NEW CITY CHAMBERS

CHAMBER READING

ISSUE 1 • AUGUST 2018

NEW CITY CHAMBERS NEWSLETTER

IN THIS ISSUE

THE FIRST EDITION

BY PETRA RICHARDS

New City Chambers is a boutique law chambers located in downtown Port-of-Spain, minutes walk away from the courts.

Welcome to the first edition of the Chamber's Newsletter, Chamber Reading.

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We aim to provide an easy to read and informative short-newsletter which broadly covers some of the areas we have been active in, in recent times.

Chambers was formed in 2017 to provide a client focused, research driven approach to the practice of law. We have grown from strength to strength serving a broad range of clientele, which includes other professional service provide to lay persons in a variety of contentious and non-contentious areas.

With the recent addition Dr. Emir Crowne, who was previously as door-tenant in Chambers, we have added Intellectual Property Law and Sports Law to the core chambers areas.

We hope you enjoy our first edition of Chamber Reading.

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SM JALEEL & COMPANY LIMITED -AND- TAX APPEAL BOARD, P23 OF 2018 ("JALEEL")

BY MATTHEW GAYLE

Described as a "formidable advocate", Matthew's work encompasses a variety of civil litigation and some criminal defence.

While Matthew accepts work in a broad range of areas, many of Matthew's cases have a constitutional and/or administrative law dimension. He has appeared as counsel in a number of recent important cases including **Isioma Loveth Eze v The AG**

Markarchbald v the Trinidad and Tobago Defence Force

Jimdar Caterers v The BIR

Climate Control Limited v CG Construction Limited.

This was an application made by the Applicant to the Court of Appeal to extend the time allowed for the Applicant to appeal the judgment of the Tax Appeal Board.

In Jaleel at first instance, in the Tax Appeal Board the Applicant had sought to to advance a novel point on appeal from assessment by the Board of Inland Revenue. In essence the Applicant sought to reverse the burden of proof in tax appeals and, unsurprisingly, the Board rejected the proposition and made a final decision in keeping with the well settled position.

The Applicant then had 21 days to apply to the Registrar of the Board, for the Board to state its case. This is the process that kick starts all appeals from the Tax Appeal Board. All the Applicant would have had to do is give notice of the request simpliciter (e.g. the words "Kindly prepare the Case Stated") within the 21 days, the burden of producing the reasoned case then falls to the Tax Appeal Board.

In Jaleel the Applicant made an Application to the Registrar of the Tax Appeal Board, asking that a case stated be produced, but did so after the 21 days had expired. The Registrar refused on the grounds that the application was out of time. Indeed, it is unclear how the Registrar of the Board of his own volition could have extended the time; Rule 17 suggests that any such discretion, if it does exist, vests with the Board itself. Instead of applying directly to the Board however, the Applicant therefore applied to the Court of Appeal.

The basis of doing so appears to be the proposition that the Court of Appeal had a concurrent jurisdiction with the Board. Had this succeeded, this would have been an interesting and novel point. By extension, the Court of Appeal would have the jurisdiction to intervene in ongoing appeals before the Tax Appeal Board. But where would such a jurisdiction come from?

The Tax Appeal Board (the "Board") is a superior court of record created by the Tax Appeal Board Act Chap 4:50, it is led by a chairman who is of equal rank and station as that of a High Court Judge. The Board deals with appeals from decisions of the Board of Inland Revenue and other taxing authorities and is an 'appeal' body properly so called since the taxing authorities exercise what is effectively a quasi judicial function in the exercise of those duties.

In Jimdar Caterers v the Board of Inland Revenue, the Court of Appeal laid to rest the ongoing disputes which had arisen before the Board as to whether the Rules of The Supreme Court 1975 still applied to it, placing the Court at variance with the new approach to civil litigation which operated in the other civil courts in the country. It was unclear which set of rules applied, with many practitioners before the court themselves advocating for this divergent approach to be applied only by the Board. Despite having been in force since 2005, the Civil Proceedings Rules 1998 ("CPR"), still dubbed by many as 'the new rules' has faced much and still faces not insignificant resistance more widely in both the legal profession and the bench. Now where there is no express rule in the Board's own rules, it is beyond a doubt that the CPR with suitable adjustments must be used to bridge any gaps. Jimdar clearly compels the Board to use the CPR principles when exercising its discretion.

Jimdar also confirmed that the only way to approach the Court of Appeal from the Board is by way of case stated. The intended Applicant applies to the Board for them to 'state the case' essentially set down in particular form their reasons for ruling a particular way (even though their reasons may already be in writing). This is then transmitted to the parties and to the Court of Appeal, and the matter is seized by the Court of Appeal.

Viewed against the backdrop of Jimdar, the ruling in SM Jaleel is therefore hardly surprising. There being no express rule which tells one what to do in the circumstance of a late appeal one must in the first instance, apply the rule which applies to an extension of time (Rule 17) with references to the CPR to guide the Board's exercise of it's judicial discretion.

In this instance the Application for the Board to state the case ought properly to have been filed together with an Application to enlarge the time for asking for the court to state the case. This would have avoided the costly exercise of applying to the Court of Appeal.

The second reason why it ought to have been clear that an Application to the Court of Appeal could yield no fruit, is because the root of that application was bad. Jimdar having confirmed that the only way to approach the Court of Appeal was by way of a case stated, there could be no jurisdiction if the case stated was refused. In this regard Jones JA, in Jaleel has removed any doubt that there may be any other avenue by which one may approach the Court:

It seems to me that in the instant case I have no jurisdiction to consider whether or not to extend the time for the making of the Request [for the case to be stated] in the absence of an application

by the Applicant to the Board pursuant to rule 17 of the Rules and consequent refusal by the Board to extend the time in accordance with the applicable law. In those circumstances in the event of such a refusal the Applicant would be entitled to approach this court on appeal by way of case stated on a question of law in accordance with section 9 of the Act.

In other words, should the court refuse to extend the time, thereby permitting the Applicant to make the request for a case stated, the Applicant must apply for a case stated in respect of that decision in order to engage the court of appeal's jurisdiction.

In the circumstances where the Board would thereafter refuse and all options exhausted, redress may be sought from the High Court, but not the Court of Appeal. There is no concurrent jurisdiction.

It cannot be denied that the application for a case stated imposes an onerous burden on the Board to draft the case stated. In procedural matters, it is clear that a more streamlined process is desirable. Particularly where there is a written decision on a procedural appeal, there is no logical reason why the Court of Appeal would not be well placed to determine the matter without the Board's assistance in the form of the case stated. It was argued by the author in Jimdar that the Court of Appeal should recognize such a route, though the actual appeal in that case was made by way of case stated, thereby recognizing the Court of Appeal's supervisory jurisdiction over the rules. The Court of Appeal did not accept this in Jimdar and Jones JA expressly rejects it in Jaleel. In Jaleel, Jones JA outlines the form a procedural appeal must take.

Viewed in this context Jaleel was essentially an attempt to leap-frog the Board's discretion on the extension of time and even if the Court of Appeal had concurrent jurisdiction as was argued by the Applicant, it would have been wrong for the Court of Appeal to exercise it.

Counsel for the Applicant indeed advanced this rather esoteric point that the jurisdiction of the Court of Appeal was concurrent with that of the Tax Appeal Board.

The author does not know if there is to be an appeal to the full Court of this decision; but any such appeal must be doomed to fail. That said, there may be some benefit in the full court endorsing the judgment of Jones JA. It is often felt by clients and practitioners that procedure is not as important as the substantive law of the individual matter it frames. An advocate however, must master the procedure and avoid such jurisdictional pitfalls as in Jaleel. They may prove costly and embarrassing.

Full Case: Jaleel v Tax Appeal Board

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INDUSTRIAL COURT EXERCISES SOUND DISCRETION

BY SHERIZA KHAN

Sheriza is an Attorney at Law with experience in the areas of Corporate Law, Commercial Law, Environmental Law, Employment Law, Civil Litigation and non contentious matters.

Also experienced with tribunals, Sheriza has done matters before the Service Commission Tribunal, the Airports Authority and Amalgamated Services Limited, the Trinidad and Tobago Olympic Committee and the Environmental Commission

The Industrial Court has long been dubbed by practitioners to be very 'pro-worker' in its decisions. However, a great change can be seen from a recent judgment where the Honourable Court has exercised its discretion in favour of the Company.

In the case of GSD-TD 099/2013 National Workers' Union v Sana Narinedath trading as Sana's baby world the panel of Judges with Justice Daniel delivering the oral judgment exercised its inherent jurisdiction and dismissed the Union's case for failing to provide any evidence whatsoever in support of their claim.

The judgment was given on 12th April, 2018. The Honourable Court gave the Union several gracious extensions to file its Evidence and Arguments which it finally did some four (4) years after the matter was brought before the Industrial Court, including after the matter was initially set for trial.

The dismissal of this matter gives hope to Companies that it can be successful before the Court. It should also set precedent in the form of guidance for the Unions that it ought to decipher whether their members will be successful based on the evidence presented by the members. The Unions ought not to simply bring every and any matter before the Industrial Court. Judicial resources are precious and certainly the Employees and Unions ought to engage in good industrial practices as well.

Unfortunately, Ms. Narinedath, who operates a small business selling baby clothes, following the death of her husband, is unable to recover the monies spent in order to defend this matter especially given the trying economic times with which our society is faced – a topic for possible reform? – I would say a definite yes. If costs were awarded in all circumstances, not only in special circumstances as it stands, then perhaps the corollary of this reform would curb in meritless claims before the court so that its resources may be channeled elsewhere.
The Court applaudably gives the option to the Workers and Employers to have a voice but the society ought not to abuse this option.

For those companies who felt as if any decision made against it was unfair, unfortunately you can only appeal based on a point of law – food for thought in the direction of reform.

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LEGAL REMEDIES FOR ATHLETES

BY DR. EMIR CROWNE

One of the region's leading experts in Intellectual Property and Sports Law, Dr. Crowne is a Tenant at New City Chambers in Port-of-Spain, and the Founder of Crowne Sports Law, an international sports litigation practice.

He is a Barrister, Attorney-at-Law and Intellectual Property Agent with a wide-ranging and extensive practice in the following areas: Administrative Law, Complex Litigation & Dispute Resolution, Constitutional Law, Contracts (Drafting & Negotiation), Corporate/Commercial Law, Human Rights, Intellectual Property, International Trust Law, Labour Law (Union Side), Professional Discipline, Sports & Entertainment Law, Telecommunications Law and Technology Law.

Athletes have been denied access to justice for far too long in this jurisdiction. Until recently, unfair team selection decisions and punitive disciplinary measures issued by National Sporting Organizations ("NSOs") were irreproachable. Athletes had no meaningful way to challenge them. Of course, recourse to the High Court was always an option (and still is). However, it is neither practical nor in the interest of sport generally. Team selection decisions and disciplinary issues often require swift determination. The court system is ill equipped to deal with appeals that

usually require final determination within a matter of weeks, days, or – sometimes – hours. There's no time for the familiar gamesmanship of civil litigation.

There is hope however. Earlier this year the Trinidad and Tobago Olympic Committee (the "TTOC") amended its Constitution to provide athletes with recourse to arbitration to help settle their disputes. Arbitration is an alternate form of dispute resolution and is binding on the parties involved. The arbitration is usually conducted before a panel of three (3) arbitrators, or a sole panelist. The panel is generally free to control their own procedure, including the format of the hearing and the taking of evidence, insofar as the rules of natural justice are adhered to. To date, mediation has been noticeably absent from the TTOC's constitution and dispute resolution agenda. Perhaps future amendments could introduce the concept of sports mediation, whether mandatory or optional.

In any event, the change in the TTOC's constitution was prompted, in part, by the earlier fiasco involving Ms. Thema Williams, and her unceremonious de-selection from an Olympic qualifying event in Rio. The author was involved in that dispute and, at the time, decried the unilateral appeal scheme that previously operated under the TTOC's constitution. In earlier versions (of the TTOC's constitution), only NSOs had the right to elect for arbitration. The athlete had no right to invoke the process. The situation was unsatisfying, to say the least.

Under the TTOC's newly amended constitution, NSOs and athletes now have the right to invoke arbitration. In fact, athletes themselves invoked the first two (2) arbitrations conducted under this new constitution. In both cases, one involving the Trinidad and Tobago Volleyball Federation and the other involving the Trinidad and Tobago Table Tennis Association, the athletes and other affected parties in question were represented by counsel from our firm, New City Chambers. Indeed, the days of NSOs operating without accountability are coming to an end. NSOs are no longer 'islands onto themselves', operating for their own benefit without regard for athletes' rights and interests. A new era of dispute resolution in sport has been ushered in, and athletes should capitalize on their ability to meaningfully and practically access justice.

You can contact Dr. Emir Crowne directly at E.Crowne@NewCityChambers.com

7 THINGS TO BRING TO YOUR LAWYER WHEN CONSIDERING ESTATE PLANNING: LAST WILL AND TESTAMENT

1. LABEL DOCUMENT.

Include your full name, current address and age. It would be wise to also include your birth date as well as your national identification number.

2. THE PERSON MAKING THE WILL MUST BE OF SOUND MIND.

This means you are not being pressured of under the influence of a drug or alcohol (enabler or stimulant).

3. CHOOSE AN EXECUTOR.

This is the person you think will act in your best interest on your behalf.

4. CHOOSE A RUNNER-UP.

This person is your third in command. Your secret weapon in-case your first choice executor declines.

5. IDENTIFY YOUR HEIRS AND/OR BENEFICIARIES.

These include but are not limited to your spouse, child and family.

6. NAME A GUARDIAN FOR ANY MINORS.

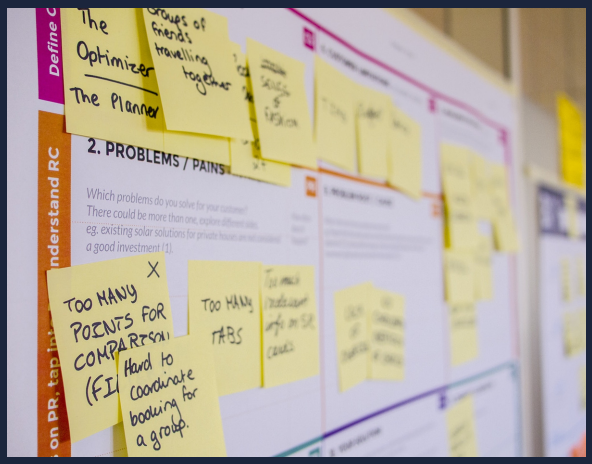
It is important that you discuss with this person what this would entail. NB. If you don't choose the court will.

7. ASSESS YOUR ASSETS.

This means make a note of all your worth, what you own and all your investments.

8. GET PROPER LEGAL ADVICE TAILORED TO YOUR CIRCUMSTANCES.

Contact a lawyer if you feel your circumstance may need extra attention.



NEW CITY CHAMBERS
BULLETIN BOARD

EVENTS

To register for our events, please visit **https://newcitychambers.com/masterclasses** for more information.

• ***How To Swiftly Resolve Sports Disputes Without Endangering Your Career Or Spending Thousands In Legal Fees: A New City Chambers Masterclass For Sporting Bodies & Athletes***

CHAMBERS IN THE PRESS

• Matthew Gayle and Sheriza Khan speak about the victory in TTOC arbitration tribunal case. (TV6, 10 July)

• Two-time Olympic Qualifier, Dexter St. Louis, sings Chambers praises in Trinidad Express and on TV6.

CHAMBERS ROUND-UP

• Matthew Gayle co-authors article with Dr. Derek O'Brien, Reader in Law at Oxford Brookes University on local Constitutional Reforms, **see here**.

• Emir Crowne appears before Parliamentary Select Committee defending freedom of the press and resisting press regulation.

• Matthew Gayle secures landmark victory in case of denial of the right to counsel and illegal detention: Loveth v The Attorney General

• Dr. Emir Crowne has been selected to join Law In Sport Editorial Board.

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