

BETWEEN JENNIFER CLARKE

Appellant

AND CROQUET NEW ZEALAND

Respondent

AND AARON WESTERBY

Interested Party

**DECISION OF SPORTS TRIBUNAL ON JURISDICTION
14 JULY 2026**

Hearing 8 July 2026 – by Microsoft Teams

Present Ian Hunt, counsel for Appellant
Edward Cox, counsel for Respondent
Aaron Lloyd, counsel for Aaron Westerby (Interested Party)

Tribunal John Macdonald (Chair)

Registrar Luke Macris

Introduction

1. The appellant, Dr Clarke, is a New Zealand croquet player who has failed to gain selection in the New Zealand croquet team to compete in the MacRobertson Shield tournament in England, between 24 July and 9 August 2026. She is one of three players vying for the fifth and six places in the team, the others being Aaron Westerby and Greg Bryant, both of whom have been selected.
2. Dr Clarke has filed an appeal against the decision of an Appeals Committee of 6 July 2026, despite her appeal being upheld.
3. The appeal is advanced on the basis that cl.6(f) of the Croquet New Zealand (CNZ) 2018 Selection Policy permits a player who is not selected to appeal to the Sports Tribunal of New Zealand (the Tribunal).
4. In her notice of appeal, Dr Clarke says that it appears that the Appeals Committee considered that the Selection Policy did not permit it to select her, or that it should not do so. In either case, she challenges that decision.

Timeline of events

5. The following timeline of events sets out the unique background to this appeal:

Date	Event
13 February 2026	MacRobertson Shield team announced on CNZ website. Dr Clarke appeals against her non-selection to first Appeals Committee.
9 March 2026	First Appeals Committee dismisses Dr Clarke's appeal on grounds of eligibility.
1 April 2026	Dr Clarke appeals to the Tribunal against first Appeals Committee decision.
16 April 2026	Appeal resolved and consent memorandum filed with Tribunal (ST05/26) recording that CNZ agrees to make a new selection decision, which is to occur with no issues as to eligibility.
4 May 2026	MacRobertson Shield re-selection announcement is published on CNZ website. Dr Clarke is not selected and appeals to second Appeals Committee.
29 May 2026	Hearing of appeal by second Appeals Committee.

3 June 2026	CNZ files a memorandum seeking a stay of the Appeals Committee's decision on appeal pending the determination of an urgent application to the Tribunal by CNZ in which it intends to seek to reopen ST05/06 and rescind the consent order made by the Tribunal.
4 June 2026	Decision of second Appeals Committee is issued. The appeal is allowed on grounds of breach of natural justice and referred back to CNZ for a new selection decision. Simultaneously, the second Appeals Committee issues a Minute responding to memorandum filed by CNZ and declines to defer the release of the decision.
24 & 26 June 2026	Selection meetings for third Selection process.
28 June 2026	Decision of Selection Committee is received, and Dr Clarke is not selected.
29 June 2026	Dr Clarke appeals to a third Appeals Committee.
3 July 2026	Hearing of third appeal by Appeals Committee.
6 July 2026	The third Appeals Committee releases its decision (at 8.31pm), upholding her appeal on two grounds; breach of natural justice and a failure to properly apply and give effect to certain applicable selection criteria. The matter is referred back to CNZ for what will be a fourth selection decision. The decision notes the "acute urgency" of the situation as by Friday, 10 July 2026, CNZ is required to notify the MacRobertson Shield organisers of the membership of the New Zealand team (at [23]).
7 July 2026	Dr Clarke appeals to the Tribunal on the grounds in r. 60(b)(i) and (ii) of the Tribunal's Rules.

The appeal process

6. As a preliminary observation on the timeline, it should be apparent that Dr Clarke has been involved in a selection process marred by error and delay on the part of CNZ and its selectors.
7. The New Zealand team selected for the MacRobertson Shield tournament was announced on 13 February 2026, yet five months on the composition of the team has still to be conclusively determined.

8. While Dr Clarke's appeal to the first Appeals Committee was dismissed, she was successful before the second and third Appeals Committees, both of which issued very prompt decisions and thoroughly canvassed the various issues involved.
9. In its decision of 4 June 2026, the second Appeals Committee (chaired by Mr Robert Dobson KC) allowed her appeal on the ground that there had been a breach of natural justice. A 2017 Manager's Report (containing adverse comments about Dr Clarke) was found to have had a material impact on the selection decision, but she had been given no opportunity to respond to the comments in the report. The Appeals Committee directed a reconsideration of Dr Clarke's position by a new selection committee.
10. As to the decision on 6 July 2026 of the third Appeals Committee (chaired by Ms Karen Clark KC) her appeal was allowed on two grounds:
 - (a) That there was again a breach of natural justice in relation to the 2017 Manager's Report. Inexplicably, that report was included in an information pack CNZ had provided to the selectors, but again no opportunity was given to Dr Clarke to respond to the report. The Appeals Committee rejected claims by CNZ that the selectors had successfully put that material to one side and instead took the view that the process was skewed from the outset by the inclusion of "dated, prejudicial, contestable material in the information pack"¹; and
 - (b) The selectors had failed to properly apply and give effect to certain applicable selection criteria.
11. On 7 July 2026 Dr Clarke filed an appeal with the Tribunal seeking selection in accordance with r.60(b)(i) or (ii) of the Tribunal's Rules, where the Tribunal could conclusively determine the issue of selection of an appellant if:
 - (i) it would be impracticable to refer the question of selection back to the NSO and/or the NZOC in the time available in which entries to the relevant event or competition are to be submitted; or
 - (ii) there has been such disregard of the selection criteria by or on behalf of the NSO and/or the NZOC that a reasonable person could reasonably conclude that it is unlikely that the selection criteria will be properly followed and/or implemented.

¹ Para. [64] of the Appeals Committee Decision (6 July 2026).

12. On the understanding that CNZ was required to notify the tournament organisers in England of the membership of the New Zealand by 10 July 2026, I held an urgent conference with counsel (by Microsoft Teams) on the morning of 8 July 2026, to discuss how the appeal might proceed. At that time a fourth selection process was underway, and although CNZ indicated that a decision was expected to be released that evening such a decision has yet to be provided to the Tribunal.
13. Of course, if Dr Clarke again misses out on selection she would have a right of appeal to another Appeals Committee, but whether there is time to convene a fourth Appeals Committee must be seriously in doubt.
14. The unfortunate position of Dr Clarke potentially running out of time in the exercise of her appeal rights, is the product of a two-tier appeal system, because even in circumstances where finalising the selections had become acutely urgent the Appeals Committee did not appear to have the ability to conclusively determine the appeal, it having no corresponding power to r. 60(b) of the Tribunal's Rules. Therefore, even if it found that a selection decision was flawed, as was the case here, the only available option was to refer the matter of selection back to CNZ for reconsideration.
15. The Selection Policy also has the complicating factor that the right of appeal to the Tribunal under cl.6(d) can only be in response to an unsuccessful appeal to an Appeals Committee.
16. Both the issues just discussed could have been avoided had there been a single right of appeal to the Tribunal.
17. In its decision of 6 July 2026, the Appeals Committee observed at para.100:

The appellant continues to be excluded from membership in the team to compete in the MacRoberston Shield Tournament pursuant to an inadequate and flawed process.
18. That observation coincides with my own view. It is extraordinary, if not unprecedented, that the decision currently awaited would be the fourth selection decision issued by CNZ, in what is otherwise a single selection process to select a team to play in a croquet tournament in England.

Jurisdiction

19. At the conference with the parties on 8 July 2026, counsel made submissions on the issue of jurisdiction.
20. Mr Hunt, for Dr Clarke, submitted there was jurisdiction and the Tribunal should consider selecting her in accordance with r.60(b)(i) or (ii) of the Tribunal's Rules.

21. Mr Cox, for CNZ, and Mr Lloyd, for Mr Westerby, strongly argued that the Tribunal had no jurisdiction, relying principally on the wording of cl.6(f) of the Selection Policy.

22. The CNZ appeal procedure is set out at cl.6 of the CNZ Selection Policy and states:

6. Procedure for Appealing the Selection Process

- a. A player may make an appeal to the selection process to the Executive Director in writing within 5 working days of the announcement of the selection;
- b. A player will provide a copy of all supporting documentation for the appeal within 2 working days prior to the appeal to the Executive Director;
- c. A copy of the selectors report will be provided to the Appeals Committee;
- d. The Executive will convene an Appeals Committee of three persons (including at least one person from another sport) within 10 working days to consider the appeal. The decision of the Appeals Committee will be communicated to the concerned player within 5 working days of the appeal being heard;
- e. No person present at a selection meeting shall participate in the appeals process;
- f. If the appeal is unsuccessful, the player may also appeal to the Sports Disputes Tribunal of New Zealand within 15 working days of a decision by the appeals committee, which shall be final and binding.

23. After considering the respective submissions, the parties were informed by email later in the day, that I had determined that the Tribunal did not have jurisdiction to hear the appeal.

24. As to my reasoning, the starting point was cl.6(f) of the Selection Policy, which commences with the phrase, "If the appeal is unsuccessful". It follows, contrary to Dr Clarke's notice of appeal, that cl.6(f) does not necessarily permit a player who is not selected to appeal to the Tribunal. It only permits a player to appeal to the Tribunal, if there has been an unsuccessful appeal to an Appeals Committee.

25. The obvious difficulty for Dr Clarke is that her latest appeal to the Appeals Committee was allowed. In other words, her appeal did not fall into the category of being unsuccessful, and therefore no right of appeal to the Tribunal existed under cl.6(f).

26. Furthermore, while Dr Clarke might have hoped that the Appeals Committee would have selected her, the Selection Policy on its face does not permit such an option. All that the Appeals Committee can do is refer the matter back to CNZ for reconsideration, which is precisely what has occurred with the Appeals Committee decisions of 4 June and 6 July 2026.

27. Although Mr Hunt sought to rely on the fact that the Selection Policy did not expressly exclude the Appeals Committee from selecting Dr Clarke, by the same token it did not say that it could do so either. For my part, if selection was an available option, then I would have expected there to be an express provision to that effect, as is the case with

the Tribunal where the ability to select is clearly set out in r.60(b)(i) and (ii) of the Tribunal's Rules.

28. In my view cl.6(f) of the Selection Policy is determinative of the issue meaning that, at this stage, the Tribunal simply has no jurisdiction to hear the appeal.

Result

29. For the reasons outlined above the appeal is dismissed for want of jurisdiction.

Dated: 14 July 2026



John Macdonald
Chair