IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0149

BETWEEN:

CYRIL EDWARD

Applicant

and

(1) KENNEDY SAMUEL
(2) FOLK RESEARCH CENTRE INC.

Respondents

Appearances :
Mr. Vern Gill for Applicant
Mr. George Charlemagne for Respondents

2006: November 6, 14.

JUDGMENT

INTRODUCTION

[1] EDWARDS, J.: This judgment is on an Application For Leave To Make a Claim For Judicial Review. The Applicant Mr. Cyril Edward is Captain of the Piaye Walaba Cricket Team.

[2] Folk Research Centre Inc (F.R.C.) is a private non-profit company registered since 1985, and continued, under the Laws of St. Lucia. Its Executive Director is Mr.

Kennedy Samuel, against whom the Application was dismissed on the 30th October 2006.

[3] Traditionally, judicial review allows a person with sufficient interest in the subject matter of the Application, to challenge the decision making process of a public authority, thereby ensuring that the public authority acts within its given powers.

[4] With the development of modern public law, the Courts on a case by case basis, can now treat a private body as if it was a public authority. Consequently, acts, decisions, or omissions of non-governmental authorities are no longer automatically excluded from judicial review. The new approach of the Courts is to focus not merely on the nature of the body or its source of existence, but also on any public function that the private body performs, when deciding whether or not that body should be subject to judicial review.

[5] The present Application has thrown up this very issue: Should the decision of Folk Research Centre Inc. a private body, be subject to judicial review?

[6] Before proceeding to consider Counsel's submissions and the applicable law, it is necessary to give the factual background to the filing of this Application on the 21st February 2006.

BACKGROUND FACTS

[7] The first Woulé Laba/ Walaba National Tournament was organized by F.R.C. as part of the celebrations for Creole heritage month 2005. A press release dated 21st February 2006 from the F.R.C's Executive Director states that the Tournament was "initiated by the Prime Minister, Hon. Dr. Kenny Anthony and organized by the Folk Research Centre, with the general sponsorship and support of the St. Lucia Distillers and their Bounty Rum brand . . ."

[8] Woulé Laba/Walaba is an indigenous community sporting tradition in St. Lucia, involving the playing of a localized version of cricket in rural communities, among the predominantly African population, with attendant activities, which are usually an informal betting of monies on the teams of the rural communities, sale of food and drink, and a public dance to end the day.

[9] The F.R.C. decided to promote this indigenous sporting tradition in order to generate national awareness and understanding of this traditional St. Lucian cricket game, document it, and foster greater socialization among St. Lucia communities, as a strategy for building a peaceful and harmonious society, while adding variety and interest through competition, to the programme of activities for Creole month.

THE PROPOSAL

[10] According to the F.R.C's Written Summary Proposal for the National Walaba Tournament, the actual format of this St. Lucian cricket game is "broadly similar to international cricket but with some significant changes to the rules that make it less formal, and increase the excitement for local spectators."

[11] This proposal forecasted the following schedule:

> "ACTIVITIES
>
> The tournament will comprise a maximum of twelve matches including two sem-finals and one final to determine the overall winner. All matches will preferably be played on local community playgrounds.
>
> | | | |
> |---|---|---|
> | August | : | Finalizing participating teams; Finalizing Matches Schedule; Public Information |
> | September | : | Start of matches in preliminary round, Documentation |
> | October | : | Conclusion of preliminary round; Semi-Finals; Finals, Documentation |
> | October 30 | : | Prize-Giving at Jounen Kwéyòl celebrations |

MANAGEMENT

The tournament will be managed by a special committee set up by the Folk Research Centre comprising of FRC members, community cricketers, and experienced cricket administrators. The committee will be responsible for finalizing the list of competing teams, establishing the rules, liaising with all teams, and handling all logistics relating to the efficient execution of the tournament. The Folk Research Centre will give administrative support and backing to the committee's work."

THE RULES

[12] The playing of the tournament on a community basis in a competitive atmosphere required rules to be drawn up. Consequently, for the finals of the Walaba Competition, the under mentioned conditions were formulated by the F.R.C. and agreed to by the participants as Rules of play –

"1. Play will commence at 9:30 am such other time determined by the umpires and match adjudicator.

2. The number of players per side shall be thirteen (13).

3. Each side will be allotted a maximum three (3) hours or a maximum of 500 balls for batting with a cut-off time of no later than 1:00 pm. There will be a break of 30 minutes between innings. In the event that the side batting first is bowled out before the three (3) hours or 500 balls the side batting second will be allowed the full three (3) hours or 500 balls to reply.

4. In the event of a late start or interruptions during the course of the match, the number of hours/number of balls allotted for batting will be reduced accordingly after consultation between the match adjudicator, umpires and the two (2) captains. In any event, at least 250 balls per innings per

batting side shall constitute a match, in terms of deliveries to determine the outcome of the game.

5. Where there is a query by any member of the opposing sides, the matter will be brought to the attention of the captain who will refer the matter to the umpires. The umpires shall take a decision on the matter or may refer the matter to the match adjudicator for a decision. The decision of the adjudicator will be final.

6. The umpires for the final match will be selected by the organizers of the competition.

7. The umpires in collaboration with the match adjudicator will take all necessary steps to ensure that teams do not waste any time during the course of the match.

8. The umpires will act accordingly to ensure that bowlers bowl all deliveries within reach of batsmen to allow for strokes to be offered; and when in the opinion of the umpires that a bowler is deliberately bowling negative deliveries to the batsmen, the following will apply: -

    (i) The umpires will bring the matter to the attention of the captain and the bowler will receive a warning for deliberate negative bowling.

    (ii) If the bowler continues to deliberately bowl negative deliveries he will receive a second warning; and at that point the umpires will inform the captain that the offending bowler be removed from the bowling and award 6 runs to the batting side.

    (iii) Later in the match the offending bowler may resume bowling at the discretion of his captain."

THE FINALS

[13] At the end of play at the second finals between the Walaba cricket teams of Piaye and Morne Cisseaux on the 6th November 2005, there was no outright winner.

[14] According to Mr. Cyril Edward, the Adjudicator after due consideration based on the 250 balls rule, determined and announced that Piaye Walaba Cricket team had won the game and the competition.

[15] However, Mr. Kennedy Samuel and the Adjudicator Mr. Gilroy Satney dispute this. They both contend that Mr. Satney said over the public address system that on the basis of the number of balls bowled, it would seem that the Piaye team had won.

[16] The Statement on the outcome of the replayed finals of the Bounty National Walaba Tournament from the F.R.C. dated 18th November 2005 states that:

> ". . . the match adjudicator announced on the microphone that it appeared that Piaye was the winning team based on the relative situation of both teams in respect to runs scored 155 for 5 wickets and Morne Cisseaux scored 143 for 5 wickets. Hence he declared Piaye to be the winning team. The captain and members of the Morne Cisseaux team immediately expressed their disagreement with the results to the match officials and members of the Folk Research Centre's Organising Committee."

PROTEST

[17] By letter dated 7th November 2005 the Captain of Morne Cisseaux Walaba cricket team wrote to Mr. Leslie Charles who is the Chairman of the Organizing Committee of the Walaba Cricket Competition for the F.R.C. In this letter, he contested the decision of the finals played on the 6th November 2005, and some of the points made were that:

(a) Morne Cisseaux team bowled a total of 380 balls in the first 3 hours with Piaye reaching 225 runs for 10 wickets.

(b) Piaye team bowled a total of 290 balls in 3 hours and 40 minutes. There was only a 15 minutes interruption for rain. Morne Cisseaux team reached a commanding total of 174 runs for 5 wickets.

(c) Piaye team and their supporters engaged in several delay tactics in order to make clause 4 of the rules applicable, according to their interpretation of clause 4.

(d) Morne Cisseaux team did not receive a complete copy of the Rules as the document handed to them prior to the game truncated Rules 3,4,5 and 8, while omitting Rule 2.

(e) In particular, the document Morne Cisseaux team received stated Rule 4 as Rule 3 in the following manner:

> "In the event of a late start or interruptions during the course of the match the number of hours allotted for batting will be determined after consultation between the match adjudicator, umpires and the two (2) captains."

(f) Piaye seemingly being awarded the game by Mr. Satney is in contravention of Clause 4 of the Rules. Mr. Satney's reason is that at 250 balls, Piaye led 155 runs for 5 wickets while Morne Cisseaux has 143 for 4 wickets.

(g) Since the match ended with Morne Cisseaux facing 290 balls, the first part of Clause 4 should apply. However Mr. Satney did not consult the captain of Morne Cisseaux before making the public announcement.

(h) Since Morne Cisseaux team faced 290 balls; the match should be considered on a run rate of 290 balls as practiced in international cricket matches limited overs competitions, in the absence of a formula provided by the Rules, for determining a winner.

(i) Consequently the decision of the Organizers should not be made, using the 250 balls minimum as 290 balls allow for a wider assessment of the game.

(j) Applying the general rule governing cricket, a team can be declared the winner based on a superior run rate.

(k) Piaye team had a run rate of 0.592 runs per ball while Morne Cisseaux's run rate was 0.6 runs per ball.

(l) On the basis of this and another alternative working put forward in the letter, Morne Cisseaux should have been declared the winner; as would have been the case in any other local and international game, since this team required a further 50 runs to win with 90 more deliveries to face and 7 wickets in hand.

(m) In addition to this, Morne Cisseaux team was disadvantaged since their new ball was declared lost after only 52 deliveries were bowled to them. Consequently, they had a difficult task of scoring from the old ball that was dilapidated from Piaye innings.

[18] It is important to quote the final paragraphs of this letter which stated:

> "Recommendation
>
> It appears that Piaye's fixation was on the money and would settle for nothing less than winners at any cost. We played with the interest of Walaba, and in the competitive but friendly spirit in which the Folk Research Centre had organized this cultural event. The money to us was incidental.
>
> We request that the organizing Committee rightfully declare us the winners. We are willing to sign over the prize money to Piaye in the form of a donation, as we are a proud people that believe in principles and justice rather than financial gain.
>
> Should our request to reconsider be denied we will not accept the second place prize money, nor will we participate in any prize giving ceremony. We anticipate your response on this matter."

MEETINGS TO RESOLVE WINNER

[19] The Folk Research Centre Inc. Walaba Organizing Committee convened a meeting on the 10th November 2005 at the Folk Research Centre without any communication with or from the Captain of the Piaye Walaba Cricket team, on this controversial outcome.

[20] They decided "to invite the two umpires to a subsequent meeting with the Walaba Organizing Committee to review the match and to ensure that the announced result was a fair one according to the rules for the game as laid down by the Walaba Organizing Committee. The match adjudicator, who is a member of the Committee, would also be in attendance."

[21] At the subsequent meeting which took place on Monday, 14th November 2005 at the Folk Research Centre, the consensus was that the umpires had had no say in the final results announced by the adjudicator, and the adjudicator's interpretation of the rules that the use of 250 balls could be used to decide the winner, was not supported by the rules. On the basis of this, coupled with the fact that the Morne Cisseaux team did not receive a complete copy of the final rules before the match day, the Organizing Committee decided –

(i) That the decision to declare the Piaye team as the sole winner be revoked.

(ii) That the Piaye team and the Morne Cisseaux team be declared joint winners of the 2005 Bounty National Walaba Tournament, and that the prize monies be shared between them.

[22] The F.R.C. communicated their decision by their correspondence dated 18th November 2005. Their hope that this decision would be accepted by all the parties as the best one, was not to be.

REJECTION OF DECISION

[23] By letter dated 6th December 2005 Mr. Vern Gill, the legal representative for the Captain of the Piaye Walaba Cricket team, wrote to Mr. Kennedy Samuel, confirming that the F.R.C's proposal about sharing the prize money had been rejected by his client.

[24] Mr. Gill articulated his client's instructions, pointing out in this letter the following things -

"1. A decision was made to replay the finals but to have the Rules modified to allow for a decision at the conclusion of the day's play. A meeting chaired by Mr. Gilroy Satney was

held at your premises with captains and representatives from both teams, members of the Steering Committee and Executive of the Folk Research Centre. Out of this meeting all the parties agreed on the rules, which were perfected by Mr. Satney and passed on to him [the Captain] by Mr. Satney. (As Captain of the team he informed his players of the changes and played accordingly)."

[25] The letter continued –

"2. One of the rules which was looked at was one which required that in the event of a late start or interruption a minimum of 250 balls per innings per batting side would constitute a match for there to be a result. This is consistent with cricket played elsewhere. No one expressed disapproval or non understanding of this rule.

3. Based on this understanding and instructions to his team, the innings was approached by his team in that manner. The game was played with one interruption from the weather but again the day ended without a conclusive decision. The matter was referred to the adjudicator, the same Mr. Satney, who made a decision based on the previously agreed rules, that the Piaye team had won and made a public announcement to the effect."

[26] Mr. Gill stated that his client was perplexed as to how that decision could be reversed by F.R.C. without having involved his clients in any way in the process. He referred to the discussions on the revised rules where the participants agreed that the decision of the adjudicator would be final.

[27] Mr. Gill referred to the effect the reversal did have on the informal betting of monies on the teams. Mr. Gill stated that his client ". . . is mindful of the likely effect such a decision could have on the betting; which, with . . . [F.R.C's] knowledge and approval, took place on the day. You will appreciate that based on the announced result lots of money changed hands at the event."

[28] Mr. Gill reiterated his client's decision not to accept the F.R.C's decision; and their insistence that the game was won by the Piaye team fair and square, given perhaps that they had a better appreciation for the rules governing the game. Mr. Gill requested that F.R.C. confirm the results and prizes as announced on the 6th November 2005.

[29] Following their letters written to Mr. Gill on the 20th December 2005 and 31st January 2006, explaining and confirming the decision of the Committee of the F.R.C, there was no response from Mr. Gill. Subsequently, the F.R.C. issued a Press Release dated 21st February 2006 announcing the long-awaited Prize-giving ceremony for the 2005 Bounty National Walaba Cricket Competition to take place at the Folk Research Centre "this afternoon from 4:00 p.m." Mr. Edward attended this Prize-giving and received a cheque of $4,500.00 and a hamper worth approximately $200.00 from the Tournament Sponsors.

THE APPLICATION

[30] On the 21st February, the same day as the long-awaited Prize-giving, Mr. Gill approached this Court.

[31] Paragraph 3 of the Application states -

> "The Applicant applies to the Court for leave for Judicial Review of a decision made by a committee of the Folk Research Centre and communicated by the Executive Director, Kennedy Samuel, in a letter of the 18th November, 2005 revoking a decision by the match

adjudicator that the Piaye Walaba Cricket Team was the winner of the finals played on the 6th November 2005 of the National Tournament and declaring Piaye to be joint winners with the Morne Cisseaux Walaba team.

[32] The Applicant Mr. Edward, pleaded that this decision which was made without any input from or representation of Piaye team, is contrary to the agreed upon rules for the match, one of which was that the decision of the adjudicator would be final. By paragraph 5 of his supporting Affidavit he deposed that the meetings held by the F.R.C. after the Morne Cisseaux letter, were held without him or any representative from the Piaye team being present, or having an opportunity to be heard, and to respond to whatever the protest involved.

[33] The Application alleges that the implications of this decision is that there would be a loss of prize money for the Applicant's team, $4,500.00 instead of $6,000.00 and a loss of the right to call themselves champions of the Walaba Cricket game in St. Lucia.

[34] It is stated in the Application that this matter is one of public interest because this was a national event well supported by the administration and the public, and clear rules and guidelines and processes need to be established as it is envisaged that this will be an annual event.

SUBMISSIONS OF COUNSEL

[35] Learned Counsel Mr. Gill submitted that the Rules of natural justice were applicable to the decision making process of the Committee which reversed the declaration of the adjudicator. He argued that since Folk Research Centre Inc. failed to allow Mr. Edward to be heard before making the decision; and also failed to disclose the Morne Cisseaux letter to him, their decision cannot be sustained. He has relied on the Judgment of Byron C.J. delivered on the 27th March 2000 in

the Dominica case Civil Appeal No. 10 of 1999. Cpl Philbert Bertrand v The Secretary, PSC, which explains the rules of natural justice.

[36] Speaking of the Audi Alteram Partem Rule as the first rule of natural justice which requires that each party be heard by the adjudicating authority, Byron C.J. continued at paragraph 11:

> "It seems clear from this case that three essential elements of the rule require reinstatement. One is the duty to disclose the information on which judgment is likely to be based in order to give an opportunity to controvert, correct and comment on it. Another is the necessity to give particulars of the charges on which judgment will be based. The third is the elementary and obvious imperative that judgment should not be reached until the parties have had an opportunity to be heard."

[37] Learned Counsel Mr. Charlemagne did not directly address this submission.

[38] Instead, he questioned the jurisdiction of the Court to entertain these proceedings as judicial review proceedings, given that the F.R.C. is a private non-profit company, conducting its activities including the organized Walaba Cricket Competition, in its private capacity, and not as a public functionary. Mr. Charlemagne relied on Supperstone & Goudie, Judicial Review 2rd ed. (1997) paragraphs 3.5, 3.6; R v Football Association Ltd Ex parte League Ltd and FootBall Association Ltd v Football League Ltd [1993] 2 All E.R. 883; Law v National Greyhound Racing Club Ltd [1983] 3 All E.R. 300; GCHQ case [1984] 3 All E.R. 935; R v British Broadcasting Corp. Ex parte Lavelle 1983] 1 All E.R. 241; R v Disciplinary Committee of the Jockey Club Ex Parte Aga Khan [1983] 2 All E.R. 853. The authorities existing after 1987, discuss the impact of the decision in R v Panel on Take-Overs and Mergers Ex Parte Datafin Plc [1987] 1 All E.R. 564 on the development of the law on Judicial Review.

[39] Mr. Charlemagne argued that the Memorandum of Association of F.R.C. clearly discloses that it was established to promote research into the St. Lucian culture through the use of Folk Arts and appreciation of Kweyol and contribute to the cultural development of St. Lucia.

[40] Article 3 of the Memorandum states that the objects for which the Folk Research Centre Inc. is established are:-

> "(a) To promote research into St. Lucian Culture through the Scientific study of culture; the collection and analysis of data on the Folk tradition and through the compilation, publication and dissemination of information.
>
> (b) To explore and clarify the role of culture in the development of St. Lucia through the following:-
>
> (i) promoting the use of the Folk Arts as a medium for change and integral development;
>
> (ii) promoting the use and appreciation of Kweyol;
>
> (iii) and by monitoring cultural research by all foreign personnel and institutions.
>
> (c) To contribute to the cultural development of St. Lucia through the following:-
>
> (i) Organisation and implementation of Kweyol education programmes;
>
> (ii) Promoting and supporting development projects aimed at strengthening traditional values of co-operation and self-reliance."

[41] Article 4 (e), (f) and (n) state –

> "The Folk Research Centre shall also have the following powers which shall be exercised solely for the purpose of attaining the aforementioned objects.

(a) to (d) . . .

(e) To collaborate as appropriate with the Ministry of Government and all other bodies responsible for Culture in St. Lucia and elsewhere in effecting the objects described in paragraph 3 hereof.

(f) To maintain the ties of co-operation which exists between the Folk Research Centre and other . . . organization having similar objects to the objects of the Folk Research Centre.

(g) to (m) . . .

(n) To do such other things as are incidental or conducive to the attainment of the above objects . . .”

[42] Mr. Charlemagne mounted F.R.C’s challenge to the Application with the following points:

[1] There are well defined parameters as to whether a private company or body is caught by judicial review. The most salient element is that the aspect over which it exercises jurisdiction must be a ‘public’ one: Supperstone & Goudie at paragraph 3.6 states that “A public element’ suggests a governmental element though extending to indirect governmental connections. . .”

[2] The F.R.C. has no exclusive jurisdiction over cricket whether local or Walaba cricket, and there is a body in place in St. Lucia performing that duty being the St. Lucia National Cricket Association.

[3] A Walaba Cricket competition is not in the domain or objects of the F.R.C, and there is no evidence suggesting that the F.R.C. has exclusive control or stronghold over culture or cultural activities in St. Lucia, as there already exists a National Cultural Foundation funded by the Government.

[4] There is no arguable case for review since Mr. Cyril has condoned the decision of F.R.C. by participating in the prize-giving ceremony, and then later deposing in his Affidavit that he was put under pressure to attend, and he was mitigating his losses.

[5] Mr. Cyril is therefore asking the Court to act in vain and to adjudicate on a matter which has come to an end and in which he fully participated.

[6] Since the F.R.C. by organizing a private cricket competition was acting outside the scope of its main objective, a task which is open to any private individual cannot find itself in the realm of judicial review scrutiny.

[7] To grant leave on this Application would leave the Court open to a plethora of unnecessary judicial review applications. Since there are various heads of private law in which private law concerns can be addressed, the Court should dismiss the Application with costs to F.R.C.

[43] Learned Counsel Mr. Gill argued that the law on the issue – Whether a decision of a private company is susceptible to review? appears to be fluid.

[44] Relying on Datafin supra; Principles of Judicial Review by De Smith Woolf and Jowells paragraphs 3-019 – 3-0122; Administrative Law Legal Challenges to Official Action by Carl Emery (Sweet & Maxwell 1999) pages 60 – 66; as well as the cases Counsel Mr. Charlemagne referred to, Mr. Gill made the following submissions:

(a) The defining case of Datafin set out the principle that any body is subject to judicial review in respect of any public function which that body performs. The test has moved from the source of power to examining whether the body is performing a public function.

(b) A public function is defined by De Smith Woolf and Jowells (paragraphs 3-0122 at page 65) as follows:

> "A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public; or a section of it, as having authority to do so."

(c) De Smith Woolf and Jowells (para 3-019 at page 64) states –

> "It is submitted that the Court ought to have regard to the function being performed by a body whose decision is impugned, rather than the formal source of its power, this should be so whether or not the body in question is ostensibly a 'public' or 'private' one. If a public function is being performed, and contract law does not provide an aggrieved person with an appropriate remedy, then action taken under or in pursuance of a contract should be subject to control by judicial review principles."

(d) Though decided cases Jockey Club Ex parte RAM supra; Jockey Club Ex parte Aga Khen supra and Football Association Ex parte Football League Ltd supra all decided against the granting of Leave of Judicial Review, all leave an opening for the possibility of judicial review in not dissimilar circumstances.

[45] Mr. Gill contends that although there appears to be much scope for the Court to determine the extent of what is amenable to Judicial Review, there is no contractual situation in the present case where consideration was given to allow the Court to refer the parties to their private remedies

[46] In light of this, Learned Counsel Mr. Gill submitted, that since the public has a legitimate concern as to the outcome of this issue, and it is not satisfactorily protected by private law; the Court should take on the matter as one answerable to Judicial Review.

APPLYING THE LAW

[47] I do not accept that Mr. Edward and his Piaye Walaba Cricket team have no other remedy in private law, because of Article 917A of the Civil Code of St. Lucia which speaks for itself. It states –

> "Subject to the provisions of this Article; from and after the coming into operation of this article the law of England for the time being relating to contracts, quasi-contracts . . . shall mutatis mutandis extend to . . . [St Lucia] and the provisions of Articles 918 to 989 and 991 to 1132 of this Code shall as far as practicable be construed accordingly; and the said articles shall cease to be construed in accordance with the law of lower Canada or the "Coutume de Paris."

Provided, however, as follows:-

(a) the English doctrine of consideration shall not apply to contracts governed by the law of . . . [St. Lucia] and the term "consideration" shall have the meaning herein assigned to it;

(b) the term "consideration" when used with respect to contracts shall continue as heretofore to mean the cause or reason of entering into a contract or of incurring an obligation; and consideration may be either onerous or gratuitous;

(c) . . .

(2) . . .

(3) Where a conflict exists between the law of England and the express provisions of this Code or of any other statute, the provisions of the Code or of such statute shall prevail."

[48] Furthermore, De Smith Woolf & Jowells supra point out at footnote 63, page 66 that "the mere fact that there may be no remedy other than judicial review (such as in contract or tort) is not in itself a sufficient reason for the court to apply judicial review principles and remedies; the body must be exercising a public function."

[49] The F.R.C. derives its authority to perform its functions in question, not from a statutory source, or from prerogative power, but from its memorandum and Articles and its contractual relationships in accordance with the relevant Rules governing the Walaba Cricket Tournament.

[50] Although Counsel Mr. Charlemagne is of the view that the F.R.C.'s promotion of the Walaba Cricket Tournament, was not within the scope of its objectives under its Memorandum, I accept Counsel Mr. Gill's view that such a promotion falls within the scope of Article 3 (c) (ii) of F.R.C.'s Memorandum of Association.

[51] Though Articles 4 (e) and (f) of the Memorandum (reproduced at paragraph 41 above) permitted the F.R.C. to collaborate with the Ministry of Government responsible for culture in St. Lucia; and affiliate with organizations sharing similar objects as the F.R.C., there is no evidence to establish such collaboration or affiliation.

[52] Although F.R.C.'s Proposal (at paragraph 11 above) indicated that the Special Committee for the Management of the Tournament would comprise "experienced cricket administrators", there was no evidence led which disclosed any collaboration or affiliation with The St. Lucia National Cricket Association.

[53] As Mr. Charlemagne mentioned, the Cultural Development Foundation was established under Section 3 of the Cultural Development Foundation Act No. 26 of 2000 which states – at Section 3 (2) that "The Foundation shall be the principal public body responsible for execution of the national cultural activities on behalf of the Government; Section 4 (1) states that the Foundation shall have as its objects –

(a) the implementation of a National Cultural Policy;
(b) the advancement of the arts and culture in the society.

The 16 duties of the Foundation are specified in Sections 4 (2) and (3) of the Act.

[54] Before Datafin supra, and cases applying the Datafin principles, the law appeared to be that a body only attracted public law intervention, if its was empowered to act

by statute, delegated authority, prerogative power, and possibly royal charter. Also, the decision complained of must have been made in the body's public law capacity so as to affect the public law rights, obligations or expectations of the persons subject to the exercise of power. Consequently, judicial review was not available as redress against the activities of a private domestic body.

[55] In Datafin, the Court of Appeal held that the Take Over Panel which was a self-regulating voluntary body acting as a watch dog in the city, was exercising public law functions. The Court held that there was jurisdiction to review the Take Over Panel's decisions since . . . "it operates wholly in the public domain. Its jurisdiction extends throughout the United Kingdom. Its code and rulings apply equally to all who wish to make take over bids or promote mergers, whether or not they are members of bodies represented on the panel . . . [and] . . . the position has already been reached in which central government has incorporated the panel into its own regulatory network built up under the Prevention of Fraud (Investments) Act 1958 and allied Statutes such as the Banking Act 1979." (Per Donaldson M.R. at pages 574 – 575).

[56] Lloyd L.J. at page 585 observed –

> "Having regard to the way in which the panel came to be established, the fact that the Governor of the Bank of England appoints both the Chairman and deputy chairman, and the other matters to which Sir John Donaldson M.R. has referred, I am persuaded that the panel was established "under authority of [the] Government" to use the language of Lord Diplock L.J. in Lain's case. If in addition to looking at the source of the power we are entitled to look at the nature of the power, as I believe were are; then the case is all the stronger."

[57] The Datafin decision is therefore the authority for saying that where there is a statutory underpinning of a private body by Government, judicial review may apply to its decisions.

[58] It would seem therefore from the judicial statements, that the various factors to consider when determining whether or not the decision of a private body is subject to judicial review are –

(1) the source of the existence of the body concerned;
(2) the nature and source of its powers;
(3) the nature of the role to be filled by the body;
(4) whether it is of major or national importance or monopolistic;
(5) whether there is any other effective remedy;
(6) the nature of the particular function being performed; and
(7) whether there is a statutory underpinning of the private body by Government.

Factors (3) and (6) seemingly overlap.

[59] In the pre-Datafin decision Law v National Greyhound supra; it was held that the exercise of the Stewards' authority to suspend a trainer's licence derived from contract; and that a challenge to that authority could only be made by private law procedure. Lawton J at page 1307 of [1983] 1 W.L.R. pronounced –

> "In my judgment, such powers as the stewards had to suspend the plaintiff's licence derived from a contract between him and the defendants . . . A stewards' inquiry under the defendant's Rules of Racing concerned only those who voluntarily submitted themselves to the stewards' jurisdiction. There was no public element in the jurisdiction itself. Its exercise, however, could have consequences from which the public benefited, as for example, by the stamping out of malpractices, and from which individuals might have their rights restricted by, for example, being prevented from employing a trainer

whose licence has been suspended. Consequences affecting the public generally can flow from the decision of many domestic tribunals."

[60] Slade L.J. at pages 307-308 in Law v Greyhound [1983] 3 All E.R. said that the defendant's status was essentially domestic, not public, albeit that its decisions "may be of public concern."

[61] In R v East Berkshire Health Authority [1984] 3 All E.R. 425, at 430, Donaldson M.R. said that he could not find "any warrant for equating public law with the interest of the public."

[62] Lastly, it was Simon Brown J in R v Chief Rabbi of the United Hebrew Congregation of G.B. and the Commonwealth Ex parte Wachmann [1993] 2 All E.R. 249 who said at page 254:

"To say of decisions of a given body that they are public law decisions with public law consequencies means something more than that they are decisions which may be of great interest of concern to the public or, indeed, which may have consequences for the public. To attract the court's supervisory jurisdiction there must be not merely a public but potentially a government interest in the decision-making power in question. Where non-governmental bodies have hither to been held reviewable; they have generally been operating as an integral part of a regulatory system, which although itself non-statutory, is nevertheless supported by statutory powers and penalties clearly indicative of government concern . . . it is a feature of all these cases that, were there no self-regulatory body in existence, Parliament would almost inevitably intervene to control the activity in question."

[63] My research also unearthed the Barbados case Griffith and Byer Et al v Barbados Cricket Association (1989) 24 Barb. L.R. 108; (1989) 41 W.I.R. 48.

[64] Though the High Court of Barbados did not consider the Datafin landmark authority, or apply any of the decisions previously mentioned in this judgment, Williams C.J. had no difficulty determining the issues raised in the actions of the 3 plaintiffs. They sought declarations that the decision of the defendant Association, that the result of a Division One Cricket match played between their respective teams in the final fixture of the competition in 1987 was ultra vires, illegal and void.

[65] There was another declarations sought by the St. Catherine's Social and Sports Club, through the 1st Plaintiff that the match was played in accordance with the rules of the competition.

[66] The Police Sports Club through the 2nd and 3rd plaintiffs also sought a declaration that Police were the winners of the match, and the Division One Cricket competition 1987.

[67] It is important to state the facts which bear some similarities to the instant case. There was to be a 2 innings match between the 2 teams for 3 consecutive Saturdays, but rain prevented play on the first 2 days. Before the toss on the final day of play, the captains agreed to limit the first innings of each, but denied that there was any agreement to limit the 2nd innings. Police won the toss and sent St. Catherine in to bat. St. Catherine closed its one over 1st innings with 10 runs, Police with 11 runs. In the 2nd innings St. Catherine was bowled out for 75 runs after 21.3 overs; Police then scored 75 runs for the loss of 5 wickets. Police emerged the winners of the competition for 1987. After complaints by other member clubs, the Board of Association declared the decision of the match in question a no decision, awarded one point to each of the 2 competing teams and as a result one of the complainants, the Barbados Cricket League emerged as winner of the competition for 1987.

[68] A crucial question arose as to whether the Court had jurisdiction in this matter. The Rules of the Association and the Statutory provisions governing the operation of the Association made the decision of the Board final and binding on its members.

[69] It was held –

(i) The action of St. Catherine and the Police in agreeing to the first innings limitation was consistent with Note (b) Law 12.1 of the Laws of Cricket. The decision of the Board of the defendant Association was void and of no effect and the Police were the winners of the match.

(ii) In the hearing which considered the first innings limitation, the 2 clubs were never given an opportunity to put their case before the Board. The representative of one of the Complaints Committee of the Board also sat as a member of the Board which declared in favour of his complaint. The cardinal principles of natural justice that a man should know what is being alleged against him and be given a reasonable opportunity to rebut the allegations and that no man should be a judge in his own cause had been breached.

(iii) Where matters of dispute within the Association were questions of law, it would be illogical for the court to defer the exercise of its jurisdiction in order to allow decisions on those issues to be made by bodies that for the most part comprised persons not trained or experienced in the law. It would be different if the questions to be decided fell within an area which members of the Association by their contractual arrangements with each other; properly left to the decision of the Board.

[70] It is important to state that the authority of the Defendants to perform quasi judicial functions in respect of the Clubs that were members, was derived from Statute. The Association is a body corporate by virtue of a private Act 1933 which enables it to sue and be sued. The Act makes its property liable for its debts and liabilities and gives it power and authority to make rules and regulations. The Act also makes it lawful for the Association to fix and appoint reasonable adequate fines, forfeitures and penalties for the non-observance; non performance or breach of the rules and regulations.

[71] Section 6 of the Act states that "Every dispute between any member or members of the Association and any person claiming through or under a member or under the Rules of the Association, and any other member or members of the Association shall be decided in a manner directed by the Rules of the Association and the decision so made shall be binding and conclusive on all the parties without Appeal."

[72] The Association comprises a group of individuals and cricket clubs whose objects as stated in the Constitution and General Rules of the Association are to promote and control the game of cricket in Barbados and to join with the other West Indian territories and Guyana to promote the game in the West Indies generally.

[73] It is evident therefore that the Association was fulfilling a public function; and the state was apparently involved in and encouraging it's activity. There was a statutory underpinning of the Association by government in my opinion.

[74] Although Datafin was not applied, it is obvious to me that this Barbados case would have satisfied the criteria established in Datafin. The Association obviously has monopolistic control over the national sporting activity which it is regulating in Barbados.

[75] The same thing cannot be said for F.R.C. in St. Lucia. I am satisfied that F.R.C. has not fulfilled the Datafin test. F.R.C. is not a body which regulates the national cultural activities on behalf of the government, or with the substantial encouragement of the Government of St. Lucia. The fact that the Prime Minister initiated the promotion of Walaba Cricket Tournament by the F.R.C, or that politicians on dignitaries were present at the Tournament or attended the Prize Giving Ceremony, is not sufficient in my view to conclude that the F.R.C. has rights or duties relating to members of the public.

[76] Given the source of F.R.C.'s powers, and the nature of its functions, and the absence of a sufficient public element involved in F.R.C's activity, its participation in Walaba Cricket promotion is of a domestic character, based upon a contractual relationship between F.R.C. and the participating cricket teams.

CONCLUSION

[77] I conclude therefore that though Mr. Edward and his Piaye Walaba Cricket Team have a sufficient interest pursuant to PART 56.2 (2) (a) of CPR 2000, he has failed to prove that no alternative form of redress exists. In any event, based on my findings, F.R.C. is not a public authority whose decision is amenable to judicial review.

[78] The Application is therefore dismissed with Costs to the Respondent to be assessed on the 20th November 2006. The Respondent's Counsel is to file a Statement of Costs.

Dated this 13th day of November 2006

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OLA MAE EDWARDS
HIGH COURT JUDGE