

JUDGMENT

IN THE SUPREME COURT OF JUDICIATURE OF JAMAICA

CLAIM NO. 03147 of 2009

BETWEEN	SAINT CATHERINE CRICKET CLUB	1ST CLAIMANT
AND	MELBOURNE CRICKET CLUB	2ND CLAIMANT
AND	JAMAICA CRICKET ASSOCIATION LIMITED	DEFENDANT

Mr. Roderick Gordon and Ms. Candice Castillo instructed by Gordon McGrath for the Claimants.

Ms. Maliaca Wong instructed by Myers Fletcher & Gordon for the Defendant.

Heard: 8 January, 4 March 2010.

MEMBERS OF JAMAICA CRICKET ASSOCIATION - COMPANY LIMITED BY GUARANTEE-INTERPRETATION OF RULE AS TO ELIGIBILITY OF PLAYER AND SANCTIONS PROVIDED FOR- -RULE CONTAINING WORDS "SHALL" AND "MAY" AND "AND/OR" - WHETHER CERTAIN SANCTION MANDATORY OR DISCRETIONARY- WHETHER OTHER PARTICIPANTS IN COMPETITION HAVE RIGHT TO BE HEARD IN RELATION TO SANCTION TO BE APPLIED TO COMPETING MEMBER CLUB/ASSOCIATION

Mangatal J :

1. The Claimants Saint Catherine Cricket Club and Melbourne Cricket Club are members of the Defendant Company the Jamaica Cricket Association Limited "the J.C.A."

2. The J.C.A. is a limited liability company duly incorporated under the Laws of Jamaica and is a company limited by guarantee, having no share capital.
3. Although all of the parties share a love of the game "Cricket, Lovely Cricket", they find themselves on this occasion on opposing teams. This is because it is the Claimants' complaint that the J.C.A. has applied certain Rules unlawfully, and incorrectly. Further, they allege that the J.C.A. has treated them unfairly. They claim that the J.C.A. has made decisions that bring forth the protestation "That's Just Not Cricket!".
4. The objects for which the J.C.A. is established are the following (paragraph 3 of the Association's Memorandum and Articles) :
 - 3.1 *to advance, promote and improve knowledge of and awareness of the principles and techniques of the game of cricket in Jamaica;*
 - 3.2 *to develop the proper skills and attitudes for the playing of cricket;*
 - 3.3 *to promote and encourage sound disciplinary practices and sportsmanlike conduct among those engaged in all aspects of the game of cricket.*
5. The J.C.A. organizes and runs the Jamaica Super Cricket League Competition "the JSCL League" and the Claimants are participants.
6. This application is brought by way of Fixed Date Claim Form in which the Claimants seek (as a subset of the relief they had originally requested), the following:
 1. *A Declaration that the Defendant's Rule concerning Registration and Eligibility of Players for its competitions, provides for the mandatory deduction of points in the event of a breach thereof, as well as the discretionary consideration of the application of a fine;*

2. *A ...Declaration that the Claimants are entitled to appeal the decision regarding Manchester Cricket Association's use of an ineligible player in the Jamaica Super Cricket League Competition*

Originally, the Claimants had filed for injunctive relief to restrain certain actions on the part of the J.C.A. However, the time for effective injunctive relief has passed and so the Claimants have abandoned those claims. The Association has already declared Manchester C.C. to be the winner of the League and presented them with the winner's trophy for the year 2009.

7. In argument, Mr. Gordon, who advanced submissions on behalf of the Claimants, indicated that the Claimants do not at this stage now wish the Court to determine whether they had a right of appeal, but wish the Court to declare that they would have a right to be heard in keeping with the principles of natural justice in relation to issues such as those which are involved in this case.
8. I wish to express my gratitude to the Attorneys-at-Law who appeared in the matter for their helpful and lucid submissions. Both sides have indicated to the Court that the issues, although perhaps, now less live in relation to the 2009 J.S.C.L. League, are far from academic. This is because there are annual Leagues, and indeed, not only the J.S.C.L. League. The parties advised the Court that the 2010 J.S.C.L. League is scheduled to commence in March 2010. The question of the interpretation of the Rules, and as to whether there is a right to be heard in relation to issues such as those raised in the instant case, will continue to be relevant to those events and competitions that are still to come. Hence, both parties are of the view that the Court's rulings on these questions will be useful and will instruct the future interactions in relation to relevant Cricketing competitions in Jamaica.

9. Both sides are in agreement that the court has authority to interpret the Rules and also to review the decisions reached by bodies such as the J.C.A. if there has been a breach of natural justice. Reference was made to the authorities of Lee v. Showman's Guild of Great Britain [1952] 2 Q.B.329, Baker v. Jones [1954] 2 All E.R. 553, Griffith v. Barbados Cricket Association (1989) 24 Barb. LR 108, and The Board of Alexandra School v. the Barbados Cricket Association (unreported) No. 2277/ 2003 (January 28, 2004). They agree that the Court's authority to decide on these types of issues cannot be ousted by the parties or draftsmen of the Rules.
10. There are Supporting Affidavits, sworn to by Mr. Ransford Evans, First Vice-President of the 1st Claimant and by Mr. Courtney Walsh, the President of the 2nd Claimant.
11. The J.C.A. has opposed this application, and in that regard has filed Affidavits of Mr. Paul Campbell, the President of the Association, and of Mr. O'Neil Cruickshank, the Director of the J.S.C.L. League.
12. The J.S.C.L. League has its own Rules, Regulations and Guidelines. This matter really revolves around Rule 1 of the J.C.A.'s 2007 Handbook/Manual. No Handbooks were produced for the year 2008 and 2009 and the 2007 Handbook continued to apply and was accepted and utilized by all members of the J.C.A. Rule 23, which appears in Appendix V to the J.S.C.L. League Rules, Regulations and Guidelines, was also referred to. It would seem that, whereas the Handbook, attached to the Affidavit of Mr. Campbell, provides general rules and regulations, the J.S.C.L. League Rules, attached to Mr. Evans' Affidavit, applies specifically to the J.S.C.L. League Competition of 2009. However, to some extent the Rules and Regulations set out in the Handbook are incorporated by reference in the J.S.C.L. League Rules

13. Under the Head "**Rules and Regulations**", the J.S.C.L. League's Rules provide:

- Where there are no explicit provisions in this document, the rules and regulations as stipulated by the JCA for its competitions shall apply;
- The JCA rules and regulations governing transfers, loans, registration (except for specific provision in this document) and conditions of play shall apply to the JSC League.
- The JCA's Competitions and Complaints Committee shall adjudicate on matters of (in) discipline (outside of matters within the purview of Match Referees), Complaints and Competition specific infractions.
- All team Management are required to familiarize themselves and then sensitise their members of all rules and regulations governing the playing of cricket in Jamaica and such rules and regulations that apply specifically to the Jamaican Super Cricket League.
- Lack of knowledge or familiarization will not be accepted as a defence of breach.

14. Rule 1 in the JCA's Rules appears under the subhead, "Registration and Eligibility of Players". It reads :

1. REGISTRATION OF PLAYERS

Each Club /Parish must register the names of all players likely to participate in the matches under the aegis of the ...Association at a date to be determined.

Applications for additions to the list may be submitted from time to time- however such applications must be made not less than seven (7) days prior to the date on which any such player intends to participate in a match in any of the ...Association's Competitions.

Should any Club/ Parish be found guilty of a breach of this rule-then such a Club/Parish shall suffer a loss of any points gained in the match in which the breach was committed and/or may be fined.(my emphasis).

15. The Rule as to the Intra-Seasonal Transfer of players from one club to another is also important, and is set out at page 8 of the Manual/Handbook. The background, aim and objectives of the Transfer Rule are relevant-page 5. It is stated:

Page 5...

The Transfer Rule

(Effective January 2004)

BACKGROUND

To restrict player exit from one Club/Association to another without due process and communication.

To encourage and protect the investment in young talent, by minimizing the luring away of players.

To enhance player commitment and eliminate delinquents switching allegiance at will.

AIM

To enable a smooth process of transfer of players from one Association/ Club to another.

OBJECTIVES

1.To encourage contact and communication with and between all parties concerned.

2. To ensure meaningful rewards for lost talent and investment.

*3. To promote stability of player listing at Associations/ Clubs.
To enhance investor confidence in players by Associations/Clubs.*

... page 8

INTRA SEASON TRANSFERS

A player having been registered by an Association/ Club for a particular season, and released by said Association/ Club during the season in question, MAY BE REGISTERED BY ANOTHER Association/ Club and may REPRESENT HIS NEW ASSOCIATION/CLUB providing the following criteria are met:

.....

3) The transfer process is completed on or before the closing date of the second Transfer Window to be implemented by the Jamaica Cricket Association.

16. Rule 23 in Appendix V of the J.S.C.L. League Rules states:
- 23. IN ALL INSTANCES WHERE SANCTIONS ARE APPLICABLE THERE IS A RIGHT TO APPEAL !!!**
17. In the preamble to the J.C.A. Handbook, there is the following unique statement:
- THE SPIRIT OF CRICKET**
(Preamble-The Laws of Cricket 2000 Code)
- Cricket is a game that owes much of its unique appeal to the fact that it should be played not only within the Laws but also within the Spirit of the Game. Any action which is seen to abuse this spirit causes injury to the game itself. The major responsibility for ensuring the spirit of fair play rests with the captains.*
18. Both Claimants, by virtue of their standing in previous All-Island competitions qualified to participate in the J.S.C.L. League. The Handbook states that the format of the Competition shall be a League with teams playing one another once, resulting in a 7 round competition.

19. Sometime in June 2009 the Claimants became aware that the Competitions and Complaints Committee of the J.C.A. "the Committee" had met and deliberated on the issue of Mr. Maurice Kepple playing for the Manchester Cricket Association "Manchester C.C." in the League. A letter communicating the decision of the Board of the J.C.A., acting on the recommendations of the Committee, along with the Minutes of the Committee's deliberations and reasons for its recommendations, were circulated to all of the clubs, including the Claimants.
20. Essentially, what transpired is that, although Mr. Kepple was not eligible, he played 6 matches for Manchester C.C. Mr. Kepple was ineligible because he was transferred to Manchester C.C. outside of the Transfer Window period that had been established and announced prior to the start of the competition. When this was discovered, the Board decided to impose as a penalty, solely a fine against Manchester C.C., and did not penalize them by deducting any points gained in matches in which the breach was committed. The Claimants argue that by virtue of Rule 1, it is mandatory for the J.C.A. to deduct the points from the team in breach and the J.C.A. cannot elect to instead impose a fine. They argue that the power given to the J.C.A. is one whereby it has a discretion whether to issue a fine **in addition to**, and not **instead of**, the deduction of points. The J.C.A. on the other hand, maintains that the plain meaning of the words of the rule are that the J.C.A. had the discretion to (a) cause Manchester C.C. to forfeit the points earned in the relevant matches, or (b) to fine Manchester C. C., or (c) to cause them to forfeit the points and to pay a fine.
21. Mr. Gordon advised the Court that Manchester CC were served with notice of these proceedings. Mr. Campbell, the President of the J.C.A. also advised that he had spoken with the President of Manchester C.C. Mr. Patrick Anderson and that Club is aware of

these proceedings. They were not in attendance, but the Court is satisfied that they were notified of the proceedings, and could have been represented here if they so chose.

22. According to Mr. Evans, he has been a member of the 1st Claimant since 1981, and during that time he has been a player, Team Captain, and he was also Manager of the Senior Cricket Team and the Assistant Coach. As a result, Mr. Evans has participated in several competitions under the aegis of the Association, and he indicates that he is intimately familiar with its Rules and Regulations, as well as the Spirit of the game.
23. Mr. Walsh, in his Second Affidavit, states that he has been a player, servant, and admirer of the game of cricket for as long as he can remember. He speaks of having represented his High School, local club, the 2nd Claimant, and international club Gloucester County Cricket Club in England. Mr. Walsh has worn the cap for both Jamaica's Youth and Senior Teams and was for some time a fixture on the West Indies Team. Mr. Walsh captained many teams, most well-known and famous of which is his captaincy of the West Indies team in 1994-1998. Mr. Walsh modestly states that he has "been fortunate to receive a number of awards associated with (his) tenure in cricket and how (he) played the game". He has also served in the administration of cricket, having been President of the 2nd Claimant since 2006, and he has served as a member of the Disciplinary Committee of the West Indies Cricket Board since 2007.
24. Both Mr. Evans and Mr. Walsh have expressed the view that the interpretation which the J.C.A. has placed on the Rule is wrong, incorrect, and unfair, and they are adamant that the interpretation placed by the Board on the Rules reeks havoc with the whole spirit of the game and the fairness of the J.S.C.L. League .

25. In his Affidavit filed July 7th 2009, Mr. Walsh puts forward his side's view of the issues as elegantly as he delivers his bowling on the pitch. At paragraphs 15, 16, 17, 18, 20, and 22, he states:

15. ...cricket is a team sport. You win as a team, and you lose as a team. In my experience over the three decades that I have played the sport, every competition I have played in arrives at the selection of the winning team of that competition by the accumulation of points.

16. ... the results of matches are therefore very important for each team in a competition, as more points are awarded for a win as compared to a draw. In the competition in dispute, 2 points were awarded for a win, and 1 point for a draw. No points were awarded for a loss. This is standard in virtually every country I have played the game.

17. ... because cricket is a team sport, it is not possible to separate the performance of a player from the result the team obtains. This logic is reinforced in the absence of the award of points in any form of cricket for individual performances in matches.

18. ... once you have declared your eleven as a Captain, unless there are unforeseen circumstances, that eleven must play. In my opinion, each player is integral to the performance and conduct of a team. He provides camaraderie, motivation and is expected to carry his weight in the team. It is impossible to segregate the player's role in the team from his individual performance. Even when a player underperforms with the bat or ball, he may make a positive contribution on the field or be influential in the team and its performance.

...

20. in my experience and considered opinion, it is therefore an incorrect interpretation of the Rules that sees a club only

being penalized by a fine, having fielded an ineligible player in their team for 6 matches in the JCSL competition. In my humble opinion, it makes a mockery of the very spirit of the game, as well as of fair play, as it allows the team to profit from the use of an ineligible team by virtue of retaining the points earned in using such a player on the team. The team's performance cannot be separated from the contribution made by the player.

....

22.... the spirit of the game as well as the inherent fair play of the competition is offended by allowing the team to not only retain said points, but to win the competition by virtue of said points accumulation. That's just not cricket.

26. In his Affidavit, Mr. Evans opines that on a proper interpretation of the Rules, Manchester C.C. must lose the points gained in the 6 matches, and this would affect the Claimants', indeed all the other Clubs participating in the competition and its final outcome.
27. In the written submissions filed on behalf of the Claimants, Mr. Gordon argues that (at paragraph 25), :

By its ruling, the Defendant has rewarded the behaviour of Manchester C.C. by enabling it to retain the trophy and the majority of the prize money won as a result of the unfair advantage it gained as a result of its willful infringement of the Rule. In such a scenario, any team could therefore breach the Rule and be able to take the financial risk that its fine would be less than its winnings.

28. In his Affidavit, Mr. Campbell did not express any personal views or experience in relation to the meaning or operation of Rule 1. Nor did he respond to the matters which the Claimants have raised about the ways in which the J.C.A's interpretation of the Rule on Registration and Eligibility of players offends the spirit of the game.

However, he indicates that all Clubs, including the 1st and 2nd Claimants are members of the J.C.A. and are accordingly bound by its Memorandum and Articles of Association and Rules and Regulations. Mr. Campbell makes reference to Clause 4.6 of the Memorandum of Association which states, that amongst others, the J.C.A. has the following power:

*4.6. To impose fines or penalties (including penalties by way of suspension or expulsion) for any breach of the Articles of Association or By-Laws or Rules of the Company or the Regulations relating to Jamaican, West Indies or international cricket by any official, umpire or player, and subject to the Articles of Association of the Company, **a decision of the Board of the Company in respect thereof shall be final conclusive and binding** (my emphasis).*

29. Also, as Mr. Campbell points out, at page 8 of the Handbook it is provided that:

The Jamaica Cricket Association shall be the final arbiter in any transfer dispute and on all occasions its decision(s) shall be binding and final.

30. At paragraphs 12 and 13 of his Affidavit, Mr. Campbell states:

12. The Defendant's Board of Directors' decision to impose a fine only on the Manchester Cricket Club is therefore final and binding on all member Clubs and there is no right of appeal to any member Club or player of such decisions.

13. Rule 23 does not relate to decisions of the Board of Directors of the Defendant and accordingly does not afford the Claimants a right of appeal against a decision of the Board.

31. In his Affidavit, Mr. Cruickshank indicates that he was the draftsman of the J.S.C.L. League Rules, Regulations and Guidelines located at Appendix V in the J.S.C.L. General Rules and Regulations Booklet. He addresses the matter of the application of

Rule 23 of the J.S.C.L. League Rules. He has not entered into the arena of the meaning of Rule 1 of the Handbook, nor as to the applicability of the spirit of the game to the interpretation of the relevant Rules.

32. Mr. Cruickshank informs that the Jamaica Super Cricket League is a new league which commenced in 2008. Paragraphs 5-8 (inclusive), of his Affidavit are instructive as to the position taken by the J.C.A. He states:

5. All Clubs participating in the JSCL were provided with a copy of the JSCL Rules, Regulations & Guidelines and have all agreed to be bound by them expressly and/or by their actions.

6. The JSCL Rules, Regulations & Guidelines were enacted to facilitate the creation of the JSCL, a semi-professional league, requiring the presence of a Match Referee at each match in the league.

7. The J.S.C.L. Rules, Regulations & Guidelines are specific to the JSCL and are not applicable to other competitions under the auspices of the Defendant.

8. Rule 23 of the JSCL Rules, Regulations & Guidelines relates to appeals of decisions of any Match Referee acting within his power to impose sanctions or fines under the JSCL Rules, Regulations & Guidelines or the Jamaica Cricket Association Code of Conduct....Accordingly, there is no right to appeal a decision of the Competitions and Complaints Committee of the Defendant's Board of Directors under Rule 23 of the JSCL Rules, Regulations & Guidelines.

33. I think that the starting point is to look at the meaning of the words in Rule 1, and for ease of reference I set them out again.

Should any Club/Parish be found guilty of a breach of this rule-then such a Club/ Parish shall

suffer a loss of any points gained in the match in which the breach was committed and/or may be fined.

34. Ms. Wong helpfully referred to **Words and Phrases Legally Defined**, 4th Edition, at 129. There I have found a useful discussion on how the phrase “and/or” has been interpreted from time to time. It is also clear that interpreting “and” and interpreting “or” where they appear separately, is not the same thing as interpreting the term “and/or”.

.... Sometimes the word “and” is read as “or”, and vice-versa, by force of the context in which they appear. The governing rule must be that both words should be interpreted so as to make sense and give effect to the document being construed. This will at times lead to “and” being construed disjunctively and, conversely, the normal alternative sense of “or” ceding to a conjunctive meaning. (See, for example Doe d. Bedford v. White (1827) 4 Bing 276, 130 E.R.773, where “and” was construed as “or” and, conversely, Clergue v. H H Vivian and Co. (1909) 41 SCR 607, per Anglin J. at p.617, where “or” was interpreted as “and”.) In holding use of the word “and” in the reversion proviso left him no alternative but to rule the land reverted to the Crown, the judge must be regarded as falling into the error of not exploring whether the context of its use might import a disjunctive sense to the word.’ Boy Scouts of Canada v. Doyle (1997) 149 DLR (4th) 22 at 58, Nfld CA, per Marshall JA.

AND/OR

There is really a clear understanding of what the words “and/or” mean. To take one of the simplest cases and an obvious case, where there is a charterparty by which a ship is

to proceed to Rotterdam and/or Antwerp at charterer's option it means one of three things: the charterer may either send the vessel to Rotterdam alone, or he may send her to Antwerp alone, or he may send her to Rotterdam and Antwerp. Now that...[is] the ordinary business meaning of the words "and/or".' *Gurney v. Grimmer (1932) 38 Com Cas 7 at 13, CA, per Scrutton LJ.*

...(Also reference was made to) Re Lewis, Goronwy v. Richards [1942] 2 All E.R. 364 at 365, per Farwell J.

35. Miss Wong also referred to **The Elements of Drafting**, by E.L.Piesse and J.Gilchrist Smith 3rd Edition, Chapter 9, pages 68-83, under the heading "PROBLEMS OF 'AND' AND 'OR'". At pages 76-77 the authors discuss the expression 'and/or' as follows:

'And/or' has an increasing vogue in business. But most lawyers regard it as an unwelcome intruder into documents that are intended to be exact in meaning..... Even where the phrase is used in the simple form 'A and/or B' and so is unambiguous, the gain in economy of two letters over 'A or B or both' is not sufficient to justify its use.

36. I have also taken the opportunity to look at the meaning of the words "may" and "shall" as set out in **Words and Phrases Legally Defined**, Third Edition, especially the word "shall" since there is not really any issue between the parties as to the meaning of the word "may" in Rule 1. "Shall" is ordinarily a word with a mandatory meaning. However, as stated and quoted at page 177 of **Words and Phrases**, Volume 4: R-Z, :

'The word "shall" does not always impose an absolute and imperative duty to do or omit the act prescribed. The word is facultative: it confers a faculty or power...The word "shall" cannot be construed without reference to its context.' *Re Davis (1947) 75 C.L.R. 409 at 418, 419 per Starke J.*

37. Then at Volume 3, page 116 it is stated:

' "May", unlike "shall", is not a mandatory but a permissive word although it may acquire a mandatory meaning from the context in which it is used, just as "shall" which is a mandatory word may be deprived of the obligatory force and become permissive in the context in which it appears..' Johnson's Tyne Foundry Pty Ltd. v. Shire of Maffra [1949] ALR 89 at 101, per Williams J..

38. I found the dicta of Sir Wilfred Greene M.R. in the English Court of Appeal decision, **Re Diplock, Wintle v. Diplock** [1941] Ch 253, affirmed sub nom **Chichester Diocesan Fund and Board of Finance (Incorp) v. Simpson** [1944] A.C. 341, HL, helpful in relation to rules of construction. These cases are referred to in **Words and Phrases** Volume 3, page.... in relation to the word "or". There is also reference to the **Chichester** case, at page 73 of the **Elements of Drafting** excerpt, cited by Ms. Wong. The English case had to do with the interpretation of a testator's will. At pages 260 to 261, Greene M.R. states:

The matter now becomes a pure matter of construction, and in deciding that question of construction, it is perhaps unnecessary to say that the Court must not allow its mind to be deflected by any consideration of the consequences of its decision....The construction of the will remains the same to-day as it was at the moment after the testator's death, and nothing which has happened can alter it, nor can it be allowed in any way to affect our minds.

The rule of construction to be applied is, of course, the cardinal rule: that words are to be construed in their natural and grammatical sense unless there is something in the context of the will, read as a whole, which imposes a different meaning upon them.

.....The word "or" is *prima facie*, and in the absence of some restraining context, to be read as disjunctive...

I approach this question therefore on the view that the word "or" is *prima facie* to be read as meaning what it says. Mr. Harman, as one of the arguments he put before us, invited us to construe the word "or" as meaning "and", or as meaning "id est", or he said, it should be omitted altogether. I am quite unable to understand on what principle of construction, or indeed of common sense, it would be justifiable to apply such violence to the language of a testator. That words may be omitted, that they may even be changed in their meaning, or read in a meaning which is far from their natural meaning if the context so requires it, is a truism; but I can find no vestige of a context in this will which would justify the Court in reading the word "or" in that way.

39. The Claimants argue that the word "shall" must be given its natural and ordinary mandatory meaning and the sanction that immediately follows the word "shall" is that of a deduction of points. This formulation it is submitted should be read as mandating a deduction of points. The Claimants' position is that the use of the words "and/or" before the fine gives the J.C.A. a discretion, not to impose a fine instead of the deduction of points, but rather a discretion to decide whether the fine is **in addition to** and not **instead of** the deduction of points. Mr. Gordon argues that the use of the word "or" does no more than establish this choice, removing any ambiguity as to the possibility of there being a mandatory nature attached to the fine as well.
40. Mr. Gordon argues also that in the event that the argument above is not accepted, in other words, if the literal meaning of the words is that the Rule does grant a discretion as contended for by the J.C.A., it is the position that where the application of the literal

meaning of the words used would lead to a result that is unlikely to be the legislating body's intent, the judge can depart from this meaning. He referred to **Becke v. Smith** (1836) 2 M&W 195.

41. The JCA, on the other hand, argue that "shall" must be given a mandatory meaning, but that the mandatory meaning that it has is that there must be a **sanction** and not that there must be a **deduction of points**. It is their submission that the plain meaning of the term 'and/or' here is that the Board had the discretion to cause Manchester C.C. to forfeit the points earned in those matches, or to fine Manchester CC, or to cause them to forfeit the points and to pay a fine. Ms. Wong argued that even if one looks at the mischief of the Rule in relation to transfers, it really is simply there in order to enable a smooth transfer of players from one Association/Club to another-page 5 of the Rules. Seen in its proper context therefore, Ms. Wong submits that there is no offence to the "spirit of the game" if a party in breach is merely fined, as opposed to suffering a loss of points.
42. Ms. Wong argued that in an instance such as this, where the plain meaning of a term is apparent, extrinsic evidence should not be considered in order to interpret the language. She cites **Bank of New Zealand v. Simpson** [1900] LR 182 at 189.
43. In my judgment, what the Claimants are asking the Court to say is that the words "and/or may be fined" signify that the mandatory deduction of points is to occur **with or without** a fine. If that is indeed the meaning of the Rule, as the authors of the Australian Law Journal quoted at page 79 of **The Elements of Drafting** put it so well, " 'and/or' may be a much less simple formula to fit into the meaning of a sentence than such a phrase as 'with or without' ".
44. It is no surprise to me that a number of the cases cited emanate from the High Court of Barbados. The Barbadian public's love of cricket is well-known and so it is quite understandable that there

may have been need from time to time for the court's adjudication on some issue. At paragraph 23 of his judgment, Innis J., a Judge of the High Court of Barbados, in **The Board of Management of Alexandra School v. The Barbados Cricket Association** (unreported) No. 2277 of 2003, delivered February 12 2004, stated " Sports, especially cricket, plays a pivotal role in the lives of many Barbadians. Those who administer sporting organizations must recognize that they must observe the basic principles of natural justice". The judgment is quite instructive, both in relation to the interpretation of language used, and the question of whether the spirit of the game calls for the mandatory deduction of points from a team that plays an ineligible player.

45. The case was concerned with, amongst other matters, the interpretation of a Rule set out in a booklet entitled "Special Conditions of Play" which applied to the cricket competition under consideration. The Board of the Barbados Cricket Association determined that a particular school team had fielded an ineligible player. Without giving the school any right to be heard, the Board informed the school of its determination and indicated that as a result of the school's breach of the rules pertaining to the eligibility of players, it had forfeited the game. As a result of this decision the school was unable to proceed to the finals and instead the game was awarded to the opposing team which would as a consequence play another team in the finals. The school filed for injunctions and declarations and the Barbados Cricket Association also filed for certain declarations. The applications were heard together, and it was held, and declared, that the Board had correctly construed the Rule as to ineligibility of the relevant player. However, the Board's decision to forfeit the game was deemed null and void and it was declared that the Board had acted in breach of the principles of

natural justice in not giving the school an opportunity to be heard at its monthly meeting.

46. In the course of his judgment, at paragraph 33, Innis J. opined that the Rules did not support the view, as contended for by the Board, that forfeiture is the inevitable punishment for breach of the ineligibility rules. At paragraphs 34, 35 and 36 his Lordship stated:

[34] The Rules confer a discretion upon the Respondent to mete out varying degrees of penalties. Rule 19 of the Conditions of Play states:

"No captain shall waive any penalties imposed under the aforesaid Regulations nor shall disregard any violation of any such Regulations.

Breaches of the aforesaid Regulations or any of them shall be deemed to be violations by Clubs themselves and not by individual club members.

The Board may in its discretion reprimand any club found guilty of any violation of these Regulations or any of them, or, if in the opinion of the Board the gravity of such violations justifies the Board's so doing may:-

- a. cause any club to forfeit the match in respect of which any such violation has occurred or,*
- b. disqualify any such club competing in any or all of the competitions.*

(my emphasis).

[35] If the school was not afforded a hearing, on what basis did the Board exercise its discretion granted under the rules? Had the school been heard it might have been able to urge upon the Board some mitigating factors which could reduce the harshness of the eventual penalty. For example it could

have submitted that consideration should be taken of the following:

(a) The Applicant at all times acted in good faith even though it misinterpreted the rules.

(b) That it sought clarification from the Respondent and when the Respondent replied, it appealed the decision pointing out specific facts which the Respondent had, no doubt, inadvertently misrepresented and the Respondent then neither convened a meeting to deal with the "appeal nor did it refer the matter to its disputes committee as provided by its rules.

That the school defeated its opponent by a large margin. Although no evidence has been led to show the performance of the ineligible student, it is more likely than not that his absence from the team would have made no difference to the final result.

[36] It is not for the Court to determine what weight the Board would have placed on any submission made on behalf of the school or what would have been the eventual result, had the school been heard. It is however, the duty of the court to ensure that the rules and procedures are followed.

47. In my judgment, one cannot look at any of the words used in Rule 1 in isolation. One has to look at the Rule in its entirety. It becomes a matter of pure construction. One has to read all of the Rules together, especially the Transfer Rule, its background, aims and objectives and the terms of the Rule itself, particularly the Rule governing Intra-Seasonal Transfers. The Rule regarding Intra-Seasonal Transfers indicates that a player may be registered by another Club and may represent his new Club, provided certain criteria are met. One of these criteria is that the transfer process must be completed on or before the closing date of the Second

Transfer Window. I agree with Ms. Wong that the fundamental aim of the Rule is to ensure a smooth process of transfer of players from one club to another. This aim to my mind has more to do with smoothness and communication in the process, rather than any matter going to the root of fair play in the game.

48. It is plain that Rule 1 has not been drafted in the clearest of terms. Indeed, it leaves scope for intelligent, informed persons such as the parties in this case to disagree. Its meaning is obscure. It seems to me that my task in those circumstances is to arrive at a meaning which does the least damage to the actual language used in the Rule. The Court must also do its best to try to ascertain the meaning that was intended by the draftsmen of the Rules. In that regard, one has to look at all of the Rules and also in this case, it is useful to look at the concept of the "Spirit of the Game". That the tenets of the "Spirit of the Game" merit great weight in interpreting Rules or Codes of Conduct in relation to cricket, may be seen from the decision of Justice John Hansen, sitting as the Appeals Commissioner in **International Cricket Council Appeal in the Matter of an Appeal by Mr. Harbhajan Singh, 29th January 2008**, in particular at paragraph 61.
49. I think that if one attempts to scrutinize the Rule through the lens of "the spirit of the game", difficulties in interpreting the Rule as contended for by the Claimants arise. This is so because, for example in the Barbadian Rules referred to in the **Alexandra School** case, a discretion is expressly conferred on the Barbados Cricket Association to mete out varying degrees of penalties in relation to breach of the Rules as to eligibility. If the spirit of the game dictated that every time an ineligible player or wrongly registered or transferred player were allowed to play, the team on which he played should suffer a loss of points, then I would have expected these Rules in Barbados to provide for deduction of the

points in any affected game, or forfeiture of the game, to be mandatory too.

50. In order to understand the true impact of a breach of the ineligibility Rules and its relationship to fair play and the spirit of the game, I have looked by way of example at the Rule as to Eligibility as it concerns the Schoolboys Cricket Competition-page 4 of the Rules. In order to participate as a schoolboy, the player must be under 19 years of age on the 1st of January in the season at hand. Suppose for example, a player who is age 21 was allowed to play. It seems to me that a breach whereby a team fielded an older and therefore more experienced player, is a more serious breach of the eligibility Rule than the Transfer Rule. The aim of the Transfer Rule does not in my view deal with a matter of the same weight and substance as the Rule relating to this type of eligibility as a result of age. This suggests to me that it would be useful for the J.C.A. to have a wide discretion as to what penalty it deems suitable to a particular set of circumstances. This is because breaches will vary in nature and degree. I am not therefore in agreement with Mr. Gordon that the interpretation advanced by the J.C.A. is repugnant to the intention of the draftsmen, nor to the spirit of the game or sound disciplinary practices.

51. In my judgment, the meaning contended for by the J.C.A. is more in keeping with the language of the Rules. It is more rational to accept that the word "shall" applies to the concept of a sanction and that the Rule gives to the J.C.A. a mandatory directive that it must impose a sanction, but accords a discretion as to whether there should be a deduction of points, a fine, or both. It is more difficult to reason that the Rule means that the deduction of points is mandatory and that the discretion is as to whether the J.C.A. deducts the points with or without a fine. Or that the discretion is for the J.C.A. to impose a fine in addition to but not instead of

deduction of points. This is because that would require the Court to omit or ignore the word "or" altogether. Though the meaning of all the words depend on their context, in my judgment, where a Court can find a construction that accords more fully with the words used, and that meaning is not wholly extraordinary, or absurd, then it is preferable for the Court to carry out that exercise, rather than obliterating, or treating as silent a word which actually appears in the Rule. The fact that the words are "and/or" and not just "or" means that the Court cannot readily interpret the "or" as "and", since we would then be confronted with a superfluous conjunctive "and". In other words, what we would end up with is the phrase "and and". In order for the Rule to have the meaning which the Claimants advance the word to be exorcised would be the word "or". It is therefore more probable that the intention of the draftsmen was that the J.C.A. would have the discretion contended for by the J.C.A and that intention is gleaned from the language of the Rules.

WHETHER THERE WAS A RIGHT TO BE HEARD

52. In the **Alexandra School** case, Inniss J. made the following sage and pertinent observation at paragraph 19:

*[19] It is unfortunate that an increasing number of sporting organizations either seek or are forced to seek the assistance of the court with little or no attempt to resolve their differences amicably. The time has come when these organizations need the assistance of a sports Referee or Arbitrator to assist in the resolution of disputes. In its revised constitution which came into effect in 2003 the Barbados Cricket Association has recognized the need for such a procedure and has included the following provision: **Rule 23 (a) :***

(a) Complaints and disputes between:

(i) Member Clubs;

(ii) A Member Club and the Association;

(iii) A Member and the Association; and

(iv) Other members of the Association

Must first be referred to the Board for resolution, then to arbitration by arbitrators appointed by agreement between the disputing parties or failing this in accordance with the Arbitration Act, Cap. 110A of the Laws of Barbados, before they are referred to the Courts.

This entire dispute has progressed as though Rule 23 does not exist. In the meantime the parties have come to the court, and the court cannot shirk its responsibility.

(my emphasis).

53. In my view, the J.C.A. and its members should consider amending Rule 1 to achieve the desired clarity. In other words, the amendment should make the intended discretion clear. Whilst they are engaged in that task, the relevant parties would do well to consider whether a dispute resolution structure such as that set out in the Barbadian Rule 23 (a) may prove useful to the cricketing community and the J.C.A. and its members.
54. The nature of the powers conferred upon the J.C.A. require that they observe the rules of natural justice. One of those rules has to do with the question whether there is a right to be heard. It is to be noted that the decision which the J.C.A. would have been required to make as to whether to deduct points, to fine, or to do both, would directly affect Manchester C.C. In my judgment, the authorities clearly demonstrate that Manchester C.C. would have a right to be heard before the Committee decided what form of sanction was to be imposed because Manchester C.C. would be a party directly affected by the J.C.A.'s decision. However, the Claimants here are not in the same position. They would only be indirectly affected, or, as Ms. Wong puts it in her submissions, "they would only be an incidental beneficiary if Manchester C.C.

was required to forfeit its title"-or points. The decision to be taken will impact upon other Clubs in the Competition, because by definition, they are competing against each other for "the spoils". However, a contractual relationship exists between the J.C.A. and its members and amongst each other. The Claimants and other members of the J.C.A. are bound by the terms of the J.C.A.'s Memorandum and Articles of Association. The Claimants and other members have agreed amongst themselves that the decision of the Board of the J.C.A. to impose fines or penalties shall be final conclusive and binding. The Board therefore has every right to carry out its functions free from enquiry and is not required to hear from competing parties in the Competition as to how it should exercise its discretion in respect of another participant-paragraph 28 of the **Alexandra School** case. The Board has not therefore acted in breach of the rules of natural justice by not affording the Claimants a hearing prior to deciding on the appropriate manner in which to sanction Manchester C.C.'s breach.

55. Mr. Walsh in his Affidavit cites examples of situations where appeals have been heard by the J.C.A. but in each of those cases, it was the aggrieved party, and not a party indirectly affected who exercised or was allowed a right of appeal and that is a situation that is distinguishable from this case. Although Mr. Gordon had indicated that the Claimants are not now seeking to be heard on appeal, it does seem to me that Rule 23 would not apply to the facts of this case because the Claimants here would not be the aggrieved parties in respect of which sanctions were to be applied. I also agree with the J.C.A. having looked at the Rules in their entirety, including Appendix V, that Rule 23 does not, and would not apply to the facts of the instant case. It appears to relate to decisions taken by Match Referees.

56. In summary, the Claimants are not entitled to the Declarations sought. The J.C.A. in 2009 applied the correct interpretation of Rule 1 in deciding that they had the discretion to impose a fine only on Manchester C.C. Since both parties have indicated that the Court's interpretation of Rule 1 is being sought, and also its determination regarding the right to be heard, I declare as follows:

(a) The meaning of Rule 1 of the J.C.A.'s Handbook is that the Board of the J.C.A. has the discretion to cause a Club or Parish found guilty of a breach of this Rule to forfeit any points gained in those matches in which the breach was committed, or to fine that Club or Parish, or to cause it to forfeit the points and to pay a fine.

(b) Participants (such as the Claimants) have no right of appeal nor any right to be heard by the J.C.A. in relation to the J.C.A.'s exercise of its discretion under Rule 1 in relation to another competitor's breach of Rule 1.

57. The relief claimed in the Fixed Date Claim Form is refused.

In light of the nature of the relationship between the parties, the Claimants being members of the Defendant J.C.A., as well as the nature of the issues in respect of which the Court's orders were sought, I exercise my discretion and make no order as to costs.