

Case number: NST-E23-2400

Case Title: Daniell Haenga v Queensland Billiards and Snooker Association (with Australian Billiards and Snooker Council)

## Determination

### National Sports Tribunal

#### General Division

sitting in the following composition:

Panel Member

Mr Andrzej Kudra

in the arbitration between

**Daniell Haenga**

*(Applicant)*

And

**Queensland Billiards and Snooker Association**

*(Respondent)*

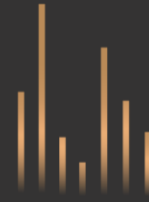
Represented by John Van Der Zee, President

And

**Australian Billiards and Snooker Council Limited**

*(Applicant – Sporting Body)*

Represented by Simone Fortune, Secretary General



## 1. PARTIES

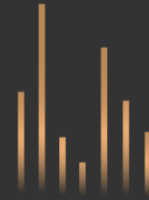
- 1.1 The Applicant is an active snooker player, QBSA member and former Board member/office bearer of the QBSA.
- 1.2 The Queensland Billiards and Snooker Association Inc (QBSA) is an Incorporated Association in Queensland with objects which include amongst other things, fostering, stimulating and encouraging interest in Billiards and Snooker, providing facilities where possible, participating as a member of and affiliating with the ABSC including the adoption of its policy framework, representing all snooker and billiards players in Queensland, promoting trust between QBSA, ABSC and members, acting in the interest of members, providing rules and regulations applicable to the game.
- 1.3 The Australian Billiards and Snooker Council Limited (ABSC) is the Australian peak body for Billiards and Snooker and has referred this dispute for resolution to the NST.

## 2. INTRODUCTION

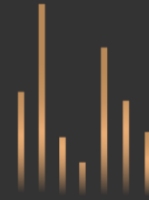
- 2.1 Mr Haenga has appealed the QBSA Judiciary Committee's decision in relation to eight charges to suspend his Association membership for four months from 10 October 2022.
- 2.2 QBSA accused Mr Haenga (a snooker player and QBSA member) of breaching the ABSC Member Protection Policy, dated 23 May 2020 (MPP) and the QBSA Constitution by re-posting on social media disparaging comments about QBSA Board Members and others (originally posted by another player). Mr Haenga does not challenge the QBSA Judiciary Committee finding dismissing a ninth charge.
- 2.3 Mr Haenga claims he was denied natural justice and procedural fairness during the QBSA Judiciary hearing due to application by the QBSA of the ABSC MPP, bias and a conflict of interest, and he claims the penalty imposed was unjust. He seeks for the Judiciary Committee's proceedings and outcomes to be quashed along with a formal apology from the QBSA and ABSC.
- 2.4 QBSA believes the Judiciary Committee's findings are based on fact and the process was in accordance with the QBSA Constitution and ABSC MPP. It requests that the sanction imposed on Mr Haenga by the Judiciary Committee be upheld.
- 2.5 ABSC has referred the dispute to the NST for resolution. Mr Haenga and QBSA have provided written agreement for the NST to hear the dispute.
- 2.6 On 6 January 2023, the Parties attended a preliminary conference conducted by the NST CEO.

## 3. BRIEF FACTUAL BACKGROUND

- 3.1 On 10 September 2022, the QBSA appointed a Judiciary Committee to consider and determine 9 misconduct complaints concerning social media posts made by the Applicant. The social media posts covered a number of issues and were critical of a range of different persons and classes of persons within billiards and snooker in Queensland.



- 3.2 The posts were on Facebook. There was an initial "post" by Mr Brett Watson followed by a series of comments made by persons who had read the post with responses to Mr Watson. The Applicant allegedly reposted Mr Watson's original post and several of the comments. He also posted comments of his own, one of which was the subject of a complaint by the QBSA.
- 3.3 There were 9 alleged breaches identified by the QBSA as offending its Constitution and/or the ABSC Member Protection Policy (MPP).
- 3.4 The ABSC MPP is alleged to have been adopted by the QBSA at the relevant time. In addition, the MPP was alleged to have been binding upon the Applicant.
- 3.5 The Applicant was notified about the concerns of the QBSA by letter dated 9 September 2022 but not the specifics of the complaints.
- 3.6 Upon being notified about the concerns by the QBSA, the Applicant took steps to remove the post and associated comments from his Facebook page.
- 3.7 On 10 September 2022, a document was produced "QBSA documentation for Judiciary Committee re-Mr Daniell Haenga Facebook post and comments" (Formal Complaint). This document comprised of 4 pages which identify the specific provisions in the QBSA Constitution and in the MPP which were said to be relevant to the alleged misconduct.
- 3.8 The next 13 pages of the Formal Complaint comprised a series of screenshots taken of the Applicant's Facebook page. The screenshots have then had particular passages identified as being the subject of complaint with a shorthand reference to the Provisions alleged to have been breached. It was alleged that the Applicant had breached primarily clause 15 (2)(h) of the QBSA Constitution which requires members not to act in a manner unbecoming or prejudicial to the objects and interests of the QBSA. Further it was alleged that clauses 6.6, 6.9 and 6.10 of the ABSC MPP had been breached as they related to Discrimination, Bullying and Social Networking.
- 3.9 The MPP Clause 7.1 requires that a complaint should be dealt with promptly, seriously, sensitively and confidentially so a hearing was set for 14 September 2022. The Applicant Mr Haenga attended unrepresented.
- 3.10 The hearing was recorded.
- 3.11 At the hearing the Applicant read from a written statement submitting that the matters 1-8 complained of did not apply to him as he was not the author of the posts, Complaint 9 could not be sustained because there was nothing in his comments which indicated that he agreed in full with the original post, and lastly that if commenting on or sharing a post is deemed to be promoting its content then anyone who interacted with the post was in breach regardless of their intentions. The Applicant submitted at the time that the process had caused him great distress and did not wish to answer any questions.
- 3.12 The Judiciary Tribunal determined that 15 of the 16 complaints against Mr Watson had been substantiated. Eight of these comprised the first 8 complaints against the Applicant. The Judiciary committee concluded that reposting and commenting on the original post was positively endorsing the post.
- 3.13 On 19 September 2022, the Judiciary Committee advised the parties that it considered that 8 of the 9 complaints had been substantiated. The Judiciary Committee requested and received written submissions on sanctions – first from the QBSA and then from the Applicant.



#### 4. MAIN ISSUES IDENTIFIED BY THE PARTIES

- 4.1 Whether Mr Haenga was denied procedural fairness and/or natural justice, and whether the penalty imposed by the QBSA Judiciary Committee was unjust.
- 4.2 Whether the ABSC MPP had been adopted by the QBSA and whether it applied in relation to the alleged conduct and/or the QBSA Judiciary hearing.
- 4.3 Whether Mr Haenga committed misconduct when republishing a series of social media posts critical of a range of different persons and classes of persons within billiards and snooker in Queensland, contrary to the ABSC MPP and QBSA Constitution.
- 4.4 If Mr Haenga is found to have breached the ABSC MPP and QBSA Constitution, what penalties are to be imposed.

#### 5. INDEX OF DOCUMENTS

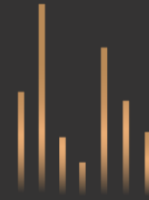
- 5.1 The parties have collectively filed approximately 34 documents totalling 554 pages. Those documents have been helpfully compiled into a paginated and indexed hearing book. I will use page references of this document as the reference point when discussing those documents in this determination.
- 5.2 A recording of the Judiciary Committee hearing has also been filed and considered.

#### 6. NST JURISDICTION AND PROCEEDINGS BEFORE THE NST

- 6.1 The jurisdiction of the NST is engaged by section 24(1)(a) and section 24(1)(b)(ii) of the *National Sports Tribunal Act 2019* (NST Act).
- 6.2 The proceeding was heard on the papers as an arbitration by single member Andrzej Kudra in the General Division of the NST.
- 6.3 The Parties agreed that, subject to clause **Error! Reference source not found.** of the Arbitration agreement (see page 18), the NST's jurisdiction is engaged until resolution of the dispute.
- 6.4 ABSC has referred the dispute to the NST for resolution under the ABSC By-Laws, dated 6 April 2021. Mr Haenga and QBSA have provided written agreement for the NST to hear the dispute.
- 6.5 On 6 January 2023, the Parties attended a preliminary conference conducted by the NST CEO.
- 6.6 Tribunal member Andrzej Kudra was appointed 11 January 2023
- 6.7 The Applicant filed all materials for the Tribunal to consider on 12 January 2023
- 6.8 The Respondent filed all materials for the Tribunal to consider on 17 January 2023.
- 6.9 The Applicant filed submissions in reply on 18 January 2023

#### 7. SUBMISSIONS BY THE APPLICANT

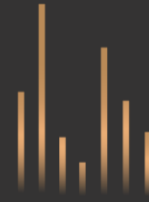
- 7.1 The Applicant seeks the Tribunal review the eight (8) allegations found as substantiated by the Judiciary Committee of the Respondent (QBSA) in a decision made 2 October 2022.



- 7.2 The Applicant submits –
- a. the allegations should be dismissed on the basis that –
    - i. the ABSC MPP did not apply as alleged at the relevant time; and
    - ii. the Applicant has not breached the QBSA Constitution as alleged; and
  - b. if the allegations are upheld, the sanction imposed is unreasonable in all the circumstances.
- 7.3 Further, the Applicant seeks an order that QBSA pay the arbitration costs of the Tribunal with no order as against the Applicant or the ABSC.
- 7.4 In his written submissions, the Applicant pleads inter alia that the Complaint Notice was deficient, inadequate time was provided to allow him to consider and prepare for the Hearing, and the QBSA had not yet adopted the ABSC MPP and therefore could not bring charges for breaches of the MPP (the QBSA purported to adopt the MPP by special resolution on 8 September 2022 subsequent to the conduct complained of). (see page 129).
- 7.5 The Applicant further pleads that he admits making the posts and that the MPP provisions should not apply, rather the breaches should be based on allegations as they relate to the QBSA constitution. He pleads the context of making the comments was such that if the comments of Mr Watson were in fact true then the QBSA should investigate. The Applicant further pleads that the penalty imposed was manifestly excessive and if the breaches are made out (which he denies) then a 3-month penalty should apply. (see page 130).

## **8. DOCUMENTS RELIED ON BY THE APPLICANT**

- 8.1 In addition to his written submissions the Applicant filed his own statement and statements of William Kent and Bill Horner together with various annexures.
- 8.2 The Applicant states that on 3 September 2022 he posted comments to a Facebook posting of Brett Watson claiming that he believed that there was some substance to the “article” and considered that the QBSA should look into the matters raised in the original post. He denies endorsing the language used in the post, proceeds to provide a brief background as to his achievements and contributions to the sport and criticises the QBSA governance over the years particularly with respect to the implementation of By-Laws. The Applicant states that he was requested on 8 September 2022 by the QBSA to delete his comments. The Applicant claims that he did so by the following day, deleted his own Facebook profile and encouraged Brett Watson to remove his post, which was done. The following day he received a letter advising that he was being referred to a Judiciary Committee to be convened 14 September 2022. The Applicant claims that he requested for the Hearing to be delayed so that he could properly consider the issues. This request was denied by the Judiciary Chair and the QBSA. (See page 124).
- 8.3 Mr Kent’s statement commences at page 132 of the hearing book which relevantly identifies his lengthy history of involvement in the sport and his position on the board of QBSA at the relevant time. He asserts that the sanctions were unnecessary and that the matters could have been adequately dealt with by way of warning letter to the Applicant and Mr Watson. He further asserts that the whole decision to discipline the Applicant was driven by 2 committee members and did not reflect the views of the board. He states that he did not participate in the emergency

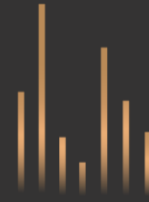


meeting which resolved to establish a Judiciary Committee to determine the matter. Mr Kent is critical of the Board consulting with the ABSC and appointing Mr Jenner, a former Board Member of the ABSC, as the chair of the Judiciary Committee. Mr Kent is further critical of the MPP, poor governance of the QBSA and expresses concern for the sanction imposed on the Applicant preventing the Applicant from competing in world championships. (various attachments in support of Mr Kent's assertions appear at pages 136-150)

- 8.4 Bill Horner's statement was also filed in support of the Applicant. Mr Horner states that he was a board member of QBSA during the course of 2022 and formally resigned on 8 January 2023. Mr Horner asserts that during his tenure he was denied access to various policy/governance documents which were under review by the board. He states at page 151 that as at end of August 2022, no resolution had been reached as to the adoption of the MPP and he annexes the minutes of the QBSA Delegates meeting of 31<sup>st</sup> August 2022 confirming same (see page 161). Mr Horner further asserts that the MPP was formally adopted at the 1 November QBSA meeting annexing the Agenda of that meeting which seek to endorse the special resolution made by email by various board members on 8 September. (see pages 167-176).

## 9. SUMMARY OF FACTS ALLEGED BY THE APPLICANT

- 9.1 As at 31 August 2022, the QBSA was yet to adopt the ABSA MPP as a policy of the QBSA
- 9.2 On 3 September 2022, the Applicant made various comments/ posts on Facebook in response to posts made by another individual, Brett Watson.
- 9.3 On 3 September 2022, the QBSA Board purported to hold a special meeting of the QBSA Board, seeking to refer Mr Watson and the Applicant to a Judiciary Committee.
- 9.4 On 8 September 2022, the QBSA –
- issued a letter to the Applicant requesting that he remove unidentified posts from his Facebook page;
  - purported to adopt the ABSC MPP by way of special resolution under clause 25.17 of the Constitution.
- 9.5 On or about 8 September 2022, the Applicant removed the posts from his Facebook page and deleted his Facebook profile
- 9.6 On 9 September 2022, the QBSA –
- advised the Applicant it had formed the Judiciary Committee to determine allegations that the Applicant had breached the Constitution and the ABSC MPP by making certain posts on Facebook. This was done by way of the Complaint Notice;
  - attempted to rectify the fact the Board members at the alleged special meeting on 3 September 2022 did not form a quorum for the purposes of voting.
- 9.7 The Complaint Notice identifies various provisions of the Constitution and of the MPP, but failed to outline any details of the posts alleged to have been breached. The Complaint Notice then advised the Judiciary Committee would meet on 19 January (sic), that is 5 days later, to determine the issues.
- 9.8 The Judiciary Committee met on that date, despite a request from the Applicant to delay the hearing in order that he could prepare for it.



9.9 On 2 October 2022, the Judiciary Committee issued the Determination.

## 10. RELEVANT DOCUMENTS FILED BY THE RESPONDENT QBSA

10.1 In addition to the submissions referred to below, the Respondent filed the following documents to assist the Tribunal.

- a. ABSC Member Protection Policy
- b. QBSA Constitution
- c. Email 11 September from QBSA President to Judiciary Committee that the Facebook post had not yet been removed
- d. Emails 11 September between Judiciary Committee and QBSA Secretary regarding information requested by the Applicant
- e. Email 22 October – resignation of Treasurer
- f. Special board meeting minutes 3 September 2022
- g. Emails 8 September 2022 regarding adoption of the MPP and removal of the posts
- h. Kent email 10 September to board with blanket approval for all tribunal plans
- i. QBSA Documents for Judiciary Committee and the Applicant which outline the relevant rules that are alleged to have been breached by the Applicant and then proceed to cross reference each breach against screen shots of the Facebook post. (QBSA Documentation for the Judiciary Committee re Daniell Haenga – see page 398)
- j. Audio recording of the Judiciary Committee hearing 14 September 2022
- k. Determination – Judiciary Committee Decision
- l. Link to the current ABSC website which includes links to all ABSC policies and the Integrity framework documents.

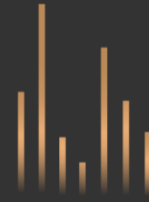
## 11. SUBMISSIONS BY THE RESPONDENT QBSA

11.1 The Respondent filed a summary to assist the tribunal in this proceeding together with separate responses which address each of the Applicant's witness statements. (main summary commences at page 222).

11.2 The main summary addresses firstly the issue of procedural fairness and a helpful chronology of events is detailed therein as it relates to the processes undertaken to identify alleged misconduct, establishing the judiciary tribunal, notifying the Applicant, conducting the hearing, inviting submissions, handing down the reasons for decision, imposing sanctions and advising the Applicant as to appeal rights.

11.3 The main summary then purports to address the issue as to the applicability of the ABSC MPP. The Respondent simply relies on its submission to the Judiciary Tribunal and no further information or argument is offered in this regard other than a brief submission at paragraph 18 of the document (page 224) which outlines the circumstances of reaching a special resolution by email votes having been moved by the then President and seconded by Mr Horner. The Tribunal notes that this special resolution, if valid, is passed after the alleged misconduct.





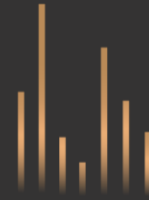
11.4 The Respondent then addresses the penalty imposed submitting that at first instance less intrusive penalties were requested but now agreed with the sanctions having been imposed by the Judiciary Committee without offering any specific reasons as to why those sanctions are now considered appropriate.

11.5 In support of the main summary numerous attachments follow which cover:

- email exchanges between the committee members on 3 September 2023 as they relate to the alleged misconduct and convening a Special Meeting of the QBSA Board that same day;
- emails of 7 and 8 September regarding the removal of the offending Facebook post;
- emails selecting 3 Judiciary Committee members and voting on same;
- Facebook exchanges between the Applicant and the main protagonist Mr Watson aka Billy Blackwood regarding removal of the post;
- emails of 8 September regarding a special resolution to adopt ABSC policies including the MPP;
- 9 September emails to nominated Judiciary Committee members with proposed date, time and venue for disciplinary hearings;
- emails of 9 September purporting to serve notice to the Applicant to attend the hearing scheduled for 14 September;
- emails from the Applicant 10 September regarding short notice and wanting to communicate with the Judiciary Committee;
- 11 September emails to Applicant annexing documents to be relied on at the Judiciary Committee;
- emails of 11 September as they relate to removal of the Facebook posts;
- 12 September emails from the Judiciary Committee Chair to QBSA Secretary clarifying 9 complaints to be heard against the Applicant;
- 19 September email from Judiciary Committee Chair to QBSC confirming 8 complaints were substantiated against the Applicant;
- numerous emails 20, 21 and 22 September as to submissions to consider for sanctions, subsequent delivery of reasons, penalty and appeals procedure;
- and finally the Applicant's emails regarding his intention to appeal and being advised that he was out of time.

11.6 The Respondent further submitted a specific response to the statement of the Applicant which submits amongst other things, the Applicant as a former Treasurer of the QBSA should have had a better understanding around the need to invite constructive conversation to help the association, agreement that the Applicant was remorseful but should have objected to the Facebook comments at the relevant time rather than express support for the comments, the QBSA governance documents have been in need of updating for some time, the sanctions imposed were those of the Judiciary Committee and QBSA played no part in this process, and the Respondent submitted that the sharing of the Facebook posts and making comments caused hurt and embarrassment and damage to the association, parents and juniors as well as the individuals mentioned by name. The Tribunal notes that no evidence of specific harm to





specific persons or groups of persons arising from the alleged misconduct has been proffered by the Respondent.

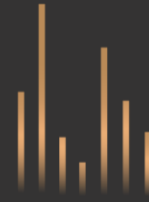
- 11.7 The Respondent further submitted a specific response to the statement of William Kent (see page 307) which asserts amongst other things; Mr Kent is no longer a financial member, his views that the process and sanctions were driven by 2 board members, Dinga and Gray, are misguided and the board supports the decisions taken (although not supported by all board members), Mr Kent's views on the matter being settled by letter are misguided, Mr Kent is incorrect as to notice given for the emergency board meeting, the MPP was already on the QBSA website and applied to all members (though not yet formally adopted), the QBSA followed the ABSC guidelines consistent with the QBSA constitution, Mr Kent's opinions are not relevant as they relate to sanctions and instability of the board. (Attachments to this submission included Mr Kent's email of 3 September indicating that he does not wish to be part of a witch hunt together with all preceding and subsequent emails regarding the need to refer the matters to and appoint the Judiciary Committee).
- 11.8 The Respondent further submitted a specific response to the statement of Mr Horner (page 186) which submits amongst other things, that Horner resigned from the board 11 January 2023 due to misconduct allegations by his own club in Gympie, that QBSA documents were never withheld from him, that the decision to formally adopt the ABSC MPP became urgent following the Facebook posts, and that Horner supported the special resolutions, that Horner's view on the Judiciary Committee Chair being a close personal friend of the QBSC President are misguided. Various emails in support are attached to this response document.

## 12. THE APPLICANT'S REPLY

- 12.1 On 18 January 2023, the Applicant filed a brief Reply to the submissions and evidence filed by the Respondent (see page 415).
- 12.2 The Reply alleged that the QBSA has failed to supply any statements from individuals which support their submissions relying primarily on email documents alone.
- 12.3 The special resolution processes to appoint the Judiciary Committee and adopt the MPP were flawed and invalid.
- 12.4 The complaint against him should have been limited to one post only whereby Watson's post was shared. Reference is then made to various shares, likes and comments to Watson's post.
- 12.5 The application of the QBSA Constitution is challenged as there are no regulations or By-Laws. The Applicant submits that the evidence does not sustain a finding that his actions were in a manner unbecoming a member.
- 12.6 The Applicant submits there is no evidence or reasonable submission made as to why the penalty imposed was appropriate.
- 12.7 Reduction in penalty is sought and costs awarded against the QBSA.

## 13. APPLICANT SPORTING BODY

- 13.1 The ABSC filed this Application (see page 3) which identifies that the dispute is in the nature of an "Appeal"; that the Applicant did not seek an appeal process through the QBSA but appealed to the ABSC pleading denial of natural justice and unjust penalties; that the ABSC granted

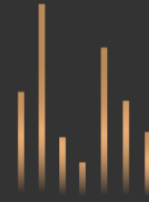


leave to appeal solely on the basis of ambiguity between the ABSC MPP and the ABSC By-laws (the right to appeal contained in the latter having not yet been repealed due to administrative oversight).

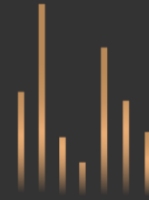
- 13.2 The ABSC states in its Application “Seeking an independent and binding review of the actions taken by Mr Haenga, together with recommended sanctions (if any)”
- 13.3 The pending world championship eligibility is raised as an issue and a determination date on or before 20 January 2023 is sought by the ABSC.
- 13.4 The Tribunal has decided to review the Application holistically with as much expediency as the circumstances allow without the need for parties to mobilise for a hearing in the traditional sense with cross examination and oral submissions.
- 13.5 This Determination examines the procedure, merits and outcomes mindful that an urgent determination is requested.
- 13.6 While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties he refers in his Determination only to the submissions and evidence he considers necessary to explain his reasoning.

#### **14. PROCEDURAL FAIRNESS**

- 14.1 The first issue that the Tribunal has been asked to consider by the Applicant is whether the Respondent QBSA afforded him natural justice and procedural fairness in their prosecution of the alleged misconduct.
- 14.2 The ABSC MPP (if it applies) contemplates procedural fairness in so far as clause 7.1 requires complaints to be dealt with promptly, seriously, sensitively and confidentially (page 34) and clause 9 of that document (page 37) states that any disciplinary measure imposed will be fair and reasonable; applied consistently...; based on the evidence and information presented and the seriousness of the breach; and be determined in accordance with our constituent documents, By-Laws, this Policy and/or the rules of the sport. Attachment DI provides a complaints procedure but no specific procedures or requirements as they relate to disciplinary procedure.
- 14.3 The ABSC By-Laws provide a brief narrative around recognition of various suspensions from ABSC affiliates and overseas and allows for appeals to be made under the By-Laws, but there is no guide as to how those appeals are to be conducted nor any procedural rules as such.
- 14.4 The QBSA Constitution (see page 89) deals with discipline of membership at clause 18 (page 102). The clause enables the board to commence disciplinary proceedings when a member breaches the QBSA constitution, regulations, ABSC constitution or regulations or any resolution of the board; acting in a manner unbecoming, prejudicial to purposes or interests of the QBSA or bringing the QBSA or its members into disrepute. Other than enabling the board to appoint a Judiciary Committee there are no provisions which set out the procedures to be followed in terms of who can be appointed to the Judiciary Committee, serving a notice on the member, what the notice should contain, notice periods and how the hearing should be conducted. Clause 19.2 states that the member concerned shall be given a full and fair opportunity of presenting his or her case. There do not appear to be any QBSA regulations or by-laws.



- 14.5 In the absence of a procedural code or protocol to guide the conduct of disciplinary hearings then it is appropriate to apply common law principles of procedural fairness to enable an assessment by this Tribunal as to whether the Applicant was denied procedural fairness by the QBSA or the Judiciary Committee empanelled by the QBSA.
- 14.6 In 2015 the High Court stated that “in the absence of a clear, contrary legislative intention, administrative decision makers must accord procedural fairness to those affected by their decisions” (*Minister for Immigration and Border Protection v WZARH* [2015] HCA 40)
- 14.7 Procedural fairness traditionally involves two requirements: the fair hearing rule and the rule against bias. (*Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476)
- 14.8 Mason J’s statement in *Kioa v West* (1985) 159 CLR 550 at 585, remains relevant in that the expression procedural fairness conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case.
- 14.9 The rule against bias should be determined by reference to standards of the hypothetical observer who is fair minded and informed of the circumstances. The question should be whether the decision maker can objectively be considered to be impartial and not to have prejudged the decision. I cannot be satisfied in this proceeding that the Judiciary Committee empanelled to hear the misconduct complaint were conflicted or in any way or potentially biased in the exercise of their duty. The issue of bias is raised by the Applicant and the witness William Kent (page 133). The Chair of the Judiciary Committee is an independent legal counsel at the South Australian Bar. There is no evidence before this Tribunal to suggest that his conduct of the disciplinary hearing was biased in any way. The Applicant alleges that he should not have been appointed as he is a former President of the ABSC and friends with QBSA board members (refuted by the Respondent). The Chair’s former presidency of ABSC should not preclude him, and if anything, his knowledge of the relevant sport and its administration would have been of some benefit to the proceeding. Similarly, I note that the other 2 members of the judiciary were Presidents of affiliate ABSC associations. Presumably their knowledge of the sport was also of some service. Having listened to the recording of the hearings and having read the reasons for decision I can be satisfied that the chair Mr Jenner thoroughly, professionally and independently facilitated the hearing process.
- 14.10 In terms of any contravention of the hearing rule is concerned, the ground of appeal on this front must fail. A fair hearing would generally require a notice that a decision is going to be made that may affect a person’s interests, that there is disclosure of the critical issues to be addressed and information is provided that is credible, relevant and significant to the issues (*Kioa v West* *ibid.*). What follows is that a substantive hearing is held with a reasonable opportunity to be heard and present a case.
- 14.11 In this proceeding it can be concluded that the QBSA prepared a detailed notice of the misconduct alleged and provided the Applicant with the evidence of the misconduct clearly referencing the relevant rules that had been allegedly offended according to the evidence. Whilst the allegations of breaches of the MPP remain controversial there can be no criticism of the content of the notice and evidence provided to the Applicant.
- 14.12 Similarly, there can be no criticism levelled at the conduct and procedure of the substantive hearing. The Applicant was given an opportunity to present his case in response to the misconduct allegation and did so by way of a prepared statement. He then declined to answer questions or further engage in the process. Whilst I note that the 5-day notice period between service of the notice and the substantive hearing was not particularly extensive, I do not



consider that the notice period was so unfair as to amount to a denial of procedural fairness. The hearing rule is premised on the notion of a “reasonable opportunity” rather than a “perfect opportunity”. On balance it would appear that for a period of time during the 5-day period, the Facebook posts complained of remained in the public domain, and that it was of a high priority for the QBSA to have the complaint dealt with. I note email correspondence from the QBSA to the Judiciary Committee Chair 3 days out from the hearing (page 271) identifying that the Facebook post had not yet been removed and as such there was a sense of urgency in hearing the matter.

14.13 I am mindful of notice periods across numerous sporting codes where on field misconduct is alleged and disciplinary hearings convened within 2-3 days of the alleged offence. Whilst this proceeding involved potentially complicated issues to be addressed by the Applicant in the 5-day notice period, I cannot be satisfied that procedural fairness was denied in these circumstances.

14.14 This ground of appeal should therefore be dismissed.

## 15. APPLICATION OF THE ABSC MEMBER PROTECTION POLICY

15.1 Whether the ABSC MPP applied in relation to the alleged conduct and/or the QBSA Judiciary hearing is a very difficult issue for the Tribunal to reconcile.

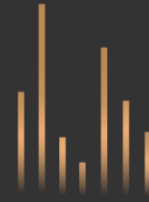
15.2 Whilst there is ostensible mutual recognition of each other’s laws, rules and regulations between the QBSA and the ABSC it cannot be simply concluded that members of QBSA are subject to all of the ABSC laws unless there had been a formal process of adopting those laws.

15.3 The objects of the QBSA Constitution (page 94) include objects which envisage the QBSA will participate as a member of the ABSC, and also affiliate and otherwise liaise with the ABSC and adopt its rule and policy framework.

15.4 The minutes of the QBSA board meeting of 31 August 2022 (page 161) note that the MPP had been completed and it was suggested that the MPP be put forward at a Special General Meeting for ratification by the members rather than incur the costs of having a solicitor review it. Presumably this is a reference to the ABSC MPP, however it may be a draft QBSA MPP that is being referred to. In any event those meeting minutes suggest that no MPP policy had been adopted by the QBSA at the relevant time of the alleged misconduct by the Applicant.

15.5 I further note the email exchange between various board members on 8 September 2022 (pages 172-176) with the subject line of each email being “Special Resolution – Please Respond”. The email exchange purports to be a board resolution under clause 25.17 of the QBSA Constitution seeking to essentially adopt all of the ABSC policies, by-laws and regulations published from time to time. I will not comment as to the validity of the resolution, however it appears to be an action of a board who do not consider that any MPP had ever been formally adopted by the QBSA. The resolution does not make any reference to the resolution operating retrospectively. The only inference that I can draw is that the alleged misconduct predates this purported special resolution and hence the MPP could not be deemed to have been operative and applicable to QBSC members at the relevant time.

15.6 This is further galvanised by the agenda prepared for the QBSA 1 November 2022 board meeting, which at page 167 seeks to endorse the 8 September 2022 special resolution to adopt the ABSC MPP. Presumably some form of motion was passed to endorse that special

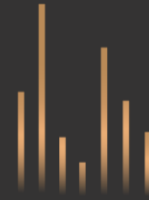


resolution at the 1 November meeting. There is a plausible argument that the QBSA did not formally adopt the MPP until 1 November 2022.

- 15.7 Whilst clause 15.2(c) of the QBSA Constitution states that members are subject to the jurisdiction of the ABSC (page 100) there is no express statement that members are subject to the ABSC rule and policy framework, noting the objects of QBSA refer to adopting such rules and policies of the ABSC, which indicates that some form of positive action is required of the QBSA to adopt specific rules and policies, as evidenced by the various minutes, agendas and ‘special resolution’ by email referred to above.
- 15.8 The ground of appeal that the MPP did not apply at the time of the alleged misconduct should therefore be upheld.

## 16. WERE THE APPLICANT’S FACEBOOK COMMENTS MISCONDUCT?

- 16.1 Did the Applicant commit misconduct when republishing a series of social media posts critical of a range of different persons and classes of persons within billiards and snooker in Queensland, which is contrary to the ABSC MPP and QBSA Constitution?
- 16.2 Given my findings as to the applicability of the MPP as outlined above, addressing the alleged misconduct of the Applicant within the context of the MPP would be otiose.
- 16.3 The question therefore is whether the Applicant’s conduct amounted to breaching a provision of the QBSA Constitution, acting in a manner unbecoming or prejudicial to the purposes and interests of the ABSC (not the QBSA) or bringing the QBSA or ABSC into disrepute.
- 16.4 The Applicant has not at any time denied commenting on the original post nor sharing it on at least one occasion. As I understand the operation of the social media platform, once a user comments on a post, the comment and the post become visible to all of the user’s friends, unless the user adjusts their settings to restrict access. The Applicant admits to having about 300 friends on Facebook.
- 16.5 I note the Applicant’s email to QBSA 10 September 2022 (page 266-267) where he suggests that he was *“responding with my opinion to a post on someone’s profile and did not believe that I was doing anything wrong....and it was not my intent to do so”*
- 16.6 The original post of Watson can be readily described as provocative, alleges incompetence, misappropriation of funds, potentially defamatory comments all of which are capable of causing harm to certain individuals, groups of individuals and the QBSA. (page 402). Clearly Watson is the author and principal offender.
- 16.7 The Applicant’s comments on the original post can be readily found to amount to misconduct which is unbecoming and brings the QBSA into disrepute. Comments such as “I have never seen a worse association”, “harry high pants is playing up here and we also have caitlyn jenner up here, but no one is friends with her because she has massive balls” “give this man (Watson) a gold medal” are capable of causing harm to individuals and the QBSA.
- 16.8 Other comments made by the Applicant do, to some extent support the Applicant’s submission that the issues raised by the original post raised some concerns around competition management and player behaviour and that those issues should be looked into (see page 407). In any event the Applicant has shared the post and maintained the post on his page for some time. There are other comments and exchanges on the post. It is clear that the discussion was



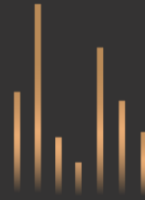
not limited to a closed group but to all Facebook users at large. It was not until the request was made by QBSA to remove the post that the Applicant took some steps to do so.

- 16.9 Most cases as they relate to social media misuse are within the context of unfair dismissal and defamation litigation. Most notably the case of *Nationwide News v Voller* [2021] HCA 27 establishes responsibilities on persons using social media platforms, namely that a person who facilitates, encourages and thereby assists the posting of comments by third party Facebook users, renders them publishers of those comments. Each comment posted is an intentional participation inviting others to like, share or comment, hence facilitating publication from third parties.
- 16.10 The appellant had the capacity to control his own Facebook page and to take measures to restrict access to his page or remove Watson's posts from the outset.
- 16.11 The ground of appeal that findings of misconduct should be dismissed is dismissed.

## 17. APPROPRIATE PENALTIES

- 17.1 If Mr Haenga is found to have breached the ABSC MPP and QBSA Constitution, what penalties are to be imposed?
- 17.2 The Applicant has breached the QBSA Constitution by commenting on Watson's provocative post, ostensibly endorsing it and maintaining it for public view and comment.
- 17.3 The Applicant's actions however are significantly less serious than those of Watson whose original post was entitled "QBSA Sucks" followed by a detailed and lengthy rant critical of directors, coaches, individuals by name, the junior program, juniors, their parents, allegations of misuse of funds, corruption and so forth. The Judiciary Committee suspended Watson for 6 months.
- 17.4 The Applicant contends that a more proportionate penalty if misconduct is found proven would be 3 months suspension. I agree. In my view the penalty imposed by the Judiciary Committee was excessive in the circumstance noting the penalty given to the principal offender. The Applicant removed the post in a timely fashion when requested to by the Respondent. He appears to have been remorseful for his actions and contends that it was not his intention to cause harm. In those circumstances I consider it appropriate to reduce his penalty.
- 17.5 This ground of appeal is therefore upheld.





**18. THE TRIBUNAL THEREFORE DETERMINES:**

1. The sanction imposed by the QBSA Judiciary committee on 2 October 2022 is set aside.
2. A sanction of 3 months suspension of the Applicant's Association membership effective from 10 October 2022 is imposed.
3. Section 46 of the National Sports Tribunal Act makes provision for the CEO of the National Sports Tribunal to charge one or more of the parties to the arbitration for the costs in conducting the arbitration and to apportion the charge or waive the whole or part of the charge. The Applicant has been partially successful. It is recommended to the CEO that the costs of the arbitration be apportioned equally as between the Applicant and the Respondent.

Date: 30 January 2023



Andrzej Kudra