

NST-E23-118097

Peter Dorries v Australian Outrigger Canoe Racing Association

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Mrs Fiona de Jong

in the arbitration between

Peter Dorries

Applicant

Represented by Leisha Antunovich

And

**Australian Outrigger Canoe Racing
Association (ACORA)**

Respondent

Represented by Tony Dempsey, Solicitor and Michael Seay, President



PARTIES

The Parties to this dispute are:

1. Mr Peter Dorries – athlete and coach
2. Australian Outrigger Canoe Racing Association (AOCRA) – National Sporting Organisation

INTRODUCTION

1. The Tribunal has been asked to resolve a dispute between Mr Peter Dorries and Australian Outrigger Canoe Racing Association (AOCRA) for an Alleged Breach of the AOCRA Member Protection, Anti-Doping and Risk Management Policies Codes of Behaviour and AOCRA Member Protection Policy.
2. The Tribunal was asked to review a Provisional Sanction imposed by AOCRA on 6 May 2023 while the merits of the substantive dispute were being considered by the National Sports Tribunal. The matter was reviewed on the papers without the need for a hearing and the Tribunal issued its decision in respect of the Provisional Sanction on 25 May 2023.
3. This Tribunal decision is in respect of the substantive dispute regarding the merits of the Alleged Breach by Mr Peter Dorries, and sanctions imposed by AOCRA.

NST JURISDICTION

4. As a dispute between a person and a sporting body, this matter is heard before the National Sports Tribunal General Division in accordance with section 23 of the *National Sports Tribunal Act 2019* (the NST Act).

FACTUAL BACKGROUND & PROCEEDINGS BEFORE THE NST

5. On 15 April 2023, AOCRA was made aware of an Alleged Breach of the AOCRA By Law 12 – Member Protection, Anti-Doping and Risk Management Policies Part B section 7 Codes of Behaviour and the AOCRA Member Protection Policy, Part 3.1 Prohibited Conduct arising from social media comments made by Mr Peter Dorries.
6. Specifically, AOCRA alleged that Mr Dorries:
“Created a social media comment that was discourteous to AOCRA with misrepresenting information and also defaming the reputation of AOCRA officials; and That within Mr Dorries’ social media comment he stated information which is misleading, incorrect, and malicious.”
7. On 26 April 2023, AOCRA issued a Breach Offer to Mr Dorries detailing the allegation and rationale, including details of two previous occasions when AOCRA sought to address the issue and offer of a reduced sanction if Mr Dorries was willing to accept the Alleged Breach occurred and resolve the matter without a hearing. The reduced sanction was:



- (a) Suspension of AOCRA membership for 1 year; and
 - (b) Exclusion from holding AOCRA coaching or leadership positions.
8. On 3 May 2023, Mr Dorries elected to have the Alleged Breach and proposed sanction referred to a hearing tribunal.
 9. The parties agreed to a resolution through binding decision (arbitration).
 10. On 6 May 2023, AOCRA imposed a Provisional Action in the form of (a) suspension of AOCRA membership (b) suspension of coaching accreditation and (c) not to attend AOCRA events in any capacity (including as a volunteer) while the Alleged Breach was being considered by a hearing tribunal.
 11. Mr Dorries sought to have the Provisional Action and sanction reviewed in the General Division of the National Sports Tribunal, in accordance with clause 6 of the AOCRA Conduct and Disciplinary Policy.
 12. On 23 May 2023, the National Sports Tribunal appointed Ms Fiona de Jong to undertake an expedited arbitration. No objection was made at the outset of the matter to the appointment of the Panel Member.
 13. The dispute was reviewed without the need for a hearing, that is, 'on the papers'.
 14. On 25 May 2023, the National Sports Tribunal issued its decision for the Provisional Action under section 42 of the NST Act as follows:

The Provisional Action imposed on Mr Peter Dorries by the Australian Outrigger Canoe Racing Association Ltd (AOCRA) in the form of (a) suspension of AOCRA membership (b) suspension of coaching accreditation and (c) not to attend AOCRA events in any capacity (including as a volunteer) seem disproportionate in the circumstances as there is insufficient evidence to demonstrate that a "further or ongoing risk of harm being suffered by one or more persons involved in the Sport" has been met.

Accordingly, Mr Dorries' should be permitted to continue to participate in the sport while the Alleged Beach is being considered by the NST tribunal.

In making this determination, the tribunal has sought to preserve the interim rights of both parties. While the athlete's right to compete is being preserved, so too should the reputation of AOCRA and its administrators be protected. It is the tribunal's recommendation that Mr Dorries refrain from any social media comments about the sport including any personnel involved in the administration of the sport until the substantive matter is determined.

This determination does not involve consideration of the merits or otherwise of the substantive dispute and should not prejudice the NST's consideration of the matter.

Written reasons to follow.

15. On 29 May 2023, the National Sports Tribunal issued the written reasons for this decision.



16. In June & July 2023, the parties provided submissions, evidence, and submissions in response on the merits of the substantive dispute. On 14 July 2023, the party submissions were provided to the Tribunal to consider the matter on the papers.
17. While the Tribunal Member has considered all the facts, allegations, legal arguments, and evidence submitted by the parties, in making a determination for the substantive matter, she refers in her Determination only to the submissions and evidence she considers necessary to explain her reasoning.

APPLICABLE RULES

18. AOCRA asserts that Mr Dorries' social media comments breached two applicable Policies:

(1) AOCRA By Law 12 – Member Protection, Anti-Doping and Risk Management Policies, Part B section 7, Codes of Behaviour, which includes (relevant extracts):

All Persons Involved in Outrigger Canoeing:

- *Display control and courtesy to all involved with the sport.*
- *Respect the rights and worth of every person regardless of their gender, ability, cultural background, or religion.*
- *Respect the decisions of officials, coaches, and administrators in the conduct of the sport.*
- *Adopt appropriate and responsible behaviour in all interactions.*
- *Act with integrity and objectivity and accept responsibility for your decisions and actions.*
- *Ensure your decisions and actions contribute to a harassment free environment.*
- *Do not tolerate harmful or abusive behaviours.*

...

Coaches

- *Place the safety and welfare of the athletes above all else.*
- *Help each person (athlete, official etc) reach their potential - respect the talent, developmental stage and goals of each person and compliment and encourage with positive and supportive feedback.*

...

Officials

- *Be consistent and impartial when making decisions.*
- *Address unsporting behaviour and promote respect for all people.*

Administrators

- *Act honestly, in good faith and in the best interests of the sport.*
- *Ensure that any information acquired, or advantage gained from the position is not used improperly.*
- *Do not allow prejudice, conflict of interest or bias to affect your objectivity.*

Spectators & Volunteers

- *Respect the performances and efforts of all people.*

and

(2) AOCRA Member Protection Policy, Part 3.1 – Prohibited Conduct which states:



Prohibited Conduct

A Relevant Person or Relevant Organisation commits a breach this Policy when they, either alone or in conjunction with another or others, engage in any of the following conduct against one or more Relevant Persons or Relevant Organisations, in the circumstances outlined in clause 2:

- (a) Abuse;
- (b) Bullying;
- (c) Harassment;
- (d) Sexual Misconduct;
- (e) Unlawful Discrimination;
- (f) Victimisation; or
- (g) Vilification.

SCHEDULE 1 sets out examples of what may constitute Prohibited Conduct under this Policy.

SCHEDULE 1 - Examples of Prohibited Conduct

1. Abuse must be behaviour of a nature and level of seriousness which includes, but is not limited to:

- (a) physical abuse and assault including hitting, slapping, punching, kicking, destroying property, sleep, and food deprivation, forced feeding, unreasonable physical restraint, spitting at another person or biting;
- (b) sexual abuse including rape and assault, using sexually degrading insults, forced sex or sexual acts, deliberately causing pain during sex, unwanted touching or exposure to pornography, sexual jokes, using sex to coerce compliance;
- (c) emotional abuse such as repeated and intentional embarrassment in public, preventing or excluding someone from participating in sport activities, stalking, humiliation, or intimidation;
- (d) verbal abuse such as repeated or severe insults, name calling, criticism, swearing and humiliation, attacks on someone's intelligence, body shaming, or aggressive yelling;
- (e) financial abuse such as restricting access to bank accounts, taking control of finances and money, forbidding someone from working, taking someone's pay and not allowing them to access it;
- (f) neglect of a person's needs.

2. Bullying must be behaviour of a nature and level of seriousness which includes, but is not limited to, repeatedly:

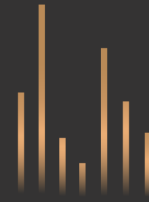
- (a) keeping someone out of a group (online or offline);
- (b) acting in an unpleasant way near or towards someone;
- (c) giving nasty looks, making rude gestures, calling names, being rude and impolite, constantly negative and teasing;
- (d) spreading rumours or lies, or misrepresenting someone (i.e., using their social media account to post messages as if it were them);
- (e) 'fooling around', 'messaging about' or other random or supposedly playful conduct that goes too far;
- (f) harassing someone based on their race, sex, religion, gender, or a disability;
- (g) intentionally and repeatedly hurting someone physically;
- (h) intentionally stalking someone; and
- (i) taking advantage of any power over someone else, but does not include legitimate and reasonable:
 - (a) management action;
 - (b) management processes;
 - (c) disciplinary action; or
 - (d) allocation of activities in compliance with agreed systems.

3. Harassment must be behaviour of a nature and level of seriousness which includes, but is not limited to:

- (a) telling insulting jokes about racial groups;
- (b) sending explicit or sexually suggestive emails or text messages;
- (c) displaying racially offensive or pornographic images or screen savers;
- (d) making derogatory comments or taunts about someone's race;
- (e) asking intrusive questions about someone's personal life, including his or her sex life;
- (f) sexual harassment or any of the above conduct in the workplace by employers, co-workers, and other workplace participants;
- (g) any of the above conduct in the workplace, based on or linked to a person's disability or the disability of an associate; and
- (h) offensive behaviour based on race or racial hatred, such as something done in public that offends, insults, or humiliates a person or group of people because of their race, colour or nationality or ethnicity.



19. AOCRA issued a Breach Offer and Sanctions to Mr Dorries under section 5.4 and 5.6 of the AOCRA Conduct and Disciplinary Policy. Clause 5.4 states:
- (a) If the Complaints Manager has determined Breach Offer is the most appropriate Process, the Complaints Manager must refer the Alleged Breach to the Decision Maker, who must:*
- (i) Determine the applicable Sanction that may in the Decision Maker's opinion be likely to apply if the Alleged Breach (or a complaint of a similar nature) was proven; and*
- (ii) Determine a discounted (reduced) Sanction to be offered to the Respondent, if any.*
- (b) The Decision Maker may, at their absolute discretion, require the Complaints Manager to seek further information from any person to assist them to decide the appropriate Sanctions under clause 5.4(a), including by conducting further investigation under clause 4.2.*
- (c) The Complaints Manager must issue the Respondent with a breach notice, using the template letter set out in Schedule 3..."*
20. The Policy also contemplates a Warning Procedure prior to issuing a Breach Offer and submissions were made by both parties about the two prior attempts to warn Mr Dorries on his conduct. It is the Tribunal's view that it is not mandatory to issue a warning before issuing a Breach Offer, so it is not a material issue in the Tribunal's consideration of this matter.
21. Mr Dorries sought to have the Alleged Breach and proposed sanction referred to a tribunal for determination under clause 6 of the AOCRA Conduct and Disciplinary Policy.
22. On this occasion, all the procedures as set out in the AOCRA Conduct and Disciplinary Policy appear to have been appropriately followed by the Complaints Manager when issuing the Breach Offer and as a member of AOCRA, there is no question that these Policies applied to Mr Dorries when the alleged conduct occurred. That being said, AOCRA could have engaged and communicated more deliberately with its membership when the new Policies were introduced in 2022, including training and education sessions for members to ensure the expectations and implications regarding codes of conduct were fully understood by all involved in the sport.
23. Accordingly, the matter before this Tribunal is (according to clause 6.1(a)(i) of the AOCRA Conduct and Disciplinary Policy), to arbitrate the Alleged Breach, determine whether a Sanction be imposed and if so, what Sanction in accordance with clause 5.6 of the AOCRA Conduct and Disciplinary Policy.
24. Clause 5.6 of the AOCRA Conduct and Disciplinary Policy provides:
- (a) Where a Respondent is found to have committed a breach of an Eligible Policy, the Decision Maker, NST and the Hearing Tribunal (if applicable) have absolute discretion to determine the appropriate Sanction imposed on a Respondent, including as to whether a combination of measures is to be imposed, and the terms and the period of any measures.*
- (b) Without limiting the discretion in clause 5.6(a), the Sanctions that may be imposed on a Respondent include, but are not limited to:*
- (i) A reprimand;*
- (ii) Verbal or written apology;*
- (iii) Direction to attend counselling or training to address their behaviour;*



- (iv) Suspended sentence and/or good behaviour period;*
- (v) Removal of accreditation;*
- (vi) Removal of awards (such as life membership);*
- (vii) Exclusion from a particular event or events, competition or activity;*
- (viii) Suspension of membership from AOCRA Ltd or other Sport Organisation and any other Members or Affiliates;*
- (ix) Suspension from such activities or events held by or under the auspices of AOCRA Ltd or other Sport Organisation;*
- (x) Suspension for a specified period and/or termination of any rights, privileges and benefits provided by AOCRA Ltd or other Sport Organisation;*
- (xi) Expulsion from a Sport Organisation; and/or*
- (xii) Any other form of discipline that is considered appropriate.*

(c) Without limiting the discretion afforded in clause 5.6(a), the following factors will be considered when determining the appropriate Sanction:

- (i) The nature and seriousness of the behaviour or incidents;*
- (ii) The considerations (if any) of the Complainant;*
- (iii) The contrition, or lack thereof, of the Respondent;*
- (iv) Any Provisional Action taken in relation to the Alleged Breach;*
- (v) The effect of the Sanction on the Respondent including any personal, professional, or financial consequences;*
- (vi) If there have been relevant prior warnings or disciplinary action against the Respondent;*
and
- (vii) If there are any aggravating or mitigating circumstances.*

(d) If there is more than one breach of an Eligible Policy, where appropriate, the Sanction may be imposed having regard to all the breaches considered together, and the seriousness of the overall conduct in question.

(e) Sanctions imposed under this Policy shall commence from the date of the decision, unless otherwise directed.

MAIN SUBMISSIONS OF THE PARTIES & MERITS

- 25. AOCRA is seeking for Mr Dorries to be sanctioned for the breach as outlined in the Breach Offer.
- 26. Mr Dorries is seeking for the Alleged Breach to be dismissed.
- 27. The Alleged Breach in the Breach Offer relates to the social media comments only – making a social media comment that was “discourteous, misrepresenting and defamatory to AOCRA officials”, and within that comment making “misleading, incorrect and malicious comments”. But the rationale for the Breach as provided in the Breach Offer does not refer to the social media comments but rather is limited to occasions when Mr Dorries’ is alleged to be “spreading spurious information and its resultant disharmony in the sport” and the assertion that these verbal discussions should be characterised as warnings relevant to the breach and sanction imposed.



28. The substance of Mr Dorries' submissions appears to provide evidence to support his view that the warning conversations were false and should not be considered as a warning because they were not put in writing. Further, because the comments on social media were based on truthful conversations he had with other members and combined with his personal views, he was merely expressing his opinion based on his facts and made in the best interests of the sport – to hold AOCRA accountable for their decisions.
29. Mr Dorries' submissions included statements from multiple people to support his case that the Breach Offer was based on false claims. That is, his intentions (both in discussions with other members and in the social media posts) were to raise awareness of some issues other members had raised with him and any comments made by him were simply intended to address the underlying issues AOCRA had created through their poor decisions. Further, Mr Dorries' frustrations (real or perceived) that AOCRA would not listen to his or other members' feedback on important matters like age eligibility as it related to national selections, led him to eventually take to social media in an effort to be heard and to drive positive change for the sport in the areas most important to him and his club members.
30. Mr Dorries and AOCRA made submissions around the “warning” discussion that occurred on 1 December 2022. A video of the discussion was provided as evidence and viewed by the Tribunal. Irrespective of whether this meeting or other similar discussions occurred or did not occur; the Respondent's submission is persuasive – that there is no requirement for a member to be provided a warning prior to a Breach Offer being made. While it is a factor to be considered when determining the appropriate sanction, nothing turns on whether Mr Dorries was given a warning or not prior to the Breach Offer.
31. Mr Dorries submissions assert that the social media post was limited to a private friendship group of 16 participants and, in essence, were not defamatory in nature because they were “honest factual feedback” and “justified as true or substantially true insofar as it consisted of expression of honest factual feedback and “fair comment” on a matter of public interest, not actuated by malice and based on facts (that he) honestly believed to be true”.
32. On balance, I favour the Applicant's submissions to the effect that his intention (in both discussions and social posts) was aimed at improving the sport and primarily motivated to see that the AOCRA leadership be more transparent in decision-making, have greater accountability, consistency in rule enforcement, strengthening whistle-blower protections, provide more training and education on good governance, a separation of powers to prevent conflicts of interests and broader stakeholders voice in key decision making. Submissions include documents and statements from witnesses that support his perspective in this regard.
33. Mr Dorries submissions go on to assert that members of the AOCRA Board are using the dispute system to disadvantage certain crews. While these assertions may have merit, the behaviour of the AOCRA Board members is not the subject of a complaint. So, while it is included as evidence of Mr Dorries' factual belief, it is not entirely relevant for the Tribunal to consider. Further, as asserted by the Respondent, the appropriate manner for Mr Dorries to raise any such concerns regarding the conduct of the AOCRA office-bearers is under the same complaints procedures as governs this dispute. If Mr Dorries is the victim of bullying, harassment, victimisation, and discrimination by AOCRA as is asserted, then this should be the subject of a complaint by Mr Dorries or other AOCRA members privy to the incidents. Similarly,



if the views asserted by Mr Dorries are widely held by many members, then the most appropriate way to effect change is for the membership to utilise the democratic process (as imperfect as it is within sports membership associations) to vote for new office-bearers in AOCRA.

34. Conflict and free expression of opinions is an important part of any democratic society. This includes decisions made by sporting organisations around how best to administer and govern their sport. The AOCRA Board is entitled to set eligibility rules to ensure the sport's long-term interests are protected. The root of this issue appears to arise from the process of introducing new rules and insufficient consultation in arriving at these new rules, and the alleged inconsistent enforcement of those rules. While it may seem removed from the issue before the Tribunal, I am not satisfied that there was not some contributory conduct on the part of the AOCRA President that led to the actions of Mr Dorries. That is, but for the series of statements, decisions, judgements, and actions of some AOCRA leadership alleged by Mr Dorries in the lead up to his social posts, he may not have resorted to posting the comments on social media. In simple terms, it is important for the AOCRA leadership to reflect on the underlying reason why Mr Dorries posted on a social platform in order to be heard on this issue. How might the complaints procedure be reviewed to ensure feedback from the membership can be better heard and considered appropriately in making important decisions?
35. As with any community of diverse people, sporting organisations may be united in their passion for the sport but not everyone will be united on how things should be done. The same is true in workplaces, playgrounds and social forums. A sporting board is responsible for determining what rules and behaviour are acceptable for THAT particular sport. The AOCRA Board (as the fairly elected representatives of the sport) has tried to determine what these rules should be. The By Law 12 and Code of Conduct adopted in October 2022 was clearly designed to reflect the aspirational standards of conduct for the sport. The problem seems to arise with a perceived inconsistency in implementing the standards and sanctions imposed for alleged non-compliance. While it is admirable to set such high standards of conduct for its members, some degree of reasonableness needs to be applied. I'm not sure it is reasonable to expect 100% compliance by everyone at all times. So, the question turns to appropriateness and proportionality in all the circumstances.
36. So, the question before the Tribunal is whether there has been a breach of the Policies and Code of Conduct as adopted by AOCRA at time the social posts were made by Mr Dorries.
37. AOCRA made helpful submissions that provided context on the various decisions made by the AOCRA leadership and circumstances leading up to the social media posts by Mr Dorries. Focusing on the Breach Offer, AOCRA submissions clarified that the social comments posted by Mr Dorries were not limited to a private chat forum but was a public post open for anyone to read and was copied to another Facebook page with over 2,400 followers.
38. AOCRA submissions clarify that on numerous occasions, Mr Dorries did not utilise the proper channels to challenge or protest decisions made regarding eligibility, selection and enforcing the rules. The submissions contained evidence regarding the issuing of warnings in relation to his conduct prior to issuing the Beach Offer, and I favour the Respondent's view that a warning is immaterial to finding someone breached the By Laws and Code of Conduct. AOCRA note that Mr Dorries has not offered an apology nor seem able to have him understand the



implications of his approach when he takes to social media instead of using the traditional dispute/complaints channels.

39. The AOCRA submissions highlight the importance of recognising that its Board are elected volunteers who give of their time freely and contribute to the sport while managing family and other work. So, subjecting them to public criticism under the grounds of “free speech” is not fair nor conducive to the sport being able to manage its affairs or leadership in the long term. Accordingly, it is asserted that Mr Dorries’ conduct cannot go unsanctioned as it may incite others to do the same, which adversely affects the reputation of the sport and its officers.
40. I agree with the Respondent’s submission that Mr Dorries’ conduct in posting the comments on social media falls within the definition of “Abuse” as defined in Schedule 1 of the AOCRA Member Protection Policy. Similarly, his conduct in posting the comments on social media falls short of the code of conduct framework that outlines the standards of behaviours expected of all members as contemplated by section 5 of the Code of Conduct – specifically “*use of social media to bully, call out, or harass any other member or official is strictly banned*” and “*Respect the rights and dignity of every person regardless of gender, race, ethnicity, or sexual orientation including teammates, opponents, coaches, and officials and never engage in behaviour that abuses, provokes, or harasses others, this includes but is not limited to social media.*”
41. A leading Australian case involving social media is *Nationwide News v Voller* (2021) HCA 27. Although distinguishable on its facts, the underlying principles are applicable in the current circumstances. One broad principle was the court’s openness to consider those who facilitated or encouraged the posting of comments by others as having a level of responsibility for those comments. In short, each comment posted aides further publication. This underlying principle remains analogous: the nature of social media activity is that posting or sending messages invites future activities, and thereby facilitates spread.
42. In the context of this case, Mr Dorries would have known that his comments had the possibility to be spread to a wider audience as evidenced from the post going from 16 members to 2,400 in a short time. And notwithstanding his intention, the impact of his conduct was discourteous to AOCRA at best, and malicious at its worst.
43. While sympathetic to AOCRA’s prior attempts to resolve the matter amicably with Mr Dorries, and a need to take action to enforce the Code of Conduct, the Tribunal is not convinced that the sanction imposed by AOCRA was entirely reasonable in the circumstances. The duration of 1 year seems punitive in nature when considering all the evidence provided. Other Sanctions that could have been imposed under clause 5.6(b) include a reprimand, verbal or written apology, direction to attend counselling or training, suspended sentence or a good behaviour bond. These sanctions do not seem to have been contemplated at any stage of this dispute and in the case of social media commentary, would generally be considered appropriate, with increased sanctions in the event of non-compliance.
44. Further, the Provisional Action imposed on Mr Peter Dorries by the AOCRA included immediate (a) suspension of AOCRA membership (b) suspension of coaching accreditation and (c) not to attend AOCRA events in any capacity (including as a volunteer). This suspension was in place from 6 May until 25 May 2023. It was lifted by AOCRA following the determination of the



Tribunal in the Provisional Action. As such the Applicant has already served 19 days of suspension.

THE TRIBUNAL THEREFORE DETERMINES:

45. A sanction of 60 days suspension of Mr Peter Dorries' (a) AOCRA membership and (b) suspension from holding an AOCRA coaching accreditation or leadership position for breach of the AOCRA By Law 12 and Code of Conduct.
46. Mr Dorries' period of provisional suspension (19 days) is considered as time served.
47. As such, Mr Dorries is free to resume his AOCRA membership, coaching and participation in competitions from 12 October 2023.
48. It is the Tribunal's recommendation that AOCRA provides its membership with education or training on appropriate and inappropriate conduct, especially regarding social media, to ensure people are aware of its policies and Code of Conduct.
49. Section 46 of the NST 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 August 2023



Fiona de Jong