

# AN ANALYTICAL REVIEW OF THE DISCIPLINARY PROCEDURE UNDER THE INTERNATIONAL CRICKET COUNCIL CODE FOR CONDUCT OF PLAYERS AND PLAYER SUPPORT PERSONEL

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## INTRODUCTION

International cricket council, the governing body of world cricket, which has 105 countries currently in membership, began its life with some very tentative steps. In 1907, Abe Baily, the president of the South African cricket Association, wrote a letter to F.E Lacey, Melbourne Cricket Club Secretary and suggested the formation of as IMPERIAL CRICKET CLUB. It was thereby stated that its function would be to formulate set of rules and regulations to govern international matches involving England, Australia and South Africa. He also wished to promote a Triangular Test series between the counties in England in 1909.<sup>235</sup>

A month later, under Lord Harris's Chairmanship, a second meeting set the Imperial Cricket conference on its way, when rules were agreed to control test cricket between the three nations. He prescribed at a second meeting at the oval, where it was agreed that the membership of the ICC should comprise governing bodies of cricket in counties within the Empire to which cricket teams are sent, or which send teams to England.<sup>236</sup>

From then onwards, the ICC met on an annual basis except during the war year. The main business of these meetings was to set out future test tours, check that players were properly qualified and encourage the use of turf pitches as against matting ones. Possible law changes also came up for discussion.

In 1964, Pakistan suggested the expansion on the ICC for the purpose of including non-test playing countries. In the following year, the ICC had another name to International cricket conference.<sup>237</sup> In July of the same year, the ICC had another name change – to International Cricket Council – but still retains the three initials that had served from its inception. The newly named organization had a wider authority and was not merely confined to the making of recommendations to national governing bodies rather it could impose binding decisions on members. The most far reaching effort of the changes at this time was the creation, in 1993, of the post chief executive of ICC.<sup>238</sup>

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<sup>235</sup> Available At [Http://Www.Icc-Cicket.Com/The-Icc/Overview.Php](http://Www.Icc-Cicket.Com/The-Icc/Overview.Php) (Visited On August 5,2014)

<sup>236</sup> *Ibid*

<sup>237</sup> Available At [Http://Www.Icc-Cricket.Com/The-Icc/About\\_The\\_Organisation/History.Php](http://Www.Icc-Cricket.Com/The-Icc/About_The_Organisation/History.Php) (Visited On August 5, 2014).

<sup>238</sup> *Ibid*

As the international governing body for cricket, the international cricket council issued the following Mission Statement.<sup>239</sup>

- Providing a world class environment for international cricket;
- Delivering major events across three formats;
- Providing targeted support to members; and
- Promoting the global game.

In pursuance to the aforementioned statement, the ICC adopted and implemented the “ ICC CODE OF CONDUCT FOR PLAYERS and PLAYERS SUPPORT PERSONNEL” to maintain the public image, popularity and integrity of cricket by providing an effective means to deter any participant from conducting themselves improperly on and off the ‘Field of play’ or in a manner that is contrary to the ‘Spirit of cricket’ and a robust disciplinary procedure pursuant to which all matters of improper conduct can be dealt with fairly, with certainty and in an expeditious manner.<sup>240</sup>

### **THE DISCIPLINARY PROCEDURE: AN INTRODUCTION**

The ICC adopted and implemented the code of conduct for players and players support personnel as part of the ICC’s continuing efforts to maintain the public image, popularity and integrity of cricket by providing an effective means to deter any participant from conducting themselves improperly on and off the ‘field-of – play’ or in a manner that is contrary to the ‘ spirit of cricket’ and a robust disciplinary procedure pursuant to which all matters of improper conduct can be dealt with fairly, with certainty and in an expeditious manner.<sup>241</sup>

The scope of this code under article 1 extends all the players and players supports personnel as have been defined in the Appendix to the code and all such persons are automatically bound by this code. Under the Appendix to this code, a player has been defined as any cricketer who is selected in an playing or touring team or squad that is chosen to represent a national cricket federation in any international match or series of international matches and also a ‘player support personnel’ is defined as any coach, trainer, manager, selector, team officials, doctor, physiotherapist or any other person employed by, representing or otherwise affiliated to a playing or touring team or squad that is chosen to represent a national cricket federation in any international match or series of international matches.<sup>242</sup>

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<sup>239</sup> *Supra* Note 1.

<sup>240</sup> Available At [Http://Www.Icc-Cricket.Com/Rules\\_And\\_Regulations.Php](http://Www.Icc-Cricket.Com/Rules_And_Regulations.Php) (Visited On August 6, 2014).

<sup>241</sup> Available At [Http://Www.Icc-Cricket.Com/The-Icc/Overview.Php](http://Www.Icc-Cricket.Com/The-Icc/Overview.Php) ( Last Visited On August 6, 2014).

<sup>242</sup> Appendix-1 ‘Definitions’ 13.27 The I.C.C CODE OF CONDUCT FOR PLAYER AND PLAYERS SUPPORT PERSONNEL Available At [Www.Usaca.Org/Docs/ICC%20Code%20of%20conduct.Pdf](http://Www.Usaca.Org/Docs/ICC%20Code%20of%20conduct.Pdf) (Visited On August 6, 2014).

Article 2 of the deals with the various forms of the offences committed by the player or even a player support personnel in contravention to the terms of the code.<sup>243</sup> Moreover the code provides for several notes in the code for the simple purpose of providing guidance to the nature and examples of certain documents, which might be prohibited by a particular article and should not be read as an exhaustive or limiting list of conduct prohibited by such article.

Thus, the various offences as mentioned in the code have been categorized as Level 1, Level 2, Level 3, Level 4 offences, these offences have been broadly describe under Article 2 of the Code of conduct offences. This Article also enshrines the concept of minimum over rate offences<sup>244</sup>, which also forms the part of offence committed against the principle and spirit of the game.

Under the disciplinary procedure of this code, it is important to note that in case of commissions of any offences under the ambit of level 1, level 2, and minimum over rate offence, the prescribed procedure under Article 5.1 is to be followed. In case of any offences under level 3 and/or level 4, the procedure that must be followed has been highlighted under Article 5.2 of the code. Finally, the last part of the Disciplinary Procedure includes the general principle that are to be considered while following the guidelines as enshrined in the code.

Thus, in a nutshell, it can be stated that the procedure under the ICC Code can Categorically divided into three slots, where the first slot deals with level 1, level 2, and maximum over rate offences, the second deals with level 3 and level 4 offences and the third determines the general principles of procedure to be considered under the code.

### **THE DISCIPLINARY PROCEDURE FOR LEVEL 1, LEVEL 2 AND MINIMUM OVER RATE OFFENCES**

Where a matter proceeds to a hearing for adjudication on Level 1, Level 2 and minimum over rate offences such cases is then referred to march referee for adjudication in accordance with the procedure prescribed under Article 5.1 of the Code.

The first and foremost procedure is of 'hearing'. The hearing takes place at the time specified in the ' Notice of charge' which in the absence of exceptional circumstances should not be more than thirty six hours after the receipt of the notice of charge and subject to proviso under Article 5, in the country in which the alleged offence was committed .<sup>245</sup> This provision is also subject to the discretion of the match referee who may determine the date and place of hearing in any case of good cause shown by the player or player support

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<sup>243</sup> Article 2 *Ibid.*

<sup>244</sup> Article 5.1, *Ibid*

<sup>245</sup> Article 4.1, *Ibid.*

personnel.<sup>246</sup> The provision also state that no hearing shall be convened at the time during which the international match in relation to which the alleged offence took place, remains in progress.<sup>247</sup>

Moreover the procedure followed at hearing is at the discretion of the match referee, provided that the hearing conducted in a manner which offers the player and player support personnel a fair and reasonable opportunity to present evidence (including the right to call and to question witness by telephone or video conference where necessary), address the march referee and present his/her case.<sup>248</sup> Thus, even though huge power vested with the match referee, yet the principle of natural justice cannot be done away with.

The provision also specifies that the hearing should be conducted or convened in English translations have to be mandatorily of any non-English document that have been put before the match referee.<sup>249</sup>

In cases where video evidence of the alleged offence is available at the hearing, then, it may be relied upon by any party, given that all other party shall have the right to make such representation in relation to it.<sup>250</sup>

The Article also provides for the various persons to remain present during the hearing of any alleged offence as mentioned above, these persons are as follows<sup>251</sup>

- a) The player or player support personnel who has been charged with the alleged offences; and
- b) The person who lodged the report, (or, in case of the ICC's chief executive officer, his/her representative nominee).
- c) One of the team captain, team vice-captain or team manager of the team that the player of player support personnel represents may also attend such a hearing to provide additional support and assistance to the player or player support personnel.

Such above person shall have the right to be represented at the hearing by such representative which may even include a legal counsel of his/her or its own choosing, where the person lodging the report is an umpire or the ICC's Chief Executive officer, then such person shall be entitled to be represented by a representative of the ICC's Legal department.<sup>252</sup>

In any situation where any player or player support personnel or his/her representative is not present at hearing, such absence does not prevent the match referee to proceed with the hearing and issue a ruling as the referee may deem fit in accordance with the offence charged.<sup>253</sup> At the end of a hearing, further evidence or further

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<sup>246</sup> Article 5.1.1, *Ibid.*

<sup>247</sup> *Ibid.*

<sup>248</sup> Article 5.1.2, *Ibid*

<sup>249</sup> Article 5.1.3, *Ibid*

<sup>250</sup> Article 5.1.4, *Ibid*

<sup>251</sup> Article 5.1.5, *Ibid*

<sup>252</sup> Article 5.1.6, *Ibid*

<sup>253</sup> Article 5.1.7, *Ibid*

time is required to consider the evidence that has been presented, the referee shall adjourn the hearing for an appropriate period of time and make such directions as requisites.<sup>254</sup> Alternatively at the end of hearing, the referee shall confirm the players' or player support personnel's admission to the offence that has been charged and thereafter announces the decision in black and white accompanied with reasons setting out the sanctions imposed, either a fine or a suspension, the amount of fine or the period suspension, and a mention as to the right to appeal against the present decision as have been provided under Article 8.<sup>255</sup>

Further article 5.1 provides that where any player or player support personnel has failed to respond to the notice of charge, in such cases<sup>256</sup>

- a) The match referee shall adjourn the hearing for a period not less than ten minutes and not more than twenty four hours, following which the hearing is re-convened and there is a verbal announcement of the finding as to whether a code of conduct offence has been committed;
- b) Where the match referee determines that a code of conduct offence has been committed, the player or player support personnel request a short adjournment of not more than thirty minutes to prepare any submission that might be made in relation to appropriate sanction that ought to be applied and;
- c) As soon as possible after the conclusion of the hearing and, in any event, no later than forty eight hours thereafter, the match referee will announce his/her decision in writing, with reason setting out;
  - a. The finding whether the code of conduct offence had been committed;
  - b. What sanction, if any, are to be imposed (including any fine and/or period of suspension);
  - c. The date that any period of suspension shall come into force and effect; and
  - d. Any right of appeal that may exist pursuant to Article 8.

The Match referee shall have the discretion to announce the substance of the decision prior to the issue of the written reasoned decision and a copy of the written reasoned decision has to be provided to the player or player support personnel, the CEO of the player or player support personnel's National cricket federation, and the ICC's cricket operation manager.<sup>257</sup>

The match referee's decision is to be considered as a complete and final disposition of the manner and which would be binding on all parties, but this is subject to the provision of appeal available under Article 8 of the Code.<sup>258</sup>

#### **THE DISCIPLINARY PROCEDURE FOR LEVEL 3 AND LEVEL 4**

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<sup>254</sup> Article 5.1.8, *Ibid*  
<sup>255</sup> Article 5.1.9.1(A), *Ibid*  
<sup>256</sup> Article 5.1.9.2, *Ibid*  
<sup>257</sup> Article 5.1.10/11, *Ibid*  
<sup>258</sup> Article 5.1.12, *Ibid*

Where a matter proceeds to be hearing for adjudication on Level 3 and Level 4, such case is then refereed to the judicial commissioner for adjudication in accordance with the procedure prescribed under the Article 5.2 of the code.

As soon as reasonably possible, the ICC shall appoint one member from the ICC's code of conduct of the commission to sit as the judicial commissioner to hear the case. The appointed member shall be independent of the parties, must have had no prior involvement with the case and shall not be from a country participating in the international match in relation to which, the alleged offence was committed. The judicial commissioner shall convene a preliminary with the ICC and its legal representatives, together with the player or player support personnel and his/her legal representative.<sup>259</sup>

The preliminary hearing should take place as soon as possible by telephone conference call unless the judicial commissioner determines otherwise.<sup>260</sup> This non participation, without compelling justification, of the player or player support personnel or his/her representative at the preliminary hearing shall not prevent the judicial commissioner from proceeding with the preliminary hearing, irrespective of any written submission made on behalf of the player or player support personnel.<sup>261</sup>

The Basic rationale behind conducting the preliminary hearing is to allow the judicial commissioner to address any preliminary issue that need to be resolved prior to the hearing date. The provision elaborates functions of the commissioner, which are as follows<sup>262</sup>:

- a) To determine the date upon which the full hearing shall be held which shall not exceed more than fourteen days;
- b) To establish the date reasonably in advance of the date of the full hearing by which:
  - 1) The ICC shall submit an opening brief with argument on all issues that the ICC wishes to raise at the hearing and a list of the witnesses that the ICC intends call at the hearing and enclosing copies of the exhibits that the ICC intends to produce at the hearing;
  - 2) The player or player support personnel shall submit an answering brief, addressing the ICC's arguments and setting out arguments on the issues that he/she wishes to raise at the hearing, as well as a list of the witness that he/she intends to call at the hearing; and
  - 3) The ICC may submit a reply brief, responding to the answer brief of the player or player support personnel and listing any rebuttal witnesses;

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<sup>259</sup> Article 5.2.2, *Ibid*

<sup>260</sup> *Ibid*

<sup>261</sup> *Ibid*

<sup>262</sup> Article 5.2.3.1/2/3, *Ibid*

- c) Make such order that the judicial commissioner shall deem appropriate in relation to the production of relevant document and/or other materials between the parties.

Hearing before the judicial commissioner shall take place in the country in which the alleged offence was committed and the procedure followed at the hearing shall be at the discretion of the judicial commissioner provided the principle of the natural justice are adhered to strictly.

The hearing shall be in English and the cost of translation was borne by the party offering the documents. The judicial commissioner shall make arrangements to have the hearing recorded or transcribed. If requested by the player or player support personnel, the ICC shall also arrange for an interpreter to attend the hearing.<sup>263</sup>

Under this provision, the following individuals are needed to remain present unless exceptional circumstances apply<sup>264</sup>

- a) The player or player support personnel who has been charged with the alleged offence;
- b) The person who lodged the report (or, in case of the ICC's Chief executive officer, his/her representative/ nominee ); and
- c) A representative of the ICC's legal department ; and
- d) One of the team captain, team vice-captain or team manager of the team that the player or player support personnel represent may also attend such a hearing to provide additional support and assistance to the player or player support personnel.

The non-attendance of the player or player support personnel or their representative at the hearing shall not prevent the judicial commissioner from proceeding with the hearing whether or not any written submission are made on his/her behalf. At the end of the hearing, where the judicial commissioner consider that further evidence or further time is required , such commissioner shall adjourn the hearing for an appropriate period of time and make such direction as may be necessary.<sup>265</sup>

Alternatively, at the end of hearing, the commissioner shall confirm the player or player support personnel admission to the offence that has been charged and thereafter announce the decision in black and white accompanied with the reason setting out the sanction imposed, either a fine or a suspension, the amount of fine or the period of suspension, and a mention as to the right to appeal against the present decision as have been provided under Article 8.<sup>266</sup> In any event of any failure to respond to the notice of charge, the powers of judicial commissioner are similar to those of a match referee as mentioned above.

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<sup>263</sup> Article 5.2.6, *Ibid.*

<sup>264</sup> Article 5.2.8(A)(B)(C), *Ibid.*

<sup>265</sup> Article 5.2.11, *Ibid.*

<sup>266</sup> Article 5.2.12 (A), *Ibid.*

The judicial commissioner shall have the discretion to announce the substance of his/her decision prior to the issue of the written reasoned decision along with the copy of it to be provided to the player or player support personnel, the CEO of the player or player support personnel's national cricket federation, and the ICC's Cricket operation manager.<sup>267</sup>

## **THE GENERAL PRINCIPLES OF PROCEDURE**

The provisions of the code also entails the general principle that have to be considered during any procedure to be followed in case of any offence committed in contravention to the code. The following are the principles that have been set out in the code<sup>268</sup>:

- a) Where a report is filed by more than the one individual then the player or player support personnel alleged to have committed the offence would only be served with one notice of charge in accordance with the procedure.<sup>269</sup>

However, all person who filled a report or, in the case of the ICC's Chief Executive office, his/her representative/ nominee in relation to the alleged offence are required to attend the hearing before the match referee or judicial commissioner.<sup>270</sup>

- b) Where two or more player or player support personnel are alleged to have committed the offence under the code of conduct, they may both be dealt with at the same hearing where the proceedings arise out of the same incident of set of facts, or where there is a clear link between separate incidents, provided that the code of conduct permits the offences to be determined by the same adjudicator.<sup>271</sup> The provision provides the clarification that:

- 1) Any number of level 1 offences and/or level 2 offences can all be determined by a match referee at the same hearing; and
- 2) Any number of level 3 offences and/or level 4 offence can all be determined by a judicial commissioner at the same hearing; but
- 3) A level 1 offence or level 2 offences cannot be determined at the same hearing as a level 3 offence or a level 4 offence and separate proceeding should therefore be issued in relation to each alleged offence.

- (c) Where a player or player support personnel is alleged to have committed more than one breach of the code of conduct during, or in relation to the international match, then all of the alleged offences may

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<sup>267</sup> Article 5.2.14, *Ibid.*

<sup>268</sup> Article 5.3-5.9, *Ibid.*

<sup>269</sup> Article 5.3, *Ibid.*

<sup>270</sup> *Ibid.*

<sup>271</sup> Article 5.4(1) (2) (3), *Ibid.*



be dealt with the same hearing, provided that the code of conduct permits the offences that are alleged to have been committed to be determined by the same adjudicator.<sup>272</sup>

(d) Any failure or refusal by any player or player support personnel to provide assistance to a match referee or judicial commissioner in connection with any charge made pursuant to this code of conduct may constitute a separate offence.<sup>273</sup>

e) Where a match referee is, or becomes unwilling or unable to hear a case, then the ICC's Head of legal shall have the discretion to appoint the ICC's Chief Referee or such other referee as the ICC deems to be appropriate in all the Circumstances.<sup>274</sup>

Where the ICC's Chief Referee or such other referee is unwilling or unable to hear the case, a member of the ICC's Commission shall be a replacement to the match referee and all the remaining procedure will apply accordingly.<sup>275</sup>

f) Where a Judicial commissioner is, or becomes unwilling or unable to hear a case, then the ICC's Head of Legal shall have the discretion to appoint another member of the ICC's Commission shall be replacement to the judicial commissioner and all the remaining procedure will apply accordingly.<sup>276</sup>

g) The ICC will issue a public announcement regarding any decision of the match referee or judicial commissioner made under the code, as may be reasonably practicable after the decision has been communicated which may include details of the offence committed and the sanctions imposed. Until such time as a public announcement is published, all parties and participants in the proceedings shall treat such proceedings as strictly confidential.<sup>277</sup>

## CONCLUSION

After a perusal through the various provisions of the ICC code of conduct for players and player support Personnel, it can be deduced that the disciplinary procedure set out under this code is in conformity with the principle of natural justice.

The match referee and the judicial commissioner, as the case may be, have a wide discretionary authority under this code, which empowers them to determine the procedure to be followed during the hearing by the parties, and such other authority as may be required from time to time. Even though such discretion may be

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<sup>272</sup> Article 5.5, *Ibid.*

<sup>273</sup> Article 5.6, *Ibid.*

<sup>274</sup> Article 5.7, *Ibid.*

<sup>275</sup> *Ibid.*

<sup>276</sup> Article 5.8, *Ibid.*

<sup>277</sup> Article 5.3, *Ibid.*

huge, it is not absolute and is subject to the various terms and conditions of the Code, fairness and reasonableness and the principle of natural justice.

It can also be stated that the disciplinary procedure as set out under this code, under the 'General Principles of procedure' clearly determines that Level 1, and Level 2 offences may be heard during another set of hearing. The exception to this is that a Level ½ offence cannot be heard along with level ¾ offence and offence shall have to be decided separately.

Also, the general principles clearly provide that once the appropriate authority in relation to any offence has given a final decision, the ICC make a public announcement about such decision as soon as it would be reasonably practicable. But until such decision is published, the entire proceedings are to remain confidential.

Thus, it can be concluded that as per Bertrand De Speville, he has made a total of 27 recommendations<sup>278</sup> stated that the decision to bring disciplinary proceedings should be taken by the prosecutor, whether internal or external. Also, it mentions that minor breaches of any of the ICC's Code or rules of conduct should not be prosecuted before a tribunal but should be addressed by the appropriate ICC official or domestic authority on behalf of the ICC or, in the case of ICC official and staff, by the relevant ICC head of department or the CEO of the ICC. The ICC has made reservations against the same and is still to make a call on such suggestions.



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<sup>278</sup> Speville, Bertrand De, NOTE TO ICC EXECUTIVE BOARD, Available At [Http://Static.Icc-Cricket.Com/Ugc/Document/DOC\\_A64F4EDDCA2CBF74012DAE8E79F3779D\\_1328108025248\\_287.Pdf](http://Static.Icc-Cricket.Com/Ugc/Document/DOC_A64F4EDDCA2CBF74012DAE8E79F3779D_1328108025248_287.Pdf) (Visited On August 6,2014)