

BETWEEN JENNIFER CLARKE

Appellant

AND CROQUET NEW ZEALAND

Respondent

AND AARON WESTERBY

Interested Party

AND GREG BRYANT

Interested Party

**REASONS DECISION OF SPORTS TRIBUNAL
19 OCTOBER 2026**

Hearing 22 & 23 July 2026 – online by Microsoft Teams

Present Ian Hunt, counsel for Appellant – 22 & 23 July
Dr Jenny Clarke, Appellant – 22 & 23 July
Aaron Lloyd, counsel for Respondent and Aaron Westerby (Interested
Party) and Greg Bryant (Interested Party) – 22 & 23 July
Dr Graeme Roberts, Board Member for Respondent – 22 July
Richard Dimmock, Board Member for Respondent – 23 July
Aaron Westerby, Interested Party – 22 July

Tribunal Andrea Twaddle (Acting Chair)
Ruth Aitken DNZM
Sam Fellows

Registrar Luke Macris

Introduction

1. On 15 July 2026, Dr Jennifer Clarke, the Appellant, filed an urgent appeal to the Sports Tribunal (Tribunal) against the decision of Croquet New Zealand (CNZ), the Respondent, not to select her for the team to represent New Zealand at the 2026 MacRobertson Shield to be held in England. The tournament was to shortly commence on 24 July 2026, with competition concluding on 9 August 2026.
2. The MacRobertson Shield is one of croquet's most prestigious international trophies, contested every four years between leading croquet nations including New Zealand, Australia, England and the United States. First played in 1925, it is a pinnacle event for international association croquet competition. The MacRobertson Shield is played in a test-match format, with each contest between two countries comprising a series of singles and doubles matches played over several days. This format places equal emphasis on team depth, endurance, and consistency, making victory a true measure of a nation's overall strength in association croquet. The New Zealand team would play in three tests against each of the other participating nations.
3. The MacRobertson Shield team comprises six athletes. However, the focus of preceding internal appeals to CNZ as well as to this Tribunal, was that Dr Clarke (world ranking #22) was one of three candidates competing for the two final selection places with Aaron Westerby (world ranking #36) and Greg Bryant (world ranking #46) – both joined to the Tribunal's proceeding as interested parties. Various CNZ selection panels had, on multiple occasions, selected Mr Westerby and Mr Bryant ahead of Dr Clarke.
4. Dr Clarke has challenged her non-selection throughout. The rather prolonged background and history of appeals is set out further below, and the most relevant appeal decisions attached as appendices.
5. The Tribunal issued a Result Decision on 27 July 2026, allowing Dr Clarke's appeal and, exercising its power under Tribunal Rule 60(b), conclusively determined that Mr Westerby be selected into the 5th position along with Dr Clarke in the 6th position (ahead of Mr Bryant – now relegated to 7th). The reasoning behind the Tribunal's selection of Dr Clarke ahead of Mr Bryant for the Second and Third Tests of the 2026 MacRobertson Shield is laid out at Appendix A of the Result Decision.
6. Instead, this Reasons Decision provides the basis for which the Tribunal allowed the appeal on the ground of a continuing breach of natural justice and analysis of related issues, such as whether Dr Clarke was eligible to be selected.

Background

7. This appeal has a unique background in which there have been multiple independent appeals conducted by internal CNZ Appeal Committees, as well as appeals to this Tribunal.
8. A timeline of events table is set out in the Tribunal's decision on jurisdiction dated 14 July 2026¹. For the purposes of this Reasons Decision, the pertinent background events are the appeal processes and their associated decisions which largely detail the contested issues.

First Appeals Committee (CNZ)

9. On 13 February 2026, CNZ announced its team for the MacRobertson Shield on its website. This was the first selection decision made by CNZ and Dr Clarke was not selected on the basis that she was ineligible for selection having not attended a required domestic event², not been granted an exemption from doing so, and presumed unavailable for selection. Dr Clarke subsequently appealed against her non-selection to a CNZ Appeals Committee which, on 9 March 2026, dismissed her appeal.
10. This appeal process is referred to as the "**First Appeals Committee**".

Consent Order ST05/25 (Tribunal)

11. On 1 April 2026, Dr Clarke appealed to the Tribunal against the First Appeals Committee decision³. The appeal appeared to be resolved when it was dismissed by consent⁴ after the parties had earlier jointly agreed and the Tribunal directing that the matter be referred back to CNZ on the basis that CNZ would make a fresh selection decision, removing the issue of eligibility for all athletes.
12. This appeal process, comprising both the joint agreement between the parties and associated Tribunal directions/orders, is referred to as the "**Consent Order ST05/26**".

Second Appeals Committee (CNZ)

13. On 4 May 2026, the MacRobertson Shield re-selection announcement was made by CNZ, being the second selection decision, and Dr Clarke was again not selected. She again appealed to a second CNZ Appeals Committee.

¹ Refer para [5] of *Jennifer Clarke v Croquet New Zealand*, ST12/26, Jurisdiction Decision dated 14 July 2026.

² The AC Top Invitation ("the Top 8 event").

³ This appeal was given the Tribunal proceeding number: ST05/26.

⁴ By Tribunal email direction dated 6 May 2026.

14. This appeal process is referred to as the “**Second Appeals Committee**” and the Second Appeals Committee decision dated 4 June 2026 is attached as **Appendix A**.
15. Following a hearing on 29 May 2026, the Second Appeals Committee allowed Dr Clarke’s appeal on a ground of a breach of natural justice having found that a 2017 Manager’s Report from the 2017 MacRobertson Shield, containing significant adverse comments about Dr Clarke, was before the selectors in circumstances where Dr Clarke had not been given an opportunity to sight or respond to that adverse material.⁵ Importantly, the Second Appeals Committee considered the 2017 Manager’s Report had a material impact on the selection decision, and referred the matter back to CNZ for fresh reconsideration with procedural guidance on the proper use (or otherwise) of the 2017 Manager’s Report.⁶

Third Appeals Committee (CNZ)

16. A third CNZ selection committee (the “**Third Selection Committee**”) was subsequently appointed, being a new set of selectors from those selectors that made the second selection decision. This new Third Selection Committee made their selection decision in late June 2026 and Dr Clarke was once again not selected and appealed to a third CNZ Appeals Committee.
17. This appeal process is referred to as the “**Third Appeals Committee**” and the Third Appeals Committee decision dated 6 July 2026 is attached as **Appendix B**.
18. The Third Appeals Committee heard the appeal on 3 July 2026 and again upheld Dr Clarke’s appeal on two grounds: a breach of natural justice and a failure to properly apply and give effect to certain applicable selection criteria.
19. In short, the Third Appeals Committee:
 - a. found there was the same breach of natural justice in relation to the 2017 Manager’s Report, as the report was somehow again included in the information pack that went to the new selectors in circumstances where Dr Clarke had still not been given an opportunity to sight or respond to it;
 - b. rejected the position of CNZ that the selectors had put that material to one side, taking the view that the process was skewed by the inclusion of “dated, prejudicial, contestable material in the Information Pack”⁷;

⁵ Relying on *Maxwell v Cycling New Zealand*, ST11/24, Reasons Decision dated 11 July 2024 at [41].

⁶ Refer paras. [35]-[39] of Appendix A (Second Appeals Committee decision dated 4 June 2026).

⁷ Refer para. [64] of Appendix B (Third Appeals Committee decision dated 6 July 2026).

- c. found the selectors had failed to properly apply and give effect to certain applicable selection criteria; and
 - d. referred the matter back to CNZ for a fourth selection decision, noting the “acute urgency”⁸ of the matter as CNZ was required to notify the MacRobertson Shield Tournament organisers, being the World Croquet Federation (WCF), of the membership of the New Zealand team by Friday, 10 July 2026.⁹
20. The core guidance provided to CNZ by the Third Appeals Committee at para [100] was¹⁰:

The appellant continues to be excluded from membership in the team to compete in the MacRobertson Shield Tournament pursuant to an inadequate and flawed process. In any further selection process, the procedure should be fair; reflect the requirements of natural justice (which, in this case, requires the abandonment of the 2017 Manager’s Report in any information pack for decision-makers) and ensure application of the applicable selection criteria.

Tribunal Jurisdiction Decision (ST12/26)

- 21. Despite having been successful in her appeal to the Third Appeals Committee, Dr Clarke immediately sought to file an appeal with the Tribunal on 7 July 2026 in an attempt to activate Tribunal Rule 60(b) which provides the Tribunal the power to conclusively determine the issue of selection under two scenarios.
- 22. An urgent conference was held by the Tribunal Chair (John Macdonald) with counsel for the parties¹¹ on 8 July 2026 to discuss how or whether the appeal might proceed. It was indicated that a fourth CNZ selection process was underway, and submissions were heard as to whether the Tribunal had jurisdiction to hear the appeal.
- 23. In a decision on jurisdiction dated 14 July 2026, the result of which had been earlier conveyed to the parties by email, the Tribunal Chair dismissed the appeal for want of jurisdiction on the basis that Dr Clarke had been successful before internal Third Appeals Committee and the right of appeal to the Tribunal under the CNZ Selection

⁸ Refer para. [23] of Appendix B (Third Appeals Committee decision dated 6 July 2026).

⁹ Throughout the course of the proceedings, the ‘final’ deadline would change numerous times. In the end, the Acting Chair (Andrea Twaddle) would later hear argument and determine that there were potential avenues for relief available to Dr Clarke after the 10 July 2026 registration date because the WCF regulations contained provisions that allowed a ‘replacement’ player to substitute in for a ‘permanent casualty’, with any such determination being made by WCF – refer *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 23 July 2026.

¹⁰ Refer Appendix B (Third Appeals Committee decision dated 6 July 2026).

¹¹ In attendance: Ian Hunt for the Dr Clarke (Appellant); Edward Cox for CNZ (Respondent); and Aaron Lloyd for Mr Westerby (Interested Party).

Policy explicitly required that an appeal could only arise where the athlete's "appeal is unsuccessful".¹²

24. This appeal process is referred to as the "**Jurisdiction Decision**".

Fourth Appeals Committee (CNZ)

25. Following the Third Appeals Committee decision, CNZ appointed a fourth CNZ selection committee (the "**Fourth Selection Committee**") comprised of the same selectors that had made the third selection decision. The Fourth Selection Committee undertook a fresh selection process and decision. Yet despite having read and considered the 2017 Manager's Report during their Third Selection Committee, the Fourth Selection Committee explicitly records that they did not take into account the 2017 Manager's Report. Dr Clarke was once again not selected and, perhaps unsurprisingly by this point, lodged a fourth appeal to a CNZ Appeals Committee.

26. This appeal process is referred to as the "**Fourth Appeals Committee**" and the Fourth Appeals Committee decision dated 15 July 2026 is attached as **Appendix C**.

27. The Fourth Appeals Committee dismissed Dr Clarke's appeal. In doing so, it canvassed arguments raised by Mr Hunt (counsel for Dr Clarke) noting that, while it did include renewed and fresh criticism of the process, a core focus of the appeal appeared to be directed at the merits and that Dr Clarke should be selected over the other two materially lower ranked athletes of Mr Westerby and Mr Bryant.

28. Accordingly, the Fourth Appeals Committee found¹³:

After analysing the issues, the Appeals Committee takes the view that it is more likely than not that CNZ would be able to defend the adequacy of this, its fourth attempt to conduct a proper process, at least sufficiently to resist an order that a fifth process be undertaken.

29. It also noted, however, the following given the urgency of achieving a result on the merits¹⁴:

We are satisfied that the prospect of a further success on the process criticisms advanced in this appeal could lead to a Pyrrhic victory. That is because the time taken to resolve it then precludes the opportunity for a contest on the substantive merits. To do so would do a disservice to the jurisdiction we have in this case.

Tribunal Procedure (ST12/26)

30. Having canvassed that complex and lengthy background, we now turn to describing the procedure adopted by the Tribunal leading up to the hearing.

¹² Refer para. [19]-[28] of *Jennifer Clarke v Croquet New Zealand*, ST12/26, Jurisdiction Decision dated 14 July 2026.

¹³ Refer para. [7] of Appendix C (Fourth Appeals Committee decision dated 15 July 2026).

¹⁴ Refer para. [13] of Appendix C (Fourth Appeals Committee decision dated 15 July 2026).

31. After the Fourth Appeals Committee dismissed her appeal, Dr Clarke re-filed her Notice of Appeal (Form 3) with the Tribunal on 15 July 2026.

Pre-hearing conference (16 July 2026) – Chair recusal application

32. On 16 July 2026, the Tribunal Chair held a pre-hearing conference with the parties to discuss preliminary/procedural matters and set timetabling toward an urgent hearing.¹⁵
33. Very shortly prior to the conference, CNZ had filed a memorandum requesting that:
- a. the appeal be dismissed on the basis that relief was not available to Dr Clarke under the 2026 MacRobertson Shield Regulations; and
 - b. in the event the appeal proceeded to hearing, the Chair recuse himself from hearing the matter given the comments he made in the Jurisdiction Decision.
34. The Chair declined to deal with the relief application during the conference on the basis that neither he, nor Dr Clarke, had been given sufficient opportunity to consider and respond to CNZ's application, but heard argument from counsel on the matter of his recusal.
35. The Chair's email Minute of that conference also records the following:
- 8. Counsel for CNZ:** Mr Cox, counsel for CNZ, indicated that he would no longer have instructions to act for CNZ following the conference and would not be appearing at the hearing. Mr Cox agreed that he would pass on the contact details to Mr Hunt of the person from CNZ that would be responsible for appearing on CNZ's behalf for this proceeding.
36. Mr Cox had represented CNZ for each of the prior appeal stages from the Consent Order (ST05/26).
37. The next day (17 July), the Chair issued a Minute setting out that, while he observed there was no basis for recusal, he was electing not to sit on the Tribunal panel for the proceeding so as to "obviate the need for counsel to engage in the Tribunal's formal recusal process and allow counsel to focus on the issues pertinent to determining the appeal".¹⁶ The Tribunal was also then made aware that Mr Lloyd had instructions to represent CNZ.
38. Having elected not to sit on the panel, the proceeding was transferred from the Chair to Andrea Twaddle to preside (as Acting Chair).

¹⁵ In attendance: Ian Hunt for Dr Clarke; Edward Cox for CNZ; and Aaron Lloyd for both Mr Westerby and Mr Bryant.

¹⁶ Refer para. [6] of *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 17 July 2026.

Pre-hearing conference (21 July 2026) – relief and representation issues

39. On 21 July 2026, the Acting Chair convened an urgent pre-hearing conference with counsel¹⁷ to hear and consider the issues of CNZ's relief application, whether Mr Lloyd could appropriately represent three parties to the proceeding – being CNZ, Mr Westerby, and Mr Bryant – without actual conflicts arising, and to seek agreement on hearing procedure (which was obtained).
40. A Minute was issued by the Acting Chair following the pre-hearing conference detailing the arguments and determinations.¹⁸ To summarise, the CNZ application for dismissal of the appeal on the basis that practical relief was unobtainable was rejected and a direction made that Mr Lloyd could continue to act for all three parties. That direction was made on the basis that CNZ was to have a representative appear alongside Mr Lloyd at future hearings, to protect against arising conflicts delaying the proceeding further given the acute urgency.
41. By this time, the First Test of the MacRobertson Shield was due to begin in just three days' time on 24 July 2026 (GMT / BST).

Tribunal hearing – part one (22 July 2026)

42. The Tribunal held the first part of the hearing by Microsoft Teams early on of 22 July 2026 (NZST).¹⁹
43. It heard oral evidence, with their written statements having been taken as read, from:
 - a. Dr Clarke (Appellant);
 - b. Judith Hanratty CVO OBE (independent appointed Board Member of CNZ);
 - c. Luke Rive (Chair of the third and fourth CNZ selection committees); and
 - d. Aaron Westerby (Interested Party and Convenor of Selectors).
44. The following written witness statements (no oral evidence required) were also taken as read:
 - a. Chris Clarke (Husband of Dr Clarke, himself an experienced international croquet player, coach and administrator);
 - b. Christopher Williams (expert witness on Association Croquet Ranking System);

¹⁷ By this stage, Mr Hunt and Mr Lloyd only.

¹⁸ *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 23 July 2026.

¹⁹ To accommodate witnesses, such as Dr Clarke and Mr Westerby, appearing from the United Kingdom.

- c. Stephen Mulliner (croquet doubles partner to Dr Clarke).
45. Mr Bryant elected to neither provide a written statement nor oral evidence.
 46. The Tribunal also considered all other material filed by the parties in relation to the fourth selection decision and Dr Clarke's eligibility. That included the various Appeals Committee decisions, the Fourth Selection Committee's decision and criteria worksheet (dated 9 July 2026) as well as all material that Fourth Selection Committee considered, and evidence in relation to Dr Clarke's eligibility (such as relevant emails between parties and her medical reports/information). In our analysis below, we will refer only to those matters and evidence that were material to our decision-making on each issue.
 47. Having considered that evidence, the Tribunal issued a Minute the same day indicating its finding that there had been an ongoing breach of natural justice by the Fourth Selection Committee, arising out of the 2017 Manager's Report seen by those same selectors during the third selection committee stage, which had still not been properly remedied.²⁰ However, we were not in a position to assess the gravity of that breach because the Tribunal had not yet sighted the 2017 Manager's Report. Accordingly, the Tribunal issued timetabling directions for prompt provision of the 2017 Manager's Report to both the Tribunal and Dr Clarke, so that she could provide any written response to it that she may wish to make ahead of the reconvened part two of the hearing to take place the next day.

Tribunal hearing – part two (23 July 2026)

48. Beyond briefly canvassing Dr Clarke's oral response to the 2017 Manager's Report, part two of the hearing on 23 July 2026 primarily focused on submissions by counsel on:
 - a. Dr Clarke's eligibility – whether she had legitimately obtained an exemption from her non-attendance at a Top 8 tournament of 4 February 2026 or obtained that exemption by way of material misrepresentation; and
 - b. the appropriate procedure to be adopted under Tribunal Rule 60, including which material which should be before the Tribunal in making a selection decision if Tribunal Rule 60(b) was engaged.
49. Shortly after the part two hearing, the Tribunal issued a Minute stating²¹:

²⁰ *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 22 July 2026.

²¹ Refer paras. [3]-[4] of *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 23 July 2026.

[3] The Tribunal panel considers that it could be unfair to everybody involved in the 2026 MacRobertson Shield, including Dr Clarke, for the Tribunal to issue a Result decision with such a short time period before that First Test begins. Croquet NZ should proceed with the team that it has selected for that First Test.

[4] The Tribunal panel will consider the information and submissions before it and will endeavour to issue its Result decision early next week given it is mindful that the Second Test is due to begin on 30 July 2026.

Result Decision (27 July 2026)

50. On 27 July 2026, the Tribunal issued a Result Decision²², determining that Dr Clarke was eligible to be selected – her exemption was legitimately obtained as there was no material misrepresentation and the Tribunal’s Consent Order was validly granted – and that both Tribunal Rule 60(b)(i) and (ii) had been satisfied.
51. The Tribunal then conclusively determined the issue of selection between the three athletes selecting Mr Westerby (5th) and Dr Clake (6th) ahead of Mr Bryant (7th) as set out in that Result Decision.

Issues for determination

52. A significant issue raised by CNZ and the Interested Parties was whether Dr Clarke had obtained her eligibility legitimately (i.e., an exemption to not attend a mandatory selection event due to injury) via the Consent Order (ST05/26).
53. The re-filed Notice of Appeal (Form 3) of Dr Clarke set out the grounds of her appeal with respect to the fourth selection decision – being whether:
 - a. natural justice was denied;
 - b. the Fourth Selection Committee based its decision on erroneous or irrelevant information that was material to the decision reached;
 - c. the applicable selection criteria were properly followed and/or implemented;
 - d. she was afforded a reasonable opportunity to satisfy the applicable selection criteria;
 - e. the selection decision was affected by actual bias; and
 - f. there was material on which the selection decision could reasonably be based.
54. Finally, where the Tribunal determined that a ground of appeal had been successfully made out and Dr Clarke eligible for selection, it then had to turn its mind to which limb of Tribunal Rule 60(a) or (b) should be properly engaged.

²² *Jennifer Clarke v Croquet New Zealand*, ST12/26, Result Decision dated 27 July 2026.

CNZ Selection Criteria

55. The CNZ selection criteria and processes are primarily set out in the CNZ Selection Policy – April 2018 (the Selection Policy), the relevant portions of which are:

1. Objectives

- a. To identify, develop and select players to represent New Zealand in national and international events.
- b. To select players who will fulfil the agreed long-term selection plan.

....

3. Selection

- a. Eligibility
 - i. Players who wish to be considered for selection must meet eligibility requirements of Croquet New Zealand and the WCF which will be posted on the CNZ website.
- b. Availability
 - i. The Selectors may ask players of their availability for selection prior to the selection meeting; or
 - ii. The Selectors may make the assumption that a player is available for selection unless otherwise notified.
- c. Selection Process
 - i. If the selectors wish to amend the selection criteria for a selection event beyond the default criteria outlined under section 3(c)(vi) they should communicate this to the relevant players via a notice on the CNZ website within a reasonable time frame.
 - ii. The Selection Committee will consider all players who are eligible and available for selection;
 - iii. Where practical, the Selectors will name an initial squad/s of players for international events.
 - iv. Players selected for each squad may be added/ removed and moved between squads depending on their form and commitment to team preparation;
 - v. Players may be members of more than one squad at any one time;
 - vi. If no guidelines for selection are announced the following information about each player will be considered by the selectors;
 - a. Performance and results in the specified national events in the 12 months prior to the selection meeting commencing or the equivalent event based overseas, with no weighting to timing of events.
 - New Zealand Open/ Golf Croquet Nationals
 - New Zealand A vs B
 - New Zealand AC Invitations / GC Invitations
 - New Zealand Mens and Womens
 - North & South Island AC Championships & GC Grades
 - b. Performance in International events in the previous 24 months
 - c. World Ranking at the commencement of the selection meeting
 - d. Win/loss ratio over specified events
 - e. Specific abilities including
 - Success rate of peeling (AC)

- Roqueting/ Shooting ability
- Unforced errors
- Tactical knowledge
- Knowledge of laws and refereeing qualifications
- f. Compatibility of doubles combinations and successful doubles play
- g. Performance under pressure
- h. Presence in the team will encourage responsible and harmonious behaviour
- i. Compliance with Croquet NZ Players 'Code of Conduct'
- j. incorporation with long term selection plan.
- k. Win/loss ratio against specific grade ranges.
- vi. The Selectors shall appoint the Team Captain where appropriate from the selected players with final approval from the CNZ Executive.

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CNZ Long Term Selection Plan

April 2018

The current CNZ selection policy makes reference to a long-term selection plan.

Until such time as a more nuanced plan is developed it is recommended that the following is to represent the operative Long Term Selection Plan:

In the first instance the best available players in terms of playing ability should be selected for all team and individual events. While the selection policy permits nonplaying factors to be considered these should only influence selection where these factors are compelling. While permissible, a cautious approach should be adopted when promoting a developing player with good long term 'prospects', over an established player or player(s) who are widely accepted to currently be stronger than the developing player.

56. Despite reference to its potential creation, it was accepted evidence that “a more nuanced [long term selection] plan” had not been created or adopted by CNZ beyond that wording already in the Selection Policy.
57. Clause 3.c.vi of the Selection Policy sets out the selection criteria in the absence of any guidelines. However, for the 2026 MacRobertson Shield selection process there was guidance provided in the form of a MacRobertson Shield 2024 Campaign Announcement posted online and dated 15 October 2024 (the 2024 Announcement) which stated:

The 2026 MacRobertson Shield will be played in England between 24th July and 9th August, 2026. Participation in the centenary series is likely to be a highlight for all those involved. To be eligible for the NZ team, players will need to play either the NZ Open Singles or the Top 8 Invitation in the 2024/25 season and at least the Top 8 in the 2025/26 season.

Players are expected to prioritise participation in these events to best support the team's preparation. Any player unable to meet this requirement will need to apply, as early as possible prior to the relevant event(s), to the Chief Executive for an exemption. This request should outline the player's circumstances (e.g. non-residence) that prevents them from meeting this requirement.

A squad of up to 10 players will be selected at the end of the 2024/25 season with the final team selection being made by the end of February, 2026. Form over the two preceding seasons will be given the most weight, in particular singles peeling performance against players above a 2100 DGrade.

Additional factors that selectors will consider include, but are not limited to; performance in the 2022 MacRobertson Shield Team (if applicable), the ability to contribute as a positive team member, world ranking and doubles pairing dynamics.

Tribunal Analysis

58. Before canvassing the key aspects of our analysis, we consider it worth giving a brief description of the factual background leading into the 2026 MacRobertson Shield, which was said to inform both the selection policy and process itself. For the most part, this context was commonly accepted between the parties and helps explain the relationships and connections between the individuals involved in what is a relatively small high-performance sporting community.

2017 MacRobertson Shield

59. The 2017 MacRobertson Shield was held in California and New Zealand finished third out of the four competing nations behind Australia and England, but ahead of the United States. Because what occurred during this tournament became a significant point of discussion in this appeal, we summarise it briefly.
60. The New Zealand team to play included Greg Bryant (proposed Captain), Paddy Chapman, and Dr Clarke; with Jarrod Coutts as Manager. Near the start of the tournament, Mr Bryant was unfortunately unable to travel to the United States and forced to withdraw from the team. Two additional players were therefore brought in at late notice to replace Mr Bryant and play different weeks of the Test schedule.
61. Dr Clarke described the interruption to preparation this caused for the team, and that she was encouraged and reluctantly accepted the captaincy. She did this despite having concerns about one of the players within the team and described occasions of having to manage conduct of concern during the tournament.
62. By way of context, during the tournament, the team lived together in rental style accommodation. Team accommodation arrangements were largely driven by financial considerations.
63. Following the tournament, Dr Clarke provided a Captain's Report to CNZ.
64. Mr Coutts provided his 2017 Manager's Report to CNZ, but a copy was not provided to Dr Clarke by either he or CNZ. In that report, Mr Coutts acknowledged that on the whole, Dr Clarke "did a reasonable job as Captain." He noted she can be "extremely helpful, is very knowledgeable and has times where she demonstrated good leadership

and a high level of ability as a player.” However, he also advised that there were times he was “miserable because of Jenny” and “Because of this, I wish to never have any involvement in any team which she is a member of in the future.” He voiced the opinion that she should never be captain again, and there were times others and he had not enjoyed being in a team with her because of “drastic changes of attitude/actions.”

65. There was no evidence before the Tribunal that CNZ held a formal debrief with either Dr Clarke (Captain) or Mr Coutts (Manager) following the 2017 MacRobertson Shield.

2022 MacRobertson Shield

66. The WCF postponed the 2021 MacRobertson Shield after disruption caused by the Covid19 pandemic, border closures and isolations. It was rescheduled for November 2022. At the 2022 MacRobertson Shield held at Melbourne, New Zealand again finished third of the four competing nations, behind England and Australia and ahead of the United States. New Zealand was highly competitive, losing to both Australia and England by only narrow margins.
67. Dr Clarke was a member of that 2022 team, as were Paddy Chapman and Aaron Westerby.
68. Mr Bryant was selected as the Captain and then, after the Team Manager resigned at late notice in September, also performed the Managers role as there was insufficient time to elect a replacement. After the event, he prepared the 2022 Manager’s Report, reporting that “As Captain and Manager, I am very proud of the NZ team members commitment to the campaign and the outcomes, and how they rallied and supported each other through a very difficult series of unique challenges.”²³ There were no negative comments about Dr Clarke in the report.

2026 MacRobertson Shield

69. On 20 April 2026, CNZ undertook a survey of players available for the MacRobertson Shield Selection. CNZ requested a response to its email request by 5pm on 23 April. In the email, CNZ advised that it was asking all squad players to provide information to assist selectors. The email noted information relating to form, results, and world rankings will be sourced independently by selectors and did not need to be included in player responses. Information sought in the email included:²⁴

²³ 2022 MacRobertson Shield NZ Manager / Captain report at pg. 28 of the MacRobertson Shield Selectors’ Information Pack CNZ Selection Committee July 2026.

²⁴ Email from CNZ Selectors to the players available for MacRobertson Shield Selection dated 20 April 2026 at page 35 of the Fourth Selection Committee’s Information Pack.

- a. Doubles preferences – input into potential doubles combinations: Preferred partner, if any, and why e.g., playing style compatibility, past experience, communication; combination considerations; and any additional comments;
- b. Player availability / support requirements;
- c. Team contribution – any information the player would like selectors to be aware of regarding the player's ability to contribute positively to the team environment during the campaign, noting that: "This may include communication, preparation habits, supporting teammates, previous experience in team environments, or any other considerations you believe are relevant to effective team functioning."

70. The Tribunal notes its concern regarding the player survey undertaken by CNZ selectors in its discussion following.

Eligibility: Did Dr Clarke misrepresent her injury status to CNZ?

71. Mr Lloyd argued on behalf of his clients that a central issue in this appeal was the eligibility status of Dr Clarke because if the Tribunal determined Dr Clarke had obtained her exemption from CNZ by way of material misrepresentation then essentially the entire appeal would become moot. In opposition to that, Mr Hunt argued that the Tribunal should be reluctant to revisit or overturn the Consent Order (ST05/26), submitting that CNZ and Mr Bryant had, by agreeing to that order when it was made, effectively waived any entitlement to raise the issues now relied upon. He accepted that the position may be different in relation to Mr Westerby, given the absence of evidence that he had agreed to the Consent Order (ST05/26), but nevertheless appeared to challenge his standing to advance those matters.
72. This issue was important and warranted investigation by the Tribunal on its merits because it is a well-established principle of contract law that a party induced to enter into an agreement by a material misrepresentation may be entitled to have that agreement set aside.²⁵ The significance of the allegation was that any misrepresentation concerning Dr Clarke's injury would not merely have affected CNZ's decision-making, but may also have undermined the factual foundation upon which the Consent Order (ST05/26) was made by this Tribunal.
73. However, Mr Lloyd also argued, on behalf of Mr Westerby, that the Consent Order (ST05/26) should be overturned as it was entered into by CNZ without consent of the other athletes, who were also parties to the same contract, formed between CNZ and

²⁵ See *Thompson v Vincent* [2001] 3 NZLR 355 (CA); and sections 35-37 of the Contract and Commercial Law Act 2017.

the athletes within the broader MacRobertson Shield Squad. He submitted that the waiver by way of the Consent Order (ST05/26) was an attempt to alter the contractual terms without the consent or agreement of all parties and therefore, as a matter of law, must be ineffective.

74. The Tribunal has carefully considered the submissions made on behalf of Mr Westerby. The Tribunal accepts that the Consent Order (ST05/26) arose from an agreement between CNZ and Dr Clarke as to the resolution of those proceedings. However, it does not follow that the resulting Consent Order is properly characterised merely as a contractual variation requiring the agreement of every athlete said to be a party to the broader contractual arrangements concerning the MacRobertson Shield Squad. The agreement reached between CNZ and Dr Clarke was put before the Tribunal and the resulting order was made by the Tribunal in the exercise of its jurisdiction and discretion. Whatever the contractual character or effect of the agreement between CNZ and Dr Clarke that led to the Consent Order, the Consent Order itself is an order of the Tribunal.
75. Importantly, the Consent Order has not been set aside and these proceedings are not an appeal from, or an application to set aside, ST05/26. The Tribunal does not consider that the alleged absence of consent from Mr Westerby or other squad members provides a basis in these proceedings for treating an existing order of the Tribunal as ineffective. It is therefore unnecessary for the Tribunal to determine whether, as a matter of contract, CNZ could otherwise have varied any contractual rights or obligations said to exist between CNZ and members of the MacRobertson Shield Squad.
76. On 2 February 2026, Dr Clarke sought an exemption by email to CNZ from competing in a required domestic competition under the Selection Policy, the AC Top Invitation ("the Top 8 event"), on the basis of injury to her back. There was no formal process for seeking an exemption and Dr Clarke's email advising CNZ she was withdrawing from the Top 8 event was sent to an older address of the CNZ Chief Executive and the Tournament Manager. The CNZ Chief Executive later stated he was not accustomed to using that email address and it was not the generic CNZ email address nor his personal email address.
77. Dr Clarke followed up her exemption application by email to CNZ on 13 and 15 February 2026. The exemption was initially declined by CNZ, which then announced its selections for the MacRobertson Shield, not including Dr Clarke after having deemed her ineligible for selection. She challenged that decision to the First Appeals

Committee, which declined her appeal, leading to her first application to the Tribunal. The Tribunal's appeal was resolved by way of a joint memorandum of counsel with the Tribunal granting the corresponding Consent Order (ST05/26) on 15 April 2026. CNZ had agreed to send the matter back for re-selection, on the basis that the question of eligibility was resolved for all athletes. Dr Clarke was not the only athlete that benefitted from the removal of this requirement. As CNZ agreed to the Consent Order (ST05/26) which essentially covered off these procedural matters, the Tribunal is not required to determine whether Dr Clarke in fact provided notice of her injury and an exemption request to CNZ prior to the tournament as required by the 2024 Announcement. The issue on this point is only whether she misrepresented her injury.

78. Moving to the factual issues around Dr Clarke's injury and the challenge to eligibility, CNZ, through Mr Westerby, subsequently learned that Dr Clarke had played golf in the days immediately after injuring her back, prior to seeing her physiotherapist and informing CNZ of her injury. They claimed that Dr Clarke misrepresented her position to CNZ regarding her ability to play by omission, because she did not disclose to CNZ the fact of playing golf after injuring her back and that the reason she did not play in the Top 8 event is materially incorrect. CNZ alleged that Dr Clarke obtained the Consent Order from this Tribunal by misrepresentation, and therefore the matter of Dr Clarke's eligibility came before the Tribunal. Dr Clarke denied that allegation.
79. The factual background to the issue of eligibility is as follows:
 - a. The 2024 Announcement requires that an athlete must have competed in one of the named domestic competitions or been granted an exemption from doing so.
 - b. Dr Clarke first sought an exemption from the Top 8 event from CNZ on 26 November 2025. This was based on mental health struggles following the death of her father and ongoing responsibilities involved in resolving his affairs. CNZ declined the exemption application. The effect of this was that Dr Clarke was required to compete at the Top 8 event in Morrinsville to meet the selection eligibility criteria, unless she otherwise received an exemption from CNZ.
 - c. On 29 January 2026, Dr Clarke hurt her back while gardening. On 30 January 2026, she made an appointment with her physiotherapist. The first available appointment was 2 February 2026.
 - d. On 1 and 2 February 2026, Dr Clarke played golf for her interclub golf team.
 - e. After golf on 2 February 2026, Dr Clarke attended an appointment with her physiotherapist who advised her to refrain from playing any further sport. Later

that same day, she emailed Stefan Horrер (CNZ Chief Executive) and John Christie, attaching her medical certificate, and advised that:

I'm really sorry to let you know that I am not able to do anything much at the moment due to a back injury. I hurt it during garden maintenance... and have spent the last few days taking a lot of pills to manage the pain. I was hoping it would fix itself naturally, but having seen my physio this afternoon, have been told I need to rest.

I have attached a note from my physio which includes the ACC number and details of this assessment.

My apologies, however I am just in too much pain and am unable to do much at the moment.

- f. On 12 February 2026, Dr Clarke emailed CNZ again, having become aware that she was not to be selected for the MacRobertson Shield team. Mr Horrер replied on 13 February 2026 that firstly, an appeal could only be made following the announcement, therefore the email was premature, and secondly, that there had been no second exemption request by Dr Clarke for the eligibility criteria, therefore no basis for selection consideration. Dr Clarke emailed, noting that: she had provided medical information; wished to apply for exemption from the requirement to participate in the Top 8; felt it would be self-evident she wished to be considered for selection; and had not been notified of the date of the selection meeting, therefore had been treated unfairly in that respect.
- g. On 13 February 2026, CNZ announced the team selected for the MacRobertson Shield. Dr Clarke was not named in the team.
- h. Dr Clarke appealed on the basis that she should have been granted an exemption from the requirement to participate in the Top 8 event on the basis of her injury. Her appeal was heard by the first CNZ Appeals Committee on 11 March 2026 and subsequently rejected.
- i. Dr Clarke then lodged an appeal to the Sports Tribunal (ST05/26), which as previously outlined was resolved by way of joint agreement via the Consent Order (ST05/25). CNZ agreed to send the matter back for re-selection, on the basis that the question of eligibility was resolved for all athletes.
- j. Around the time of the Second Appeals Committee hearing, CNZ (through Mr Westerby) became aware that Dr Clarke had played golf on 1 and 2 February 2026. CNZ and Mr Westerby raised with the Second Appeals Committee their view that Dr Clarke had misrepresented her position regarding her injury, by not mentioning playing golf. This was rejected. The Second Appeals Committee directed the matter back for reselection.

- k. During May and June, CNZ continued to put an allegation to Dr Clarke that she had misled it and both Appeals Committees about the reason she was unable to play in the Top 8 event.
 - l. Dr Clarke responded to the CNZ allegations, providing further information, supporting statements, and medical evidence from her physiotherapist as to the treatment of her back injuries, including the treatment she received on 2 February 2026 and the ACC 45 form and declaration completed by Dr Clarke. Dr Clarke reiterated that there was no basis for any suggestion of her being misleading.
80. The Tribunal heard oral evidence by Dr Clarke on this issue, and she was cross-examined by Mr Lloyd. Dr Clarke's evidence was that she sought to make an appointment with her physiotherapist immediately after sustaining the injury on 30 January 2026, but was unable to see her until 2 February 2026. Her explanation for playing golf on 1 and 2 February was that, because other members of the interclub golf team were unavailable, she needed to play or their team would forfeit the match.²⁶ She explained that her hope in undertaking that exercise/activity is that it might ease or lessen her injury as, in the past, this has had potential to help and that she would withdraw mid-round if it was too painful. She played her matches with limited mobility and in pain but was able to complete the rounds by modifying her swing. On the afternoon of 2 February 2026, Dr Clarke saw her physiotherapist who noted the following in the Assessment Notes Report:

Mechanism: Hurt back, twisted it when pruning bushes

....

Current Symptoms: pain central low back

24 hr Pain Pattern: troubled sleep

Aggravating Factors: bending, sit to stand , after sitting, swinging golf club, standing in croquet stance

Easing Factors: sitting supported

Current History: on the 29/1/26 doing gardening, pruning bushes reached and twisted and felt pain in lower back, kept going but became sorer, troubled sleep and quite sore next day , tried to play golf but was too sore. Started some brufen 800mg and feels this has helped , not as sore to day.

Spine Objective Assessment Observation: tender at L5. hips and SI joints fine

....

Treatment: Phil Parker regime L5 = eased up some ROM, Interferential 0-150Hz x 12mins to lumbar spine low, to do REIL stretches, to hold off golf and croquet over next week. Was due to go to croquet tournament this week but advised not to do this while back is still irritable. start back on low ab activation exercises

²⁶ She had provided signed written statements to CNZ, and then subsequently to the Tribunal, from her interclub teammates supporting this to be accurate.

Differential Diagnosis: S572. Sprain Lumbar Spine

Diagnosis: L5 segmental sprain

Analysis: L5 segmental sprain, inflammatory component

81. Dr Clarke demonstrated her intention to play the Top 8 event, a matter challenged by Mr Westerby in his evidence, in the form of receipts of pre-booked and paid for travel and accommodation in advance of the injury. The Tribunal also received evidence from Dr Clarke that she declined further invitations to play golf during the period of injury after receiving her physiotherapist's advice.
82. Mr Westerby also challenged that Dr Clarke had not properly applied for an exemption, claiming that the form and content of her email to CNZ was not sufficient because it did not explicitly mention or request an exemption. The Tribunal, accordingly, sought and received information regarding the CNZ process by which an exemption is granted. We are satisfied that Dr Clarke met the expectations required to request an exemption; by notifying CNZ that she was unavailable and why. We consider that it was implicit that she was seeking an exemption, both because she had previously applied for one and because otherwise there would have been no reason for her to notify CNZ of her injury. The 2024 Announcement contains no clear requirement about what an athlete is expected to do beyond taking these steps. CNZ did not have any required form or information to be supplied to them, nor a clearly designated email address for this purpose.
83. Mr Westerby gave evidence to the Tribunal regarding Dr Clarke's injury and the exemption granted. He had been the Convenor of Selectors when he was advised that Dr Clarke was ineligible because she had not met the Top 8 participation requirement. He knew that Dr Clarke had sought an exemption in late 2025 and that it had been declined. He knew she had presented information saying that she was injured and unable to play. In his view "If Dr Clarke was capable of playing golf, it seems to me she must have been capable of playing croquet, but simply chose not to."²⁷ The Tribunal finds that Dr Clarke provided contemporaneous evidence that she genuinely intended to compete in the Top 8 and rejects Mr Westerby's view that she was looking for a reason not to participate. Dr Clarke provided clear and credible medical information to CNZ that she was unfit to play the Top 8.
84. As Convenor of Selectors, Mr Westerby was aware that CNZ ultimately entered into the Consent Order (ST05/26) following the first Tribunal proceeding. He made clear to the Tribunal that: he did not consent to the order; he believed Dr Clarke was not entitled

²⁷ Refer paragraph [25] of Statement of Aaron Westerby dated 21 July 2026.

to the exemption; regarded Dr Clarke's participation in golf to be incompatible with her explanation for not playing croquet; and did not trust Dr Clarke, stating that she "was not fully honest about her injury"; had either "mislead CNZ and all of us about the extent of her injury" or at a minimum "failed to disclose key facts", and he struggled to see how the team could trust her because of that conduct. Mr Westerby confirmed to the Tribunal that he had passed on information regarding Dr Clarke's golf participation to CNZ and its Board members, including Judith Hanratty.

85. Mr Westerby was a player whose own selection interests could be affected by Dr Clarke's eligibility and potential selection. In his evidence, Mr Westerby admitted that he continued to push the issue of Dr Clarke playing golf and challenging her eligibility with CNZ as he did not agree with their decision and that he had conversations with other selected members of the squad about the unfairness associated with Dr Clarke's eligibility. We note our concerns as to Mr Westerby's conduct in this regard. We do not consider his actions reflect those of an objective and detached Convenor of Selectors, who had recused himself due to his own conflict of interest as a player seeking selection. Indeed, the multiple roles that Mr Westerby held – as selection policy drafter, Convenor of Selectors, an athlete seeking selection, Life Member of CNZ with close friends within the playing group – reflects the irreconcilable position that he had placed himself in. We do not go so far as to find he was biased against Dr Clarke, but he certainly failed to meet any standard of seeking to avoid a perception of bias. We note that Mr Westerby was not a selection decision-maker, though he does clearly have considerable influence and respect within the croquet community. We were particularly concerned about what he had to say about sharing his views with CNZ about Dr Clarke's eligibility and having discussed them widely across the playing group in circumstances where questions of trust, compatibility and team dynamics are considerations in the selection process and when selectors surveyed and discussed these criterion with the playing group. We have serious reservations that Mr Westerby's conduct may have essentially been 'fanning the flames' in sowing discord, if any existed, between the playing group and Dr Clarke.
86. The Tribunal also expresses its concern by the position taken by CNZ in its initial selection of the MacRobertson Shield team. Clause 3.a.i of the Selection Policy contains a requirement that players had to meet the requirements of CNZ to be eligible for selection. Dr Clarke took reasonable steps to notify CNZ of her inability to play the domestic competition (Top 8) due to injury and should have been presumed eligible for selection. In the meantime, under cl. 3.b, selectors could either ask players about their availability *or* assume that a player is available for selection unless notified. In contrast

to that, Mr Westerby acknowledged during his evidence that he had assumed that Dr Clarke had not made herself available for the 2026 MacRobertson Shield team and took no action to confirm the position with her. Indeed, the Tribunal did not receive any evidence that CNZ made any enquiries with Dr Clarke as to her intention to remain available for selection. An exemption decision and presumption of eligibility should have been made. Instead, CNZ presumed the opposite.

87. When CNZ became aware of Dr Clarke playing golf in the days between the date she emailed she had become injured and the production of a medical certificate, it was reasonable and appropriate for CNZ to make further enquiries of her, as to the nature of the injury, her subsequent activity, and her apparent ability to play golf but not croquet. However, there was no basis for CNZ to question the legitimacy of the medical information provided. It was provided by a suitably qualified health professional who had assessed Dr Clarke's injury. We consider Dr Clarke was unfit to compete at the Top 8 for genuine reasons, that is, she was injured. But for that injury she would have played in the domestic competition in order to meet CNZ selection eligibility requirements. Dr Clarke notified CNZ of her injury and inability to play, and there were no additional steps required of her by CNZ to apply for an exemption to be eligible for selection. Dr Clarke did not obtain a Consent Order regarding her eligibility for selection by misrepresentation. It was appropriately granted.

Opportunity to demonstrate compatibility and doubles combinations

88. During the hearing, the Tribunal explored with Dr Clarke what opportunities existed between late 2025 and the selection decisions in 2026 for her to demonstrate compatibility with other squad members and to participate in potential doubles combinations, given the importance of this in the selection criteria to be applied.
89. Dr Clarke gave evidence that, following the refusal by CNZ of her November 2025 exemption request, she made herself available to play doubles with any player being considered for selection to the MacRobertson Shield team. During a squad meeting, she advised that while she had a default doubles partner, she was willing to play with any squad member if that would assist team preparation and selection considerations.
90. Dr Clarke advised that one squad member accepted that offer and arrangements were made for them to play together. However, that player subsequently withdrew from the squad for personal reasons and the proposed doubles combination did not eventuate.
91. Dr Clarke's evidence was that CNZ provided no direction regarding which players she should partner with, no request that she participate in any specific doubles combination, and no guidance as to how selectors wished compatibility or doubles

dynamics to be assessed. She stated she would have played with any player suggested by CNZ and had previously played with most members of the squad, but no such discussion or requests occurred.

92. The Tribunal accepts that evidence. It is relevant because compatibility, doubles pairing dynamics and successful doubles play later assumed considerable significance in the selection process. Yet there was little (if any) evidence before the Tribunal that CNZ actively facilitated opportunities for Dr Clarke to demonstrate those attributes or communicated any expectation that she take particular steps to do so. The absence of such direct engagement is difficult to reconcile with the substantial weight ultimately placed on those matters in the selection decisions.
93. Dr Clarke made herself available to play with prospective squad members during the relevant period and expressed a willingness to participate in combinations that CNZ might consider useful. There was no evidence before the Tribunal that CNZ identified any particular combination, requested that she play with any specific athlete, or otherwise facilitated opportunities to address any perceived compatibility concerns before relying upon those concerns in selection.
94. In the Tribunal's view, where a sport has selection criteria that involves consideration of player partnerships, it should be providing a reasonable opportunity for athletes to play together in order to fairly assess those factors. In this case, Dr Clarke took appropriate steps to communicate her willingness and availability to play with others in contention for the team's selection. The Tribunal notes with concern that CNZ did not actively facilitate these opportunities.

Breach of natural justice

95. Natural justice requires not only that decision-makers act fairly, but that the process be seen to be fair. A selection decision can therefore be susceptible to challenge where a reasonable observer could conclude that irrelevant, adverse or prejudicial information may have influenced the decision-making process, even if the decision-makers sincerely believe they were able to disregard that information. The issue is not confined to actual bias. It also includes the appearance of unfairness and the risk that prejudicial material may influence the outcome.
96. The purpose of procedural fairness is to ensure that an athlete is given a fair opportunity to know and address adverse information which may be relied upon in a selection decision. The requirement reflects a fundamental principle that a person affected by a decision should have the opportunity to answer allegations or adverse

material before it is taken into account.²⁸ The obligation exists because decision-makers may unconsciously be influenced by information which has not been fairly tested.

97. Sport selection decisions commonly involve the exercise of specialist judgment and discretion. However, where a selection panel has been exposed to prejudicial information which was not disclosed to the athlete and which the athlete had no fair opportunity to address, subsequent assertions that the information was not relied upon do not necessarily cure the defect. The question is whether a reasonable person could be satisfied that the information played no part in the process. Where the material is adverse, memorable, and directly relevant to issues subsequently relied upon by the selectors, there may remain a legitimate concern that it influenced the decision-making whether consciously or unconsciously.
98. The Tribunal notes the observations of the Second and Third Appeals Committees that the inclusion of the 2017 Manager's Report created a breach of natural justice because Dr Clarke had not been given an opportunity to comment on it, and that the process was skewed by the inclusion of dated, prejudicial and contestable material. The Tribunal accepts those observations and agrees with them. The concern is not merely what conclusion was reached, but that the decision-making process was conducted with adverse information before the selectors in circumstances where procedural fairness had not been afforded to Dr Clarke.
99. In *Roy v Canoe Racing New Zealand*²⁹ the Tribunal recognised that where a selection process has been conducted in a manner that demonstrates a failure to properly apply the selection criteria and principles of fairness, there may come a point where confidence in the ability of the decision-maker to undertake a fresh and fair reconsideration is undermined. The focus is not upon criticism of the individuals involved but on whether the process can command confidence that the criteria will be fairly and properly applied. That approach follows and is consistent with *Murdoch & Others v Yachting New Zealand*³⁰, in which the Court of Arbitration for Sport referred to whether the performance of the panel had been so unsatisfactory that it "could not be trusted to follow the Nomination Criteria on a reference back."³¹ The Tribunal considers reference to a panel that could no longer be "trusted" to apply the criteria

²⁸ *Maxwell v Cycling New Zealand*, ST11/24, 11 July 2024.

²⁹ ST05/15, 21 May 2015.

³⁰ *Murdoch & Others v Yachting New Zealand*, CAS 2004/A/582, 2 April 2004.

³¹ *Ibid.* at para 7.4

properly is directed to the integrity of the process, rather than personal misconduct by decision-makers.

100. Applying those principles, the Tribunal is not persuaded that the Fourth Selection Committee succeeded in putting the 2017 Manager's Report out of its mind.
101. The significance of Mr Luke Rive's evidence (as Chair and convenor) is not that the Fourth Selection Committee consciously relied on the 2017 Manager's Report. Rather, it is that having already been exposed to the concerns contained in that report, that selection panel considered further information (the player survey) which was directed at substantially the same issues of compatibility, team contribution and team dynamics. The survey responses must be viewed in the context in which they were obtained. The survey was conducted at a time where there had been discussion within the croquet community concerning Dr Clarke and the Top 8 event, from which a view had been taken that she was untrustworthy. The survey therefore captured opinions formed within an environment that was already prejudicial to Dr Clarke and may reflect the influence of those pre-existing views, rather than an objective assessment of Dr Clarke's conduct against the selection criteria. This sequence supports a concern that the prejudicial material continued to inform the Fourth Selection Committee's thinking, notwithstanding its stated intention not to rely upon the report itself.
102. Moreover, we consider that the fourth selection decision unduly elevated the 'non-playing criteria' to greater prominence than it had under the Selection Policy. The wording of the Long Term Selection Plan 2018 makes clear that "the best available players in terms of playing ability should be selected for all team and individual events" and that "nonplaying factors...should only influence selection where these factors are compelling". We articulate why we considered nonplaying factors were not compelling in this case within the Tribunal Selection Criteria Worksheet.³²
103. Indeed, we struggle to apprehend, having had to conduct our own selection decision based on the Fourth Selection Committee's selection criteria worksheet, how it was that the Fourth Selection Committee came to the view that:

On overall playing performance, Mr Bryant and Dr Clarke are closely matched: Mr Bryant has the lower singles win rate, but that is offset by his stronger peeling conversion.

³² Refer Appendix A – *Jennifer Clarke v Croquet New Zealand*, ST12/26, Result Decision dated 27 July 2026.

104. On our analysis, Dr Clarke had a clear advantage over Mr Bryant in terms of performance criterion:³³

Dr Clarke is ahead of Mr Bryant in criterion #1, #2, #3 and #5 of the performance criterion. Importantly, Dr Clarke is ahead of Mr Bryant in criterion #3, which must be given the most weight. Mr Bryant is ahead of Dr Clarke in the performance criterion #10 only and the nonplaying criterion #13. Remaining criterion are not materially different between the two athletes.

105. We consider that the Fourth Selection Committee's view of Dr Clarke was prejudicially tainted by what they had seen in the 2017 Manager's Report. Despite confirming that the 2017 Manager's Report was not in their information pack, the Fourth Selection Committee spent considerable time obtaining similar, or even more historic, evidence from other sources, such as from Paddy Chapman, about negative aspects of Dr Clarke's nonplaying ability. They also failed to account for any positive aspects attributable to Dr Clarke³⁴, including that Mr Bryant's report for the 2022 MacRobertson Shield (which Dr Clarke was a member of the most recent evidence of the event) only contained positive comments about team cohesion. We consider their efforts to re-establish prejudicial evidence of Dr Clarke's non-playing factors speaks to their focus on these factors. After completing our own analysis, we also hold concerns that it likely made them unable to properly and correctly assess the objective performance criterion before them.
106. As the Tribunal set out in an earlier Minute, we consider the breach could have been remedied or 'cured':³⁵

a) by convening a new selection committee that did not include the 2017 Manager's Report in the information pack and had never been seen by this new committee; or

b) by having the Fourth Selection Committee put the 2017 Selector's Report to Dr Clarke for comment and then properly considering and incorporating her reply in its decision-making.

107. Instead, CNZ convened the Fourth Selection Committee with members that had already seen the 2017 Manager's Report. While CNZ may have technically complied with the guidance of the Third Appeals Committee by the "abandonment of the 2017 Manager's Report in any information pack for decision-makers"³⁶, they failed to truly comprehend or address the nature of the breach of natural justice. The Fourth

³³ Refer para. [6] of the "Summary of Reasons" at Appendix A – *Jennifer Clarke v Croquet New Zealand*, ST12/26, Result Decision dated 27 July 2026.

³⁴ Refer Criterion 13 of Appendix A – *Jennifer Clarke v Croquet New Zealand*, ST12/26, Result Decision dated 27 July 2026.

³⁵ Refer para. [5] of *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 22 July 2026.

³⁶ Refer para. [100] of Appendix B (Third Appeals Committee decision dated 6 July 2026).

Selection Committee still had prejudicial material in their mind where they had not heard or considered Dr Clarke's perspectives of that event.

108. Accordingly, we found there was a breach of natural justice by CNZ and this ground of appeal has been made out.
109. Many of the other grounds of appeal have been interwoven into the arguments regarding natural justice. For example, on the matter of bias, the Tribunal has noted its concerns with aspects of the selection processes by CNZ. However, because of the Tribunal's finding that this ground was made out, we make no definitive finding in respect of the other grounds of appeal.

Engagement of Tribunal Rule 60

110. Given our finding that there had been a breach of natural justice that materially impacted the selection decision, we therefore had to consider the appropriate remedy under r. 60 of the Tribunal Rules:

Selection Appeal

60. Rule 58 shall not apply to an appeal against Selection or Non-Selection of a national team or squad. If the appellant succeeds on such an appeal, the Tribunal may:
 - (a) as a matter of usual practice, but in the discretion of the Tribunal, refer the question of selection back to the NSO and/or the NZOC for determination in accordance with the relevant selection criteria;
 - (b) allow the appeal and conclusively determine the issue of selection of the 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.
111. Rule 60(a) records the usual practice of referring selection back to the national sports organisation. Rule 60(b) permits the Tribunal to determine selection conclusively where either it is impracticable to remit the matter in the time available, or there has been such disregard of the selection criteria that a reasonable person could conclude that the criteria are unlikely to be properly followed or implemented.
112. Mr Hunt submitted that both limbs of r. 60(b) were met. He relied on the proximity of the Second Test in the MacRobertson Shield tournament, the time required for CNZ to approach the WCF if a substitution was directed, and the repeated failures to provide Dr Clarke with a fair selection process. Mr Lloyd submitted that the matter should instead be returned to the Fourth Selection Committee, which had specialist expertise

and could reconsider the decision taking the 2017 Manager's Report into account and with Dr Clarke's response and any further material or guidance directed by the Tribunal.

113. The exercise of r. 60(b) is relatively exceptional. In *Roy v Canoe Racing New Zealand*³⁷, the Tribunal exercised the power after a materially deficient selection process. Referring to *Yachting New Zealand v Murdoch and Others*³⁸, the Court of Arbitration for Sport described the question under the equivalent of r. 60(b)(ii) as whether the performance of the selection body had been so unsatisfactory that it could not be trusted to apply the criteria properly on reconsideration. More recently, in *Maxwell v Cycling New Zealand*³⁹, the Tribunal relied on the equivalent of 60(b)(i), because the proximity of the Paris Olympic Games made a further referral impracticable.
114. We concluded that both r. 60(b)(i) and (ii) applied. However, a significant consideration was time. The Tribunal's Minute of 23 July 2026⁴⁰ directed that CNZ should proceed with its selected team for the First Test, which was due to begin on 24 July 2026. The Tribunal did so because issuing a results decision immediately before that Test could have been unfair to all involved, including Dr Clarke. The Tribunal stated it would determine the matter before the Second Test, due to begin on 30 July 2026. By the time of the decision, a further referral would not have allowed fair reconsideration, any resulting steps by CNZ, any necessary approach to WCF to be completed in a practical way before the Second Test.
115. Rule 60(b)(ii) also applied. Three adverse selection decisions had been made while information from the 2017 Manager's Report was either before it or remained known to its members, without Dr Clarke first having a fair opportunity to respond. The defect identified by successive appeal bodies had therefore not been removed by CNZ. A further referral to the same third and Fourth Selection Committee would have required it to make a third decision in that setting. CNZ had also acknowledged the limited pool of persons available to constitute a wholly fresh committee. In those circumstances, a reasonable person could reasonably conclude that the criteria were unlikely to be properly followed and implemented on another referral.
116. We recognise the caution required when a tribunal assumes a role ordinarily performed by selectors with specialist sporting knowledge. That concern is addressed by the

³⁷ ST05/15, 21 May 2015.

³⁸ *Murdoch & Others v Yachting New Zealand*, CAS 2004/A/582, 2 April 2004.

³⁹ ST11/24, 11 July 2024.

⁴⁰ *Jennifer Clarke v Croquet New Zealand*, ST12/26, Minute dated 23 July 2026.

conditions in r. 60(b), not by declining to exercise the power once those conditions are met. We also confined ourselves to the selection material identified in the Result Decision and used the Fourth Selection Committee's worksheet as a guide. We did not consider evidence from Dr Clarke or her other witnesses on the merits of selection, because the Interested Parties had not put forward equivalent advocacy evidence and it would not have been fair to proceed on an uneven evidential basis.

117. The Tribunal also notes that there was no evidence before it to suggest that the Fourth Selection Committee had personally observed the athletes during the selection process. Whether it was to be the reconvened Fourth Selection Committee or a freshly constituted CNZ selection panel, either would have been basing its decision on the same material and guidance that the Tribunal itself used to make the decision.

Selection Decision

118. The detailed application of selection criteria is recorded in the Tribunal Worksheet attached as Appendix A to the Result Decision.⁴¹ It forms part of the Tribunal's reasons. The principal conclusions are summarised below.
119. The governing documents required form over the two preceding seasons to receive the most weight. The CNZ Long Term Selection Plan also stated that the best available players in terms of playing ability should be selected in the first instance, and that non-playing factors should influence selection only where they were compelling. The Tribunal therefore treated performance criteria as primary, while recognising that compatibility, successful doubles play and team contribution were relevant criteria.
120. Mr Westerby retained the fifth selection position. He ranked first on form over the two preceding seasons, the criterion that carried the greatest weight. Although Dr Clarke was ahead of him, or at least equal to him, on the remaining performance criteria, his assessment under the non-playing criteria confirmed his position if the performance comparison was otherwise close.
121. The contest for the sixth position was between Dr Clarke and Mr Bryant. Dr Clarke ranked ahead of Mr Bryant on national event performance, international event performance, form over the two preceding seasons, and world ranking. Mr Bryant ranked ahead on successful doubles play and on the combined criteria concerning harmonious behaviour and positive contribution. The remaining criteria did not materially distinguish them. Applying the required weight to performance and giving

⁴¹ Appendix A – *Jennifer Clarke v Croquet New Zealand*, ST12/26, Result Decision dated 27 July 2026.

non-playing factors limited weight in the absence of compelling evidence, Dr Clarke ranked ahead of Mr Bryant overall.

122. We gave limited weight to player preferences about doubles partners, which had been solicited through the CNZ survey to players. A preference is not the same as demonstrated incompatibility. In a national high-performance team, selectors may ordinarily expect selected athletes to work professionally with one another. A departure from that expectation requires reliable evidence of material incompatibility, fairly disclosed to the athlete, together with a genuine opportunity to respond. The material before the Fourth Selection Committee did not establish such an incompatibility.
123. The same approach applied to the criterion concerning responsible and harmonious behaviour. The Tribunal considers that if subjective factors such as character or past conduct concerns in this instance are to be considered in selection, the sport has a duty to raise these with the athlete and fairly consider their response before coming to any decision. Where there are legitimate concerns, the parties are then in a position to fairly consider any support that may be necessary to remedy the issue.
124. The Tribunal notes that if CNZ genuinely considered the matters described in the 2017 Manager's Report to be serious enough to affect national team selection in 2026, it is difficult to understand why they were not raised with Dr Clarke at any point in the many intervening years, including in a post-event debrief by CNZ in 2017, or prior to the 2022 MacRobertson Shield tournament. The adverse historical material about Dr Clarke was contested, was at least eight years old, and had not resulted in any Code of Conduct process by CNZ to establish any behavioural concern. The Tribunal does not accept the position presented to it by Mr Westerby that Dr Clarke knew or ought to have known that compatibility issues would be relevant and relied on in selection decisions by CNZ.
125. As between 2017 and 2022, the team had a different manager, different players, different circumstances, that no interpersonal difficulties arose and positive reports followed the CNZ team's MacRobertson Shield performance. The Tribunal accepts that the 2022 campaign provides a more recent example of how Dr Clarke operated in and contributed to the CNZ team environment.
126. Dr Clarke gave evidence to the Tribunal which reflected her insight into the challenges that had arisen in 2017. She commented that she had not wished to take on the captaincy at that time, nor was she seeking a leadership role in the current team. She acknowledged the potential disruption that could arise if her appeal was successful, by virtue of joining the team very late in its preparation for the MacRobertson Shield and potentially during the competition itself. She offered that separate accommodation

arrangements were available to her if this would assist. Dr Clarke proposed reasonable options which could have gone some way to addressing concerns held by CNZ regarding team dynamics. However, it did not provide that opportunity to her.

127. The absence of Dr Clarke having any opportunity to fairly have any alleged character or conduct breaches put to her by CNZ (if they were as serious as now asserted to be considered relevant in national selection decisions), close in time to the 2017 MacRobertson Shield enabled no opportunity for her to respond, and for CNZ to then rely on such a situation in its selection years later is fundamentally inconsistent with natural justice. The Tribunal considered the historic adverse material relied on by CNZ should carry very little weight. We agree with the reasoning in *Maxwell*, adopted by the Second Appeals Committee, that: “at a most basic level, national sports team selection processes should afford all potential candidates an adequate opportunity to know the nature of adverse factors the selectors may take into account when evaluating the candidate and be given an adequate opportunity to respond.”⁴²
128. The Tribunal was also concerned that the Fourth Selection Committee’s treatment of the non-playing criteria was not balanced. Its reasons referred to reported concerns about Dr Clarke but did not reflect the positive comments in the 2017 and 2022 reports. There was also a risk that substantially the same concerns were counted under both doubles compatibility and team harmony. The Tribunal Worksheet avoids that duplication.
129. The selection outcome was concluded as Mr Westerby fifth, Dr Clarke sixth, and Mr Bryant seventh.

Observations

130. The following observations are not necessary to the outcome of Dr Clarke’s appeal but arise from the history of the proceeding.
131. First, selection disputes are inherently urgent. CNZ’s internal process required repeated selection decisions and internal appeals before an unsuccessful appellant could bring a claim to the Tribunal. In this matter, that structure consumed much of the available time while seemingly providing no power to an internal appeals committee to make the selection decision itself. The Fourth Appeals Committee’s reference to the “jurisdiction we have in this case”⁴³ reflects what appears to have been the common understanding throughout the earlier proceedings: that the CNZ Appeals Committees had no power to overturn the selectors’ decision on its merits and were confined to a

⁴² Refer para. [41] of *Maxwell v Cycling New Zealand*, ST11/24, 11 July 2024.

⁴³ Refer para. [13] of Appendix C (Fourth Appeals Committee decision dated 15 July 2026).

quasi-judicial review of the process by which that decision had been reached.⁴⁴ CNZ could review whether its internal appeal pathway permits selection disputes to be resolved finally, fairly, and promptly.

132. That observation is not a criticism of the members of the CNZ Appeals Committees. Their decisions repeatedly identified the natural justice problem(s), after hearing and issuing reasoned decisions promptly. The concern is that later selection processes did not fully address and cure the flaw in the decision-making process. Reconsideration requires the decision-maker to approach the matter afresh, not simply to fix a procedural error (in this case remove one document while relying on materially similar information from another source, such as was the effect of CNZ selectors developing a 'player survey' given the circumstances), but come to the same conclusion without truly reopening their minds to the new information and decision before them.
133. Second, where subjective matters such as compatibility, conduct or team contribution may affect selection, the athlete must know the substance of any adverse concern and have a fair opportunity to answer it. If the concern is longstanding and material, the sport should ordinarily have raised it when it arose and considered whether support or intervention was appropriate. It is not sufficient to assume that an athlete must have known that an unparticularised concern would later be used in selection.
134. Third, surveys of squad members about preferred partners or team dynamics require particular care. They may provide relevant information, but can also reflect personal preference, incomplete knowledge, or existing group alignments. They should not be treated as a vote on selection. Any adverse response should be tested against objective information and disclosed fairly to the affected athlete.
135. Fourth, where there is to be rehearing of a selection decision following a successful appeal, the Tribunal holds serious doubt that the selection decision is an appropriate avenue within which to attempt to 'future proof' against objections or appeals by tackling individual objections that were raised in the appeal. In this case, it was not the role of the Fourth Selection Committee to state that there was "no continuing breach of natural justice on this round" because "that defect has now been cured".⁴⁵ Its role

⁴⁴ We note this because we consider there may be an arguable case that, as an internal appeal body constituted by CNZ, an Appeals Committee can exercise the same decision-making powers as CNZ itself, including the power to make the selection decision rather than merely remit the matter to the selectors. However, we recognise that the existence and scope of any such power would ultimately turn on the terms of the relevant constitution and/or selection policy of the sport. We also acknowledge that, ordinarily, the appropriate course may be to remit the matter to the selectors for reconsideration in the first instance; that usual approach contemplated within the Tribunal's Rules: see r. 60(a).

⁴⁵ Refer para. [18] of the Fourth Selection Committee decision dated 9 July 2026.

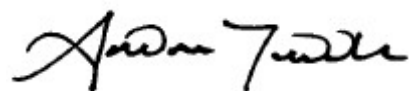
was to conduct a fair and impartial selection process; one that cured the breach through appropriate action, not words.

136. Finally, CNZ should review the management of conflicts of interest in high-performance selection. Mr Westerby had held roles in developing the selection framework and convening selectors, while also being a candidate for selection. Although he stepped aside from involvement in selection decision-making once it became apparent his place may be in question, he inappropriately continued to raise strongly held negative views about Dr Clarke and her eligibility. The evidence showed he had not seen all the material CNZ had considered on that question. Stronger separation between governance, selection, and athlete interests would reduce the risk of actual or perceived bias and unfairness in selection.

Decision

137. For the reasons set out above, and consistent with the Result Decision dated 27 July 2026, the Tribunal concluded that Dr Clarke was eligible for selection; that her appeal succeeded because of breaches of natural justice; that both r60(b)(i) and (ii) were engaged; and that the Tribunal should conclusively determine selection.
138. The Tribunal allowed the appeal and **directed** CNZ to select Mr Westerby in the fifth position and Dr Clarke in the sixth position of the MacRobertson Shield team ahead of Mr Bryant. The further directions concerning CNZ's approach to WCF are those set out in the Result Decision.

Dated: 19 October 2026



Andrea Twaddle
Acting Chair



Ruth Aitken
Tribunal Member



Sam Fellows
Tribunal Member

APPENDIX A

BEFORE AN AD HOC APPEALS COMMITTEE

CONVENED BY CROQUET NEW ZEALAND INC

IN THE MATTER of An Appeal

BETWEEN **JENNIFER CLARKE**

Appellant

AND **THE 2026 MAC ROBERTSON SHIELD SELECTION
COMMITTEE**

Respondent

Appeals Committee: R A Dobson KC, J D Howman and A Shires

Hearing: 29 May 2026

Appearances: I G Hunt for the Appellant
EMS Cox for the Respondent

APPEALS COMMITTEE DECISION

4 June 2026

Introduction

- 1 This appeal is from the decision of a second selection committee convened by Croquet New Zealand (CNZ) to select a team to compete in the Mac Robertson Shield tournament in England in July 2026 (Mac Rob 2026). The Committee's decision was not to select the appellant from those eligible for selection.
- 2 In February 2026 an earlier selection committee had decided to select a team that also excluded the appellant. That decision was the subject of an unsuccessful appeal to a differently constituted Appeals Committee. That Appeals Committee decision was the subject of an appeal to the Sports Tribunal; however, that appeal was settled in mid-April 2026 on terms that the selection process would be undertaken afresh by a new selection committee. It is the 4 May 2026 decision of that committee that is the subject of the present appeal.
- 3 The current selection committee (SC) provided a reasoned decision for their choices of the six-person team, and included some explanation for the exclusion of the appellant. The appellant promptly appealed to the Chief Executive of CNZ, who directed the appointment of the current Appeals Committee, which convened to hear the appeal on 29 May 2026.
- 4 The essential grounds for the appeal were that the SC had failed properly to apply the criteria for selection in respects including: alleged failures to have regard to competition results throughout the specified period, giving weight to more recent results inconsistently with the selection criteria, and introducing consideration of intra-squad competition results. In addition, it was alleged that behavioural or relationship matters adverse to the appellant had wrongly been taken into account, including that regard had been given to them in breach of obligations of natural justice, when the appellant had not been given

notice that they were being considered, and she was not afforded any opportunity to answer such criticisms.¹

Scope of the Appeal

- 5 A preliminary issue arose as to the nature of the appeal. For the appellant, Mr Hunt submitted that the Appeals Committee was to undertake its own assessment of whether the appellant ought to have been included in the team. He rejected the prospect that any deference should be given to the SC on the matters where their expertise in playing croquet and management of players competitive performance was an issue.
- 6 For the selection committee respondent, Mr Cox submitted that the nature of the appeal was more restricted, in that selection decisions involved discretionary evaluations with a measure of deference required to the technical expertise of selection committee members. He submitted that the appellant had to make out a material error, and that the appeal should not succeed if the Appeals Committee accepted that the decision made was one that was reasonably available to the selection committee.
- 7 Provision for appeals from selection committee decisions are provided in clause 6 of the 2018 Croquet New Zealand Selection Policy, including the following terms:

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;*

¹ Particulars of the grounds for the appeal listed 13 points, but this summary adequately reflects the essence of the grounds advanced.

- (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*

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.

- 8 Mr Hunt characterized such appeals as an aspect of Croquet New Zealand's "*internal processes*", suggesting that supported his contention that the Appeals Committee make its own de novo decision on the challenged selection. He did not object to the composition of the present Appeals Committee and accepted that it did not include anyone with technical croquet knowledge able to match that of the members of the SC. He submitted that the scope of appeals usually get more confined as challenges are elevated to higher levels in an appellate structure, suggesting that the current appeal ought to be wider in scope than would apply in a second (external) appeal to the Sports Dispute Tribunal of New Zealand (SDTNZ).
- 9 The wording creating the entitlement to bring an appeal "*...to the selection process...*" suggests that the focus is on challenges to the process, but sensibly appeals would generally only arise if a disappointed candidate for selection complains that the comparative assessment was undertaken wrongly, to his or her detriment.
- 10 We do not accept that the wording of the applicable appeal provisions require an appeal de novo and prefer an approach that requires an appellant to identify a material error in the process or reasoning of the selection committee's decision.
- 11 That is the scope of appeal generally available in comparable sports selection structures. It meets the practicalities of situations in which disputed selection decisions are challenged, having regard to timing and resources of such bodies. It also avoids the need for an Appeals

Committee to have comparable or greater technical expertise to that enjoyed by members of a selection committee. The prospect of showing deference to a selection committee's decision on technical matters is an aspect of reviewing the challenged decision, but is not inevitable, and will always be context specific.

- 12 After hearing counsel and conferring, the Appeals Committee advised that the appeal would be conducted consistently with the provisions in Rule 53 of the Sports Tribunal Rules. Both parties accepted that ruling and were prepared to proceed on that basis.
- 13 Rule 53 of the rules of the sports tribunal of New Zealand (2024 version) provides:

53. Grounds of Appeal

53. The grounds for an appeal shall be those set out in the constitution, rules or regulations of the NSO or the NZOC (if the appeal is brought under section 38(c) of the Act) or as set out in the agreement between the parties (if the appeal is brought under the provisions of section 38(b) of the Act). In the absence of such grounds, the grounds shall only be one or more of the following grounds:

- (a) natural justice was denied;*
- (b) the decision-maker or decision-making body acted outside of its powers and/or jurisdiction (i.e. acted ultra vires);*
- (c) the decision-maker or decision-making body made an error of law;*
- (d) the decision-maker or decision-making body based its decision on erroneous or irrelevant information that was material to the decision reached;*
- (e) substantial new evidence became available after the decision, which is being appealed, was made;*
- (f) in the case of a decision relating to misconduct, the penalty was either excessive or inappropriate;*
- (g) in respect of a decision relating to the Selection or Non-Selection of the appellant as a New Zealand representative in a sport or to a*

New Zealand representative team or squad, the following additional grounds apply:

- (i) *the applicable Selection Criteria have not been properly followed and/or implemented;*
- (ii) *the person seeking selection was not afforded a reasonable opportunity by the NSO to satisfy the applicable Selection Criteria;*
- (iii) *the selection decision was affected by actual bias;*
- (iv) *there was no material on which the selection decision could reasonably be based.*

The Evidence

- 14 The appellant lodged a lengthy statement covering her playing experience, her view on dealings with others likely to be involved in the forthcoming team, and on other matters which may have counted against her in her non-selection. She also lodged two statements in support of her appeal, the first from Mr. Stephen Mulliner on his positive experience of playing doubles with the appellant in numerous top-level competitions in the United Kingdom between 2022 and 2025. He described their having enjoyed substantial success.
- 15 The second statement was from Mr Christopher Williams, who developed and administers the current Dynamic Grade System for international ranking of croquet players. Mr. Williams opined on the basis of statistics that the combined rankings of a doubles pair will generally dictate that their performance is better than other pairings whose combined ranking is lower - i.e. the individuals'
- 16 rankings do provide a projection of their likely level of success in doubles competition.
- 17 The Appeals Committee had read all witness statements prior to the hearing and they were taken as read. We were only advised after the hearing began that neither Mr Mulliner nor Mr Williams would be available for questioning. Both reside in the United Kingdom. After discussion with counsel, it was agreed that we could attribute what

weight we considered appropriate to the content of their statements, in light of any cautions or criticisms put to us on behalf of the respondent.

- 18 For the respondent, witness statements were produced from Mr Nelson Morrow, who was the convener of the relevant selection committee, and from Mr Toby Garrison, another member of the selection committee. Mr Morrow was questioned at some length. Mr Garrison was not available at the time.
- 19 Statements were also provided for Mr Aaron Westerby and Mr Jarrod Coutts. Both these gentlemen had been on the original selection committee, but had been replaced with others on the second selection committee. Mr Coutts is to manage the 2026 Mac Rob Shield team. Both were questioned on their cautions or adverse views on the impact of the appellant's presence on team cooperation and compatibility.
- 20 Lastly, a statement was produced for Mr Paddy Chapman, New Zealand's number one ranked player for the last 10 years. He addressed his long-playing association with the appellant. He was questioned briefly.

A flaw in the process

- 21 Arguably, one of the most important document in evidence that was adverse to the appellant's interests was a 2017 manager's report prepared by Jarrod Coutts after the Mac Rob tournament of that year. Whilst he acknowledged her skills as a player, the report cited various examples of other players not enjoying playing with the appellant, of her incompatibility, and a certain hesitancy to raise these concerns with her.
- 22 Mr Coutts stated in his report that he had been miserable because of his dealings with her. He stated that he never wanted to have an involvement in any team of which she was a member.
- 23 It is important to note that Mr Coutts has changed his mind on his previous refusal to be involved in teams if the appellant is. His unchallenged evidence is that he has made attempts to rebuild a positive relationship with the appellant, including via her husband, who has also been very involved in croquet. These efforts have been rebuffed. He also stated that he had ensured that CNZ is aware of his willingness to attempt to work with the appellant, and that at no stage

has he said he would not manage the 2026 Mac Rob team if she was selected for it.

- 24 Mr Coutts' 2017 manager's report was one of the documents the selection committee had available to them. Mr Morrow stated the criticisms of the appellant in it were of concern, that it was treated as background information, and that their decision was not based on it.²
- 25 On all the evidence, there is an inescapable inference that it had a material impact in the decision to exclude the appellant from the team. It was not the only source of views adverse to her compatibility, but it was an explicit record of her perceived tendency to cause disharmony. Responses from potential team members to a questionnaire addressing team compatibility suggest that there was still an apprehension among interested persons that her inclusion would risk not having Mr Coutts as manager - which suggests an awareness of his stated views from 2017.
- 26 No attempt was made to put the 2017 manager's report to the appellant, or to offer her any opportunity to respond to the negative considerations that it raised. When pressed by Mr Hunt, Mr Morrow was inclined to accept that it may have been preferable if that had occurred.
- 27 Mr Cox was inclined to suggest that the appellant's incompatibility with other players and a manager was so widely recognised within elite croquet circles that she should have appreciated that it would be a matter of concern to the selectors, so that it was for her to raise the matter and provide whatever reassurances she could that her selection would not impede team harmony.
- 28 That is, with respect, no adequate answer. The extent of procedural obligations imposed by the rules of natural justice vary substantially depending on context. However, at a most basic level, national sports team selection processes should afford all potential candidates an adequate opportunity to know the nature of adverse factors the selectors may take into account when evaluating the candidate and be given an adequate opportunity to respond.³

² Witness statement of Mr. Nelson Morrow dated 27 May 2026, at 24.

³ *CF Maxwell v Cycling New Zealand and another* (ST11/2024) at [41]

- 29 There is no point in speculating on whether the appellant's responses, if afforded a meaningful opportunity to address these concerns, would have caused the decision of the selection committee to be different. The issue is that it might have, and she should not be excluded until an adequate process has been undertaken.
- 30 Given our decision on this point, it is inappropriate to canvass the competing positions on various other criteria that were challenged in respect of the decision under appeal. A fresh look at all of those will necessarily occur in the reconsideration that should now occur.

Next steps

- 31 At the end of the hearing we asked counsel whether, if we determined that a breach of natural justice had occurred that was sufficient to strike down the decision under appeal, there would still be time to reconvene a selection committee and make a fresh selection decision in time before the 2026 Mac Rob. We were told that, while time was tight, there was sufficient time for that to occur.
- 32 The SC analysed candidates in three groups, reflecting their perceived rankings. The particulars of the appeal asserted that the appellant ought to have been selected instead of one of the two others concerned for the last two places in the squad (i.e. numbers 5 and 6). We note that in the world rankings of the Top 50 players as at 28 February 2026, which the appellant relied on as an important consideration, she was ranked 4th (at 22), ahead of the 5th and 6th players selected, whose rankings were respectively 33 and 46.
- 33 We are satisfied that the breach of natural justice entitling the appellant's position to be reconsidered need not extend to a complete re-selection exercise. Although it will be a matter for the new selection committee to consider, we are not persuaded that it is necessary to interfere with the present selections of positions one to four inclusive in the team selected thus far.
- 34 Our determination is that the process must be undertaken again with an adequate process for the selection of positions five and six in the team. This limitation on the re-selection exercise does not preclude the new selection committee from reconsidering positions higher up than five and

six, if the selection committee perceives that as necessary to do justice to all involved.

- 35 Accordingly, we allow the appeal on the ground that the process adopted was insufficient in so far as it was conducted in breach of the appellant's reasonable entitlement to respect for the principles of natural justice.
- 36 CNZ is to convene a further selection committee as soon as reasonably practicable, to reconsider the decision on places five and six in the team.
- 37 We make no personal criticisms of the committee members responsible for the decision we have struck down in part. Indeed, Mr Morrow, as its convener, who was challenged thoroughly in Mr Hunt's questioning of him, impressed us as a thoroughly honest and well-motivated man of integrity. We mean no disrespect in characterising him - and the other committee members- as well-meaning volunteers.
- 38 Given the exigencies of time and what we perceive to be a limited number of candidates to undertake the task, we do not order that any members of either the first or second selection committees be excluded from participation in the new selection process.
- 39 We do, however, direct that the new selection committee should either include, or have access to an individual with experience in contested selection processes, ideally a person with legal training who could guide deliberations and ensure the process that is fair for all and complies with the rules of natural justice.



Robert Dobson KC

Chair, and for members of, the
Appeals Committee

APPENDIX B

1

BEFORE AN AD HOC APPEALS COMMITTEE

CONVENED BY CROQUET NEW ZEALAND INC

IN THE MATTER of An Appeal

BETWEEN **JENNIFER CLARKE**

Appellant

AND **THE 2026 MAC ROBERTSON SHIELD SELECTION
COMMITTEE**

Respondent

Appeals Committee: K L Clark KC, T Castle and A Blair

Hearing: 3 July 2026

Appearances: J Clarke as the Appellant in person
EMS Cox for the Respondent

APPEALS COMMITTEE DECISION

6 July 2026

A. Introduction

- 1 On Friday 26 June 2026, a croquet New Zealand selection committee convened to select the fifth and sixth places in the team to compete in the MacRobertson Shield Tournament in July 2026.
- 2 There were three candidates for the two places: Jenny Clarke (the appellant); Aaron Westerby and Greg Bryant. Mr Westerby and Mr Bryant were selected.
- 3 On 29 June 2026, Dr Clarke notified Croquet New Zealand (**CNZ**) of her intention to appeal the selection committee's decision. With the notification was a request for urgent provision of specified documents to enable the grounds of appeal to be finalised.
- 4 Ultimately the following particulars of appeal were received:
 1. *Natural justice was denied;*
 2. *The Selection Committee made an error of law;*
 3. *The Selection Committee based its decision on erroneous information that was material to the decision reached;*
 4. *The applicable selection criteria have not been properly followed and implemented;*
 5. *The selection process was affected by actual bias;*
 6. *There was no material on which the selection decision could reasonably be based.*

B. Background

- 5 Our account of Dr Clarke's croquet experience is taken from her witness statement as is our brief description of the MacRobertson Shield. This aspect of her evidence was uncontested.

Appellant's competitive croquet experience

- 6 Dr Clarke has been playing croquet since 1999. She is currently ranked #4 in New Zealand. She won the 2025 NZ Open Championships and was runner up in the 2025 British Open Championships. Jointly with Levi Franks, Dr Clarke was named CNZ player of the year in October 2025.
- 7 Dr Clark is an inductee in the CNZ Hall of Fame and the World Croquet Federation Hall of Fame And is one of only two people, internationally, to have won World Team championships in both Association Croquet (the MacRobertson Shield) and in Golf Croquet (the Openshaw Shield).

- 8 Dr Clarke made her MacRobertson Shield debut in 2010 and captained the team in 2017. She is also a UK Championship Referee, While Dr Clarke is a New Zealand citizen and lives in New Zealand she plays the majority of her croquet in England against, she says, technically and tactically stronger opposition than is regularly available in New Zealand. That said Dr Clarke is a life member of the Canterbury Croquet Association and the United Croquet Club in Christchurch.

MacRobertson Shield

- 9 Dr Clarke described the MacRobertson Shield as the world's premier association croquet event. She described the tournament's format in the following way:

[It] is contested approximately every 4 years by teams of 6 players from the strongest nations (NZ, Australia, England, USA) each playing tests consisting of 21 best-of-3 matches against each of the other three teams. There are two rounds of singles played (total of 12 matches) where the top two players contest matches against the top two players of the other team, and so on for the 3rd/4th and 5th/6th ordered players. In addition, there are three rounds of doubles (total of nine match) where each pair contests a match against each pair of the opposition team.

C. Previous selection decisions and appeals

- 10 The appeal before us is against a third decision to exclude Dr Clarke from selection in the team to compete in the MacRobertson Shield.
- 11 In February 2026, a CNZ selection committee decided to select a team that excluded the appellant. That decision was the subject of an unsuccessful appeal to an Appeals Committee (differently constituted from the present Appeals Committee). Although further appealed to the Sports Tribunal the appeal itself was settled mid-April 2026 on the basis that the selection process would be undertaken afresh by a new selection committee.¹
- 12 The second selection committee chose a six-person team. Dr Clarke was not included. The selection committee provided reasons for its choice of the six team members and some explanation for the exclusion of Dr Clarke.

¹ This background is set out in the Introduction to the Appeals Committee Decision dated 4 June 2026.

- 13 Dr Clarke appealed the second selection committee's decision on a number of grounds including that material adverse to her had been given to the selection committee in breach of natural justice because she had not been advised of the material to be considered and was not afforded any opportunity to answer its negative content.
- 14 In its decision given on 4 June 2026 the Appeals Committee categorised a 2017 Manager's Report (**2017 Manager's Report**) as one of the most important documents in evidence. The convenor of the second selection committee gave evidence. He said the criticisms of the appellant contained in the 2017 Manager's Report were of concern but the document was "treated as background information and their decision was not based on it"².
- 15 The 4 June 2026 Appeals Committee allowed Dr Clarke's appeal on the basis the process had breached natural justice. In summary, the Appeals Committee concluded:
 - a. There was an inescapable inference the report had a material impact on the decision to exclude Dr Clarke from the team.³
 - b. No attempt was made to put the 2017 Manager's Report to Dr Clarke nor to offer her any opportunity to respond to the negative considerations the report raised.⁴
 - c. There was no point in speculating on whether Dr Clarke's responses, if she had been given a meaningful opportunity to address the concerns, would have caused the decision of the selection committee to be different. Her response may have made a difference and she should not be excluded from the team until a proper process was undertaken.⁵
- 16 Being satisfied there had been a breach of natural justice, the Appeals Committee directed a reconsideration of the appellant's position by a new selection committee. Although it would be a matter for the new selection committee, the Appeals Committee did not consider it would be necessary to interfere with the selection of positions one to four in the team. Rather, the re-selection process was to be undertaken pursuant to a proper process for selection of positions five and six. That limitation on the exercise did not, however, preclude the new selection committee

² Appeals Committee decision dated 4 June 2026 at [24].

³ At [25].

⁴ At [26].

⁵ At [29].

from reconsidering positions one to four in the team if perceived “as necessary to do justice to all involved”.⁶

D. The third selection process

- 17 The decision of the third selection committee is contained in a document headed:

***CNZ Selection committee – MacRobertson Shield Team Places 5 & 6
Meeting minutes – Friday, June 26th, 2026 (online Teams meeting)
7.30pm-8.45pm***

- 18 The Minutes record a “kick off” meeting on 24 June to discuss the committee’s role, familiarise itself with the criteria, select a chair and arrange a time for its selection meeting.

- 19 We will return to the Minutes document when assessing the grounds of appeal. For the moment we note that the Minutes record:

- a. Mr Rowan Butler of Mills Lane Chambers was in attendance as legal advisor to the committee.
- b. The selection committee’s role was outlined in the documentation provided to it namely: the CNZ Selection Policy 2018 (**2018 Selection Policy**) and CNZ MacRobertson Shield Campaign Announcement October 2024 (**2024 Announcement**).
- c. The Committee’s understanding of its role namely:
 - i. to select two out of three eligible players for spots five and six on the team;
 - ii. to select “solely based on the information provided in the selector’s information pack”;⁷
 - iii. to complete selection of a team that had the best chance of winning the 2026 MacRobertson Shield; and that
 - iv. it had been provided with a clear set of selection criteria.
- d. The Committee identified factors that would attract “most weight”.

⁶ At [34].

⁷ This is the information pack referred to above at [3] and which the appellant requested as a matter of urgency on 1 July in order to finalise her points on appeal.

- e. Having “reviewed the information in the selection pack information in detail”, Aaron Westerby was a clear choice for the fifth spot and the committee then discussed the remaining two players “across each of the key criteria”.
- f. The selectors considered Dr Clarke and Greg Bryant were even across some criteria but when assessing doubles pairing “there was a consistent preference across all players in the squad for Greg over Jenny for optimal double pairing dynamics”. Because this was a “critical factor” it was deserving of “significant weight” and the selectors assessed Greg as the stronger option and to enhance prospects of doubles success.
- g. There was a detailed discussion of the previous MacRobertson reports (which included the 2017 Manager’s Report containing comments adverse to Dr Clarke and which led to her appeal being allowed)⁸ but the selectors considered the comments to be historical, not contestable, and therefore “placed little or not weight on these factors”.
- h. Given the two players were even in the selectors’ assessment of performance criteria, their decision came down to doubles pairing dynamics and Greg Bryant was selected for the sixth spot.
- i. Aaron Westerby and Greg Bryant were confirmed for selection.

20 Dr Clarke appealed.

E. Pre-hearing processes and procedure during the hearing

Pre-hearing

- 21 As we stated earlier, on Monday 29 June 2026, the appellant notified CNZ of her appeal against the decision to exclude her from the fifth and sixth spots in the team. The notification was by email from Ian Hunt of Left Bank Chambers. Mr Hunt represented Dr Clarke at the time.
- 22 In his email, Mr Hunt requested urgent provision of the “Selector’s Information Pack” referred to in the minutes of the selection committee and any other material provided to, or relied upon, by the selectors in reaching their decision. Following receipt of the requested material the grounds of appeal would be finalised.

⁸ Mentioned above at [14].

- 23 Meanwhile, appreciating the urgency of the situation for Dr Clarke, preparations towards a hearing on Friday 3 July commenced. The reason for the acute urgency (as this Committee understands the position) was that, by Friday 10 July, CNZ is required to notify the MacRobertson Shield organisers of the membership of the New Zealand team. If the Appeals Committee reaches a decision adverse to Dr Clarke, she has a right to appeal to the Sports Foundation but only a matter of days in which to do so. CNZ was concerned to protect Dr Clarke's appeal rights by moving expeditiously towards a hearing.
- 24 Membership of the Appeals Committee was finalised on Wednesday 1 July. In the normal course of events Dr Clarke would have been required to file her supporting documentation two days before the hearing but in the circumstances she was permitted to file late. The particulars of her appeal and witness statements were received on the afternoon before the hearing.
- 25 The delay had implications for CNZ's preparation for the hearing. Unsurprisingly it was difficult to prepare witness briefs without a complete understanding of the nature of the appeal grounds and without knowing what evidence on behalf of the appellant CNZ was required to address.

Course of the hearing and rulings

- 26 Dr Clarke participated in the hearing by video link. She was in England preparing for a multi-day tournament. The hearing commenced Friday 1 July at 8.00 am NZST which, for Dr Clarke, was 9pm Thursday night.
- 27 Both parties made opening submissions, called witnesses, cross-examined the witnesses they wished to cross-examine and made closing submissions.
- 28 After several hours Dr Clarke was given the opportunity to adjourn but she wished to conclude the hearing to enable her to then rest and focus on her forthcoming tournament commitments.
- 29 Mr Cox also suggested when the evidence had been completed that instead of taking the time to make oral closing submissions he could provide a typed submission to the Appeals Committee and Dr Clarke the following morning. Dr Clarke preferred not to adjourn at that point but to have closing submissions presented and conclude the hearing
- 30 After 11½ hours the hearing concluded at 7:30 pm NZS.

Rulings

(i) Leading evidence

- 31 We mentioned the difficulty that confronted counsel for CNZ in preparing witness briefs without having particulars of the grounds appeal and without the appellant's evidence. The point became relevant at various stages during the hearing but we need say no more than that Mr Cox was given leave to lead some of CNZ's witnesses.

(ii) Bias ground of appeal

- 32 During the course of the appellant's opening submissions it became apparent that the bias ground of appeal was not being pursued. When questioned by Mr Cox, Dr Clarke said the bias ground was not being withdrawn. Rather, she was not making any arguments about it because she was not represented. On that basis Mr Cox proceeded to pose questions to Dr Clarke relevant to the bias ground of appeal.
- 33 The issue arose again during the course of Mr Cox's questions. Dr Clarke said she was not advancing the bias ground "at this time". Unsurprisingly, Mr Cox pressed Dr Clarke for clarity. Following questions from the Chair, Dr Clarke said she did not "maintain" the bias ground.
- 34 At the end of her closing submissions Dr Clarke said it was not the case that she had withdrawn her bias allegation as Mr Cox put it during the hearing. Dr Clarke said she reserved her position with regard to bias.
- 35 In fairness to Dr Clarke, we accept that, being unrepresented, she herself did not want to advance legal argument in support of a bias ground of appeal but believed she could reserve the point. However, as the Committee pointed out to Dr Clarke, Mr Cox had structured the evidence to be given by witnesses in accordance with her earlier confirmation she was not maintaining that ground of appeal. Her essential withdrawal had influenced how the respondent ran its case. Even if Dr Clarke wished to reserve her position she could not as she had chosen not to pursue the bias ground of appeal and in any event the Committee would not be sitting again.

(iii) "Expert" witness

- 36 In the interests of expedition we do not propose to summarise or otherwise address the evidence of all the witnesses. It is necessary, however, to record a particular ruling.

- 37 One of the appellant's three witnesses was Christopher Clarke, the appellant's husband. He had prepared an "Expert Witness Statement" and was being called to give "expert" evidence on doubles, rankings, peeling, and lawn conditions in England.
- 38 At the beginning of the hearing Dr Clarke asked for permission to have her husband Mr Clarke assist her and when necessary speak for her, as an advocate. The appellant was permitted to have Mr Clarke accompany and assist her (in the nature of a McKenzie friend) but he could not advocate for her and, simultaneously, be presented as an independent expert witness.
- 39 In any event, although no formal ruling was made at the time about Mr Clarke's status as an expert witness, we note that Mr Clarke himself declared his conflicts in his witness statement. To qualify as an expert witness in court proceedings, a witness must be independent of the issues and the parties.
- 40 We turn now to the first ground of appeal: that Dr Clarke was denied natural justice.

F. Was there a denial of natural justice?

Appellant's case

- 41 In support of this head of appeal Dr Clarke referred to the Guidance Memorandum which CNZ's Chief Executive, Dallas Cooke, issued to the selectors specifically to guide selection of the fifth and sixth places in the Team. It is four-page memorandum dated 4 June 2026 prepared for the specific purpose of providing guidance to selection committee #3. Selectors were directed to familiarise themselves with the criteria contained in the 2018 Selection Policy and the 2024 Announcement, both of which were annexed to the Guidance Memorandum.
- 42 The Guidance Memorandum stated that, beyond performance criteria, there were criteria "not directly related to a candidate's performance". Examples included "the ability to contribute as a positive team member" and "doubles pairing dynamics". The Guidance Memorandum added:

Some of these criteria may require the Committee to consider a candidate's previous conduct on and off the croquet lawns, including reported interactions with the other previous teammates at other events and their playing combinations. These criteria should be considered even if they are harder to apply.

- 43 Adverse information that was to be considered had to be sent to the candidate concerned and the candidate was to be given an opportunity to respond to the adverse information.
- 44 Dr Clarke also emphasised [15](3) of the Guidance Memorandum under which a candidate must be allowed to “respond to information that the selector knows and considers may count against the candidate in respect of any of the criteria and take any response received into account.”
- 45 Dr Clarke identified the following two documents as containing adverse information put before the third selection committee.
- a. The 2017 Manager’s Report which was included in the Selectors’ Information Pack. The Report contained comments “significantly adverse” to her and she was given no opportunity to respond despite this failure leading to the 4 June 2026 Appeals Committee upholding her appeal.
 - b. An “Engagement Summary”, also included in the Selectors’ Information Pack, contained material Dr Clarke described as implicitly adverse to her, significantly flawed and in relation to which she was given no opportunity to respond.

CNZ’s case

- 46 The essence of CNZ’s case on this head of appeal was that all contentious material considered in the earlier selection process and which resulted in the appellant’s appeal being allowed, was effectively set aside and not taken into account. Where some of the respondent’s witnesses had stated they gave the adverse material “little or no weight”, Mr Cox submitted that the oral evidence of Rowan Butler, the legal advisor to the selection committee and Luke Rive, who chaired the selection committee, was determinative of the issue. They had been clear that the material was set aside and not taken into account. Therefore, there had been no breach of natural justice.

Our assessment

- 47 We are in no doubt that the 2017 Manager’s Report contained content that was adverse to Dr Clarke and would have been prejudicial to her candidacy had it been taken into account.
- 48 We do not see the need to repeat the content. It was covered in the Appeals Committee decision of 4 June 2026. We are surprised that this contentious material was placed before the third round of selectors at

all, particularly in light of the 4 June Appeals Committee's finding of inescapable inference the report had a material impact on the decision to exclude Dr Clarke from the team.

- 49 Yet the report re-materialised before the third section committee. In answer to our questions Dr Clarke said she did not conceive the 2017 Manager's report would be included in the information provided to the selection committee or that it would be given to them without her having an opportunity to make a submission as that had been the whole basis of her successful appeal.
- 50 There can be no argument that information adverse and prejudicial to Dr Clarke's interests was included in the Selectors' Information Pack and, therefore, was before the third Selection Committee. And CNZ does not suggest Dr Clarke was aware of that fact and had an opportunity to make submissions or otherwise comment on the material.
- 51 Thus, there was a prima face breach of Dr Clarke's natural justice rights. She was entitled to know the nature of any adverse factors that might be taken into account when evaluating her candidacy and to be given an opportunity to respond.
- 52 CNZ's position is that there was no breach because the adverse material was put to one side and simply not considered.
- 53 Mr Butler's evidence was that the selectors were conscious of the earlier appeal and were keen to avoid another such breach of natural justice. He said there was a discussion about what might be termed adverse material, including the 2017 Manager's Report. Mr Butler said in evidence before us:
- But the selectors were clear and unanimous during my meeting with them at the selection committee meeting that they were not going to take that material into account. They regarded it as stale, they regarded it as disputed, and they regarded it effectively as unfair to the athletes. And so they simply just did not put any weight, and in fact expressly put that material to one side.
- 54 Notwithstanding Mr Rowan's evidence, we have not been persuaded on this crucial issue of fair process, that the process was in fact fair to Dr Clarke.
- 55 We turn first to the Minutes of the selection committee's meeting on 26 June. These Minutes constitute the decision of the committee and its reasons for its decision. Indeed, throughout the hearing before us this

document was referred to as “the decision”. Accordingly, it is a key document containing highly relevant detail as to its processes and considerations and outcomes.

- 56 The decision records detailed discussion about the ability to contribute as a positive team member, prior MacRobertson performances and team dynamics and player feedback and doubles preferences. This statement follows:

After reading and discussing all material provided it was clear that there were a range of differing views regarding culture, fit, contribution to team dynamics, supporting a positive environment, and engagement in campaign preparation.

- 57 Having discussed the detail of the reports that are so contentious for Dr Clarke, the decision notes that “balancing and validating” all elements was not necessary in making a final selection decision. The selectors considered they were not in a position to —

make factual determinations about some of the comments made about other players. Many of the comments are not contemporaneous and are contestable.

- 58 The committee felt it “did not need to decide based on the clearly subjective elements of these criteria”. As it had “enough information in the other areas” to support a decision it “**placed little to no weight on these factors**”. (Emphasis added)

- 59 And in the final bullet points summarising the selectors’ decisions this appears:

- While there was significant information provided to support discussion in the other more subjective criteria, it was agreed that this was not necessary in making the decision for the 6th spot.

- 60 We are concerned that the decision itself, containing a record of the approach the selectors took to the adverse information, does not support a finding that the selection committee put the material to one side.

- 61 If it was put to one side, it was only after the selectors had detailed discussions about it and appreciated its contestable, subjective and adverse content. Dr Clarke’s concern was that the material should not have been available in the first place because “one cannot unsee what one has seen”.

- 62 We consider there is a difference between placing material to one side and placing “little or no weight” on the material. In his witness statement, Mr Luke Rive who chaired the committee and wrote the minutes, recorded that the selectors “consciously decided to place little or no weight on these subjective factors”.
- 63 Mr Rive’s evidence at the hearing was that they had made a conscious decision to put the material to one side. When asked why that clear conclusion was not reflected in the minutes Mr Rive said he wrote the minutes to the best of his ability and they recorded the discussion amongst selectors at the meeting.
- 64 On the basis of the evidence before us we cannot be satisfied that Dr Clarke has been afforded a fair process. While we do not doubt the bona fides of the selection panel and their intention to perform their selection task conscientiously and properly, our concern is that the process was skewed from the outset by the inclusion of dated, prejudicial, contestable material in the Information Pack. The selectors were left to form conclusions about it in the absence of any contribution from Dr Clarke herself.
- 65 The evidence before us appears equivocal. The treatment of the prejudicial material has been described in various ways:
- a. “we placed little to no weight on these factors” (the Decision);
 - b. “we consciously decided to place little or no weight on those subjective factors in reach our decisions” (Mr Rive’s Witness Statement);
 - c. “we made a conscious decision to put the information aside” (Mr Rive’s oral evidence);
 - d. “they expressly decided to put this material to one side ie they placed no weight on it” (Mr Butler).
- 66 The evidence is redolent of evidence before the 4 June 2026 Appeals Committee before which a witness had stated that the criticisms of the appellant in the 2017 Manager’s Report were of concern but it was treated as background information and their decision was not based on it.⁹ As that Appeals Committee found:¹⁰ *“On all the evidence there is an*

⁹ Appeals Committee decision dated 4 June 2026 at [24].

¹⁰ At [25].

inescapable inference that [the 2017 Manager's Report] had a material impact in the decision to exclude the appellant from the team".

- 67 The evidence does not satisfy us that, on the balance of probabilities, the prejudicial information had been put, effectively, to one side and that it had been given no degree of weight or had any degree of influence on the decision to exclude Dr Clarke from the fifth or sixth places in the team.
- 68 Accordingly, we find Dr Clarke's right to natural justice was breached. That is, the process was completed without Dr Clarke having any opportunity for input into the consideration of prejudicial material that received detailed attention by the selectors and which may have influenced the outcome (albeit unwittingly) and even if only to a small degree.
- 69 The appeal succeeds on this ground.
- 70 However we turn to one further ground concerning the applicable selection criteria.

G. Were the applicable selection criteria properly followed and implemented?

- 71 As discussed at [41] to [45] above, Dallas Cooke's Guidance Memorandum dated 24 June 2006 contained a clear direction that the 'selection criteria' were those contained in the 2018 Selection Policy and the 2024 Announcement. The Memorandum also referred to the Selectors Information Pack which contained those two documents and which Mr Cooke advised selectors to read and understand. The Memorandum directed selectors to consider and assess the information provided in the information pack in relation to the selection criteria.
- 72 The Guidance Memorandum contains no suggestion that the selection committee can choose to apply, or 'cherry pick' some items and not others; or elect to take into account the detail of the selection criteria set out in the October 2024 announcement as substituting for detail in the April 2018 Selection Policy document.
- 73 We accept of course that it was for the selection committee, in its discretion, to apply weightings to particular selection criteria. However our first task is to identify the actual criteria the selectors used in assessing the three candidates for the two remaining places on the team. And we ask also whether the same selection criteria were used for selecting players 1 to 4.

- 74 Undertaking discretionary considerations as to weight to be given to one or other, or more, of the applicable criteria does not entitle one of the two documents (which ‘together’ make up the Criteria) to be used in favour, or to the abandonment, of the other. Nor did CNZ so contend. It seems to us that Dr Roberts, called as a witness by CNZ, was correct when he said in evidence that both documents were to be applied.
- 75 Mr Rive, the Chair of the selection committee, addressed the criteria they decided to use. His evidence was that the selection committee understood it was required to put to one side specific criteria in the 2018 Policy Document. Their understanding arose in this way:
- a. Paragraph 3(c)(vi) of the 2018 Selection Policy states: *“If no guidelines for selection are announced the following information about each player will be considered by the selectors:”*
 - b. The selection committee understood the 2024 Announcement to be “a guideline” within the meaning of paragraph 3(c)(vi) and that the committee should not, therefore, consider the information set out at 3(c)(vi)(a)–(k).
 - c. Consequently, the selection committee put to one side the criteria listed in paragraph 3(c)(vi)(a)–(k) of the 2018 Policy.
- 76 The approach was contrary to the stated direction in the Guidance Memorandum that the criteria to be used were contained in the two documents provided in the selectors information pack, namely, the 2018 Policy document and the 2024 Announcement. Nor did CNZ take any different position during the hearing.
- 77 It follows that we are not satisfied the selection committee correctly identified the range of criteria to be applied, nor that it properly applied the relevant criteria when assessing individually and collectively the candidates in order to reach a proper decision as to the final CNZ team selection.
- 78 This amounts to a ‘defect in the selection-making process’ argued by CNZ to be the threshold required for, and to justify, this Appeal Committee’s intervention.
- 79 In support of this ground of appeal (that applicable selection criteria have not been properly followed and implemented) Dr Clarke identified in her opening submissions, nine respects in which the criteria had not been properly followed or implemented.

- 80 Some of those submissions debate the weightings to be given to particular criteria or the definitions of the criteria, both of which are matters beyond the Appeal Committee's domain.
- 81 In other cases the appellant's submissions highlight that the applicable criteria have not been applied.
- 82 "Form" along with "performance and results," are criteria specified across both the April 2018 Policy document and the 2024 announcement and there is no jurisdictional or other barrier preventing us from examining the appellant's contentions concerning these criteria.

Performance results and form

- 83 The 2024 Announcement requires the selectors to have regard to 'form over two preceding seasons'. We are satisfied that the evidence before us establishes that form/performance over two full preceding international seasons requires assessment.
- 84 The 2018 Selection Policy at para 3(c)(vi)(a) calls for consideration of *"performance and results in specified national events in the 12 months prior to the selection process"*.
- 85 Para 3(c)(vi)(b) calls for consideration of *"performance in international events in the previous 24 months"*.
- 86 The appellant contends that the language of both selection documents - 'two preceding seasons' or the applicable '24 months' - would necessarily require two full preceding seasons of international events so as to enable 'form' / performance to be accurately legitimately established and assessed.
- 87 The appellant argued that a truncated period from September 2024 to 28 February 2026 did not adequately cover the language of either the October 2024 announcement or the 2018 Selection Policy criteria. She argued for a period of 1 March 2024 to 28 February 2026 as required by the two selection documents taken together. Dr Roberts for CNZ opined that 1 April 2024 to 28 February 2026 was more appropriate. We accept the start date of 1 April 2024 as being appropriate and available upon an appropriate degree of scrutiny and capturing the intent of both selection policy documents. But the selection committee did not undertake any similar analysis.
- 88 The evidence from CNZ does not satisfy us that the selection committee identified with any reasonable precision what the policy documentation identified, for their implementation, as the correct period for form /

performance measurement and the appellant was disadvantaged unfairly in that respect. We do recognise that ‘merging’ or ‘combining’ the two documents in order to adequately identify what were the threshold requirements (we distinguish ‘threshold’ from ‘weight’) would likely be a challenging task; but that is what in fact the Chief Executive Officer of CNZ called for from the selection committee in the 24 June Guidance Memorandum. It may well have been helpful for the CEO of CNZ to provide the Appeals Committee his evidence in this regard.

- 89 We sympathise with the selection committee in the difficult task it faced in order to properly identify the relevant criteria, to be derived from two key documents, for application and consistent implementation; and we also recognise that the Chair of the selection committee was not able to identify and confirm for us what was the process of addressing both selection policy documents employed by CNZ when a separate and differently constituted CNZ selection committee selected the first 1-4 athletes for the 2026 MacRobertson Shield Team.

World Rankings

- 90 Under paragraph 3(vi)(c) of the 2018 Selection Policy the selection committee was required to consider ‘World ranking at the commencement of the selection meeting’.
- 91 The 2024 Announcement listed ‘world ranking’ as an additional factor that selectors were to consider. The appellant argued the selection committee “did not consider World ranking data”. We agree.
- 92 Whether by reference to the 2018 Selection Policy or the 2024 Announcement, ‘World Ranking’ was a requisite consideration. However it seems common ground, and it is clear to us that the selection committee did not consider the statistics of ‘World Ranking’. Dr Roberts for CNZ told us that world ranking for the positions 5 and 6 in the MacRobertson Shield team was not completed by him for the selection committee. The world rankings, and where within them the appellant sits, are not explained or provided in the evidence put before us. In fact Dr Roberts insisted that these were not necessarily helpful or unhelpful. As we understood Dr Roberts’ evidence he had calculated the relative assessment of rankings of athletes above a 2100D grade and presented that data to the selection committee. We were left with a residual uncertainty as to what the selection committee actually made of that information for the purposes of their decision to not select the appellant.
- 93 The evidence does not satisfy us that the selection committee actually made or applied a World ranking assessment at all; and the minutes of

the meeting of 26 June are silent on the point. Again, we must say: we are not scrutinising an issue of weight applied by the selection committee as to 'World rankings' We are simply not satisfied that the selection committee properly turned its mind to that criterion.

Compatibility of doubles combinations and successful doubles play

- 94 Paragraph 3c(vi)(f) the 2018 Selection Policy states: "Compatibility of doubles combinations and successful doubles play:"
- 95 There is no similar reference in the 2024 Announcement. The closest similar reference is an "ability to contribute as a positive team member, world ranking and doubles pairing dynamics".
- 96 There is no record in the 26 June minutes of any attempt by the selection committee to identify, reconcile, apply, or assess and implement the differing language of the two documents to which, we are satisfied, the selection committee was required to give effect.
- 97 Although 'player compatibility' (perhaps sanctioned by "doubles pairing dynamics" as that language is included in the 2024 announcement) was discussed and considered according to paragraph 4 (ii) of the 26 June 2026 minutes, we are far from satisfied that the selection committee gave any actual consideration to "successful doubles play" as required. The same, we consider, can be said about "Performance under pressure" in the 2018 Selection Policy. There appears to be no consideration of this criterion as under paragraph 6 (g) of the appellants synopsis.
- 98 We have not thought it necessary to consider every aspect of the appellant's contentions, primarily in the interests of time. We mean no disrespect to her carefully presented arguments but have decided to engage in detail only with those of her grounds that enable us to reach a firm conclusion about the disposition of her appeal.

H Conclusion

- 99 For the reasons set out above the appellant succeeds on her first and fourth grounds of appeal: her right to natural justice has been breached and certain applicable selection criteria have not been properly applied and effected.
- 100 The appellant continues to be excluded from membership in the team to compete in the MacRobertson Shield Tournament pursuant to an inadequate and flawed process. In any further selection process, the procedure should be fair; reflect the requirements of natural justice

(which, in this case, requires the abandonment of the 2017 Manager's Report in any information pack for decision-makers) and ensure application of the applicable selection criteria.

I Disposition

101 The appeal is allowed.

A handwritten signature in blue ink, appearing to read 'Karen Clark', is positioned above the printed name.

Karen Clark KC

Chair, and for members of the Appeals
Committee

APPENDIX C

**BEFORE AN AD HOC APPEALS COMMITTEE
CONVENED BY CROQUET NEW ZEALAND INC**

IN THE MATTER	of An Appeal
BETWEEN	JENNIFER CLARKE
	Appellant
AND	THE 2026 MAC ROBERTSON SHIELD SELECTION COMMITTEE
	Respondent

REASONS FOR THE DECISION OF THE APPEALS COMMITTEE

Dated: 15 July 2026

Reasons

- 1 Earlier today the Appeals Committee issued a Minute advising that it had dismissed the appeal. It now provides its reasons for doing so.
- 2 Given the urgency of achieving a result on the merits, the Appeals Committee has carefully considered the prospects for the appeal by undertaking a detailed analysis of the Appellant's statement and comparing it against the current Selection Committee's reasons for its decision to exclude her.
- 3 In each appeal to the successive Appeals Committees, the Appellant has made out deficiencies in the process adopted in the selection of the 2026 Mac Robertson team, with the result that Croquet New Zealand (CNZ) has been directed to undertake the selection process, or at least a part of it, again.
- 4 The present appeal does include renewed and fresh criticisms of the process most recently adopted. Mr Hunt has characterised some of those errors as ones of law. However, the gravamen of all complaints is undoubtedly that the Appellant contends a proper evaluation ought inevitably to lead to her selection on the basis, primarily, of a materially higher ranking than those chosen for the fifth and sixth positions in the team.
- 5 The scope of appeals to this Appeals Committee, consistent with Rule 53 of the Sports Tribunal Rules, is essentially confined to a review of the fairness and propriety of the process adopted for the selection that is subject to challenge. We note that there is one exception to this limit on the scope of such appeals, and that is addressed below.
- 6 The various process criticisms advanced on this appeal are either debatable as to whether the process adopted was open to the Selection Committee or, if a deviation from an adequate process was made out, whether its materiality is sufficient to require the selection process to be undertaken again.
- 7 After analysing the issues, the Appeals Committee takes the view that it is more likely than not that CNZ would be able to defend the adequacy of this, its fourth attempt to conduct a proper process, at least sufficiently to resist an order that a fifth process be undertaken.

- 8 An example of the approach open to the Appeals Committee is a consideration of the allegation of apparent bias arising out of the Selection Committee's resort to a report from Mr Chapman on matters going to compatibility between doubles players. The Selection Committee's reasoning acknowledged the conflicted position of Mr Chapman because of his relationships with at least some of the players involved. However, having recognised his undoubted qualification to provide a view, the Selection Committee elected to take his views into account. Importantly, it acknowledged that his potential conflicts arising from his relationships with some of those relevant to his evaluation went to the weight to be accorded to those views.
- 9 As a matter of law, that was more likely than not open to the Selection Committee, given that an expert is not automatically disqualified from providing opinion evidence on a matter within their expertise because of the potential perception of a partisan interest, so long as that factor is taken into account in the weight to be given to such an expert's opinion.
- 10 The only ground of appeal not focusing on the adequacy of process is where the Appellant contends that there was no material before the decision-maker on which it could reasonably arrive at the decision it did. That test is often formulated as one where, on the material properly before a decision-maker, the decision reached was not one reasonably open to it. That is a high bar for an appellant to meet in a selection challenge such as the present.
- 11 Mr Hunt has conveyed the wish of the Appellant to invite the Sports Tribunal to hear an appeal on the merits where he would seek to argue, not necessarily that this decision was not open to the Selection Committee, but that on a proper evaluation of the relevant merits, the decision was wrong because the Appellant is demonstrably to be preferred as a better player than one of the others. This matter had been addressed by an application made on behalf of the Appellant for the appeal to be dismissed on the merits by consent. Consent to a dismissal on those terms was not forthcoming from the Respondent and accordingly pre-hearing steps were to resume. The Appeals Committee issued a Minute to that effect yesterday.
- 12 There has been a frustration in proceedings before successive Appeals Committees in that the Appellant's conviction that she should be preferred has hung over all her challenges but cannot be addressed in those terms in this forum.
- 13 We are satisfied that the prospect of a further success on the process criticisms advanced in this appeal could lead to a Pyrrhic victory. That is because the time

taken to resolve it then precludes the opportunity for a contest on the substantive merits. To do so would do a disservice to the jurisdiction we have in this case.

- 14 For these reasons, having weighed the likely course of the appeal if it were to proceed as planned, we are satisfied that the proper course is to dismiss the appeal at this point.

A handwritten signature in blue ink, appearing to read 'Robert Dobson', with a stylized, cursive script.

Robert Dobson KC

Chair, and for members of, the Appeals Committee