

Case number: [NST-E22-73635]

Case Title: Geoff Morris v Australian Croquet Association

Determination

National Sports Tribunal

General Division

sitting in the following composition:

Panel Members

Mr Darren Kane (Chair)

Ms Fiona de Jong

Mr Peter Kerr

in the arbitration between

Geoff Morris

(Applicant)

Unrepresented

And

Australian Croquet Association Incorporated

(Respondent)

Represented by Mr Jim Clement, Secretary

PARTIES

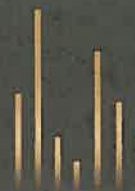
1. Geoff Morris (**Mr Morris** or the **Applicant**) is, relevantly, a participant of some degree of renown and success, in the sport of gateball. Mr Morris has represented Australia in the sport at international competitions.
2. Mr Morris is, and at all material times relevant to these proceedings has been, the President of Australian Gateball Union Incorporated (**AGU**). AGU is an incorporated association in Queensland, which exists with the object of promoting the sport of gateball. AGU is not a party to these proceedings.
3. Australian Croquet Association Incorporated (**ACA** or the **Respondent**) is an incorporated association, that is incorporated and registered in the Australian Capital Territory, in accordance with the requirements of the *Associations Incorporation Act 1991* (ACT).
4. At certain time periods relevant to the matters in dispute in these proceedings (but not at all times during that period of time which is relevant to these proceedings), Mr Morris was a member of the Respondent in one of the Respondent's available membership classes.
5. ACA is recognised by Sport Australia as the Australian national sports organisation for the sports of gateball and croquet. Further, ACA is the owner of the registered business name "Gateball Australia", and ACA trades under that business name in relation to its activities germane to the sport of gateball.
6. In its capacity as the recognised Australian national sports organisation, or **NSO**, for the sport of gateball (as distinct from the sport of croquet), ACA is a member of the World Gateball Union (**WGU**). WGU is the international federation for the sport of gateball. WGU is not a party to these proceedings.

INTRODUCTION

7. The evidence and materials relied on by the parties in these proceedings is comprised in a consolidated and paginated bundle, which for convenience will be referred to in this Determination as the **Evidence Book**.
8. The pages of the Evidence Book are consecutively numbered, commencing at page 1 and ending at page 298. Where a page of the Evidence Book or a part of the Evidence Book is specifically referenced in this Determination, that page or part shall be referenced in accordance with the pagination of the Evidence Book.
9. The Tribunal takes due note of, and gives due consideration to the parties' respective and joint descriptions of the dispute, including what is set out at page 32 of the Evidence Book, and specifically at paragraph [4] of the Arbitration Agreement executed by each of the parties and dated 31 March 2022 (**Arbitration Agreement**).
10. In the Arbitration Agreement, the parties plead that the dispute that has arisen between them can be described in the following terms:

...

- 4.1 *ACA, trading as Australian Gateball, is the sole Australian member of the World Gateball Union (WGU).*



- 4.2 *In late 2020, Mr Morris sought, on behalf of the Australian Gateball Union, membership of that Union with the WGU. At the time, Mr Morris may or may not have been a member of ACA, through a club.*
- 4.3 *ASA considers that Mr Morris' actions are a breach of sections 2(h), 11(a) and 11(b) of the ACA Constitution.*
- 4.4 *On 11 March 2022, under the ACA Discipline of Members Policy, the ACA Board resolved to revoke Mr Morris' membership and suspend him from playing Croquet or Gateball until this dispute is resolved.*
- 4.5 *On 24 March 2022, ACA notified Mr Morris that it agreed to lift his suspension thereby allowing him to compete at the National Gateball Championships ...*
11. The National Sports Tribunal (**Tribunal**), presently comprised for the purpose of these proceedings, takes due note as to how the parties, together, have framed the dispute between them, as it is framed in the Arbitration Agreement.
12. The parties' contentions having been duly considered by the Tribunal; the Tribunal considers that the answers to a series of questions are necessary to be determined.
13. Based on the parties' respective pleadings filed in the course of these proceedings; the evidence relied on by the parties as contained in the Evidence Book; and the proceedings before the Tribunal on 25 May 2022, the Tribunal considers that the following questions are representative of identifying the real issues in dispute between the parties in these proceedings, which therefore require determination by the Tribunal: It is by reference to the evidence led by the parties as contained in the Evidence Book, including the ACA Constitution itself, that the Tribunal must answer these Questions 1 to 11 (inclusive) for the purpose of then determining whether the Applicant's principal prayers for relief should be granted, and if so then in what form. The questions which the Tribunal considers to be relevant are as follows:
- (a) **(Question 1)** Was the Applicant an "Individual Member" (or a member in any other class) of the Respondent?
 - (b) **(Question 2)** If the answer to Question 1 is "yes", then by what method did the Applicant become an Individual Member of the Respondent?
 - (c) **(Question 3)** If the answer to Question 1 is "yes", then during what period(s) in time was the Applicant an Individual Member of the Respondent, during the broader period commencing 1 January 2018 and ending on 15 April 2022?
 - (d) **(Question 4)** If the Applicant was an Individual Member of the Respondent, then when was the Applicant's name entered in the Respondent's register of members as is required by the Respondent's constitution?
 - (e) **(Question 5)** Relevantly, what were the Applicant's obligations and responsibilities to the Respondent, under the Respondent's constitution?
 - (f) **(Question 6)** On what date did the AGU apply for membership of the WGU?
 - (g) **(Question 7)** By what method did AGU decide to make an application for membership of WGU?



- (h) **(Question 8)** Did the Applicant breach his membership responsibilities and obligations owed to the Respondent, in his capacity of being an Individual Member of the Respondent, because AGU applied for membership of WGU?
 - (i) **(Question 9)** If the answer to Question 8 is “yes”, then how and why did the Applicant so breach his obligations owed to the Respondent?
 - (j) **(Question 10)** If the answer to Question 8 is “yes”, then what are the consequences and sanctions which should follow?
 - (k) **(Question 11)** Is it possible for the Applicant to breach his obligations and responsibilities of membership of the Respondent, where:
 - (i) AGU applied for membership of WGU on a particular date; and
 - (ii) The Applicant was not a member of the Respondent on that date?
14. Further and importantly, the Tribunal considers that the core question for determination is that which is defined as Question 8, that question being *did the Applicant breach his membership responsibilities and obligations owed to the Respondent, in his capacity of being an Individual Member of the Respondent, because AGU applied for membership of WGU?*

NST JURISDICTION

- 15. The jurisdiction of the Tribunal is engaged by section 23(1)(b)(ii) and section 23(1)(c)(i) of the *National Sports Tribunal Act 2019* (Cth).
- 16. On 31 March 2022 each of the parties executed an Arbitration Agreement (**Arbitration Agreement**) in the standard format prescribed by the National Sports Tribunal.
- 17. Pursuant to clause 2.2 of the Arbitration Agreement, the parties agreed to refer their dispute, which is defined in the Evidence Book and the Arbitration Agreement, to the General Division of the National Sports Tribunal, for determination.
- 18. Pursuant to clause 10.15 of the Arbitration Agreement the parties have agreed to be bound by the outcome of these proceedings. The parties have also agreed that this Determination of the Tribunal will be binding on, and enforceable by and against each of them.
- 19. Based on the foregoing paragraphs of this section of the Determination, the Tribunal considers that it has the requisite jurisdiction to hear and determine the dispute brought by the parties to the Tribunal.

FACTUAL BACKGROUND

- 20. Below is a summary of what, in the opinion of the Tribunal, are the main relevant facts and allegations. The Tribunal has formed these opinions based on its assessment of the materials in the Evidence Book, and also the parties' respective submissions made to the Tribunal during the hearing that took place via videoconference on 25 May 2022.
- 21. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered the whole of the contents of the Evidence Book and all of the facts, allegations, arguments and evidence submitted by each of the parties in the present proceedings including at the final hearing, this Determination refers



only to the submissions and evidence considered necessary by the Tribunal to explain the Tribunal's reasoning, and the orders which the Tribunal has made as set out in this Determination.

22. Mr Morris has, for many years, been an active and interested participant in the sport of gateball. In that regard, Mr Morris has inter alia represented Australia in the sport of gateball on more than one occasion.
23. Mr Morris has, at various times in the past, been a member of ACA. During the course of the final hearing, it was conceded by each of the parties that Mr Morris was not a member of ACA between at least 1 August 2020 and 31 December 2020.
24. Mr Morris is also, and at all times relevant to these proceedings has been, the President of AGU.
25. Despite the singularity of its name, ACA is the NSO in Australia for the sport of croquet, but also, and importantly for the purpose of these proceedings, the sport of gateball.
26. ACA is the national federation member of WGU for Australia, in the "regular member" WGU membership class. ACA has enjoyed membership of the WGU since about 2003 (see page 209 of the Evidence Book). It is not controversial between the parties that ACA has been a member of WGU at all times between 2003 and now.
27. The constitution and statutes of the WGU effectively prescribe, at art. 8-1, that only one organisation in each country or region may be a member of WGU in that regular member category (see p 154 of the Evidence Book).
28. Notwithstanding its name, AGU is not recognised in Australia as the NSO for the sport of gateball. Neither is NSO a member of WGU, in any class. Regardless as to these facts, AGU exists for purposes connected with the promotion and fostering of the sport of gateball. The "aims" of the AGU are conveniently set out in a document titled *About Us – Australian Gateball Union* (at page 209 of the Evidence Book).
29. An annual general meeting of AGU took place on 7 March 2020. The minutes of that meeting (see p 209 of the Evidence Book) record that Mr Morris, as President of AGU, acted as chairman of the annual general meeting.
30. In the "General Business" of the minutes of the meeting, the following is recorded (see p 281 of the Evidence Book):

General Business

...

2. *Geoff Morris moved that AGU join the World Gateball Union. This was seconded by Herman Bekker, all were in favour and this was passed. Geoff and Leanne to arrange for the application to be submitted ...*
31. On or about 8 August 2020 and in accordance with the resolution recording in the meeting minutes as having been passed at that AGU annual general meeting, AGU submitted to WGU an application, whereby AGU applied to become a member of WGU (see p 222 of the Evidence Book).
32. On 18 December 2020, the WGU sent a letter to the AGU (see page 24 of the Evidence Book).



33. By that letter, WGU acknowledged receipt of AGU's application for WGU membership. Further, WGU notified AGU that WGU was unable to accept the application for WGU membership. The reason which WGU provided to AGU for being unable to accept the application for WGU membership was that ACA (trading as Gateball Australia) is the "*official member for Australia since its approval by the WGU Board of Meeting*", where the constitution and statutes of WGU prescribe that there can only be one regular member of WGU for each country or region.
34. Seemingly, AGU's receipt of this 18 December 2020 letter from WGU had the effect of quelling AGU's appetite for joining the WGU, at least in the sense that there is no evidence that any subsequent application for WGU membership has been made. Moreover, there is no evidence before the Tribunal, that the AGU has sought to unseat ACA as the WGU member for Australia.
35. At some time in or about early 2022, ACA discovered that Mr Morris had acquired membership of ACA through his becoming a "full" member of a croquet club in Western Australia (the Cambridge Croquet Club), where that club is in turn is a club member of the governing body for croquet in Western Australia.
36. It is not entirely clear to the Tribunal on the content of the Evidence Book and the evidence presented at the final hearing, as to when ACA made this discovery, in circumstances where that opaqueness leads to the conclusion that ACA cannot confidently and definitely say, at any particular point in time, who its members are. It is common ground between the parties, based on the agreement reached at the final hearing, that Mr Morris definitely was not a member of ACA between 1 August 2020 and 31 December 2020. ACA contends that it was on 28 February 2022 that it "became known" to ACA that Mr Morris was a member of ACA, and that ACA only made that discovery (that Mr Morris was a member of ACA) because Mr Morris had been entered on that day, by a gateball club, as a member of that club's team for the Australian Gateball Championships (see page 205 of the Evidence Book).
37. On 11 March 2022, and after ACA determined that Mr Morris was a member of ACA, ACA issued a letter to Mr Morris (**Breach Letter**; see p 14 of the Evidence Book). That Breach Letter is important in the context of these proceedings, as the Breach Letter is the genesis of the dispute that brings the parties before the Tribunal.
38. In that Breach Letter, the ACA informed Mr Morris that the ACA's board had "*reviewed*" Mr Morris' "*behaviour in applying as President of the Australian Gateball Union, for membership of that union with the World Gateball Union*". The letter went on to state that the ACA's board had "*agreed that the ... 'behaviour' of Mr Morris, as so summarised, constituted a breach by Mr Morris of clauses 2(h), 11(a) and 11(b) of the ACA's constitution.*"
39. The Breach Letter went on to say, that the ACA board had "*resolved that [Mr Morris] membership should be revoked and that [Mr Morris] should be expelled from the Australian Croquet Association*".
40. The letter further stated that Mr Morris' "*right to participate in the sports of croquet and Gateball [sic] are suspended until this matter is concluded*".
41. The letter concluded by providing Mr Morris with information about how he might make submissions to the ACA board in respect of resolution described in the letter, and that upon the receipt of such submissions that the ACA board would appoint a tribunal to "*hear and resolve the matter*".



42. Mr Morris submitted a reply to the Breach Notice (**Reply**). The Reply is undated, but it appears at pages 15 to 17 of the Evidence Book.
43. The parties' dispute, framed in the Arbitration Agreement and further refined in this Determination, relates to the decision of the ACA's board, as recorded in the Breach Notice. The determination of the dispute is important for both parties, and in particular Mr Morris, because membership of ACA evidently is a prerequisite to being able to compete in events and competitions in the sports of croquet and gateball, both in Australia and overseas.

PROCEEDINGS BEFORE THE NST

44. The parties' evidence, documents and submissions are contained in the Evidence Book, save for the further evidence and submissions made by the parties at the final hearing, which was audio-visually recorded with the consent of the parties.
45. These proceedings were listed for a pre-hearing conference, such pre-hearing conference which took place via videoconference on 12 May 2022. The pre-hearing conference proceeded before the Tribunal, with each party appearing at the pre-hearing conference either unrepresented, in the case of Mr Morris, or through Jim Clement in the case of the ACA. Mr Clement is the Secretary of the ACA.
46. The proceedings were set down for a final hearing before the Tribunal, such hearing which took place on 26 May 2022. Again, Mr Morris appeared unrepresented at the final hearing, while ACA appeared through its Secretary, Mr Clement.
47. No objection was made, by either party, either at the outset of the final hearing or at any other time, as to the composition of the Panel. At the conclusion of the final hearing the parties confirmed that their respective procedural rights had been fully respected during the course of the final hearing and the proceedings more generally.
48. Mr Morris and Mr Clement each gave evidence at the final hearing. Further, a witness named Brian Hadley gave evidence to the Tribunal at the final hearing, at the request of Mr Morris.
49. Mr Hadley is the Secretary of the Cambridge Croquet Club, which is located in Western Australia. Mr Hadley's oral evidence was given further to his witness statement, which appears at page 200 et seq of the Evidence Book.

APPLICABLE RULES

50. The relief which Mr Morris seeks that the Tribunal grant is set out in his *Submissions of Evidence* which are included at pages 74 to 80 of the Evidence Book, and also in Mr Morris' initiating process (see page 10 of the Evidence Book).
51. Mr Morris principal prayer for relief is that, effectively, that the "suspension" of his ACA membership be "overturned", and that he also "retain" his membership of the Cambridge Croquet Club in Western Australia. Mr Morris also seeks further, ancillary orders in relation to the future cooperation of ACA and AGU; the reciprocity of rights of ACA and AGU members; ACA's "realistic" funding of the sport of gateball; and ACA and AGU supporting each other to promote and facilitate the sport of gateball.



52. The Tribunal considers that there is some difficulty in making effective orders in relation to these prayers for ancillary relief.. The Tribunal will deal with these matters below in this Determination.
53. Conversely, the Tribunal considers that it can make determinations in relation to Mr Morris' principal prayers for relief.
54. Noting the evidence and submissions included in the Evidence Book as duly amplified by the parties' oral submissions made during the course of the final hearing on 26 May 2022, the Tribunal is of the view that this case is essentially a contract case, which concerns the proper interpretation of the terms and conditions of the ACA's constitution, which appears at page 37 et seq of the Evidence Book (**ACA Constitution**), as ACA has sought to apply those terms as specified in the Breach Letter.
55. It is by reference to the evidence led by the parties as contained in the Evidence Book, including the ACA Constitution itself, that the Tribunal must answer Questions 1 to 11 (inclusive) for the purpose of then determining whether the Applicant's principal prayers for relief should be granted, and if so then in what form.

MAIN SUBMISSIONS OF THE PARTIES

Mr Morris' Submissions

56. Mr Morris' written submissions appear at page 74 et seq of the Evidence Book. The Tribunal takes due note of those submissions.
57. Mr Morris holds a number of memberships and positions in the sport of gateball. Relevantly and at all material times, Mr Morris has held the office of President of the AGU.
58. Mr Morris is also, presently, a "full member" of the Cambridge Croquet Club (**CCC**).
59. Mr Morris contends (see page 75 of the Evidence Book) that it is his membership of CCC which triggered him becoming a member of "Croquet West" and ACA. The Tribunal notes that the reference to Croquet West is a reference to the Western Australian state governing body for the sport of croquet, which in turn is a member of ACA.
60. Mr Morris contends that he was a member of ACA before 1 August 2020 and then after 1 January 2021.
61. Importantly, Mr Morris also contends that he was not a member of ACA from 1 August 2020 to 31 December 2020.
62. Mr Morris' submissions, both written as contained in the Evidence Book and oral as made at the final hearing, explain a long history of consternation (at least on his part), in relation to ACA itself and ACA's apparent and comparative disinterest in its role in the stewardship and administration of the sport of gateball, as distinct from the ACA's apparently primary focus, directed towards the organisation and promotion of the sport of croquet in Australia.
63. Indeed the very reason the AGU was incorporated at all, is that there exists at least a perception that the sport of gateball is not best served by ACA, because of ACA's focus on the other sport, of croquet. AGU is singularly focused to serving the sport of gateball; AGU has no objective in promoting the sport of croquet.

64. On these issues, the Tribunal draws no conclusions one way or another about ACA's focus and devotion to the running of the sport of gateball, and it is unnecessary for the Tribunal to form any views about these issues for the purpose of determining the actual dispute between the parties.
65. The determinations of the Tribunal, as explained in this Determination, rise and fall by reference to factors unrelated to whether, or not, the ACA properly discharges its objects as far as those objects relate to the sport of gateball. Instead, the Tribunal's determinations are made by reference to the ACA Constitution, and what the ACA Constitution relevantly requires of Mr Morris in his capacity as a member of ACA.
66. Mr Morris readily accepts that in March 2020 he, as President of AGU, chaired the AGU's annual general meeting. Mr Morris also accepts that at that annual general meeting, a resolution was passed by the AGU as an item of general business, to the effect that AGU should forthwith make an application for membership of the WGU.
67. It likewise seems to be entirely not in issue, that Mr Morris know that ACA was a member of WGU, and that because ACA was already a member of WGU, this of itself may prevent AGU from becoming a member of WGU because of the "one country, one member" feature of the WGU constitution that is described earlier in this Determination.
68. In relation to the Breach Letter and ACA's allegations communicated on 11 March 2022, that Mr Morris breached the ACA Constitution by reason of Mr Morris, as AGU President, applying for membership of the WGU, Mr Morris denies that he breached the ACA Constitution.

ACA's Submissions

69. ACA's written submissions appear at page 204 et seq of the Evidence Book. The Tribunal takes due note of those submissions. For reasons which will become clear in the next section of this Determination, it is not necessary for the Tribunal to set out in great detail the submissions of ACA.
70. ACA's submissions are consistent with the tenor and content of the Breach Notice.
71. Relevantly, ACA contends that Mr Morris "*knowingly and wilfully*" breached the ACA Constitution "*by applying for Australian Gateball Union Inc ... membership in the World Gateball Union ... in 2020, despite being advised ...*" by ACA, in 2017 and then again in 2018, that WGU accepts only one member organisation in each country.
72. Specifically, ACA contends that Mr Morris did, by AGU applying for WGU membership in August 2020, breach a number of provisions of the ACA Constitution, and specifically clauses 2(h), 11(a) and 11(b).

MERITS

73. As is invariably the case in contested proceedings of almost any kind, one of the primary tasks of the Tribunal in this case is to review all of the parties' pleadings, evidence and submissions, so as to determine what the real issues in dispute are, and what the relevant material is for the purpose of determining those issues. In this vein, the Tribunal takes note of the Breach Letter. In the Breach Letter, ACA contends that:



- (a) Mr Morris applied for membership of the WGU;
- (b) Mr Morris made that application in his capacity as President of AGU;
- (c) In doing so, Mr Morris breached clauses 2(h), 11(a) and 11(b) of the ACA Constitution; and
- (d) As a consequence, Mr Morris' ACA membership should be "revoked" and that Mr Morris should be "expelled" from the ACA; and
- (e) As a further consequence, Mr Morris's right to participate in the sport of gateball should be "suspended" pending the final resolution of the "matter".

74. The Tribunal notes however that, by agreement between the parties, Mr Morris is presently not suspended from participating in gateball, thus obviating the need for the Tribunal to make orders for conservatory relief pending the publication of this Determination. If it were however a requirement that the Tribunal make orders for conservatory relief pending the publication of this Determination (for example, if there was no agreement between the parties to the effect that Mr Morris was not suspended, pending the publication of this Determination), the Tribunal would have commenced considering whether to grant the relief on the basis that conservatory relief should in the circumstances have been granted.

75. The Tribunal's consideration of the Breach Letter, and the decision by ACA to revoke Mr Morris' membership and expel him from ACA, must be considered in the context of the evidence. The Tribunal's consideration must also take place in stages.

Did Mr Morris apply for membership of the WGU?

76. Mr Morris is, and at all times has been the President of AGU. It seems plain to the Tribunal that there exists some longstanding, and significant animosities between ACA and AGU, and indeed between Mr Morris and ACA. Nothing much turns on any of these observations, but the observations do serve to frame the Breach Notice in context.

77. Mr Morris did preside, in his capacity as AGU President, as the chairman of the AGU annual general meeting held on 7 March 2020.

78. However, Mr Morris presiding as chairman of that AGU annual general meeting does not equate to Mr Morris making the decision of the AGU that is recorded in the minutes of the meeting, that AGU make application for membership of the WGU. The decision is a decision of the AGU, not Mr Morris. Mr Morris may have moved the motion that was voted on by the assembled AGU membership; Mr Morris may even have spoken, vociferously, in favour of the resolution. But the resolution is the resolution of the AGU.

79. It is misconceived by the Respondent to contend, that Mr Morris made the application for WGU membership. AGU made that application, even if Mr Morris may have completed, signed or submitted some or all of the documents relating to that membership application.

Has Mr Morris breached the ACA Constitution?

80. As observed in the preceding paragraphs, Mr Morris did not make the application to WGU; AGU did. Mr Morris might well be one of the loudest and most prominent supporters of AGU and its

initiatives; but those facts do not fuse Mr Morris and AGU into a single party for present purposes.

81. Nonetheless, it is important that the Tribunal consider the question of whether Mr Morris might have fallen into breach of the ACA Constitution in his membership capacity, as contended by ACA in the Breach Letter.
82. The first problem with the ACA's Breach Letter and the allegations it makes, is that it is common ground between the parties that Mr Morris actually was not a member of ACA between 1 August 2020 and 31 December 2020. It could hardly be put forward by ACA as a proposition, that Mr Morris could be held in breach of his obligations arising under the ACA Constitution by reason of him being a member of ACA, where the complained-of conduct occurred at points in time where Mr Morris was not a member.
83. On 22 June 2020, the ACA wrote to Mr Morris, and a copy of that letter is to be found at page 101 of the Evidence Book. Apart from serving any other purpose, that letter constitutes notice to Mr Morris, that his membership of ACA would be "terminated" with effect from 1 August 2020.
84. The AGU's application to WGU, for membership of that international federation, was submitted in August 2020. WGU communicated with AGU on 18 December 2020, to say that the application could not be accepted, because ACA already was a member of WGU.
85. Leaving aside the distinction between AGU making the application and Mr Morris making the application in his capacity as AGU President or on any other basis, the application certainly was made at a time *after* Mr Morris' ACU membership had been "terminated" and before the earliest date on which Mr Morris might again have become a member of ACA (noting that the parties agree that Mr Morris was not a member before 1 January 2021, and noting also that ACA submits that it "discovered" that Mr Morris was one of its members on or about 28 February 2022).
86. It is the opinion of the Tribunal that Mr Morris cannot be held to have breached the ACA Constitution when he became a member on 1 January 2021, when the conduct in question is conduct which occurred at a time when he was not a member of ACA.
87. The situation might be different, if the ACA Constitution was carefully crafted so as to "bring into play" a member's pre-membership conduct. The reality though is that the ACA Constitution contains no such terms or provisions.

Would the situation be any different if the conduct occurred when Mr Morris was a member?

88. The Breach Letter refers to three clauses which Mr Morris is said to have breached: clauses 2(h), 11(a) and 11(b).
89. Clause 2(h) of the ACA Constitution is a stated ACA object, which is to the effect that "*Croquet Australia is the peak body for the administration of the sport of Croquet in Australia. The objects for which Croquet Australia is established and maintained are to ... (h) be a Full Member of the WCF and WGU*", where the reference to the "WGU" is a reference to the World Gateball Union.
90. Clause 11(a) states to the effect that "*Members acknowledge and agree that ... (a) this Constitution constitutes a contract between each of them and Croquet Australia and that they are bound by its Policies*".

91. Clause 11(b) then states to the effect that “*Members acknowledge and agree that ... (b) they shall comply with and observe this Constitution and any policy, determination, or resolution which may be made or passed by the Board or any duly authorised committee*”.
92. Clauses 11(a) and 11(b) are important clauses, in that they together bring the ACA members under the jurisdiction of ACA. None of this is at all controversial; indeed this is a terribly common feature of membership of any sporting organisation. Clause 11(a) serves also to restate the law, as far as a constitution of an incorporated body operates as a contract between the organisation on the first part and each of the members of the organisation on the second part.
93. Clause 2 and each of its subclauses, including clause 2(h), are objects clauses. Put simply, the objects of an organisation such as ACA represent a statement of the reasons why the organisation exists. Some of these objects might represent the present reality of the organisation in terms of its activities; other objects might better be classified as the organisation’s missions and ambitions.
94. Clause 2(h) of the ACA constitution states the objects of the ACA, to be a Full Member of each of two different international sports federations. The Tribunal does not know whether the ACA’s predecessor body in fact was a member of these bodies, or either of them, immediately prior to ACA’s registration and incorporation. Accordingly, the objective at clause 2(a) might be a statement of ACA’s present reality (as at the time the object was first framed in the ACA Constitution) or a future ambition.
95. Either way, it does not matter for present purposes. What does however matter, is that the contention, that Mr Morris is in breach of that clause 2(h) because AGU made application for membership of WGU, plainly does not hold water. First, because Mr Morris personally never did make any such application. Second, because even if Mr Morris himself did make that application, how could Mr Morris taking those steps ever equate to Mr Morris, as an ACA member, breaching what is no more than a statement of either ACA’s current activities, mission or future ambition. Thirdly, the application was unsuccessful so at no time was the status of the ACA membership with the WGU in jeopardy. Further, the Tribunal reasonably apprehends that if the WGU ever did consider that it might accept AGU as a member, the process of enforcing the “one member per country” rule would involve steps more detailed than just removing ACA as a WGU member so as to allow for the admission of AGU as the substitute member for Australia.

Tribunal’s answers to Questions 1-11

96. At the outset, the Tribunal stated that its mission in determining the issues in dispute in these proceedings required the Tribunal answering a series of questions, set out and answered below:
 - (a) **(Question 1)** Was the Applicant an “Individual Member” (or a member in any other class) of the Respondent?
Yes
 - (b) **(Question 2)** If the answer to Question 1 is “yes”, then by what method did the Applicant become an Individual Member of the Respondent?



By reason of him becoming a member of the CCC, which is a member of Croquet West, which in turn is a member of ACA.

- (c) **(Question 3)** If the answer to Question 1 is “yes”, then during what period(s) in time was the Applicant an Individual Member of the Respondent, during the broader period commencing 1 January 2018 and ending on 15 April 2022?

The Applicant appears to the Tribunal to have been a member of ACA before 1 August 2020. The Applicant also seems to have been a member from at least 28 February 2022. It is not clear whether the Applicant’s membership was, in fact, revoked at the date of the Breach Letter or indeed after the service of the Breach Letter. The Applicant was not a member of ACA between 1 August 2020 and 31 December 2020.

- (d) **(Question 4)** If the Applicant was an Individual Member of the Respondent, then when was the Applicant’s name entered in the Respondent’s register of members as is required by the Respondent’s constitution?

No. This question was answered to this effect by Mr Clement during the course of the final hearing.

- (e) **(Question 5)** Relevantly, what were the Applicant’s obligations and responsibilities to the Respondent, under the Respondent’s constitution?

The Applicant’s membership obligations are as set out in the ACA Constitution.

- (f) **(Question 6)** On what date did the AGU apply for membership of the WGU?

On or about 8 August 2020.

- (g) **(Question 7)** By what method did AGU decide to make an application for membership of WGU?

By a resolution passed at the AGU annual general meeting held on 7 March 2020.

- (h) **(Question 8)** Did the Applicant breach his membership responsibilities and obligations owed to the Respondent, in his capacity of being an Individual Member of the Respondent, because AGU applied for membership of WGU?

No

- (i) **(Question 9)** If the answer to Question 8 is “yes”, then how and why did the Applicant so breach his obligations owed to the Respondent?

Not applicable

- (j) **(Question 10)** If the answer to Question 8 is “yes”, then what are the consequences and sanctions which should follow?

Not applicable

- (k) **(Question 11)** Is it possible for the Applicant to breach his obligations and responsibilities of membership of the Respondent, where:

- (i) AGU applied for membership of WGU on a particular date; and
- (ii) The Applicant was not a member of the Respondent on that date?

No, on the basis of the ACA Constitution as presently drafted.

THE TRIBUNAL THEREFORE DETERMINES

- (1) The Tribunal declares that that Mr Morris is not, and was not in breach of his membership obligations either under the ACA Constitution or otherwise, as alleged in the Breach Letter
- (2) The Tribunal declares that the revocation of membership and expulsion from ACA is invalid.
- (3) The Tribunal further notes for the record that if Mr Morris were in breach of the ACA Constitution as claimed in the Breach Letter, that the sanction of expulsion from membership of ACA would, if imposed, constitute a disproportionately harsh and unreasonable sanction in all of the circumstances.
- (4) The Tribunal declares that Mr Morris is and does remain a member of ACA].
- (5) The Tribunal further notes that it encourages the parties to work together to grow the sport of Gateball in Australia with a practical division of responsibilities to be assumed by ACA and AGU if possible.

Date 30 June 2022



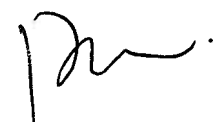
Signature

Darren Kane



Signature

Fiona de Jong



Signature

Peter Kerr AM