

**Circular 06/2010**



**3 September 2010**

**TO: ALL BOARD MEMBERS, COMMUNITY DEVELOPMENT OFFICERS, LIFE MEMBERS, CENTRE SECRETARIES, UMPIRES COMMITTEE, DISTRICT UMPIRES SECRETARIES, SELECTORS, JUDICIAL COMMITTEE**

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**Bowls New Zealand Reorganisation:**

The retirement of Sharon Sims as National Coaching Coordinator, the change of Role for Allan Griffiths and the commencement of the Regional Service Centre network has necessitated some changes of duties for staff at the Bowls New Zealand National office.

The following changes have been implemented from 1<sup>st</sup> September 2010.

**Allan Griffiths** has agreed to a new employment role as Tournament Director and will be employed in that role overseeing all National Events – Allan will be employed from 1<sup>st</sup> October to 30<sup>th</sup> April during each playing year.

**Sam McKean** has taken over some of the event preparation work that Allan previously handled and has also taken on a greater support role on the High Performance area. Sam will continue to carry out her current roles in finance and administration.

**Rob Pidgeon** will move to a new role as National Program Manager and will manage the Coaching Plan, Youth Plan, Umpires Plan and the Greens Contract with NZ Sports Turf Institute. For a period of time Rob will continue to provide support in the Marketing/Communications area but we have contracted on a part time basis our two Massey Students (Amy Williams and Nicole Fearon) to assist Mike O’Keefe in this area.

In the Technical Coaching Area I have contracted Ann Muir, Sharon Sims and Jose Uren to be National Coach Trainers and they, along with Regional appointees and Rob will ensure that the training component of the Coaching Plan will continue to be rolled out in a seamless manner.

I am pleased to say that all appointees are keen to carry out these roles with enthusiasm and look forward to being a key link with the Regional Service Centre Structure.

***An Organisational Chart for the National Structure is attached.***

**Judicial Decision:**

Attached is the Judicial Committee decision relating to an appeal by Mr David File against Bowls-Gisborne East Coast Centre.

**Suspensions:**

We have been advised by Island Bay Bowling Club – Wellington that Mr Les Whittington has been banned for life from this Club.

## **REMINDERS:**

### **2010 National Have A Go Day – October 10**



2009 was the first National Have a Go at Lawn Bowls Day. This saw over 89 clubs register for the promotion, with the majority able to coordinate with the National Day. We're seeking your involvement in this year's National Have A Go Day on SUNDAY OCTOBER 10. It is encouraged that Clubs coordinate within their Centre for maximum effect.

We would like to provide your club with marketing and promotional support. There is no charge to your club. The only criteria is to utilise the "Have A Go" logo. The aim is to get more people playing bowls and to raise our sport's profile.

***If your club is interested in participating, please register online through the Bowls NZ website [www.bowlsnz.co.nz](http://www.bowlsnz.co.nz) by no later than 10 September 2010, email [info@bowlsnz.co.nz](mailto:info@bowlsnz.co.nz) or contact your Bowls NZ Community Development Officer for details.***

We currently have 160 clubs registered – a full list of participating clubs is available to be viewed on [www.bowlsnz.co.nz](http://www.bowlsnz.co.nz)

### **Mates In Bowls – Can You Handle the Jandal?**

The summer season is approaching and Mates In Bowls is now entering its third summer. Is your club onboard with this attractive national initiative, aimed at attracting a new market of casual participant to our sport? For our existing MIB Clubs, it is time to register again and start planning for success.

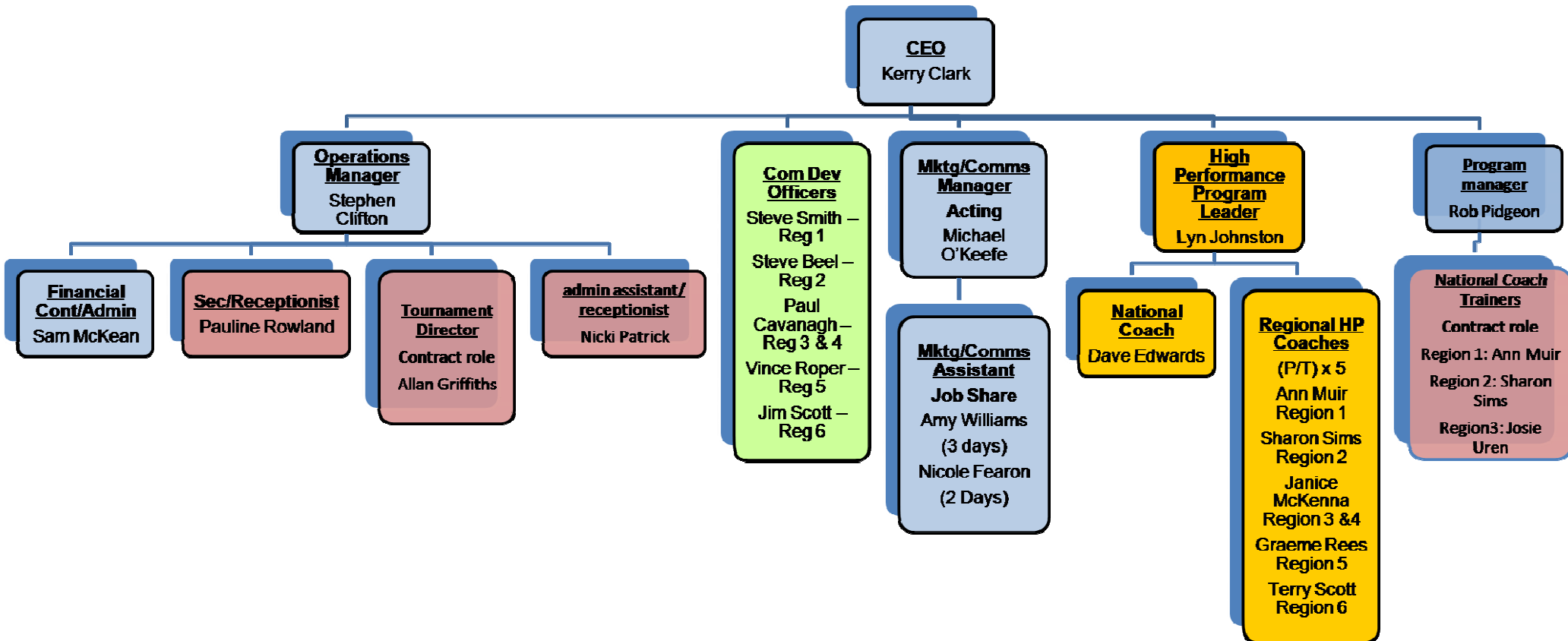


For more information on how your club can "Make It Happen", contact your Bowls NZ Community Development Officer for details.

A handwritten signature in black ink, which appears to read 'Kerry Clark'.

**Kerry Clark OBE  
CHIEF EXECUTIVE**

# Organizational Chart: Bowls New Zealand August 30<sup>th</sup> 2010



# **BOWLS NEW ZEALAND**

## **Decision of the Judicial Appeal Committee**

**IN THE MATTER** of an Appeal against the finding of the Bowls Gisborne East Coast Judicial Committee

**AND** David File (Appellant) (Represented by Counsel, Mr. Jai Moss)

### **DECISION**

Date: 2nd September, 2010

This was an appeal lodged by Mr. David File against a 10 year suspension imposed on him by a duly appointed Judicial Committee of Bowls Gisborne East Coast Bowls (BGEC) following a report of misconduct on his part during play at the Burton Cup Easter Men's Fours being played at the Kahutia Bowling Club between the 2<sup>ND</sup> and 5<sup>TH</sup> of April 2010

### **FACTS.**

As a result of a report filed by the Tournament Controller, Mr. Martin Christensen, three separate complaints were lodged alleging misconduct on the part of Mr. File. Two of these involving his actions in defaulting his team before qualifying rounds were completed and unruly behavior on the green were dealt with by the BGEC Judicial Committee and are not the subject of this appeal. The third area of complaint alleged that he undid his trousers, exposed himself and made masturbating type actions. It was this misconduct that was met with a 10 year suspension pursuant to Regulation 4.4 (a) (IV) which effectively suspends his membership of all clubs and Centres affiliated to GBEC

The Judicial Committee appointed to deal with the complaints held a preliminary hearing on 10<sup>th</sup> May, 2010. Mr. File was, by written notice, invited to attend. He failed to respond or to attend. A further letter was personally served on him on 30<sup>th</sup> June advising that due to the seriousness of the allegations another hearing would take place on 8<sup>th</sup> July but again Mr. File failed to take up the invitation to attend or reply to the complaints. It was at that hearing that the suspension, now the subject of this appeal, was imposed.

The allegation of exposure was subsequently admitted by Mr. File both in the media and in his written statement provided for the purposes of this appeal.

The issue which most concerned us was the location and circumstances of this act or acts of exposure. In his statement of facts Mr. File indicated that he told a friend that he was playing like a "dickhead" and took out his penis to illustrate his remark. This occurred in the locker room in front of three or four males and was "Just a silly joke".

The BGEC Judicial Committee came to quite a different finding. They found that on the evidence before them there were two acts of exposure, one occurred on the green during a game and one in the Clubhouse. The complaint they dealt with was the one that occurred on the green. We believed that it was essential that we resolve this conflict in order to properly assess whether the penalty imposed was appropriate or not. To that end we looked closely at the evidence which was before the BGEC Judicial Committee.

There were two sources of evidential material available. The first was the initial report filed by Mr. Christensen as Tournament Controller. In it he stated that two playing members reported to him that Mr. File undid his trousers exposing himself and making masturbating actions. One of these did not wish to be named and the other mentioned he was told of the incident. Mr. Christensen then wrote that he thought the latter member might be willing to expand his explanation of the incident. The second source was an affidavit filed by Mr. Angus McCabe. In it he stated *“that during the Burton Cup Tournament..... David File exposed his penis to a number of people during a verbal exchange with players and spectators”*

We made the assumption that Mr. McCabe was the second playing member who had reported to Mr. Christensen. We attempted to clarify that matter with a written request for clarification from the BGEC Judicial Committee but were advised to read the initial report of the incident. We have, therefore, agreed that our initial assumption was correct. This means that there were no eyewitnesses who had given evidence for consideration by the BGEC Judicial Committee. We also note that despite the assertion that Mr. File exposed his penis to a number of people none of them have made any complaint or come forward to give evidence..

The inherent unreliability of hearsay, rather than direct, evidence has long been recognized in our Courts and although we, as a Judicial Committee, are able to treat this evidence as admissible, hearsay evidence must always be regarded with the utmost caution. We are somewhat puzzled that on the evidence before them at that time and having received no account from Mr. File that the BGEC Judicial Committee was able to find there were two acts of exposure. Further, both the BGEC Judicial Committee and we, in its and/or our determination of matters before us are entitled to come to a decision based upon what is thought to be the balance of probabilities rather than being satisfied beyond reasonable doubt.

In all the circumstances and employing the former standard of proof (balance of probabilities) we are not satisfied that it was more probable than not that an act of exposure by Mr. File occurred on the playing green in front of players and spectators.

## **BREACH OF NATURAL JUSTICE**

On behalf of Mr. File it was submitted that the failure to adequately advise him what penalty he could be liable for and what evidence was available constituted a breach of natural justice in that had he been properly informed he would have, in all likelihood, taken appropriate steps to respond to the complaints against him.

While there is some merit to this submission in that the BGEC Policies and Procedures provides some mandatory requirements as to what information should be provided to an affected party we do not think it is a fatal lapse as Mr. File has to be considered as being partly the author of his own misfortune. Despite being informed of the serious view being taken of his misconduct he chose to ignore it. In the end, had David File

managed to persuade the BGEC Judicial Committee that his version of events was the correct one, he would be in the same position as he is now based on our stated findings on the facts.

## **PENALTY**

Having found that there was insufficient evidence to find that David File exposed himself in any other place than the locker room of the Kahutia Bowling Clubhouse we believe that a penalty of 10 years suspension as imposed by BGEC Judicial Committee is totally out of proportion to the seriousness of his misconduct. Accordingly, we substitute a penalty of a fine of \$500 which we believe more accurately reflects the nature of the misconduct as we have found it. The suspension imposed under Regulation 4.4(a) (iv) will, however, remain in force until the fine is paid.

Finally, this Committee notes with concern the growing tendency for talented bowlers to seek to excuse improper, unethical or unacceptable behavior or language because of their talent. In this case too, it may well be that a talented bowler was so affected by liquor (and/or a change of character brought about by it) as to realise that his actions could never be interpreted as “a silly joke”; but in fact were quite distasteful, wherever they were committed. If that is so, there is a lesson to be learnt.

Kevin Holland (Chairman)

Neil McGillivray

Pat O’Dea

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