



CANOC Sports Law

SEPTEMBER 18-19, 2019

***Ethics, Integrity, Agents,
Athletes and
Administrators***

Rule 22.1, Olympic Charter

- ▶ “The IOC Ethics Commission is charged with defining and updating a framework of ethical principles, including a Code of Ethics, based upon the values and principles enshrined in the Olympic Charter of which the said Code forms an integral part. In addition, it investigates complaints raised in relation to the nonrespect of such ethical principles, including breaches of the Code of Ethics and, if necessary, proposes sanctions to the IOC Executive Board.”

IOC Code of Ethics: Preamble

“The International Olympic Committee and each of its members and its administration, the National Olympic Committees, the International Federations, the cities taking part in any type of candidature procedures of the IOC, the Organising Committees for the Olympic Games, Olympic Games participants and the Recognised Organisations (hereinafter “the Olympic parties”) restate their commitment to the Olympic Charter and in particular its Fundamental Principles, and reaffirm their loyalty to the Olympic ideal inspired by Pierre de Coubertin. The Olympic parties undertake to disseminate the culture of ethics and integrity within their respective areas of competence and to serve as role models.”

Japanese Olympic Committee President Tsunekazu Takeda



- ▶ **“Tsunekazu Takeda will resign as President of the Japanese Olympic Committee (JOC) following bribery allegations linked to the successful bid from Tokyo 2020.** The 71-year-old...will also leave his role as an International Olympic Committee (IOC) member, where he was chair of the influential Marketing Commission.

[insidethegames, March 19, 2019]

Ethics in Caribbean Sport: The Marlon Samuels ruling



Ethics in Caribbean Sport: A case study from football

► MOHAMED BIN HAMMAM V FIFA



MOHAMED BIN HAMMAM V. FIFA

Key Background Facts:

- ▶ March 2011-MBH declares candidacy for FIFA Presidency
- ▶ May 9, 2011-MBH arrives in POS, having been denied visa to enter USA. \$360,000 US wired before then to CFU (plus USD 50,000 as a supplemental payment)
- ▶ May 10, 2011-MBH makes speech to CFU; leaves TT
- ▶ May 10, 2011-gifts distributed to CFU members (unmarked envelopes containing USD 40,000 each).

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- ▶ May 11, 2011-meeting between former CONCACAF President and CFU members
- ▶ May 15, 2011-Attorney John Collins hired by CONCACAF General Secretary, Chuck Blazer, to begin investigations regarding the source of money distributed
- ▶ May 24, 2011-Chuck Blazer reports to FIFA General Secretary, Jerome Valcke, that MBH had allegedly violated the FIFA Code of Ethics
- ▶ May 25, 2011-MBH invited to respond to allegations.

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- ▶ May 29, 2011 - FIFA provisionally suspends MBH from all football-related activity for 30 days.
- ▶ June 29, 2011 - formal report produced about the events at the May 10-11, 2011 Hyatt meeting
- ▶ July 22-23, 2011 - FIFA convenes hearing in Zurich; decision rendered

DECISION OF THE FIFA ETHICS COMMITTEE

“1. The official, Mr. Mohamed Bin Hammam, is found guilty of infringement of art 3. par 1, par 2 and par 3 (General Rules), art 9 par. 1 (Loyalty and confidentiality), art. 10 par 2 (accepting and giving gifts and other benefits) and art. 11 par 2 (Bribery) of the FIFA Code of Ethics..”

DECISION OF THE FIFA ETHICS COMMITTEE

“2. The official, Mohamed Bin Hammam, is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life as from 29 May 2011, in accordance with art. 22 of the FIFA Disciplinary Code and in connection with art. 17 of the FIFA Code of Ethics.”

MOHAMED BIN HAMMAM V. FIFA

Further time lines:

- August 18, 2011-Decision of the FIFA Ethics Committee is communicated to MBH; MBH appeals
- September 15, 2011-hearing of FIFA Appeals Committee; appeal rejected
- November 9, 2011-MBH appeals to Court of Arbitration for Sport
- April 18-19, 2012-CAS hearing

PERSONS EXAMINED DURING CAS HEARING

- Mr. Joseph Blatter (by video)-FIFA President
- Mr. Joseph (by phone)-former President of **Grenada Football Association**
- Mr. Hinds (by phone)-General Secretary of the **Barbados Football Association**
- Mr. Klass (in person), former President of the **Guyana Football Federation**
- Ms. Kanhai (in person), former Secretary General of CFU
- Mr. Sealey (in person), President of the **Bahamas Football Association**
- Mr. Sabir (in person), Secretary General of the **Bermuda Football Association**

Salient facts

- ▶ Request by FIFA to introduce Report by Price Waterhouse Coopers (PwC) was rejected by CAS Panel.
- ▶ FIFA referred to a bank transfer of USD 1 million (25xUSD 40,000) but the CAS Panel concluded that “such amount cannot *prima facie* be considered as having any relationship with the monies offered on May 10, 2011”
- ▶ The CAS Panel stated, however, that: “In the event new evidence relating to the PwC Report or to any other kind of evidence related to the present case is discovered and without prejudice to the principle of *res judicata* and other principles of applicable law, it would still be possible to re-open this case.”

Appellant's submissions

MBH's main submissions:

- ▶ “that FIFA has disregarded the principle of due process in reaching its decision to sanction him.”
- ▶ MBH “demanded that the FIFA Ethics and Appeal Committees should apply the standards of due process as guaranteed in the European Convention of Human Rights...Swiss law and general principles of sports law.”

Appellant's submissions

- ▶ MBH believed that the FIFA bodies were neither independent nor impartial [these bodies are appointed by the FIFA Executive Committee, chaired by Blatter and composed of his close friends]
- ▶ MBH stated that leaks of confidential info to the media prejudiced his right to a fair hearing.

Respondent's Submissions

- ▶ FIFA's view was that the cash payments of May 2011 at the Trinidad Hyatt were a violation of the FCE and the FDC.

Art 3 of FCE:

- ▶ “1. Officials...shall respect the significance of their allegiance to FIFA, the confederations, associations, leagues and clubs and represent them honestly, worthily, respectably and with integrity.
- ▶ 2. Officials shall show commitment to an ethical attitude while performing their duties. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity.

Respondent's Submissions

- ▶ “3. Officials may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains.”
- ▶ **Article 10.2-** “While performing their duties, officials may give gifts and other benefits in accordance with the average relative value of local cultural customs to third parties, provided no dishonest advantages are gained and there is no conflict of interest.”

Respondent's Submissions

- ▶ FIFA argued that the “USD 40,000 was offered by way of gift, a matter that is not in dispute.”
- ▶ FIFA also argued that MBH “was the source of the cash gifts”
- ▶ FIFA relied, *inter alia*, on Art 11(2) of the FCE which states that “officials are forbidden from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties.”

The ruling of the CAS

“The fact remains that the Panel has not been presented with any direct evidence to link Mr. Bin Hammam with the money’s physical presence in Trinidad and Tobago, its transfer in a suitcase or otherwise to Mr. Warner, and its subsequent offer to the CFU members for the purpose of inducing them to vote for him.”

The ruling of the CAS

“It is readily apparent that the investigation carried out by FIFA was neither thorough in respect of the matters that it did address, nor comprehensive in its scope...Accordingly, on the basis of the foregoing considerations and the evidence before it, the majority of the Panel is unable to conclude to its comfortable satisfaction that the charges against Mr. Bin Hammam are established.”

The ruling of the CAS

“The Panel...wishes to make clear that in applying the law, as it is required to do under the CAS Code, it is not making any sort of affirmative finding of innocence in relation to Mr. Bin Hammam. The Panel is doing no more than concluding that the evidence is insufficient...It is a situation of “case not proven”...”

Athletes and their Agents



► Imageview
Management Ltd. V
Kelvin Jack

The duties of an agent

Common duties/responsibilities of agents include:

- ❑ **marketing** the player, and financial management of the player's portfolio;
- ❑ **dealing with any disputes** that may arise involving the player;
- ❑ arranging and **negotiating personal appearances**;
- ❑ **offering financial and investment advice**, tax planning, and tax return preparation; and
- ❑ **handling any other** off-the-field legal issues.

Kelvin Jack case study

The central issue: **“What if a footballer’s agent, in negotiating for his client, makes a secret deal with the club for himself on the side?”**

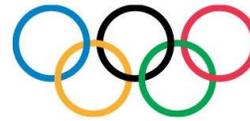
(World Sports Law Report April 2009, Kelvin Jack: case analysis)

Kelvin Jack case study: Lessons

- ❖ The agency relationship is a fiduciary relationship between one person — the agent — who agrees to act for, and under the direction or control of another — the principal.
- ❖ A fiduciary relationship implies that an obligation of *trust and confidence* exists between the principal and agent.
- ❖ Acting *on behalf of* a principal signifies that an agent is not conducting negotiations for his or her own best interest; rather, they are for the profit of the principal in the relationship.

Conclusion

- ▶ The modern-day sports industry must be athlete-centred.
- ▶ The facilitate that type of culture, administrators must cultivate an environment of integrity, trust, mutual respect and goodwill in keeping with the Fundamental Principles of Olympism.



THANK YOU!

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