AND PROCEDURE OF INVESTIGATION OFFICER

1. The Investigation Officer is instructed by the League Secretary to investigate the matter. The League Secretary supplies all relevant details regarding the alleged incident.
2. The Investigation Officer views video of alleged incident (if available).
3. The Investigation Officer interviews all witnesses (players, umpires, officials, spectators) pertaining to the matter taking a written copy of the interview. It is recommended that the interview be conducted in Question and Answer format.
For example:
Investigation Officer: Are you player (name)
the wearer of number of (Club)
who played in game (Club)
vs (Club)
on (date) at (Venue)
(can be modified for non-player witnesses).
Player/Official/Other: Responds.
Investigation Officer: It has been alleged that (description of alleged incident). What did you see of the alleged incident?
Player/Official/Other: Responds.
Investigation Officer: Asks further questions relevant to the alleged incident in order to obtain as much detail as possible.
At conclusion of interview Investigation Officer reads a copy of the interview to the witness who agrees to content of interview and signs copy of interview.
4. The Investigation Officer submits all correspondence relating to the matter to the League Secretary with a recommendation as to whether the matter should be dealt with by the League Independent Tribunal. In the conduct of the investigation and in making the recommendation the Investigation Officer should have an open mind with any doubt regarding the events of the incident being considered in favour of the investigated player or official.
5. Proforma Notice from Investigation Officer to League

The following example of a notice from an Investigation Officer to a league is recommended for use by Investigation Officers when recommending charges be laid following an investigation per VCFL Rule 5.2. The notice would obviously have to be changed for each investigation although its general wording and presentation is recommended.

The Secretary

..... Football League
Date:

1. On(date), I received notification from the Football League requesting an investigation be conducted, per VCFL Rule 5.2, into an incident that allegedly took place between player X of club) and player Y of (club).
2. The incident referred to by the Football Club (reporting clubs) relates to thequarter of the senior grade match between the two clubs on Saturday (date) played at theoval.
The (club) alleges that their player Y was struck by player X.
3. On the night of (date), I spoke to the victim, other players, officials and spectators at (venue) I have taken statements from the following: (names).
4. On the night of (date) I attended at and interviewed player X together with witness (name). Earlier in the day I had taken a statement from (club) player (name).
5. All parties agree on the fact that Player X struck Player Y. It was not in a contest for the ball, in fact play may have been at least 40 metres away. It appears the incident happened some distance behind play (more details of the incident can be supplied if desired).

- 6a. After making enquires into this incident, it is my opinion that Player X may have a charge to answer per VCFL Rule 5.0 of Unbecoming Conduct, and therefore recommend that he be called before the League Independent Tribunal to answer that charge of unbecoming conduct in that he

- 6b. After making inquiries into this incident it is my opinion that Player X does not have to answer any charge and recommend no further action is necessary.

- 7. I have retained possession of all original signed documents in this matter. This report is forwarded to the league for action by the League Executive.
 (signed)
 (date)

 League Investigation Officer.

- 8. In any proceeding brought before a tribunal under this rule the Investigation Officer shall personally appear before it and lay the necessary charge or charges and act as the prosecuting officer for the League.

