



WICB Board Meeting
March 25-26 2010

Item 11.3 – Resignation of Director Conde Riley

In early September 2009, following the breakdown of the mediation process between the WICB and WIPA facilitated by Sir Shridath Ramphal, it was reported in the regional press that Mr. Conde Riley, first Vice-President of the Barbados Cricket Association, had resigned as a Director of the West Indies Cricket Board, with immediate effect.

On Monday September 7 2009, Director Riley sent an email to WICB President Dr. Julian Hunte, stating as follows:

“Dear President,

On Friday I called a press conference and gave the press the document which the Mediator had stated caused the mediation process to break down. I consider my action to be in breach of the Code of Ethics which I signed in 2006 when I joined the Board. In the circumstances, I am placing my position as a Director of the WICB at the disposal of the Board. For the sake of good order, kindly copy the BCA with any future correspondence on this matter.

*Kind regards,
Conde”*

Management was asked to obtain legal advice on the situation - as to how the Board should address Director Riley’s actions.

That opinion is attached to this summary as Appendix 1.

Recommendation:

1. In keeping with the attached external legal advice and in compliance with Paragraph 11.3 of the WICB Code of Ethics, it is recommended that the Board refer Mr. Riley’s apparent breach of the Code to the WICB Disciplinary and Ethics Committee, requesting that the Committee submit a report, including recommended sanctions, to the Board for its ultimate determination.



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Appendix 1 – Memorandum from Clarke Gittens Farmer

CLARKE GITTENS FARMER

MEMORANDUM

TO: West Indies Cricket Board Inc.
ATTENTION: Alanna Medford
FROM: Rosalind L.C. Bynoe
DATE: November 18, 2009
SUBJECT: **Conde Riley Resignation**

Dear Alanna,

We refer to your email of September 30, 2009 whereby you sought our opinion with respect to the resignation of WICB Director Mr. Conde Riley.

We note that Mr. Riley placed his appointment at the disposal of the WICB Board after making public statements reported in the press and disclosing a document which formed part of the mediation process.

You have asked for our guidance on:

- (1) Whether the email sent by the Director to the President constituted a resignation;
and
- (2) The correct manner in which to deal with the situation.

We have reviewed the following email from the Director which you provided to us in your email:

“On Friday I called a press conference and gave the press the document which the Mediator had stated caused the mediation process to break down. I consider my action to be in breach of the Code of Ethics which I signed in 2006 when I joined the Board.

In the circumstances, I am placing my position as a Director of the WICB at the disposal of the Board. For the sake of good order, kindly copy the BCA with any future correspondence.

Kind Regards”

We have also reviewed the Code of Ethics for the WICB signed by Mr. Riley as a Director of the WICB. The following provisions we have found relevant to the facts at hand:

Paragraph 3.1:

“Each Director of the WICB owes and acknowledges that he owes, to the WICB, a fiduciary duty including a duty of care and loyalty and a duty of confidentiality.”

Paragraph 6

“6.1 Each Director acknowledges that WICB Information is and shall remain the exclusive property of the WICB and, if in the knowledge and/or possession of the Director, shall be treated in the strictest confidence and, if in the possession of the Director shall be returned to the WICB upon the Director demitting office for any reason or upon demand made by the WICB, whichever is earlier.

6.2 Each Director acknowledges that in carrying out his duties and obligations to the WICB, he will have access to WICB Information and that that Information may be sensitive in nature and the Director, therefore, acknowledges his duty to preserve and maintain all WICB Information in the strictest confidence during his appointment and as long thereafter as such information is confidential or proprietary and no Director shall disclose, use or in any other way part with or disseminate such information except to designated Government authorities as required by law or as ordered by a Court of competent jurisdiction.

6.3 No Director shall knowingly take advantage of or benefit from WICB Information which is obtained by him in the course of his official duties and responsibilities and which is not generally available to the WICB membership or to the public.

6.4 No Director shall disclose any WICB Information entrusted to them in confidence by virtue of their relationship with the WICB. In particular, no disclosure shall be for personal gain or benefit, nor should it be undertaken maliciously to damage the reputation of the WICB or any other person individually involved.

6.5 No Director shall be engaged in or facilitate the reproduction, revelation or publication of WICB Information to any third party.

6.6 These duties of confidentiality will continue indefinitely or until such time that such information comes into the public domain, other than by breach of confidential obligation or until a Director is required, by law, to disclose such information.”

Paragraph 11:

“11.1 The WICB will jealously safeguard its reputation and the welfare of the game of cricket in the Region and shall, therefore, strictly enforce this Code.

11.2 All Directors are expected to use good judgment, protect the spirit of cricket and abide by this Code. Any violation may expose the Director and/or the WICB, to civil and criminal liability and may harm their reputation and therefore their ability to achieve their mission.

11.3 Any Director who violates this Code may be subject to disciplinary measures, including dismissal. The Committee shall review all violations of this Code, which will then be reported to the Board. If appropriate, the Committee will also recommend sanctions to the Board for their ultimate determination.

11.4 Each Director has the obligation not only to abide by the Code of Ethics, but also to report violations of this Code when they become aware of them.”

Paragraph 13.1.13

“WICB Information” means all proprietary and/or confidential and all trade secrets, of the WICB in whatever manner or format stored (including, but not limited to, all knowledge, information, electronic or other transmissions, audio and/or visual recordings, papers, books, files and records) relating in any manner whatsoever to the policy and business of the WICB and all other materials owned by the WICB or used by it in connection with the conduct of its affairs and whether prepared by or for the WICB or otherwise coming into its possession, and shall, where the context so admits, include non-confidential information not generally available to the public, which if given to a third party, might give that third party an unfair advantage in seeking to do business with the WICB.”

Section 115(1) of the BVI Business Companies Act, 2004 No. 16/2004 deals with the resignation of Directors of a BVI incorporated company, such as the West Indies Cricket Board Inc. and states:

“A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.”

Article 50.6 of the Articles of Association of the West Indies Cricket Board Inc. provides as follows:

“A director may resign his office by giving written notice of his resignation to the Board of Directors and the resignation shall have effect from the date the notice is received at the offices of the Board.”

In his informal email message to the President of the Board, Mr. Riley did not explicitly state, in writing, that he tendered his resignation. Mr. Riley stated that he considered his actions to be in breach of the Code of Ethics and that given those circumstances, he was placing his position as Director at the disposal of the Board. As a consequence, it cannot be concluded that he has resigned his office as a Director.

In determining the correct manner in which the WICB should proceed with the matter we first examined whether Mr. Riley had indeed been in breach of the Code of Ethics by publicizing the document which formed part of the mediation process.

As revealed in paragraph 3.1 of the Code of Ethics, Mr. Riley, as a director of the WICB, owed certain fiduciary duties to the Board. These duties included an obligation not to use or divulge confidential information during the course of his directorship. Paragraphs 6 and 13.1.13 highlight that any information related to the business of the WICB should not be publicized by a Director to a third party (except in the limited circumstances outlined in paragraph 6.2 and 6.6) but should be maintained in confidence.

It is our understanding that Mr. Riley cited breaches by the mediator in the confidentiality of the mediation process between the WICB and the West Indies Players' Association as his reason for disclosing the document to the press. We gather that Mr. Riley was attempting to refute the claims allegedly made by the mediator in the dispute that the WICB introduced new requirements which resulted in the collapse of the mediation process. Mr. Riley thereafter released the document that supposedly derailed the mediation process, which he stated was simply a summary of what had taken place in the mediation up to that point. He stated that he recognized that the document was supposed to be confidential but that he felt obligated to make it available to the press.

In any event where information provided is to be considered as confidential, its use and disclosure is to be limited to the purpose for which the information is given.¹ Thus, the document should only have been used in furtherance of the mediation discussions and not for any other purpose. It does not appear that this case falls into any recognized exception. Mr. Riley was not required by law or ordered by a Court of competent jurisdiction to disclose the document. Additionally, despite his claim that information related to the document had been publicized by others involved in the mediation process, the document was not already in the public domain.

We are of the view that by releasing the document to the press, Mr. Riley did indeed breach the Code of Ethics. The information was confidential (as it was not public property or public knowledge), it was imparted to Mr. Riley in circumstances importing an obligation of confidence, his use of the information was improper given the circumstances and furthermore was unauthorized by the WICB.²

We are of the view that the WICB should enforce the Code of Ethics strictly in accordance with Paragraph 11. Given that Mr. Riley has violated the Code of Ethics he may be subject to disciplinary measures, including dismissal. In compliance with Paragraph 11.3 of the Code of Ethics, the Disciplinary and Ethics Committee of the Board (the "Committee") should review Mr. Riley's apparent breach of the Code of Ethics. The Committee must then submit a report thereon to the Board and must also recommend sanctions to the Board for their ultimate determination.

Until Mr. Riley is dismissed from the Board, he is entitled to attend the Board of Directors meetings.

If you have any further queries or concerns please do not hesitate to contact us.

CLARKE GITTENS FARMER

¹ *Torrington Manufacturing v Smith & Sons Ltd* [1966] RPC 285

² *Coco v Clark* [1969] RPC 41