

# Disputes Resolution Authority

An C6ras Eadr6ana

**DRA 23 of 2019: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Between:*

**COISTE EISTEACHTA LAIGHEAN (LEINSTER HC)**

*Claimant*

*v.*

**AN L6AR CHOISTE ACHOMHAIRC (CAC)**

*Respondent*

*And*

**LONGFORD GAA**

*Interested Party*

*And*

**EUGENE MURTAGH**

*Interested Party*

**Hearing:** Louis Fitzgerald Hotel, Newlands Cross, Naas Rd, Dublin 22 at 7.30pm on  
17 July 2019

**Tribunal:** Micheal O'Connell SC, Tom Barry and Seamus Woods

Secretary to the DRA, Rory Hanniffy BL

**VERDICT:** Claim dismissed.

**KEYWORDS:** *Appeals - time limits - substantive decision and consequential decision - powers of sub-committees - whether units outside a County may challenge authority of sub-committees within a County - whether non-voting county secretary a Full Member of County Committee - fair procedures - circulation of legal advice - role of Rules Advisory Committee.*

**LIST OF ATTENDEES:**

Claimant - Leinster Hearings Committee:

Dick Butler  
John Byrne

Respondent - CAC:

Brian Rennick  
Declan Hallissey

Interested Party - Longford GAA:

Eamonn Reilly  
Bríd McGoldrick  
Peter O'Reilly

Interested Party - Eugene Murtagh:

Eugene Murtagh

## 1. FACTUAL BACKGROUND

- 1.1. At its meeting of **26 September 2018** Longford County Committee ("*Longford CC*") fixed the date for the annual convention for 13 December 2018.
- 1.2. On **30 October 2018**, notice was given to the clubs by the secretary of Longford CC of the annual convention to take place on "*13 December 2017*" [*sic, recte "2018"*] and nomination forms for elections to various positions within and on behalf of the County Committee were attached to that notice with a stipulation that they be returned not later than 9pm on 13 November 2018. The nomination form attached to the email identified various positions within Longford CC and also various representative positions to be filled by election. In particular, provision was made for nominations for one Representative to Central Council and two Representatives to Leinster Council.
- 1.3. A nomination from Ballymahon CLG has been provided. It is undated, but a chronology document provided in our papers suggests that it was delivered on **13 November 2018**. For the position of Central Council Representative, Mr Derek Fahy was nominated, and for the positions of Leinster Council Representatives, Mr Eugene Murtagh was nominated.
- 1.4. On **13 November 2018**, a County Committee meeting we held (evidently prior to the 9 pm deadline for nominations).
- 1.5. On **14 November 2018**, a phone call was had between the Secretary of the County Committee ("*the County Secretary*") and Mr Murtagh, the contents of which are disputed. The County Secretary stated that Mr Murtagh advised him that he was to speak to Mr Fahy, and that he would not be running for the position of Leinster Council Representative but only for the position of Central Council Representative (we have not seen a form nominating him for Central Council Representative, but we assume that another club issued one). Mr Murtagh disputed this narrative and said that he advised the County Secretary that he would not be canvassing for the position of Leinster Council Representative, but not that he was withdrawing his candidacy. It is worth noting at this point that

- for reasons that emerge - no decision-making committee involved ever ruled upon this dispute of fact.

- 1.6. Although we have not seen it, it appears from one of the chronology documents in our papers that Mr Derek Fahy sent an email to the County Committee advising that he was not seeking election as representative to Central Council. It is also said that Mr Gerry Hagan communicated that he was not running for the positions of representative to Leinster Council. It is also said that Martin Skelly, another nominee, advised on 1 December 2018 (orally) that he was withdrawing from the Central Council Representative election. We have not seen all of the nomination documents that would have been sent to the County Secretary but presumably all of these individuals had been formally nominated.
- 1.7. By email dated **7 December 2018**, all clubs were sent a soft copy of the "*Convention Book*" which contained details of the motions and other materials necessary for attendees at the County Convention. This identified the nominees for the various positions that were up for election, and as far as is relevant here:
  - (a) For the position of Central Council Representative, there were three nominations, Brendain MacGiolla Mhuire, Gearóid Ó hÁgáin and Eoghan Ó Muireartaigh.
  - (b) For the position of Leinster Council Representative, Deric Ó Fathaigh was the only nominee.

It does not appear to be contested that all clubs were sent the convention booklet.

- 1.8. Six days later, on **13 December 2018**, the County Convention was held. We have been provided with the minutes of the Convention and the attendance sheet. The attendance sheet shows that Ballymahon, who nominated Mr Murtagh, was represented. It appears from the minutes and attendance sheet that Mr Murtagh was in attendance and he confirmed that at the hearing before us.

- 1.9. The minutes of the County Convention record as follows in relation to the election of Representatives to Central Council and Leinster Council:

*“Teachta do Árd Chomhairle – as Micheál Mac Concharraige 5 year term had expired a vote was taken between Gearóid Ó hÁgáin (proposed by Briain Ó Donnchú (Emmet Óg), seconded by Sean Ó Dúda (Emmet Óg)) and Eoin Ó Muireartaigh (proposed by Proinsias Mag Raghnaill (Seán Ó Conghaile), seconded Micheál Ó Dughail (Clairseoirí Maigh Dhuibh)). G. Ó hÁgáin was declared the winner following a secret ballot on a count of 48 as against 31 for E. Ó Muireartaigh with one spoilt vote.*

...

*Teachtaí Do Comhairle Laighean – Deiric Ó Fathaigh being the sole nominee was deemed elected unopposed.*

*As there remained a vacant position, the Cathaoirleach advised convention that the process of electing a second representative on Provincial Council would be determined by Coiste Chontae at its first meeting of the New Year”*

- 1.10. There is no record in the minutes (and it does not appear that the case was ever made) that Mr Murtagh raised objection to the proposal or statement that a vacancy remained for the second position as Leinster Council Representative.
- 1.11. It appears that a conversation was had the following day on **14 December 2018** between Mr Murtagh and the County Secretary querying why his name was not in the convention book and stating that he had not withdrawn his candidacy but had advised that he was not canvassing for it. The chronology (which we assume to be that of the County Secretary) records that Mr Murtagh was asked why he did not bring that to the attention of the Chairperson following the circulation of the Convention Book or on the night. It appears that on the same day, a conversation was had between Mr Murtagh and the Chairperson of the County Committee where in Mr Murtagh sought a meeting regarding his nomination for representative to Leinster Council. As these discussions were not confirmed at the hearing we do not attach any weight to them, but mention them as part of the chronology for completeness.

- 1.12. On **14 January 2019** a meeting of the executive of the County Committee was held and it deferred the issue of the election of a second Leinster Council Representative to the next County Committee meeting.
- 1.13. A meeting was held between Mr Murtagh and the Chairperson and Secretary of the County Committee on **17 January 2019**.
- 1.14. On **30 January 2019** a meeting of Longford's Management Committee was held which recorded that clarification had been sought from Croke Park regarding the withdrawal of nominations and we have been supplied with a copy of the query and response. The query was raised by the Chairperson of the County Committee and the response was received from the Operations Manager of the Association. The response was that names do not have to be withdrawn by writing as a requirement or rule but querying whether there was anything in the County's Bye-Laws about it.
- 1.15. The next County Committee meeting was held on **4 February 2019** and the minutes, so far as relevant here, provide as follows:

*"8.6.1 On the proposal of P Ó Tuachair (Emmet Óg) seconded by M de Burca (Meathas Troim), the meeting agreed that nominations for the position of representative to Provincial Council would close on Tuesday 19<sup>th</sup> February next and that a special convention to appoint same would take place on Thursday, 21<sup>st</sup> March.*

*On foot of a query from A Ó Fallúin, the Cathaoirleach advised that there was no nominee at Convention for the position."*

- 1.16. On **6 February 2019**, Mr Murtagh issued a letter to the secretary of Leinster Council stating his wish to appeal against *"the decision of Choiste Chontae Longfort CLG taken at a meeting on 04 Feabhra 2019 determining that a vacancy has arisen in the County's representation on Provincial Council and to commence the process of filling the position."* The ground stated for the appeal is that *"such decision is in breach of Rule 3.11(e) Official Guide 2018 as I contend that I am duly elected representative together with one other duly elected representative on Provincial Council for Longford following County Convention referred to. I have not since resigned or been removed."*

The letter goes on to set out the events leading to the County Convention and asserted that Mr Murtagh *“did not, at any time, communicate with Choiste Chontae Longford CLG in accordance with Rule 4.6(a)(ii) indicating that I was withdrawing my name as nominee for the position of representative on Provincial Council.”* It then requests that Longford CC would provide him with copies of nomination papers received prior to the County Convention indicating his nomination for the position of Provincial Council Representative together with copies of any notice or other communications allegedly received from him indicating that he was withdrawing his nomination from the position referred to.

1.17. On **13 February 2019** the County Secretary provided various documents, including the nomination form from the Ballymahon club. Obviously, there was no written document withdrawing Mr Murtagh’s nomination.

1.18. The appeal hearing before Leinster Hearings Committee, the Claimant in this arbitration (*“LHC”*) proceeded on 18 February 2019 and on 19 February 2019 LHC issued a decision allowing Mr Murtagh’s appeal and directing Longford CC to reprocess the matter *“at a specially convened Longford Convention with Eugene Murtagh as a nominee for the vacant position of delegate to Leinster Council.”* The only reason given for the decision was as follows:

*“Coiste Eisteachta Laighean found a clear infringement of Rule 3.11(e) (T.O. 2018). The Appellate Hearings Committee decided that the appeal was upheld.”*

Minutes of the meeting were, it appears, enclosed with the letter but these do not elaborate upon the grounds for upholding the appeal.

1.19. On **19 February 2019**, a meeting of the County Committee was held and under the heading *“Special Convention”* the following was recorded:

*“The Cathaoirleach advised that E. Ó Muireartaigh (Seán Ó Conghaile) had, following the decision taken at the last meeting of Coiste chontae to seek nominations and to hold a special convention to fill remaining position on Provincial Council, appeal to this decision to Coiste Éisteachta Laighean and sought an oral hearing. This hearing was held last night and a decision was made to uphold the appeal. This decision was communicated this afternoon.*

*A meeting of Coiste Bainistíochta was held earlier this evening where it was agreed to seek the following permissions from Coiste Chontae:*

*1. Seek clarification from Coiste Éisteachta Laighean on their decision – this was agreed on the proposal of A Ó Dunabhra (Naomh Brid, seconded by S Mac Ruairi (Flipeadoirí Longford).*

*2. Following study at the decision of Coiste Éisteachta Laighean to appeal same if necessary. P Ó Cathall (Carraig Éamonn) stated that Coiste Bainistíochta could not do this and asked what the clarification was being sought on. He further stated that a meeting of Coiste Chontae should be called to make a decision on an appeal or otherwise when the clarification was received and the questions raised and the clarification received should be forwarded to members. C Ó Muiri went through the difference between seeking clarification and making an appeal and the time constraints involved were pointed out to the meeting.*

*On the request of P Ó Cathall, the Cathaoirleach read out the appeal of E. Ó Muireartaigh and the decision of Coiste Éisteachta Laighean. "*

- 1.20. Separately, it was recorded in the minutes that Mr Murtagh sought the names of those nominated for the position of Provincial Delegate (presumably for the scheduled election). He was advised that given “*the current situation*” there would be a meeting of the Management Committee where a decision would be made on that request.
- 1.21. On **20 February 2019**, clarification was sought by the County Secretary from LHC in relation to the decision, in essence querying whether the direction given in the decision of LHC permitted other nominees, or whether Mr Murtagh was to be the sole nominee for the re-processing directed. In response on **21 February 2019**, LHC clarified in effect that Mr Murtagh was to be the only nominee.
- 1.22. On **22 February 2019** an appeal was submitted to the Central Appeals Committee, the Respondent in this Arbitration (“CAC”) on behalf of Longford CC against the decision of LHC.
- 1.23. A special meeting of Longford CC was held on **27 February 2019** and a debate was had about the decision of LHC and whether it should be appealed. It is not stated in the minutes whether the meeting was advised that the appeal had already been lodged, but presumably it was understood, since any administrator



within the Association knows that a three-day time limit applies to bringing an appeal. Ultimately, a secret ballot was held on foot of which the proposal to appeal the decision was carried.

1.24. Another chronology document provided to us shows that the County Secretary was making enquiries at this time with the Rules Advisory Committee (*“the RAC”*) regarding the validity of an appeal lodged by Management Committee pending authorisation from the County Committee in full session.

1.25. Eight grounds are set out in the appeal lodged with CAC, but, as we read them, the points made boil down to the following complaints:

(a) That the appeal of Mr Murtagh was out of time, since the substantive decision against which he appealed had been made at the County Convention, and that he had had notice of the removal of his name from the ballot since 7 December 2018.

(b) That the clarification given by LHC was inconsistent with the decision made by it.

(c) That LHC did not have any jurisdiction to direct the holding of a Special Convention.

1.26. The appeal was heard before CAC over three evenings, **12 March 2019, 11 April 2019** and **14 May 2019**. Longford CC was represented by the County Secretary and the Vice Chairperson. Leinster Hearings Committee was represented by its secretary and chairperson. Mr Murtagh appeared as an interested party. We have been provided with draft minutes of the meetings in question.

1.27. On the first hearing date, **12 March 2019**, LHC raised issues as to the validity of the appeal, grounded in what was alleged to be a lack of authority to submit the appeal on 22 February 2019 and a lack of authority on the part of the County Secretary to appear on behalf of Longford CC. The minutes supplied to us indicate that some complaint was made about communications between Leinster

County Committee and the RAC. In light of issues raised by Leinster Hearings Committee as to *“whether the RAC were acting within rule”* and what is recorded as the CAC’s own concern in connection with Rule 3.53, the matter was adjourned *“to seek clarification from an appropriate higher authority”*. No procedure is set out as to what was to be done with that clarification.

1.28. Following this meeting, advice was sought from the solicitors to the Association, who reverted by letter dated **5 April 2019** (*“the Advice Letter”*). As a very broad summary, the Advice Letter states the rather obvious point that the RAC has a purely advisory function and that its decisions and advices have no particular status. It was recommended that the Advice Letter be circulated to the affected parties before a decision was made on the issue in question.

1.29. The appeal resumed on **11 April 2019** and the minutes record that the Advice Letter was considered by the CAC before the parties were invited into the room and that a decision was made to dismiss the preliminary issue raised about the RAC. It is common case that the letter was circulated after the decision was made, contrary to the recommendation that it be circulated before a decision was made. It seems that further discussion was had about the role of the RAC and LHC stated their unhappiness with the advice received. The substantive appeal continued, and attention turned to the further preliminary issue raised by LHC regarding the authority of the County Secretary to represent Longford CC. Some discussion was had about that, and the CAC ruled against LHC on issue.

1.30. It appears that the appeal was then adjourned again, and it resumed on **14 May 2019**, when all remaining issues were aired.

1.31. On **15 May 2019**, CAC issued a decision in brief terms, stating that *“the Appeal is upheld. The decision appealed against is annulled and we direct that no further action be taken by the Coiste Éisteachta Laighean. As a scenario as outlined in Rialachán 3.11(e) T.O. 2019 currently exists, Coiste Chontae Longfort shall proceed to fill the vacancy in accordance with Rialacha 3.11(e) & (f) T.O. 2019. A full written decision will follow shortly.”*

- 1.32. Several communications after that date were put before us, one of what became the subject of complaint, namely an exchange of emails on **28 May 2019**, when, in response to a query from Longford CC, the Acting Chairperson of the CAC replied (without copying LHC) apologising for the delay and promising the decision in a short period.
- 1.33. The “*full written decision*” was ultimately delivered to the parties concerned on **10 June 2019**. It set out the background, identified the preliminary points raised and the decisions thereon, and gave the reasons for the substantive decision. In summary, the appeal was upheld because it was held that LHC has misapplied Rule 7.11(f) by permitting the appeal to proceed when the decision under appeal was made on 13 December 2018, more than three days before the notice of appeal was lodged. An “*additional observation*” was included that insofar as LHC’s decision was reliant upon a conclusion that no written withdrawal of Mr Murtagh’s nomination for the position of Leinster Council representative, it proceeded on the incorrect assumption of a breach of a rule which did not exist (i.e. one which required a written withdrawal of a nomination).

## **2. GROUNDS OF CHALLENGE**

- 2.1. Against that decision the LHC has brought a legal challenge. The layout of the grounds of challenge is not entirely clear but nine points emerged in the course of the hearing, as follows:
- (a) First, it is said that the appeal by Longford CC to CAC was unlawful because it was made by the Management Committee (on 22 February 2019) prior to the meeting of the County Committee on 27 February 2019 to ratify the appeal.
  - (b) Second, it is said that the County Secretary was not entitled to represent Longford CC.
  - (c) Third, it is said that the CAC was not entitled to reverse the decision of LHC where it was not found to be “*manifestly incorrect*” (per Rule 7.11(o))

- (d) Fourth, it is said that the CAC erred in finding that the decision appealed against was made at the Convention on 13 December 2018, and that the LHC ruled upon the appeal against the decision put before it which was dated 4 February 2019.
- (e) Fifth, it was complained that the Advice Letter on the issue of the role of the RAC was not circulated before the CAC's decision on the issue.
- (f) Sixth, it was complained that – during the hearing before CAC – a member of the CAC “*accused*” LHC of “*splitting hairs*” in suggesting a particular distinction relevant to the arguments.
- (g) Seventh, it was complained that Longford CC's first witness was brought into the hearing room by the County Secretary and not by a member of CAC.
- (h) Eighth, it was complained that the CAC email of 28 May 2019 was issued to Longford CC and not copied to LHC.
- (i) Ninth, and finally, it was complained that the “*full written decision*” did not issue for 27 days after the hearing and the summary decision.

### **3. PRELIMINARY OBJECTIONS**

- 3.1. Before embarking upon any discussion of the grounds of challenge, it is necessary to address certain preliminary issues raised on behalf of CAC.
- 3.2. The first of these, as raised on the Response Form, was that the claim was brought out of time. It is clear that the decision of CAC was communicated on 15 May 2019. However, that communication referred to a “*full written decision*” being issued at a later date, and a more comprehensive set of reasons was indeed furnished on 10 June 2019. After some discussion, it was conceded by CAC that this preliminary issue could not be pursued in light of that communication, and – although we find that the decision was communicated on 15 May 2019 – we formally extended the seven-day time limit given the circumstances of the case.

- 3.3. The second preliminary issue raised was that, as a hearings committee, LHC is not entitled to bring a claim to the Disputes Resolution Authority. However, this preliminary issue was itself the subject matter of a preliminary objection in that it was not raised until 15 July 2019, well outside the time allowed under the DRA Code (and extended in this case by the DRA Secretary) for the delivery of the Response Form. We find that this preliminary objection is well-founded in that the issue was raised well out of time, and there is no good reason to extend time when the issue was raised just two days before the hearing.
- 3.4. For what it is worth, we consider it unseemly that the two disputants before us are not in fact the original parties to the dispute but two decision-making bodies (who should be dispassionate about the substantive issue). However, even if the objection was within time, we would have been reluctant to uphold it, as the point has been the subject of previous discussion before the DRA (Ref. DRA/22/2016). In that case, the Tribunal – with marked reluctance (which we share) – allowed a Provincial Hearings Committee to proceed with a claim having regard to the Rules. The matter is better resolved by a review of the Rules than by inconsistent decisions of the DRA.
- 3.5. A third preliminary issue is identified on the response paper. However, this was not pursued and the evidence to support it was not adduced.
- 3.6. Turning, then, to the substantive issues raised, we will deal with them in turn.

#### **4. AUTHORITY OF LONGFORD MANAGEMENT COMMITTEE TO SUBMIT THE APPEAL**

- 4.1. It is common case that the decision of LHC was delivered on 19 February 2018, that on that evening, a decision was made by Longford CC to seek clarification and bring the matter back before it, that clarification was sought by the Management Committee and received on 21 February 2019, that the appeal issued on 22 February 2019 and that in a subsequent meeting of the County Committee on 27 February 2019 (called for the purpose of authorising the appeal), the bringing of the appeal was ratified.

4.2. The following rules have been cited as being relevant to the question.

(a) Rule 3.20(i) (so far as relevant) reads:

*“Management Committee*

*It shall be responsible, subject to the overall jurisdiction of the County Committee, for the management of the affairs of the Association, including finance, between meetings of the County Committee. ...”*

(b) The penultimate paragraph of rule 3.20 provides:

*“Except where plenary powers or functions have been specifically delegated to a Sub-Committee, all decisions of any Sub-Committee shall be submitted for approval of the County Committee prior to implementation.”*

(c) Rule 7.11(b) provides:

*“A County Committee (through its Decision-Making Sub-Committee, as appropriate) shall in all cases have a right of Appeal to the Central Appeals Committee against all decisions to which they were a party.”*

4.3. The LHC contend that it was necessary for Longford CC to have a meeting of the full County Committee prior to “implementation” of the decision to appeal. They rejected CAC’s accusation of inconsistency in respect of their own pursuit of this DRA claim given the absence of any provision in Rule 3.32 (which deals with sub-committees of Provincial Councils) equivalent to the penultimate paragraph of Rule 3.20.

4.4. CAC contend that, under Rule 3.20(i), the Management Committee of a County have full authority to conduct the business of the County between meetings of the County Committee, and that Rule 7.11(b) confirms that lodging an appeal is a plenary power vested in it.

4.5. Longford CC, for its part, submitted that “implementation” as contemplated by the penultimate paragraph of Rule 3.20 relates to the actual conduct of the appeal and not the lodgement of a notice. Longford CC also assert that under their Standing Orders, five days’ notice must be given of a meeting of the County Committee which rendered the holding of a County Committee meeting prior to

lodging an appeal impossible, due to the three-day appeal deadline. In fact, that five-day notice period is qualified by the expression “*where possible*” which admits of the possibility of shorter notice.

4.6. There are arguments different ways on the issue of authority of the Management Committee of Longford to lodge the appeal. However, in our view, it is not necessary to resolve them here. The issue comes down to this: the rules around the authority of sub-committees of County Committees are there to preserve the integrity of administration within a county and to protect County Committees against overreach by their sub-committees; they are not there to facilitate outside parties defeating the wishes or interests of a County Committee. LHC is such an outside body in the context of the rules governing the management of Longford CC. If Longford CC or one of its members or subordinate units had raised this issue, it might have had to be decided by reference to the various rules cited and perhaps others. However, this is a claim by LHC alone. We are not saying that there are no circumstances in which an outside body might establish a legitimate interest in ensuring the enforcement of the administrative rules affecting a county (indeed such rules may be the subject matter of an appeal coming to an outside body in which case it must obviously apply such rules and (if it is appealed, it must rely on such rules in defending its own decision). However in the present case, the point has been raised as a mere technical objection and does not impact on the rights or interests of LHC under the Rule. Consequently, we find that LHC has no standing to assert these administrative rules against Longford CC in this case.

4.7. Accordingly, this ground of challenge fails.

## **5. WHETHER THE COUNTY SECRETARY WAS ENTITLED TO REPRESENT IT AT HEARING.**

5.1. The LHC allege that the County Secretary was not entitled to represent it at the CAC hearing. There was a certain incongruity to this submission, given LHC raised no objection themselves, when acting as an appellate Hearings Committee, to the same County Secretary representing Longford CC (they say

that the point was not raised before them, but it is less than satisfactory – having declined to address the perceived problem when conducting a hearing – to then rely on it in the context of an appeal). At any rate, LHC say that, because the County Secretary happens to be a full-time secretary, and therefore cannot vote in his capacity as Secretary, he is not a “Full Member” of Longford CC.

5.2. Rule 7.3(x) provides (so far as relevant) as follows:

*“Save as provided in Rule 6.7, a Club, Committee or Council shall be represented at any Hearing by a maximum of two of its Full Members. A Member shall attend personally and may be accompanied by one Full Member of his Club/Unit. In addition to the foregoing, Youth Members may be accompanied by their parent(s) or guardian(s).”* (emphasis added)

5.3. Rule 3.18(b) provides:

*“The number of voting members of a County Committee shall be set out in the County Bye-Laws. A full time County Secretary shall not have voting rights in that capacity on the Committee”* (emphasis added)

5.4. There is nothing in these or any other rules open to us that suggests that a member of a unit who is not entitled to vote is not a “Full Member.” Although the words are capitalised in the Official Guide, there is no definition of the expression. There is nothing to state that a Secretary (full-time or not) is not a “member” of the committee of which he or she is secretary (indeed it is something of a logical impossibility). Likewise, there is nothing in the Rules to say that voting rights are a *sine qua non* of full membership. In the circumstances, we find it impossible to conclude that Congress in making these rules intended that a non-voting County Secretary (typically one of the most knowledgeable persons involved in administration within a County) would be excluded from representing his or her County at hearings of this type.

5.5. Accordingly, this ground fails.

## **6. WHETHER THE DECISION OF LHC WAS PROTECTED UNLESS “MANIFESTLY INCORRECT”**

6.1. Rule 7.11(o) provides as follows:



*“An Appeal shall be limited to the matters raised in the Appellant’s Appeal as originally lodged and shall be upheld only where (i) there has been a clear infringement or misapplication of Rule by the Decision-Maker or (ii) the Appellant’s right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision-Maker shall be set aside unless shown to be manifestly incorrect.”*

6.2. LHC contended that the CAC was not entitled to overrule its determination in the absence of establishing that it was “*manifestly incorrect.*” However, that high threshold applies only to findings of fact. There was in fact no determination of any disputed fact by LHC or anybody else in any of the decisions in this matter. The only fact that was disputed was whether Mr Murtagh advised the County Secretary that he was withdrawing his candidacy or merely ceasing to canvas for the position. But none of the committees involved felt it necessary to resolve that dispute of fact. LHC decided that a withdrawal of a nomination was required to be in writing which obviated the need for any determination of fact. CAC resolved the appeal before it on the grounds that Mr Murtagh’s appeal was out of time, so likewise it did not purport to resolve the factual dispute. CAC’s decision was based on a finding that LHC had misapplied a rule in determining that the appeal was within time (and insofar as observations were made about the substantive findings of LHC, that was again a conclusion that a misapplication of rule had taken place, i.e. that a withdrawal of candidacy did not have to be in writing. These findings both concerned application of rule to the facts. Consequently, it not necessary for CAC to conclude that any finding of LHC was manifestly incorrect, and this ground of challenge fails.

## **7. WHETHER MR MURTAGH’S APPEAL WAS WITHIN TIME**

7.1. Mr Murtagh’s appeal – insofar as it cited the decision made on 4 February 2019 – was against the fixing of a special convention for the election of a second Leinster Council Representative, and the extract from the minutes has been set out in the chronology above.

7.2. Rule 7.11(f) (so far as relevant) provides as follows:

*“An Appeal shall be submitted in duplicate to the Secretary of the appellate Hearings Committee, to be received within three days from the date and time of notification of the decision, or, where notification of the decision is not required in Rule, within three days from midnight following the meeting at which the decision is made....”*

- 7.3. CAC and Longford CC contend that, in substance, this was a challenge not to the fixing of a date for a Special Convention but to the decision made at the Annual Convention on 13 December 2018 to elect one Leinster Council Representative and to defer filling one place in the absence of a second nominee for the position of representative to Leinster Council. They make the point that the decision on 4 February 2019 was an administrative consequence of the decision made at Convention and could not ever have been made independently of the decision at Convention. Neither party argued for the proposition that the removal of Mr Murtagh’s name from the list of candidates (on or about 7 December 2018) was the decision so we do not need to consider that.
- 7.4. LHC contended that it was their task to deal with the decision in front of them and that that was what they did. The flaw in this argument is that the basis upon which they upheld the appeal against the decision of 4 February 2019 related not to any acts or events occurring on 4 February 2019, but to the events of 13 December 2018 and leading up to it. The error, as LHC found, occurred when the County Secretary took Mr Murtagh’s name off the ballot sheet without a written withdrawal. But in the absence of an appeal against that decision within three days on when it was made or notified (whether that be the date of Annual Convention, or on the date the Convention Book was circulated, or on some earlier date), that decision is to all intents and purposes a valid decision and cannot be deemed invalid just because an appeal is taken against some later decision that arises in consequence if it at later date.
- 7.5. It would be one thing if (as Mr Murtagh’s appeal letter of 6 February 2019 seemed to imply), the proceedings at the Annual Convention were consistent with two Leinster Council Representatives having been elected. But the minutes of Convention (the accuracy of which was never disputed) could not be clearer: it

was recorded (consistently with the Convention Book) that there was only one candidate; it was recorded that that candidate was not Mr Murtagh; it was recorded that a vacancy remained, it was recorded that arrangements would be made by the County Committee to fill that vacancy in the New Year.

- 7.6. As such, if there was any misapplication of rule on 4 February 2019, it was predicated on the error (as they found) that took place on 13 December 2018 (or beforehand).
- 7.7. Consequently, it is clear to us that Mr Murtagh's appeal ought to have been brought within three days of 13 December 2018 (if not within three days of the circulation of the Convention Book) and was out of time by 6 February 2019. The CAC was correct in determining that the decision of LHC amounted to a clear misapplication of rule.

## **8. CIRCULATION OF THE ADVICE LETTER.**

- 8.1. The Advice Letter was procured on 5 April 2019 and circulated at the meeting of 11 April 2018, evidently after a decision was made to reject a preliminary objection raised by LHC regarding alleged communications between Longford CC and the RAC. The genesis of the complaint (regarding communication with the RAC) did not form part of any submissions at the hearing of this arbitration, and all we can discern from the paperwork is that a request was made to the Chairman of the RAC whether the Management Committee of Longford CC could submit an appeal. The Advice Letter was unassailably correct in what it said (and it is not apparent that the advice of the RAC in this case was deployed before the CAC: on the contrary, it appears from the papers that the issue was brought up by LHC which led to the deferral of the hearing before CAC in order to take advice from the Association's solicitors).
- 8.2. Just as the advices or recommendations of the RAC carry no status in individual cases, nor do the advices of the Association's solicitors. Clearly, the CAC was influenced by the advice received: however, there is nothing incorrect about the advice as far as we can see, and while the Advice Letter recommended that it be

circulated before a decision was made, there is nothing in the evidence to suggest that the CAC promised the parties (who knew since 12 March 2019 that the CAC were going away to take advice) that they would disclose such advice at all. At any rate, the issue is a very simple one and the Association's solicitors were stating the obvious, and in the context of this Arbitration, the LHC have not asserted that the Advice Letter was wrong or that there was some submission that they would have made to CAC had they seen the Advice Letter before the decision was made (as noted above, the underlying issue, around communications with the RAC, was not pursued at the hearing: if it was it would have been rejected for the same reasons as are stated in the Advice Letter).

8.3. In the absence of any prejudice to the LHC, this matter cannot be seen as a breach of fair procedures.

## 9. COMMENT ABOUT "*SPLITTING HAIRS*"

9.1. The complaint raised here by LHC is difficult to understand. At some point during the deliberations, one of the members of the CAC commented in response to a distinction sought to be drawn by the LHC between two situations that they were "splitting hairs". Great exception was taken to this and it was suggested before us that such a comment might "influence" the other members of the CAC.

9.2. There is no substance to this complaint. Members of the CAC are perfectly entitled to engage with the parties before them and to do so robustly on the points issued. If a point is made by a member of any Hearings Committee to a disputant, whether expressing a view or raising a query or challenge to a position stated, that is perfectly normal, regardless of whether it influences anybody in the room. As the CAC correctly pointed out, in the committee room where the decision is made, the members of any committee having conducted such hearing will seek to influence one another in the normal exchange of ideas that leads to a decision.

9.3. Consequently, this ground of objection fails.

## **10. COUNTY SECRETARY BRINGING IN LONGFORD CC'S FIRST WITNESS**

10.1. The complaint here is that, whereas it tends to be the practice that witnesses are brought into a room by a member of the committee hearing a disputed matter, on this occasion the first witness was brought in by the County Secretary to the CAC hearing. The practice of keeping witnesses outside a room (so they are not influenced by one another's evidence) has certain advantages and we note that it is recommended in the Disciplinary Handbook. However, it is by no means necessitated by Rule, nor by the requirements of fair procedure. Indeed, in a court scenario, where issues of far greater seriousness are determined, witnesses invariably hear the evidence of other witnesses because they are free to attend the entirety of the trial. Apart from that point, in this case the witness in question was the very first witness to be heard, so there was nothing that might have been communicated to him regarding previous evidence.

10.2. It is noteworthy that no suggestion was made that the County Secretary *did* state anything to influence the witness in question (and in any event, the witness was not testifying as to disputed matters of fact). The complaint was that he was seen to have been given the "*opportunity*" to do so. Obviously, witnesses should never be coached. However, no committee of a judicial or quasi-judicial nature can rule out "*opportunities*" to coach a witness: in the present case, the witness was a member of the same committee as those presenting the case and they would have interacted with one another for a number of weeks prior to the hearing: nothing about the manner of bringing the witness into the hearing room would have created any "*opportunity*" that was not already there.

## **11. CAC EMAIL OF 28 MAY 2019.**

11.1. A complaint is made that, following the hearing, the CAC wrote an email directly to Longford CC without copying LHC. It is true that this happened. However, the content of the email was known to all and it merely constituted an apology for the delay in delivering the full reasoned decision and the promise that it would follow shortly thereafter. There is no breach of fair procedures in this.

## **12. DELAY IN DELIVERING FULL WRITTEN DECISION.**

12.1. It is complained that it took 27 days to deliver the full written decision to the parties following the hearing on 14 May 2019. There is no time limit for the delivery of reasons for a decision. Furthermore, no prejudice whatever was caused (in circumstances where we have extended time for the bringing of these arbitral proceedings). Consequently, there is no substance to this point.

## **13. CONCLUSION AND DETERMINATION**

13.1. In light of the foregoing matters, we hold that the preliminary objections to the proceedings being brought by LHC are rejected; however, all of the grounds raised by LHC fail. The claim is therefore dismissed in full, and we so award.

13.2. This is a unanimous decision of the Tribunal

## **14. COSTS AND EXPENSES**

14.1. As none of the parties was represented by lawyers, no application for legal costs arises. In light of the conclusions, it is not necessary to put the parties to the trouble of addressing issues of costs and expenses in separate submissions, and we direct that LHC discharge the costs and expenses of the Tribunal.

**Date of Oral Hearing:** 17 July 2019

**Date of Agreed Award:** 30 August 2019

**By email agreement on agreed date above.**

**Mr. Micheal O'Connell SC**

**Mr. Tom Barry**

**Mr Seamus Woods**