

BETWEEN JENNIFER CLARKE

Appellant

AND CROQUET NEW ZEALAND

Respondent

AND AARON WESTERBY

Interested Party

AND GREG BRYANT

Interested Party

**MINUTE RE CHALLENGE TO PANEL MEMBER
17 JULY 2026**

Present Ian Hunt, counsel for Appellant
Edward Cox, counsel for Respondent
Aaron Lloyd, counsel for both Interested Parties

Chair John Macdonald

Registrar Luke Macris

Introduction

1. A pre-hearing conference to discuss preliminary and procedural matters was held with all parties on 16 July 2026. An email minute of that conference was provided to the parties on that same date and recorded the matters discussed and procedural directions that I made.
2. The relevant portion of that email minute in relation to the challenge to my being on the panel for this proceeding is set out below:

- 1) **Recusal:** The Chair noted CNZ's request for the Chair to recuse based on paras. [17]-[18] of the Chair's decision on jurisdiction (dated 14 July 2026), supported by Mr Lloyd for the interested parties and also including para [6], and heard oral submissions from the parties on this point. The Chair will now consider whether to recuse himself and will provide a response to the parties by **5pm tomorrow (17 July 2026)**.

Should the Chair determine that he will not recuse, then the Tribunal will provide the parties with a copy of his signed impartiality/conflict of interest declaration together with the following standard procedural information:

You have the right to challenge the appointment of any hearing panel member if there are grounds for potential conflicts of interest within seven (7) days from the ground for the challenge having become known. Any challenge shall be decided upon by the Tribunal Chair (or, where the challenge involves the Chair, a Deputy Chair) and will take into account the principles set out in the IBA Guidelines on Conflicts of Interest in International Arbitration – as updated from time to time and available at: [IBA guides and reports | International Bar Association](#)

Should the parties still wish to challenge the Chair's appointment to this proceeding panel, the registry will request that they provide written submissions on the challenge/recusal point for consideration and determination by a Deputy Chair.

The parties had no objection to the Chair continuing to deal with the preliminary and procedural matters, set out below, in the interim.

3. This Minute details my decision and observations on the challenge and the request for me to recuse myself from this proceeding.
4. I note that I dealt with the jurisdiction issue urgently, as a one-person panel, on 8 July 2026 because, at that time, it was understood that the deadline for notification of the New Zealand MacRobertson 2026 team needed to be registered with World Croquet Federation by 10 July 2026. During that conference, the date subsequently changed to 11am on 13 July 2026.
5. The need for a three-person Tribunal panel to hear the appeal has only just arisen, with Dr Clarke having a clear right of appeal to the Tribunal. As at yesterday, it was not a foregone conclusion that, practically, a Tribunal panel could be formed, but fortunately that issue has now been resolved.

Decision

6. Given the urgency of the proceeding, I have decided not to sit on the panel and this proceeding. That is to obviate the need for counsel to engage in the Tribunal's formal recusal process. It allows counsel to focus on the issues pertinent to determining the appeal. The proceeding is now transferred to Andrea Twaddle (as Acting Chair) and thus the recusal issue now becomes academic.

Observations

7. However, having listened to argument on the issue, I will set out my position and observations. Considering the IBA Guidelines on Conflicts of Interest in International Arbitration or the High Court recusal guidelines, I do not consider that there was any basis to recuse myself from some sitting on this panel.
8. Mr Hunt was correct in identifying rule 5 of High Court recusal guidelines as providing the most helpful guidance given the circumstances:

5. Recusal where opinions earlier expressed

5.1 A judge should consider recusing him or herself if the case concerns a matter upon which the judge has made public statements of firm opinion on the issue before the court.

5.2 An expression of opinion in an earlier case or in an earlier stage of a proceeding is not of itself a ground for recusal.

9. My comments at para [6] of the jurisdiction decision in relation to the selection process being marred by error and delay is, first and foremost, about the background to the selection process. Those errors were either found or identified by both the second and third Appeals Committees decisions. For Mr Cox and Mr Lloyd to assert that there was no error or delay attributable to CNZ is plainly untenable.
10. As for my comments at paras [16]-[17], I merely repeated the words of the third Appeals Committee at para [16]. There can be no justifiable criticism whatsoever of this paragraph.
11. In saying that the background was "extraordinary, if not unprecedented", I was drawing on my own experience on the Tribunal. I am unaware of any previous Tribunal cases that might have been comparable, although I acknowledge that perhaps Mr Cox or Mr Lloyd might be aware of some.
12. Each of those comments has nothing to do with the merits of the fourth Selection Committee selection decision which did not even exist at the time. I made no public statements (the Tribunal's processes being private and confidential until the issuing of

a decision), and they were expressed as part of an earlier stage of the proceeding as contemplated by r. 5.2 above.

13. In conclusion, I upheld CNZ's challenge to jurisdiction. My comments in the jurisdiction decision were about the background to this selection process which is not in dispute. The issue before the Tribunal in the current appeal relates to the process adopted in relation to the fourth Selection Committee decision. I made no comments about the merits of a fourth Selection Committee decision which, at that stage, did not even exist.

Dated: 17 July 2026

A handwritten signature in black ink, appearing to read 'John Macdonald', with a long, sweeping horizontal stroke extending to the left.

John Macdonald
Chair