

BETWEEN	JENNIFER CLARKE Appellant
AND	CROQUET NEW ZEALAND Respondent
AND	AARON WESTERBY Interested Party
AND	GREG BRYANT Interested Party

MINUTE OF PRE-HEARING CONFERENCE (21 JULY 2026)
23 JULY 2026

Hearing	21 July 2026 – Pre-hearing conference by Microsoft Teams
Present	Ian Hunt, counsel for Appellant Aaron Lloyd, counsel for Respondent and Aaron Westerby (Interested Party) and Greg Bryant (Interested Party)
Tribunal	Andrea Twaddle (Acting Chair)
Registrar	Luke Macris

Introduction

1. In advance of the hearing scheduled for 6am on 22 July 2026, I convened an urgent pre-hearing conference by Teams with counsel at 1pm on 21 July 2026 to consider two issues and seek agreement between the parties on hearing procedure, which was obtained.
2. On both issues, I had read the written submissions provided in advance and heard their oral arguments at the conference.

Relief

3. The first threshold issue was whether there remains open the possibility of practical relief for Dr Clarke.
4. Mr Lloyd argued, on behalf of Croquet NZ (CNZ) and the interested parties, that on the balance of probabilities it is clear a successful appeal in this Tribunal would provide no effective remedy for Dr Clarke. He submitted that the MacRobertson Shield team has already been entered, in accordance with the event registration deadline, and there is now no way for her now to be included in the team selected, based on the MacRobertson Shield Regulations 2026 (Regulations) and email communications between CNZ and World Croquet Federation (WCF) about the hypothetical application of the Regulations. As such, the appeal should not proceed as no relief is available, which he further submitted was supported by reference the merits of the case.
5. Mr Hunt, on behalf of Dr Clarke, submits that the appeal is not moot and that meaningful relief remains available. He argues that CNZ's position is inconsistent with its own earlier correspondence with the WCF, in which CNZ maintained that a replacement player for a permanent casualty does not need to have been pre-listed by the registration date and that substitutes may still be introduced under the Regulations. He submits there remains an interpretation clearly available for Dr Clarke to join the team through the casualty and substitution provisions in the Regulations, which CNZ would have a duty to put to WCF if the appeal succeeds. He further contends that CNZ contributed to the delays that have brought the matter close to the start of the MacRobertson Shield and should not now rely on those delays to defeat the appeal. Dr Clarke's position therefore is that the relief sought can still have practical effect and the appeal should proceed to determination.
6. I determined that relief remains open and, as such, the matter would proceed to the hearing.

7. Mr Lloyd correctly identified that it is not for this Tribunal to determine what the Regulations mean or require and that this decision-making authority sits with WCF decision-maker. Therefore, in regards relief, I must determine whether there was an arguable interpretation of the Regulations capable of providing relief to Dr Clarke, if accepted by WCF.
8. There is an interpretation open to being accepted by WCF to substitute Dr Clarke in for Mr Westerby or Mr Bryant under the 'casualty' provisions of the Regulations, as CNZ has already put a version of this interpretation to WCF.
9. I am not persuaded that the email communications between CNZ and WCF about the hypothetical application of that interpretation of the Regulations close off relief. I noted in my oral decision to counsel that the communications are not signed statements nor affidavits from WCF decision-makers confirming a clear interpretation of the Regulations based on a full consideration of the context.¹ Rather, they are email communications which are not a direct response from the ultimate WCF decision-maker²; they contain ambiguous language; and they do not appear to provide a description of the full background/context. For example, that CNZ may be required by this Tribunal to request a substitution as a result of a successful appeal by Dr Clarke.
10. Looking forward hypothetically, and without indicating any view on the merits because this panel has not yet heard nor considered them, I considered that CNZ would have a duty to advocate to WCF for an interpretation of the Regulations that allows for Dr Clarke's substitution into the team should this panel conclusively determine the issue of selection in her favour under Tribunal Rule 60(b).
11. Accordingly, I determined that the Tribunal would continue with the appeal procedure and rejected the application that relief was not available.

Representation of three parties by Mr Lloyd

12. At the previous pre-hearing conference held by the Tribunal Chair (John Macdonald) on 16 July 2026, CNZ were represented by different counsel (Edward Cox, Gibson Sheat). At the end of that conference, Mr Cox indicated that he no longer had instructions to act for CNZ.
13. The Tribunal was notified the next day by Mr Lloyd that he had instructions to act for both CNZ and the interested parties, Mr Westerby and Mr Bryant, and that, to the

¹ I also noted that it would not be appropriate for CNZ to seek to obtain this type of evidence for the reasons outlined at para [9].

² Though the direct-decision maker may have been copied in, they provide no explicit agreement with the interpretation.

extent any conflict exists, he was satisfied that the three parties had appropriately waived conflicts.

14. Mr Hunt objected to Mr Lloyd acting on behalf of all three parties. He argued that it was unprecedented before the Tribunal that counsel could act for both the NSO and athlete(s) as an interested party, the reason being that nobody would in the ordinary course consider that it would be appropriate for such representation to occur. He relied on the decisions of *Black v Taylor*³, *Clear Communications Limited v Telecom Corporation New Zealand Limited*⁴, and *Official Assignee v Brodie*⁵ and summarised their principles as⁶:

- A Court or Tribunal has jurisdiction to bar counsel or solicitors from acting in a particular case where that step is necessary. The principles are non-exhaustively summarised in *Clear Communications*, at pages 3-4.
- They include that the Court has the jurisdiction to bar counsel or solicitors from acting in a particular case where that step is necessary for the efficient and effective administration of justice.
- Removal of a lawyer is not a retrospective sanction for past conduct or misconduct, but a prospective measure to safeguard the future conduct of the proceedings.
- Where removal has been ordered, it has usually been for conflict of interest (e.g., *Black v Taylor*), but there is no limitation upon the conduct which might jeopardise the future conduct of the proceedings.
- It is not necessary to show that the lawyer has breached any of the rules of professional conduct.
- A litigant should not be deprived of his or her choice of counsel without good reason, and the Courts should be astute to guard against removal applications being used tactically.
- An application for removal requires that a balance be struck between the injustice of depriving a party of his or her choice and the justice of allowing that lawyer to continue in prejudicial circumstances.

15. Mr Lloyd's position can be captured by repeating the following two paragraphs of his written submissions⁷:

4. An apparent conflict in respect of steps CNZ had taken in agreeing a consent order with Dr Clarke (but not with the other athletes) was identified. Through Mr Smith, CNZ confirmed its position that seeking the Consent Order was legally wrong, given the interests of the other athletes, and that in any event it had only agreed to the Consent Order on the basis of the representations made by the Appellant as to her fitness to play croquet.

³ [1993] 3 NZLR 3

⁴ [1999] NZHC 1217

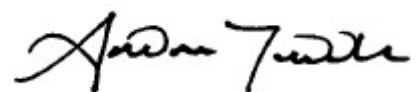
⁵ [2000] NZHC 833

⁶ Refer paras. [16] of Memorandum of Counsel for Appellant dated 20 July 2026.

⁷ Refer paras. [4]-[5] of Synopsis of Submissions for CNZ and Interested Parties dated 20 July 2026.

5. No other conflicts were identified, and the Interested Parties and CNZ confirmed their agreement to Counsel acting for both at the upcoming hearing, with any conflicts waived. In essence, the Interested Parties and CNZ are aligned in their interests in respect of this appeal.
16. This is an exceptional case, which contains an acute level of urgency given the first test of the MacRobertson Shield begins on 24 July 2026.
17. I raised with Mr Lloyd the serious concerns that I held about his acting for all three parties. I noted that it was far from ideal and not a scenario that the Tribunal would encourage in future proceedings. I indicated my concern that, at the very least, it certainly raised the potential for actual conflicts of interest emerging at the hearing which might need to be immediately dealt with and the risk that Mr Lloyd may not be able to continue to act for CNZ.
18. Mr Hunt acknowledged that, in raising his objection, he did not consider that there had been a breach of any professional obligation by Mr Lloyd to date and nor was this implied in his argument. I agree with that position.
19. Given the exceptional circumstances and the final bullet point of para [14] above – of the need to balance the injustice of depriving a party of their choice and justice of allowing representation to continue in potentially prejudicial circumstances – I determined that Mr Lloyd could act for CNZ on the basis that CNZ were required to have another representative (e.g., a staff or Board member) available at any hearing to provide instructions and/or potentially represent CNZ in circumstances where an actual conflict arose and the Tribunal held that Mr Lloyd could not act for them.
20. I posed to Mr Hunt that, practically speaking, I was concerned that the only other pathway available might be to disbar Mr Lloyd from acting for CNZ which came with a high likelihood that the hearing would need to be adjourned to give CNZ sufficient opportunity to engage alternative counsel. He indicated that this was not an approach that Dr Clarke would favour.
21. Accordingly, I directed that Mr Lloyd could continue to act for CNZ, Mr Westerby, and Mr Bryant on the basis that CNZ had a representative appear alongside Mr Lloyd at future hearings.

Dated: 23 July 2026



Andrea Twaddle
Acting Chair