

IN THE MATTER OF IRB REGULATION 17

INTERNATIONAL RUGBY BOARD (“IRB”)
Of Huguenot House, 35-38 St Stephen’s Green, Dublin 2, Ireland
Applicant

And

SOUTH AFRICAN RUGBY UNION (“SARU”)
Of 5th floor, SA Sport Science Institute, Boundary Road, Newlands 7700, South Africa
First Respondent

And

THE NATIONAL REPRESENTATIVE TEAM OF SOUTH AFRICA
(as named in Appendix D)
Second Respondent

And

THE OTHER PERSONS
(as named in Appendix E) (“Other Persons”)
Third Respondent

Committee: The Honourable Sir John Hansen KNZM (New Zealand) Chairman
 His Honour Guillermo Tragant (Argentina)
 Mr John Eales AM (Australia)

Hearing: 10 August 2009

Appearances: S Ahern & S Hollis for the IRB
 J Heunis SC and M Osborne for SARU and named individuals with
 Adrie Brand, Attie Heyns, Gert Swart and Christo Ferreira

Decision: 24 August 2009

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- 1. The charges against SARU and the named individuals under Regulations 17 and 20 are dismissed.**
 - 2. The charges against SARU under Regulation 18.1 are proved. We impose a sanction of £10,000 sterling.**
 - 3. The charges against the named individuals under Regulation 11 are proved. Each of the named individuals is fined £200 sterling.**
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Opening

[1] In this matter the South African Rugby Union, and the various named individuals, have been represented by no fewer than five lawyers. The written material, both factual and legal, extends to two over-filled Eastlight folders. As well, various photographic material and video clips have been made available. Much of this focuses on Rule 10.4(j); the efficacy of that Rule; its interpretation by referees and disciplinary personnel; and its inconsistency with other Rules. In the light of that focus it is important to state at the outset what this hearing is not about. It is not about a consideration of Rule 10.4(j); it is not about whether such Rule is workable; it is not about whether such Rule has been consistently and properly applied by officials; it is not about its relationship, inconsistent or otherwise, with other Rules. This hearing is focused on the actions taken by the various named individuals and whether such actions constitute a breach of the Regulations as alleged by the IRB. It is also about whether the SARU have breached its obligations to control its members and players; whether it can be vicariously liable for the actions of others; the extent of its corporate knowledge; and the steps that it took in the light of that knowledge.

Background

[2] In May, June and July of this year the British and Irish Lions rugby team toured the Republic of South Africa. This was pursuant to an International Rugby Board (IRB) Tours Agreement entered between the South African Rugby Union (SARU) and the British and Irish Lions (the Lions), dated 6 June 2009.

[3] At the conclusion of the second test match between the sides played at Loftus Versfeld Park, Pretoria, on 27 June, the Springbok lock (and number 4) Mr Bakkies Botha was cited for an alleged breach of law 10.4(j). Following a hearing on 28 June 2009, the judicial officer upheld the citing and imposed a two-week suspension on Mr Botha. Mr Botha appealed, and the judicial officer's decision was upheld. The decision of the Appeal Committee was notified to the player and the SARU on or about 2 July 2009, with reasons being given by the Committee in written form on 10 July 2009.

[4] It is apparent that the rest of the Springbok team, the coaching and support staff were all highly aggrieved by the citing of Mr Botha, the upholding of that citing, his suspension

and the rejection of the appeal. As a group they determined to take a stand (to put it at its most neutral at this juncture) to support their team-mate. This stand took the form of the players wearing armbands bearing the words “Justice” or “Justice 4”. One player had this on his headgear. The players placed the armbands in position before taking the field for the third test match which took place at Coca Cola Park, Johannesburg on Saturday 4 July.

[5] At some time on that day there was posted on the South African Rugby Union’s official website a statement stating why such action was taken.

[6] The actions taken by the players and coaching staff and associated officials led the IRB to issue the charges that we are hearing. We attach the charges in full to this decision as:

Appendix A – against the South African Rugby Union

Appendix B – against the specific named players

Appendix C – in relation to the coach and associated staff.

[7] We annex at Appendices D and E lists of the players and other personnel charged.

[8] Initially the IRB sought a hearing date of Monday 20 July. The Chairman convened a directions conference and was satisfied that allowed insufficient time for the SARU and the named individuals to properly prepare a defence to the charge. Accordingly, the matter was set down for hearing on 10 August. A further application by the SARU and the named individuals for a further adjournment was refused.

[9] At the request of the parties the Chairman convened a number of other directions conferences to deal with matters of logistics, filing of documents and other practical issues that arose. One of the final ones of these related to the evidence of the South African coach, Mr de Villiers. Through Counsel, he applied to give his evidence through an interpreter in his native language, Afrikaans. It was put to Counsel that in his various media interviews, Mr de Villiers seemed to have a more than adequate knowledge of English. Notwithstanding that, the application was pursued. In the interest of ensuring that no allegation could be made about unfairness in the course of the hearing, the Chairman granted Mr de Villiers the right to give his evidence and cross-examination in Afrikaans through an interpreter. In the event, the

Afrikaans interpreter arranged by the South Africans proved inadequate. With the consent of the Committee, senior counsel, Mr Heunis, assisted.

[10] The various Minutes issued by the Chairman are contained in the written material collated for this hearing.

The evidence

[11] The IRB relies on the test match imagery to show that the named individuals wore the endorsed armbands and headgear as alleged. No one has suggested that they did not wear the armbands or the headgear, or that the words complained of did not appear on the armbands or headgear.

[12] On behalf of the SARU and the named individuals, affidavits have been filed by Mr Andrew Colquhoun, who was the Strategic Communications Manager for the South African Rugby Union; Mr Peter de Villiers, the Coach of the South African team; Mr Christoffel Ferreira, the Manager Legal Affairs of the South African Rugby Union; Mr Oregan Percival Hoskins, the President of the South African Rugby Union; Petrus Johannes Heymans, the Chief Executive Officer of the South African Rugby Players Association; Andrew William Nicko Marinos, the Acting Managing Director of SA Rugby (Pty) Limited; and John William Smit, the Captain of the South African Rugby Team.

[13] This evidence is said to support the grounds of defence put forward on behalf of the Union and the named individuals. We will turn to those defences in more detail in due course, but briefly, it is argued that this Committee has no jurisdiction to hear the charges; that the individuals' rights of freedom of expression outweigh any obligations under the IRB Rules and Regulations; and in any event, this was not a form of protest or criticism but merely a gesture of support for their banned team-mate.

[14] As we have said, it is apparent from the affidavits that Mr Botha's team-mates, the coaching and management team and all others relevantly involved in the administration of South African rugby were highly aggrieved by the citing of Mr Botha, his ultimate suspension for two games, and the outcome of his unsuccessful appeal. It is clear in the case

of the named players that they took part in a meeting where it was determined and agreed by all present that some action should be taken. Ultimately it was agreed that the action should take the form of the players wearing armbands during the playing of the third test. It is equally apparent that the players approached persons of authority in the administration, and that the President of the SARU, the Acting Managing Director of SA Rugby (Pty) Limited and the team coach were all aware of the intention to wear armbands. Indeed, it is fair to say that these people gave such a course of action their blessing without making any further inquiries, or without turning their minds to the consequences of such action.

[15] On the evening of 3 July the coach, support staff and team management had a dinner together. There the decision was taken that those persons would also wear armbands. According to Mr Smit's affidavit, the decision to endorse words on the armbands, and headband was made at one of the meetings that took place in the days before the game. Mr Smit states that this was because armbands were worn in a previous year that was not endorsed with any words, which led to confusion. Accordingly, the armbands were endorsed with the word "Justice", or "Justice 4", the "4" representing Mr Botha's jersey number. Quite clearly, the team management, coach and other support staff present in the dressing room would have been aware of these endorsements. However, there is nothing to suggest that the other officials of the SARU involved in this saga were told of this intention to endorse the armbands. But it is apparent from the affidavit of Mr Merinos that he observed on a television monitor in the President's box the words on the armbands. The exact timing of that is unclear, but it certainly did not lead him to take any action. He said this was because the changing room is sacrosanct before a game.

[16] There is also evidence of a statement appearing on the SARU's official website. The IRB rely on that to show that the SARU were aware in full of the players' intention. That notice reads:

The Springbok players playing in the final Test of the Castle South Africa 2009 Lions Series against the British & Irish Lions and whom are members of the South African Rugby Players Association (SARPA) will wear white arm bands in solidarity with Springbok lock Bakkies Botha after his two week suspension and unsuccessful appeal against transgressing Law 10.4 (j) by dangerously charging into a ruck without binding on a player.

The Springbok players all feel for Bakkies as he will miss this memorable final Test against the British & Irish Lions. As a sign of solidarity the Springbok players have decided to wear white arm bands during the Test match. At the same time the players want to send a clear message that they require the IRB to have an urgent and serious relook at Law 10.4 (j),” says Piet Heymans, CEO of SARPA.

Despite comprehensive submissions by the attorney acting for Bakkies Botha and SARPA, where a very important point of principle was developed as to the proper application of this Law, and in particular when a player lawfully binds or attempts to bind for the purpose of this Law, the appeal was not successful.

Over an extended period of time numerous other players have charged into rucks without binding but were either not penalised at all or received only a penalty. Bakkies hit a ruck just before this one in question in a similar style and was not penalised. Coaches are coaching players to hit rucks in this manner and therefore this is a major cause of apprehension,” continues Heymans.

This inconsistency has upset the players and they felt very strongly that they must take a firm stance and show their unhappiness with the application of the relevant law.

Rugby as a spectacle will lose its excitement and appeal if the best players in the world are not sure how the laws will be applied and that their participation in world class rugby could be affected by the actions of judicial officers,” says Heymans.

We will be consulting with our legal team next week to consider all our legal options available to assist Bakkies Botha and provide him with a sense of justice as he has suffered significantly due to this suspension,” concludes Heymans.

[17] Mr Colquhoun, the Strategic Communications Manager for the South African Rugby Union, explains how that got on the site. He was advised 30 minutes before the match that the team intended to wear armbands to express solidarity for Mr Botha. He spoke to the PR Manager for the team, who confirmed this but, he alleges, did not tell him of any legends appearing on the armbands. He was concerned and raised the issue with the team manager, and stressed to him that it would need to be made clear at the post-match conference that the purpose of wearing the armbands was a gesture of support for Mr Botha and not a protest against the action taken against him.

[18] Mr Colquhoun then details attending the post-match press conference at around 17:40 where Mr Smit told the conference the purpose of wearing the armbands was to show solidarity with Mr Botha, and a media statement to that effect was on the South African Rugby Players Association website.

[19] In response to follow-up questions both Mr Smit and Mr de Villiers (the coach) referred questioners to the statement on that website. Mr Colquhoun then discovered this had been authored by the CEO of the South African Rugby Players Association (“SARPA”) and issued as a press release at 14:21 that afternoon. Mr Colquhoun asked Mr Borchardt, an employee in his department, to obtain a copy of the statement referred to. It was printed as a hard copy and distributed to the assembled press. To Mr Colquhoun’s knowledge Mr Borchardt then cut and pasted that statement into a South African Rugby template which he distributed by email according to a media list. One of the recipients, Supersport, the body responsible for the maintenance of the SA Rugby website, automatically posted it on the SARU website. He says that was posted to the website at about 18:14 on 4 July.

The grounds of defence

[20] The first ground advanced is that this committee lacks jurisdiction. In the written submissions the SARU and the named individuals argue that the matter is totally governed by the tour agreement between the SARU and the Lions, and that a proper construction of that agreement precludes the IRB bringing these charges and this committee being constituted to hear them. In oral submissions Mr Heunis argued the matter on a somewhat different basis. This could fairly be described as a “constitutional argument”.

[21] Secondly, the SARU and the named individuals seek to show that none of the defendants can be deemed guilty of the infractions alleged. It is said that the motive that led to the wearing of the armbands was not in opposition to, or defiance of, the procedure adopted in Mr Botha’s case, but was directed at law 10.4(j) and the citing of Mr Botha. It is said that the conduct was not intended to bring the game into disrepute. It is further argued that Regulation 11 deals with promotional apparel, has no application, and that the relevant provisions of the code would be invalid and unenforceable if they were as broad as the IRB contends. Finally, it was argued that the wearing of the endorsed armbands was an exercise of the second and third respondents’ rights of free expression, guaranteed by the English Human Rights Act 1998.

[22] Finally, in accordance with the directions given, it is argued that if the opposition to the charges fails, any sanction should be lenient.

Discussion

[23] In terms of the Regulations, the matter is governed by English law.

[24] Because of the way in which the argument unfolded, and the nature of it, it is necessary to consider the Bye-Laws and Regulations in a more general way. Under Bye-Law 1:

Regulations means Regulations Relating to the Game and General Regulations binding on all Unions and Associations and which have already been passed by the Council or which may hereafter be passed by the Council under the powers herein contained.

Council means the Board's Council which comprises representatives of Unions and Associations appointed as provided in the Bye-Laws and who comprise the committee that has the ultimate and supreme legislative authority in respect of the affairs of the Board.

[25] Bye-Law 3(b) states that it is an objective and function of the IRB to frame and interpret the Bye-Laws, the Regulations and the Laws of the Game.

[26] Bye-Law 4(b) empowers the Council as and when it deems necessary to frame and adopt Regulations which shall be binding on all Unions and their constituent bodies.

[27] Bye-Law 7 makes Membership of the IRB by Unions and Associations a binding agreement that requires Unions and Associations to abide by the Bye-Laws, Regulations and Laws of the Game and to accept and enforce all the decisions of the IRB, Council and the Executive Committee (in other words, a contractual relationship).

[28] Bye-Law 9.4(h) empowers the IRB Council to consider and approve as appropriate any amendment or alterations to the Bye-Laws, the Regulations and the Laws of the Game. The procedure for alterations to such Bye-Laws, Regulations and Laws are contained in Bye-Laws 9.9 and 9.10.

[29] Bye-Law 9.13 creates three standing committees, including The Regulations Committee whose obligations are set out in Regulation 2.2. Amongst other things, that Regulation provides a route for the expression of grievances with the Regulations.

[30] Regulation 2.1 states that Unions or Associations are deemed to have full knowledge of the content of the Regulations, and imposes on Unions or Associations an obligation to ensure that all of its members are aware of the terms of the Regulations and the obligation to comply with the same.

[31] Regulations 15 and 16 deal with Tours and Tour Agreements, and an approved form of Tour Agreement is annexed as a schedule to the Regulations.

[32] Regulation 17 deals with the illegal/foul play and misconduct. Regulation 18 deals with disciplinary and judicial matters. Regulation 20 sets out a Code of Conduct.

[33] It is clear that the Regulations are binding on all Unions and their members. It has not been suggested that the named individuals in this case are not members of the SARU. Clearly they are. It is also our view that given the nature of the Regulations they must also be binding on the IRB and its personnel. Again, it has not been suggested otherwise. We read Regulations 17 and 20 as a Code dealing with illegal and/or foul play and misconduct. The power of the various disciplinary personnel and others named within the Regulations must therefore derive directly from the Regulations themselves.

[34] In this case we are also satisfied that the Regulations must be interpreted strictly given the consequences of breach. The consequences of such breach are made self-evident by the fact that the IRB, when they addressed us on penalty, sought fines of £10,000 sterling against all the named individuals, and a fine to be imposed on the SARU equal to the total sum of the fines imposed on the individuals. Something in excess of half a million pounds sterling. As well, the IRB sought suspension of all the named individuals from participation in the 2011 Rugby World Cup, such suspension to be suspended provided there were no further actions of misconduct by the named individuals from the date of the decision until the World Cup.

[35] In accordance with the Regulations, factual matters are to be determined on the balance of probabilities.

The Tours Agreement

[36] The South African position is that, pursuant to Regulation 17.1.2, there is power to modify Regulation 17. In this case it is argued that the effect of the Tours Agreement was to modify Regulation 17, and it can only be applied in its modified form. They referred to the evidence of Mr Gresson that this tour was under the jurisdiction of the IRB, and his acceptance that it was possible in such agreements to modify Regulation 17.

[37] We are not sure that the intention of the drafters of the Regulations was to include international tours such as this under 17.1.2. We accept it can be read in that manner and, in the light of Mr Gresson's concession, are content for present purposes to accept that a tour agreement can amend Regulation 17.

[38] However, we consider this argument untenable. At its highest point the evidence only establishes that in general terms the various IRB personnel would expect there to be an agreement in place, and some were aware of the existence, but not the detail, of such an agreement. The evidence fails to establish that IRB personnel were aware of the detail of the agreement, or that the IRB was a party to such an agreement or consented to any amendments to Regulation 17 contained in it.

[39] In any event, we consider there is a complete answer contained within the Regulations themselves. Regulation 1.4 reads:

In the event of any inconsistency between the Council's Tours Agreement and these Regulations, these Regulations shall prevail.

[40] So it can be seen that Regulation 17 prevails for that reason and for reasons given earlier. The charges must be considered in the light of Regulation 17.

[41] We would add that we would consider it sensible if the Regulations required tour agreements to be submitted to, and approved by, the IRB.

Regulation 17

[42] Mr Gresson, in his evidence, usefully described to us the pilot IRB Judicial Appointment Scheme for Disciplinary Personnel. This applies to matches between Tier 1 Unions. Because the Lions are an amalgamation of four countries, they are not a Tier 1 Union. But it is clear from the evidence in this case that the pilot IRB Judicial Appointment Scheme applied to this tour with the consent of the SARU and the Lions. That is a merit-based system.

[43] Before we go on we should say something about the evidence of Mr Marinos, who said the appointments were based not on merit, but neutrality. In this regard we accept the evidence of Mr Gresson. That is, that the pilot scheme requires the appointment of the best possible personnel on merit to be appointed, but always subject to questions of neutrality. If neutrality was ignored in such appointments completely, the system would clearly be unworkable. We also accept Mr Gresson's explanation in this case that the potential pool of appointees was significantly reduced because of the fact that the Lions were made up of all four home unions, and some other personnel were unavailable because of professional commitments. In any event, given Mr Gresson's description of the experience of the personnel appointed, we reject Mr Marinos' criticism of those personnel.

[44] In this case it is clear, in accordance with Regulation 18.2.1, the appointments pursuant to the pilot scheme were made by the Chairman of the Judicial Committee in consultation with the Chairman of the IRB. That means in terms of 17.2.4:

Where appropriate in Regulation 17, where the IRB makes such appointment, references to Host Union appointment should be read accordingly.

[45] It was these words that effectively gave rise to the arguments presented by counsel on each side of this dispute in their approach to Regulation 17.22, under which Mr Miller (the CEO of the IRB) purported to appoint himself and bring these charges. 17.22 reads:

17.22 The Role of the Host Union in Misconduct Matters

17.22.1 The Host Union shall nominate a Designated Disciplinary Official who shall, subject to Regulation 17.23, be entitled to undertake such investigations as he may consider necessary into incidents that constitute or may be capable of constituting Misconduct on the part of Players

and/or Persons. The Designated Disciplinary Official shall be entitled to appoint a nominee(s) to undertake such investigation. No person who is a member or a full time paid employee of the Host Union or other affiliated organisation responsible for the management of either team participating in a Match shall be eligible for appointment as the Designated Disciplinary Official, or his nominee(s).

[46] Ms Ahern effectively argued that Mr Miller was empowered to appoint himself as a Designated Disciplinary Officer (DDO) pursuant to Regulation 17.22 and thereafter to carry out any investigation as the DDO in relation to the alleged misconduct. She said this is required by reading “IRB” for the words “Host Union” in that Regulation.

[47] She further submitted that the citing officer was conflicted because he was the one who had cited Mr Botha, and it was not appropriate for him to act as a DDO for these purposes. She further argued that it would be untenable if the IRB, as the governing body of the sport, could not take disciplinary action against players in person who contravene its rules. She submitted it would mean that persons could act with impunity in contravention of Regulations without fear of censure.

[48] Mr Heunis, however, argued that the Regulations required strict interpretation. He went through the Regulations in detail and submitted that in Regulation 17.7, “IRB” should be read for “Host Union”, and it was the IRB that had the obligation to appoint the disciplinary bodies and personnel pursuant to that Regulation. He submitted that the IRB failed to nominate a DDO, and pointed to Mr Gresson’s evidence that the IRB was not responsible for appointing DDOs. He said that Mr Gresson’s evidence was wrong in the light of his interpretation. Accordingly, he submitted, no DDO was properly appointed.

[49] He further argued that the CEO did not have power to become involved in matters of misconduct until the initial procedures set out by Regulation 17.23 had taken place and the situation arose that is envisaged in Regulation 17.23.5.

[50] He submitted that under Regulation 17.22.1 the IRB could not appoint a person as a DDO who was a member or full-time paid employee of the IRB, pursuant to the last sentence of that Regulation.

[51] It is clear from Regulation 17.3.1 that Regulation 17 is designed to set out procedures for dealing with disciplinary matters which include acts of misconduct that may have been committed by a Union, Player or Person. That provision confirms in our view that Regulation 17 is a Code.

[52] We reject Mr Heunis's submission that it is the responsibility of the IRB to appoint a DDO pursuant to Regulation 17.7.1(c)(vi). In our view Mr Gresson properly pointed out that it is not the role of the IRB to appoint DDOs. His evidence is clearly correct. Unfortunately, to the best of our recollection, neither counsel referred us to Regulation 17.7.3. We consider this makes the position perfectly clear. It also demonstrates that the drafters of the Regulations had in mind the various roles of disciplinary personnel and distinguished between Citing Commissioners, Disciplinary Committee or Judicial Officers and DDOs. That Regulation reads:

17.7.3 Where IRB appointments are made under the pilot IRB judicial appointment scheme referred to in Regulation 17.2.4, notwithstanding Regulation 17.7.1 and 17.7.2, the IRB shall determine the person(s) to be appointed and make the appointment of the independent Citing Commissioner, Judicial Officer or Disciplinary Committee Chairman (as the case may be) and Appeal Officer or Appeal Committee Chairman (as the case may be) for the Match concerned. The IRB is not required, in making such appointments, to seek the agreement of the Unions participating in the Match.

[53] This shows that the drafters of the Regulations had given consideration as to the respective obligations of the IRB and the Host Union where the merit-based pilot scheme applies. The Regulations specifically exclude the DDOs from being appointed by the IRB. This makes it clear that this remains the responsibility of the Host Union. It is equally clear from the evidence that in this case the SARU failed to appoint a DDO.

[54] Nor do we accept Mr Heunis's interpretation of 17.7.1(c)(vi). He argued that the last sentence means that in the absence of the Host Union appointing a DDO, the Citing Commissioner, or the Citing Commissioner Liaison Officer, automatically becomes the DDO. Frankly, the last sentence simply does not say that. All it states is that the DDO role may be undertaken by the Citing Commissioner or the Citing Commissioner Liaison Officer. That would only be so where the Host Union appointed either of those persons to the role.

The sentence does not allow for some sort of ex officio appointment of either of those persons in the absence of specific appointment. (Interestingly, although irrelevant for present purposes, the prohibition contained in the last sentence of 17.22.1 does not appear in 17.7.1(c)(vi).)

[55] It also follows from the provisions of 17.7.3 that one cannot read “IRB” for “Host Union” in 17.7.1(c)(vi).

[56] We turn to Regulations 17.22 and 17.23.

[57] The portion dealing with misconduct is silent as to the role of the IRB in appointments of a DDO. However, given Mr Gresson’s evidence and the effect of Regulation 17.7.3, we are satisfied it is not appropriate to simply read “IRB” for “Host Union” in 17.22.1. As we have demonstrated, under the IRB Pilot Judicial Appointment scheme it is not the responsibility of the IRB to appoint DDOs. It would be inconsistent if that was so under 17.7, but not so under 17.22, given that both deal with misconduct. In our view, it is clearly the role of the Host Union to nominate a DDO pursuant to 17.22. In any event, the final sentence of 17.22.1 would preclude the CEO or other employee of the IRB from being appointed as the DDO. As we noted earlier, the power of the CEO (or his nominee) derives from the Regulations. The Regulations do not empower him to simply nominate himself pursuant to 17.22.1.

[58] Ms Ahern argued that this would be untenable. But it cannot be said that the failure of a Host Union to act in accordance with 17.22, or any other Regulation, has been overlooked by the drafters of the Rules. It is quite apparent that the CEO, and the IRB, can deal with such situations pursuant to 17.2.3 or 18.4.4. So it is not untenable. In this case the IRB has not sought to argue or bring charges pursuant to those two Regulations. Further, we were not referred to any general overarching provision in the Regulations that would empower the CEO to act.

[59] Regulation 17.23 lays down the procedures required where there is said to be misconduct. Again, it is in the form of a Code which requires the DDO to advise the CEO where he believes acts or acts of misconduct may have been committed by a Union. There is

then the ability to refer misconduct to a Host or Visiting Union. Regulation 17.23.5 then reads:

The Designated Disciplinary Official shall notify the CEO, or his designee, of any Misconduct matters and/or act or acts which may constitute Misconduct and confirm (a) whether the Designated Disciplinary Official proposes to refer the matter to a visiting Union and, if so, the reasons for the referral or (b) that it is proposed that the matter be handled by the Host Union. On receipt of this notification, the CEO, or his designee, may determine that the case should not be referred and/or should be handled by the Board. If so, or in the event of a referral further to 17.23.3 above, then the Board will advise the visiting Union and Host Union accordingly from which point the Board will take responsibility for the investigation and general conduct of the matter. If, following further investigation or otherwise, the CEO of the Board (or his designee) elect to bring a Misconduct complaint, then the matter shall be referred to a Disciplinary Committee or Judicial Officer (as the case may be) for consideration. The Union, Player or Person concerned shall be notified in accordance with Regulation 17.23.9, with the CEO or his designee fulfilling the role of the Designated Disciplinary Official. The provisions of Regulations 17.23.11 to 17.23.19 shall apply to proceedings brought further to this Regulation 17.23.5, with the CEO or his designee fulfilling the role of the Designated Disciplinary Official as necessary.

[60] It can be seen from the Regulation that the CEO or his nominee has power to act under 17.23.3, or in certain circumstances under 17.23.5. In relation to the latter, we have given earnest consideration to the use of the term “If, following further investigation **or otherwise**” [our emphasis] to determine whether this is wide enough to empower the CEO to bring the charges in this particular case. Given that these Regulations are a Code and require strict interpretation, we think not. The power to so act is dependent upon the procedures contained in the earlier part of 17.23.5 being adhered to.

[61] A similar argument pertains to 17.23.3. The power for the CEO to act is where he receives from the DDO a report in writing that there is reason to believe the act or acts of misconduct may have been committed by a Union. But again, that is dependent on such a report from the DDO. It goes back to 17.22.1, and the appointment of a DDO. In this case, for the reasons given, we are satisfied that the CEO is not empowered by the Regulations to simply make himself the DDO. In the absence of a specific power to this effect, the Regulation cannot be so read.

[62] As we have already said, this does not create the untenable or unjust situation contended for by Ms Ahern, because there are the specific Regulations we have referred to in para [58] above.

[63] However, although this is a matter for the IRB, we consider this to be a significant omission in the Rules. It cannot be seen as a lacuna given that drafters, as we have demonstrated, appear to have turned their minds specifically to the appointments of DDOs and the effect of Unions not meeting their obligations. There will obviously be situations where – for reasons of urgency, or in the light of circumstances such as pertained here, or where Regulation 17.2.3 or 18.4.4 are inappropriate – the CEO or the Council should be empowered to appoint a DDO. Regrettably, we have concluded that the Regulations in their present form do not allow for this. From the Committee’s point of view we consider an amendment to the Regulations to deal with this situation would be highly appropriate. While we do not like such a legalistic approach in the context of sporting bodies, we are satisfied the Regulatory scheme allows us no other approach.

[64] Regulation 17.21.2 imports into the procedures under Regulation 17 the Code of Conduct under Regulation 20. It follows that before charges can be laid under Regulation 20, the initial procedures for misconduct must be followed, whether for breaches of Regulations contained within Regulation 17, or those under the Code of Conduct, Regulation 20. This is dependent on the proper appointment of a DDO pursuant to Regulation 17.22, and we are regrettably driven to the conclusion that this has not occurred here.

[65] It follows from this that the charges relating to breaches of Regulation 17.21.1, Regulation 20.21 and Regulation 20.16 against the SARU and the named individuals must fail for want of jurisdiction. There was no power for the IRB to bring these charges in the manner it has done here. Certainly it appears that the CEO could have utilised Regulation 17.2.3 or Regulation 18.4.4 in the circumstances of this case. He did not do so. We are conscious that Regulation 18.5.1 allows this Committee to deal with procedural matters as it considers appropriate. We have considered whether we could, or should, amend the charges so that they are under those Regulations as we have power to do pursuant to Regulation 17.18.10. We do not consider that appropriate. The reality is that the IRB in the course of the hearing did not seek any such amendment, and determined to insist that it had an

authority which we are satisfied is not forthcoming under the Regulations. The fact that such a power ought to be available to the CEO does not allow us to effectively re-draft the Regulations, and we would consider it inappropriate in such circumstances to amend the charges. In any event such amendment would cause injustice in the context of this hearing as the SARU and named individuals would face vastly different charges, with different relevant considerations that they were clearly not in a position to meet.

[66] The named individuals should not consider this result a vindication of their behaviour. We have reached this conclusion on our necessarily strict interpretation of the Regulations. We say it is not a vindication because on our view of the merits of the matter the individuals have committed acts of misconduct. The playing arena is no place for protest, even if it is limited, as claimed here, with a law of the game and its interpretation.

[67] However, in our view the matter goes much further. We consider the evidence suggesting this was merely a protest against the law of the game is disingenuous in the extreme. In our view, Ms Ahern submitted properly that there are a number of proper channels available to the South African players, support staff, SAPRA and the SARU to utilise to resolve their concerns with the law. But we do not accept this was simply an expression of their frustration with the law and an attempt to get the IRB to act in relation to it. We consider it was clearly a protest against the disciplinary processes that led to Mr Botha being suspended for two weeks. It was not, as Mr Heunis submitted, simply a complaint as to outcome.

[68] There is evidence to support our view in relation to this. Mr de Villiers, in his evidence, said “If we thought the appeal decision was justified we would not have taken any action.” The press release that effectively accompanied this protest action also speaks for itself. In it, it states that the wearing of the white armbands was in solidarity with Mr Botha after his two-week suspension and unsuccessful appeal. It did go on to say that the players wished to send a clear message to the IRB to urgently look at 10.4(j), but one may ask rhetorically ‘Why was there any show of solidarity required unless the players believed that Mr Botha’s treatment was unjustified?’

[69] Then there was the decision to write the words “Justice” or “Justice 4” on the armbands and on headgear. The Shorter Oxford Dictionary defines “Justice” as “the property of being (morally) just or righteous; the principle of just dealing; just dealing; integrity, rectitude.” We are satisfied on the balance of probabilities that the wearing of the armbands and the words on them was a plain statement that neither the law nor the process adopted gave justice to Mr Botha. It clearly amounted to a calculated and well-publicised criticism of the manner in which the disciplinary personnel involved handled Mr Botha’s case. We have no doubt that any viewer would have taken from the armbands exactly what we have. The affidavits filed from Lions personnel confirm our view and confirm also that the action brought the game into disrepute, criticised the judicial process and was misconduct. It follows that on the merits we would have found the charges against the named individuals proved.

[70] In this context we would not have upheld the Human Rights Act argument that the right of freedom of expression entitled the named individuals to take the action they did. Notwithstanding the able argument of Mr Heunis and Mr Osborne, we do not consider the Act applies. The Regulations are governed by English law. There has been considerable academic debate where views have been expressed that bodies such as the IRB should be subject to the Human Rights Act, and susceptible to judicial review. In other jurisdictions apart from England this may well be so, and we have some sympathy for the views advanced by Mr Osborne. But the reality is that there is no English authority that concludes that a sporting body such as the IRB, governed by contract with its members, is a public body in terms of the Act. Nor do we think there is scope to rely on Section 12. So we do not consider there is any defence available on the basis of guaranteed rights of freedom of expression.

[71] We also would have considered such misconduct to be serious. We would have been disinclined to impose fines of the level requested by the IRB. But for the charges under these Regulations we would have imposed a substantial fine on the Union and the Coach. We consider the Coach’s obligation is wider than that to his players. He has an obligation to his Union, and to the game, to ensure that the actions of the players under his control do not amount to misconduct or bring the game into disrepute.

[72] The Committee recognised that Mr Smit, as Captain, sought advice, and effectively gained approval for his actions. As we will turn to in the charge under Regulation 18, we are surprised that the relevant officials within South African Rugby tacitly approved of this protest action and failed to make any further inquiries as to the extent of it. It is clear that none of those officials, nor the Coach and players, bothered to turn their mind to the impact of their actions on the wider game and whether it breached any of the Regulations. Mr Smit candidly acknowledged that he would not have taken this action had he been aware of the furore it would cause. In answer to a question from Mr Eales he also stated that if the Union had not approved of the action, the team would not have taken it. Notwithstanding that, all of the members of the team and the support staff are deemed to be aware of the contents of the Regulations. Mature thought required a considered view of the Regulations and the effect of the actions that were taken. Rather than such an approach, the named individuals determined to take the opportunity of a widely publicised and viewed match to make a protest against the suspension, and the processes that led to such suspension, of their team-mate, Mr Botha. As well, this showed a serious lack of respect and consideration for their opponents. Outside of the hearing itself, and noticeably even then not by all witnesses, there has been no formal apology, acknowledgement, contrition or clarification from either the players or the SARU themselves.

[73] In such circumstances, two of the Committee would have been of a mind to impose a substantial fine on the Captain. One member of the Committee would have imposed a fine on all of the players. Two members would not. The Committee were unanimous that if the charges had been proved, the suspension sought by the IRB from the 2011 WRC would have been granted, although suspended, as suggested, in the absence of further acts of misconduct. We also considered that the fact no action was taken when armbands were worn previously was a minor mitigating factor.

Regulation 18.1

[74] That leads us to the additional charge against the SARU pursuant to Regulation 18.1. This reads:

18.1.1 A Union or Association shall be subject to sanction by a Judicial Officer or Judicial Committee if it is found to have breached the Bye-Laws or Regulations or to have:

- (a) brought the Board or the Game or any Person into disrepute;
- (b) engaged in conduct, behaviour or practice(s) which may be prejudicial to the interests of the Board or of the Game;
- (c) disclosed any confidential information obtained through connection with the Game; or
- (d) breached the Code of Conduct.

(We note, for the sake of completeness, that no charges were brought against the named individuals pursuant to Regulation 18.1.2)

[75] We read Regulation 18 as a stand alone Regulation. Clearly, for the reasons given earlier, the breach of the Code of Conduct cannot be sustained, because the necessary procedures were not correctly followed. However, in relation to the SARU we express disappointment with the advice and leadership shown to the players by the various management personnel involved. As we have noted, it was apparent that the Captain, Mr Smit, took steps to seek approval of the actions they took, albeit without making it plain that the armbands would bear legends. Effectively the response of the SARU, the Acting Managing Director of SA Pty (Ltd), and the Coach were to support the actions of the players and give their approval to it. As a number of witnesses said, hindsight can be clever and cruel. But this was a highly unusual action which cool and mature heads should have counselled against. We consider that the players were entitled to such advice from all those involved in the management structure. We are satisfied that the Union, as well as being properly vicariously liable, bears responsibility because of their knowledge of what was to occur and their failure to do anything about it. Even without the legends, the management structure should have advised Mr Smit that protests on the playing arena was unacceptable and may well breach various IRB Regulations. In our view the Union are subject to sanction because they allowed the game and the IRB to be brought into disrepute by not only by failing to attempt to prevent this protest, but by approving of it and effectively consenting to it. It was also conduct which was prejudicial to the best interests of the IRB and of the game. It is apparent that the responsible officials and personnel allowed their own personal view of what occurred to Mr Botha to stand in the way of making a proper objective assessment of

the actions the players wished to undertake, and approved of it. We find this amended charge against the SARU proved. Indeed, no oral submissions were made in relation to this Regulation by counsel for the SARU.

[76] As to sanction for the breach, we consider it proper that a fine be imposed on the SARU. We have already said, even if the more substantive charges had been established, that we would not have been minded to impose a fine of the magnitude contended for by counsel for the IRB. We also bear in mind the SARU was unaware of the endorsement on the armbands until close to kick off. But considering the matter overall we are satisfied that this protest occurred because the SARU failed to properly consider the consequences of the players' action. In reality, it could easily have been nipped in the bud. In those circumstances we consider it appropriate to impose a fine of £10,000 sterling.

Regulation 11

[77] That leaves the charges against the named individuals, pursuant to Regulation 11.5.3. That Regulation reads:

Save for the emblems or marks of Unions... and as otherwise expressly provided in this Regulation 11, no form of emblem, mark, name or other form of commercial and/or promotional association may be displayed on any item worn, used, placed or carried onto the playing enclosure that is not referred to in Table 1.

[78] We put to Ms Ahern whether or not the Union wished to pursue this charge, and she advised that if the other charges against the named individuals failed, she did wish to pursue it. Mr Heunis in response argued that this was no more than a desperate attempt by the IRB to obtain "a conviction". He said Regulation 11 had no place in these proceedings as it was designed to deal with effectively commercial material. We confess that was originally our view until Ms Ahern drew our attention to Regulation 11.5.7, which reads:

Nothing which may be regarded by the Union or Association in its absolute discretion as distasteful or ethically or morally undesirable or which brings the Game into disrepute shall be displayed.

[79] However, the problem again arises as to the power of the IRB to act in the absence of specific Regulatory power. 11.5.7 prohibits the display of anything a Union or association

regards as distasteful, ethically or morally undesirable or which brings the game into disrepute. 11.5.7 gives the Union/Association absolute discretion to determine whether what is displayed is distasteful, ethical lot morally undesirable or brings the game into disrepute. The Union in this case is the SARU. There is no evidence that the SARU consider that the armbands brought “the game into disrepute”. There is nothing in the definition Regulation that would allow the substitution of the IRB for “Union or Association” (i.e. the SARU 0) in 11.5.7. The absence of reference to the IRB in Regulation 11 may well be a lacuna in the Regulations that needs to be addressed. But as with Regulation 17 the right of the IRB to act is circumscribed by their own regulations. The regulation does not empower the IRB to simply substitute itself for “Union”.

[80] However, Regulation 18.4.4 does empower the Council or CEO to act of its own motion into apparent breaches of the Regulations. Regulation 11 is outside the ambit of the disciplinary regulations and we are satisfied that the CEO must have initiated his enquiries, and brought charges, under regulation 11 pursuant to such power. The CEO can, and did, determine his own procedure, and referred the matter to this committee, again in accordance with that regulation.

[81] If players choose to wear on their uniforms armbands or other emblems which bring the game into disrepute, then they have breached that Regulation. We are satisfied the armbands bearing the endorsements that we have referred to earlier did bring the game into disrepute. We are also satisfied the named individuals cannot rely on a right of free expression to justify their actions, for the reasons given earlier.

[82] However, we consider that this breach is minor compared to the other allegations made. In mitigation we note Mr Smit, on behalf of the players, sought and obtained approval for their actions. Notwithstanding that, we consider it warrants a sanction by way of a modest fine. Accordingly, for a breach of Regulation 11.5.7 the named individuals are each fined the sum of £200 sterling. We consider the position of the captain to be different from the others involved notwithstanding that he sought advice. The majority of the committee considered that the Captain of the Rugby World Championship Team is watched and acknowledged and even imitated by a lot of people in the world. He is a role model to

aspiring players. He therefore carries considerably more responsibility. The majority imposes a fine of 1,000 sterling on Mr Smit.

Costs

[83] This Committee has the power to impose costs. The parties are requested to file written memoranda of costs, through Ms Hayes, within ten working days of the handing down of this decision.

General

[84] We are conscious that the IRB may well have power to lay charges under the Regulations we referred to earlier. We would hope such a course is not followed. We trust that our views of the actions of the personnel and the SARU in this matter make it perfectly clear that protest has no part on the playing arena. We have also made it abundantly clear that, but for legal difficulties we have outlined, the named individuals would have faced very serious sanctions. We believe this in itself will deter not only South African players, but all rugby players, from adopting such an unwise and ill considered way to make their feelings clear to the IRB, or the general rugby watching public.

The Honourable Sir John Hansen KNZM

His Honour Judge Guillermo Tragant

Mr John Eales AM

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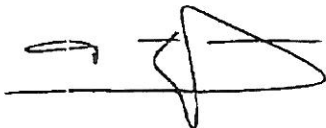
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The Honourable Sir John Hansen KNZM

A handwritten signature in black ink, appearing to be 'G. Tragant', written over a horizontal line.

His Honour Judge Guillermo Tragant

Mr John Eales AM

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The Honourable Sir John Hansen KNZM

His Honour Judge Guillermo Tragant



Mr John Eales AM

MISCONDUCT CHARGES

BROUGHT BY: International Rugby Board (“IRB”)

AGAINST: The South African Rugby Union

1. That the South African Rugby Union (“SARU”) in accordance with Regulation 17.21.1 is responsible and accountable for the conduct of its Players, officials and all Persons under its jurisdiction. SARU committed an act or acts of Misconduct in that it:
 - i. failed to exercise control over its Players, officials and other Persons under its jurisdiction at the Test by permitting them and/or failing to prevent them from wearing armbands as an act of protest (against a disciplinary decision); and/or
 - ii. failed to ensure its Players, officials and other Persons under its jurisdiction conducted themselves in a disciplined and sporting manner by allowing them and/or failing to prevent them from wearing armbands as a protest (against a disciplinary decision); and/or
 - iii. failed to ensure that its Players, officials and/or other Persons under its jurisdiction by their actions on July 4, 2009 on the occasion of the third Test match against the Lions did not commit any act or acts of Misconduct.

2. As a member Union of the IRB, SARU in accordance with Regulation 20.2.1 is under an obligation to comply with and to ensure that each of its members comply with the Code of Conduct.

20.2 Each Union and Association is under an obligation to:

20.2.1 Comply with and to ensure that each of its members comply with this Code of Conduct; and

In allowing the Team (comprising the Players of the National Representative Team of South Africa) the officials and other Persons under its jurisdiction to wear armbands and/or by not preventing such persons from wearing armbands (which bore an endorsement denigrating (actually or by implication) the Bakkies Botha decisions handed down by the independent judicial personnel appointed to the Test), SARU itself failed and failed to ensure its Team, officials and other Persons complied with the Code of Conduct and in particular failed to comply with the following provisions:

- (i) Regulation 20.1.4
“All Unions...and Persons¹...shall accept and observe the authority and decisions of...all other rugby disciplinary bodies, subject to Regulation 17”; and
 - (ii) Regulation 20.1.6
“All Unions...and Persons...shall not publish or cause to be published criticism of the manner in which Council or any other rugby disciplinary body handled or resolved any dispute or disciplinary matter resulting from a breach of the Bye-Laws, Regulations or Laws of the Game”; and
 - (iii) Regulation 20.1.8
“All Unions...and Persons...shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute; and
 - (iv) Regulation 20.1.13
“All Unions...and Persons...shall not do anything which adversely affects the Game of Rugby Football, the Board, any member Union...”
3. That in contravention of Regulation 11.5.3 SARU permitted (by its action or inaction) a form of promotional association to be displayed on items of clothing and padded headgear worn by the Players in the playing enclosure that are not referenced in Regulation 11.
- “Save for the emblems or marks of Unions...and as otherwise expressly provided in this Regulation 11, no form of emblem, mark, name or other form of commercial and or promotional association may be displayed on any item worn, used, placed or carried onto the playing enclosure that is not referred to in Table 1”.*
4. That the South African Rugby Union (“SARU”) contrary to Regulation 18.1.1 is alleged to have (a) brought the Board or the Game into disrepute and/or (b) engaged in conduct, behaviour or practice(s) which may be prejudicial to the interests of the Board or of the Game and/or (c) has breached the Code of Conduct in that it:
- (i) knew or had reason to believe that its Players, officials and Other Persons under its jurisdiction at the time of the third Lions Test match

were planning to take some form of action as a protest against the suspension of Bakkies Botha and acquiesced and/or permitted such protest to take place in the form of the wearing of armbands as an act of protest (against a disciplinary decision);

- (ii) knew or had reason to believe that its Players, officials and Other Persons under its jurisdiction at the time of the third Lions Test match were planning to take some form of action as a protest against the suspension of Bakkies Botha and failed to prevent them from wearing armbands as an act of protest (against a disciplinary decision); and/or
- (iii) failed to ensure its Players, officials and Other Persons under its jurisdiction conducted themselves in a disciplined and sporting manner and/or did not commit any act or acts of Misconduct by acquiescing, permitting and/or failing to prevent them from wearing armbands as a protest (against a disciplinary decision).

¹ “Person means a Player, trainer, referee, touch judge, coach, selector, medical officer, physiotherapist or any other individual who is or has been at any time involved in the Game, or in the organisation, administration or promotion of the Game”. IRB Regulation 1.1 Definitions.

MISCONDUCT CHARGES

BROUGHT BY: International Rugby Board (“IRB”)

AGAINST: The National Representative Team of the South African Rugby Union (as named in **Appendix D**)

5. That all members of the National Representative Team (hereinafter the “Team”) of the South Africa Rugby Union (“SARU”) appearing on the Team List individually and/or collectively committed an act or acts of Misconduct in so far as they failed to conduct themselves in a disciplined and sporting manner and their conduct and/or behaviour brings and/or has the potential to bring the sport of Rugby Union and/or the IRB into disrepute in contravention of Regulation 17.21.1 of the IRB Regulations Relating to the Game:

17.21 Misconduct

- 17.21.1 Unions are responsible and accountable for the conduct of their Players, officials and all Persons under their jurisdiction. Unions, Players and Persons must conduct themselves in a disciplined and sporting manner and ensure that they do not commit an act or acts of Misconduct.

For the purposes of this Regulation, Misconduct shall mean any conduct, behaviour or practices on or off the playing enclosure in connection with an International Match, International Tour or International Tournament (excluding Foul Play during a Match) that is unsporting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the sport of Rugby Union, the IRB and/or its commercial partners into disrepute.

6. That all members of the National Representative Team of SARU appearing on the Team List individually and/or collectively have committed an act or acts of Misconduct, in particular by their failure to respect the authority of the IRB in the area of Rugby disciplinary matters and in doing so they have breached the following provisions of Regulation 20 (Code of Conduct) of the IRB Regulations Relating to the Game:

- (ii) Regulation 20.1.4
“All...Persons²...shall accept and observe the authority and decisions of...all other rugby disciplinary bodies, subject to Regulation 17”; and

² “Person means a Player, trainer, referee, touch judge, coach, selector, medical officer, physiotherapist or any other individual who is or has been at any time involved in the Game, or in the organisation, administration or promotion of the Game”. IRB Regulation 1.1 Definitions.

- (iii) Regulation 20.1.13
“All...Persons...shall not do anything which adversely affects the Game of Rugby Football, the Board, any member Union...”
 - (iii) Regulation 20.1.8
“All...Persons...shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute.
7. That all members of the National Representative Team of SARU appearing on the Team List individually and/or collectively have committed an act or acts of Misconduct in particular by their implied and/or actual criticism of the judicial process and the personnel exercising disciplinary functions they have breached the following provisions of Regulation 20 (Code of Conduct) of the IRB Regulations Relating to the Game:
- (i) Regulation 20.1.6
“All...Persons...shall not publish or cause to be published criticism of the manner in which Council or any other rugby disciplinary body handled or resolved any dispute or disciplinary matter resulting from a breach of the Bye-Laws, Regulations or Laws of the Game”; and
 - (ii) Regulation 20.1.13
“All...Persons...shall not do anything which adversely affects the Game of Rugby Football, the Board, any member Union...” and
 - (iii) Regulation 20.1.8
“All...Persons...shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute.
8. That all members of the National Representative Team of SARU appearing on the Team List individually and/or collectively by wearing an armband affixed to their clothing bearing a form of promotional association did so in contravention of IRB Regulation 11.5.3 which provides;
- “Save for the emblems or marks of Unions...and as otherwise expressly provided in this Regulation 11, no form of emblem, mark, name or other form of commercial and or promotional association may be displayed on any item worn, used, placed or carried onto the playing enclosure that is not referred to in Table 1”.*

MISCONDUCT CHARGES

BROUGHT BY: International Rugby Board (“IRB”)

AGAINST: The named Persons who are part of the coaching & management structure of the National Representative Team of the South African Rugby Union (as named in **Appendix E**)

9. That all named Persons who are part of the coaching and management structure of the National Representative Team (hereinafter the “Team”) of the South Africa Rugby Union (“SARU”) appearing on the List in Exhibit A have individually and/or collectively committed an act or acts of Misconduct in so far as they failed to conduct themselves in a disciplined and sporting manner and their conduct and/or behaviour brings and/or has the potential to bring the sport of Rugby Union and/or the IRB into disrepute in contravention of Regulation 17.21.1 of the IRB Regulations Relating to the Game:

17.21 Misconduct

17.21.1 Unions are responsible and accountable for the conduct of their Players, officials and all Persons under their jurisdiction. Unions, Players and Persons must conduct themselves in a disciplined and sporting manner and ensure that they do not commit an act or acts of Misconduct.

For the purposes of this Regulation, Misconduct shall mean any conduct, behaviour or practices on or off the playing enclosure in connection with an International Match, International Tour or International Tournament (excluding Foul Play during a Match) that is unsporting and/or unruly and/or ill-disciplined and/or that brings or has the potential to bring the sport of Rugby Union, the IRB and/or its commercial partners into disrepute.

10. That all named Persons who are part of the coaching and management structure of the National Representative Team of SARU appearing on the List in Exhibit A individually and/or collectively have committed an act or acts of Misconduct, in particular by their failure to respect the authority of the IRB in the area of Rugby disciplinary matters and in doing so they have breached the following provisions of Regulation 20 (Code of Conduct) of the IRB Regulations Relating to the Game:

- (iv) Regulation 20.1.4
“All...Persons³...shall accept and observe the authority and decisions of...all other rugby disciplinary bodies, subject to Regulation 17”; and
 - (v) Regulation 20.1.8
“All...Persons...shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute”; and
 - (vi) Regulation 20.1.13
“All...Persons...shall not do anything which adversely affects the Game of Rugby Football, the Board, any member Union...”
11. That all named Persons who are part of the coaching and management structure of the National Representative Team of SARU appearing on the Team List individually and/or collectively have committed an act or acts of Misconduct in particular by their implied and/or actual criticism of the judicial process and the personnel exercising disciplinary functions they have breached the following provisions of Regulation 20 (Code of Conduct) of the IRB Regulations Relating to the Game:
- (iii) Regulation 20.1.6
“All...Persons...shall not publish or cause to be published criticism of the manner in which Council or any other rugby disciplinary body handled or resolved any dispute or disciplinary matter resulting from a breach of the Bye-Laws, Regulations or Laws of the Game”; and
 - (iv) Regulation 20.1.13
“All...Persons...shall not do anything which adversely affects the Game of Rugby Football, the Board, any member Union...” and
 - (iii) Regulation 20.1.8
“All...Persons...shall promote the reputation of the Game and take all possible steps to prevent it from being brought into disrepute.

³ “Person means a Player, trainer, referee, touch judge, coach, selector, medical officer, physiotherapist or any other individual who is or has been at any time involved in the Game, or in the organisation, administration or promotion of the Game”. IRB Regulation 1.1 Definitions.

South African Team v British & Irish Lions 4 July 2009

Player Number	Team Members
1.	Tendai Mtawarira
2.	Chiliboy Ralepelle
3.	John Smit (Capt)
4.	Johannes Muller
5.	Victor Matfield
6.	Heinrich Brussouw
7.	Juan Smith
8.	Ryan Kankowski
9.	Fourie du Preez
10.	Morne Steyn
11.	Jongi Nokwe
12.	Wynand Olivier
13.	Jaque Fourie
14.	Odwa Ndungane
15.	Zane Kirchner
16.	Bismarck du Plessis
17.	Gurthro Steenkamp
18.	Deon Carstens
19.	-
20.	Pierre Spies
21.	Ruan Pienaar
22.	Francois Steyn
23.	Bryan Habana
24.	Adrian Jacobs

South Africa Management Team 4 July 2009 – “Other Persons”

	Management Team
1.	Peter de Villiers – Head Coach
2.	Craig Roberts – Team Doctor
3.	Anne Lee Murray – PR Manager
4.	René Naylor – Team Physiotherapist
5.	Vivien Verwant - Management
6.	Neville Heilbron - Management
7.	Arrie Hougaard - Management