JUDICIAL CONTROL AUTHORITY
FOR RACING
TE MANA WHAKAHAERE Ā-TURE MŌ TE PUREI

Appeal RIU v M Breslin - Reserved Decision dated 9 October 2017 - Chair, Prof G Hall

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE AN APPEALS TRIBUNAL OF THE JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

AND IN THE MATTER of the New Zealand Rules of Thoroughbred Racing

BETWEEN RACING INTEGRITY UNIT (RIU)

Appellant

AND MR MICHAEL BRESLIN

Class A Trainer

Respondent

TRIBUNAL: Prof G Hall (Chairman)

Mr D Jackson (Member)

Mr N McCutcheon (Member)

APPEARING: Mr B Dickey, for the appellant

Mr P Paino, for the respondent

RESERVED DECISION OF APPEALS TRIBUNAL

[1] The RIU lodged an appeal against the penalty decision of the Non-raceday Judicial Committee dated 25 July 2017 imposed after the respondent was found to be in breach of r 801(1)(s)(i) of the NZTR Rules of Racing, namely, doing an act detrimental to the interests of racing. The penalty was one of a fine of $8,000. Costs totalling $12,000 were also imposed.

[2] The penalty was imposed pursuant to r 801(2) which provides:

A person who commits a Serious Racing Offence shall be liable to:

a) Be disqualified for any specific period or for life; and/or

b) Be suspended from holding or obtaining a Licence for a period not exceeding 12 months. If a Licence is renewed during a term of suspension, then the suspension shall continue to apply to the renewed Licence; and/or

c) A fine not exceeding $50,000.

[3] The matter was heard in Wellington on 25 September. Both parties presented written and oral submissions.

Approach on appeal

[4] The Rules are silent as to the applicable approach on appeal. Were the appeal one against sentence in the ordinary courts, an appeal court should only intervene if:

(a) for any reason, there is an error in the sentence imposed on conviction; and

(b) a different sentence should be imposed.

In any other case, the court must dismiss the appeal (Criminal Procedure Act 2011, s 250).

[5] On an appeal against sentence by the prosecutor, the court is concerned with whether the sentence imposed can be said to be manifestly inadequate. This is to be assessed by reference to the maximum sentence available for the particular offence, a consideration of comparable sentences, and the totality of the offending and the offender's culpability: *R v Wilson* [2004] 3 NZLR 606

(CA) at [41]. The court will be reluctant to interfere in borderline cases; it must be clear that the sentence was manifestly inadequate or based on a wrong principle.

The facts of the matter

[6] The facts of this matter are succinctly described at [6] in the Judicial Committee's decision of 3 July 2017, which found the charge to be proved.

[7] We highlight only the points that are salient to this appeal.

[8] Mr Breslin had been socialising at the Racecourse Hotel after the first day of the New Zealand Cup carnival at the Riccarton Racecourse. A number of racing folk were also at the hotel. At the end of the evening only a small group of people were left. They were affected by alcohol to varying degrees. The complainant was sitting on a barstool watching her male partner play pool. Seated beside her was a female friend. The respondent came and sat beside her. The respondent at the time was 54 years of age; the complainant was only 18.

[9] The complainant, whom the Committee described at [6.9] as "a truthful and reliable witness", was aware that Mr Breslin had placed his hand under her dress on her inner thigh. He then moved it upwards to her genital area. She froze. His hand remained there for some time. She did not tell Mr Breslin to desist but rather texted her partner, who eventually read her message and intervened. As the Committee said, "there is no credible evidence to suggest she in any way encouraged or consented to what was taking place."

[10] We also note the Judicial Committee's description of the breach at [4.2] in its decision as to penalty of 25 July 2017:

The conduct of Mr Breslin which was entirely unacceptable was not an indecent act at the most serious level. The touching was not prolonged. Mr Breslin desisted immediately he was challenged.

The decision under appeal

[11] In its decision as to penalty, the Committee observed at [4.1] that the Rules of Racing are primarily designed to ensure the integrity of the conduct of racing, and to uphold proper conduct by those licensed under the Rules. They are not designed for the primary purpose of punishing offenders, which should be left to the criminal law.

[12] The Committee noted the various rehabilitative steps the respondent had taken, including addressing his alcohol consumption, and stated at [4.7]:

The Committee does not believe that disqualification or suspension of Mr Breslin's trainer's licence is warranted. There are a number of considerations which have led the Committee to this view. These are:

a) These events occurred late in the evening in a social context when all the persons involved were affected by alcohol;

b) It was an isolated incident;

c) While the conduct found to have been proved was unacceptable it was not an indecent act of the most serious character;

d) Mr Breslin chose to defend the charge. Nevertheless the Committee believes that Mr Breslin genuinely regrets his conduct;

e) Mr Breslin has some insight into his circumstances and has undergone counselling;

f) The offending does not, in the Committee's view, warrant the loss of livelihood which would result from either a period of disqualification or the suspension of Mr Breslin's trainer's licence.

[13] Overall, the Committee considered that disqualification or suspension was not required, and a financial penalty was sufficient. The refusal of name suppression was also said to be itself a penalty.

The appellant's case

[14] The RIU's position was that the end sentence was manifestly inadequate and that a penalty of nine to 12 months' disqualification was necessary to mark the gravity of Mr Breslin's actions. In particular, the appellant submitted that disqualification was "necessary in this case to denounce the respondent's conduct and to deter both the respondent specifically, and the racing community generally, from engaging in this kind of behaviour." The modest fine of $8,000 was simply inadequate to reflect the seriousness of the breach.

[15] The appellant emphasised the effect of the respondent's actions upon the racing industry as being a key consideration. The purpose of the Rules is to ensure the integrity of the conduct of racing. The respondent's conduct in this particular case, the appellant submitted, went directly to the issue of whether the racing industry can maintain and attract younger, particularly female, participants, and whether it is seen by the public as an industry that takes steps to protect its youngest and most vulnerable members. Quite apart from the harm to the complainant, the fact that a senior trainer had sexually assaulted a young stable hand less than half his age at a racing industry event, if seen in any way to be condoned by the industry by way of an inadequate penalty, would have a significant effect on the reputation of the racing industry.

[16] Mr Dickey described the breach as an act of chauvinism in an industry that had to ward against such inappropriate conduct, as there were many young women involved in the industry who, by virtue of their participation, routinely interacted with men of authority. The message of the penalty the Judicial Committee had imposed, he said, was that the indecent touching of a young woman was a matter of financial consequence only, and even then, only at a modest level. The appropriate message should be that the penalty would involve a period of exclusion from the industry.

[17] Mr Dickey submitted it was an error to consider the financial penalty as being $20,000, as costs were imposed for a different purpose to that of punishment for the breach. Costs were not part of the penalty and a fine of $8,000 did not sufficiently denounce the respondent's actions or deter him or others from such conduct in the future. It treated the breach as if it were a minor matter. The penalty had to emphasise the need to protect the welfare and safety of young women.

[18] The RIU submitted that it was wrong to ascribe genuine regret and some insight to the respondent. He had denied the charge and sought to entirely minimise his wrongdoing. The counselling he sought could not have addressed what he had done to the complainant, as he had never accepted having done anything deliberately indecent. He might well feel sorry for the circumstances he found himself in, but this was not genuine regret for what he had done to the complainant nor did it demonstrate any true insight into his behaviour.

[19] With respect to the penalty of disqualification, the RIU accepted that this would have significant financial consequences for the respondent, but that was plainly one of the intended consequences of this form of penalty and would always arise in the case of a senior trainer.

[20] Mr Dickey emphasised the need to guard against the possibility of senior trainers being placed into a special or protected class of licence holder who were not likely to be disqualified because of the financial consequences to them and their employees. To do so would be wrong. All licence holders, he said, were likely to suffer significant consequences if disqualified. The Judicial Committee, he believed, had elevated this consideration beyond its proper place, which was that significant consequences would always follow disqualification and the rule-makers must have intended this.

[21] Mr Dickey commented on the matter raised in the respondent's written submission that Ms Davidson had insufficient experience and lacked the necessary management skills to take over the stable were the respondent to be disqualified. He said the truth of the matter was that the horses could go elsewhere if this was the case. There was room in the industry, and we assume he was referring to the Central Districts, for the horses to be trained in other stables. But he emphasised that Mr Breslin's forewoman would be regarded favourably by NZTR, if necessary.

[22] The RIU's submissions then addressed the nature of the breach. The assault in this case was invasive. While not of the most serious character, it was far from minor. The following features were identified:

"(a) The victim's evidence was that the respondent's hand was on her inner thigh, some 3 centimetres away from her vagina, for 30 to 40 seconds (at [2.3] of the Committee's penalty decision). It was not a minor, momentary assault....

(b) The victim was vulnerable. At 18 years old, she was significantly younger than the 54-year-old respondent and she was at the lower end of the racing hierarchy in that she was a stable-hand whereas the respondent was a senior trainer.

(c) There was a clear imbalance of power between them, in that he was a senior trainer in the industry, as opposed to her position as a stable hand. The Committee in its decision found that the respondent must have known she was a participant in the racing industry. On that basis, the respondent must have intended to take advantage of this power imbalance.

(d) The victim has clearly suffered emotional harm. She has provided a Victim Impact Statement, in which she describes suffering from flashbacks and feeling petrified during the events. The fact that she had to give evidence and be cross-examined at the hearing would have been additionally difficult for her.

(e) The respondent knew what he was doing was unacceptable. He did not have a genuine belief that his actions were acceptable or that the victim had consented. Despite this, he persisted with the assault until a third party intervened."

[23] While the appellant had not been able to locate any directly comparable cases under the Rules, it believed *NZTR v McAnulty*, 29 April 2011 to be of assistance. McAnulty concerned two charges of misconduct under r 340. He left threatening and insulting voice messages on the phones of the Chairman of the New Zealand Racing Board, and the Chief Stipendiary Steward. McAnulty accepted responsibility, as the hearing was about to commence, and elected not to contest the charges despite advice that there were legal defences open to him. After a 20 per cent discount for his apologies and acceptance of responsibility, penalty was 11 months' disqualification, and a $6,000 fine. Costs of $12,000 were awarded to the NZTR, and $5,000 to the JCA.

[24] The RIU noted that the impugned conduct in *McAnulty* was offensive, but it did not involve physical contact or any imbalance of power. It did not cause lasting emotional harm to a young, vulnerable victim. Despite these differences, and despite his early acknowledgment of wrongdoing and apologies to the complainants, a significantly more serious penalty (involving a lengthy disqualification) had been imposed in that case. The RIU submitted it would send an undesirable message to the racing industry, and the wider public, if the behaviour in *McAnulty* was held to warrant disqualification, but Mr Breslin's behaviour, involving the sexual

assault of a young woman, did not.

[25] The Judicial Committee did not suppress the respondent's name, and expressed the view that publication would have a punitive effect. This was taken into account as part of the penalty imposed. Citing *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [41]–[43] and *D (CA443/2015) v Police* [2015] NZCA 541 at [11]–[12], Mr Dickey submitted that publication was the default position, in accordance with the principle of open justice. The Court of Appeal had observed that it was natural for distress, embarrassment, and potential adverse personal and financial consequences to attend proceedings where wrongdoing was alleged. Thus, any consequence arising from the publication of the respondent's name should not be taken into account in the totality of the penalty imposed.

[26] When questioned by the Committee as to the appellant's position concerning a suspension or an increase in the fine that had been imposed upon the respondent, Mr Dickey responded that a suspension was a more flexible penalty but when it was imposed upon a trainer, rather than a jockey, it had very little impact other than the person would be unable to train horses and horses would not be permitted to race in that person's name.

[27] While Mr Dickey did not oppose an increase in the fine, his submission was that a fine was an inappropriate response to a breach of this gravity. It was the nature of the penalty, not the level, that the RIU took principal issue with. The appellant was strongly of the view that the respondent's behaviour required that he be removed from the industry for a period.

[28] The appellant concluded their submission by reiterating that the sentence was manifestly inadequate and/or wrong in principle. The appropriate sentence, taking into account the need for general and specific deterrence, was a period of nine to 12 months' disqualification.

Respondent's case

[29] The thrust of the respondent's case was that the RIU had failed to demonstrate that the Judicial Committee which "heard the evidence and issued a reserved decision got the penalty wrong - manifestly so." The appellant had not established that the effective penalty of $20,000, inclusive of costs, was manifestly inadequate. The penalty imposed provided sufficient general deterrence having regard to the circumstances of this case.

[30] Mr Paino emphasised that the Christchurch Police had received a complaint relating to the incident at issue. They had investigated it thoroughly and after interviewing all of the witnesses decided "after detailing the circumstances of the offence, the victim's reaction at the time and what Breslin stated in his interview, the opinion was that although Breslin's action met the elements of indecent assault, his claim of an honest belief was a defence to the charge and that the chance of the prosecution having a successful outcome was highly unlikely".

[31] The Judicial Committee, Mr Paino emphasised, had had a chance to assess the witnesses, the detail of the incident, heard the explanations, counsel's submissions and had found the defendant guilty of one charge. In its penalty decision of 25 July 2017, the Committee stated at [2.4] and [2.5] that no comparable cases were located and that the RIU had not advanced a submission as to how their suggested penalty of nine to 12 months' disqualification was arrived at, nor was there any submission as to why disqualification, rather than suspension, was the appropriate penalty.

[32] The respondent stated that it was appropriate that the Committee had had regard to the costs awards in assessing the amount of the fine. The overall penalty was relevant. Drawing a parallel with the criminal courts was not appropriate as costs in that fora were often minimal. In addition, Mr Breslin had had his travel costs and those of his counsel, his legal costs throughout the JCA proceedings and the proceeding before NZTR. This added up to a significant figure, perhaps as high as $35,000.

[33] The Committee, he emphasised, had described the financial penalty as "meaningful". It had information about Mr Breslin's financial position. The penalty that was imposed had come almost nine months after the charge was laid. Although not unusual in the criminal courts, in the thoroughbred racing process this was an extraordinary length of time from charging to completion brought about mainly because of the Police inquiry and the Committee's reluctance to deal with the charge before that inquiry was completed.

[34] Mr Breslin had met with NZTR at their request following a complaint to them by the RIU relating to the same allegation. After hearing from Mr Breslin, NZTR imposed some conditions on his trainer's licence. NZTR did not revoke or suspend his licence but added conditions that he attend counselling and took what they saw as protective measures in terms of Mr Breslin's contact with female employees (none of whom had made any complaint about his behaviour), requiring that he not be alone with them. We note that Mr Breslin, when he addressed this Tribunal, stated he had been attending counselling for a year and had not drunk alcohol since the incident. He also referred to the inconvenience and costs in complying with the restrictions NZTR had imposed, and described the health issues he had had over the past year or so. He also mentioned the current uncertainty surrounding the rezoning of the leasehold land where his stables are situated.

[35] In determining that disqualification or suspension of the respondent's trainer's licence was not warranted, the Committee had analysed the CCTV footage of the incident. This CCTV footage, Mr Paino said, showed that during the incident the complainant had not moved from her seat, had carried on engaging in conversation with others, had sent text messages and, once Mr Breslin's behaviour was referred to, he had stopped and immediately apologised.

[36] Correctly, the Committee had not criticised Mr Breslin for defending the charge. It had heard in detail from him including his evidence that he regretted the incident but did not consider he was guilty of indecent assault, a conclusion that the Police had predicted should the matter have proceeded in the criminal court. The Committee had observed that Mr Breslin had insight into the circumstances of the offending and had undergone considerable counselling. Mr Paino reiterated that the respondent genuinely regretted his behaviour that night and emphasised that Mr Breslin had apologised to the complainant the next day.

[37] Mr Paino said there was no evidence of a deterrent penalty being necessary in this case. There was no evidence of an increase in prevalence of this type of behaviour in the industry. He emphasised the absence of any relationship between Mr Breslin and the complainant. This was an incident that happened between strangers, at closing time in a hotel, and had nothing to do with the relationship of Mr Breslin as a trainer and the complainant as a track work rider. He did not approach her because of her racing connections. They were the only ones left in the hotel, which was about to close. He had not been talking or drinking with them earlier that evening. Mr Breslin had not met the complainant before, did not know her name, and his only encounter with her was when he came up to the four people she was with. Mr Breslin and the complainant had initially talked in an animated and friendly fashion as the CCTV footage demonstrated. He gave evidence before the Committee that he did not know she was a licensed person. The Committee had found that he must have known she had some connection with racing.

[38] Mr Paino emphasised this was not a case where the respondent had any power or influence over the victim. He was not at a racing function. It was not on a racecourse or premises associated with thoroughbred racing other than a pub.

[39] The respondent submitted that the RIU continued to overstate the senior trainer and junior stable hand relationship. There was none, and consequently no power imbalance. Mr Breslin had never employed her or had any connection with her at all other than this one incident, which happened over a period of a few minutes and with three other adults standing within a metre of her. It was in a public place, a public bar at closing time, and in plain view of those present. There were a number of people close by and all were drunk. They had been at the hotel for over seven hours. The respondent was not aware that the complainant had had issues with intimacy in the past and that that was the reason for her not saying anything when he placed his hand on her thigh.

[40] Mr Paino described the respondent's financial circumstances. We do not enumerate these in this decision but we have had regard to his submissions and also to Mr Breslin's comments on this issue. We have also regard to the delay in hearing the matter. The decision of the Committee not to proceed until the police inquiry was completed was, in our view, understandable. However, we refer to the matters that specifically relate to the imposition of a period of suspension or disqualification.

[41] Mr Paino referred to the difficulties were the respondent to be disqualified or suspended. Mr Breslin employs four full-time and three part-time staff. He said being the foreperson of a stable was totally different from being a licensed trainer with responsibility for a number of employees with employment contracts, financial responsibilities to the bank for the necessary cash flow, dealing with over 100 owners and over 50 horses, with 30 in work at any one time. He disagreed with the RIU submission that the fact the respondent was a senior trainer was irrelevant. He drew a parallel to a discharge without conviction application in the criminal courts. The consequences of the penalty were to be considered and in this regard the importance of the respondent's position, the fact he was a senior trainer with a number of staff, was relevant. The issue was not whether there was a protected class of persons but what were the consequences of the penalty imposed. The higher the position the person in breach of the Rules occupied, the greater the fall from grace, and the greater the impact upon those dependent upon him for their livelihood.

[42] In this regard, Mr Paino submitted a suspension, like disqualification, would have a significant impact upon the stable and would likely lead to redundancies. He emphasised Mr Breslin's partner, who worked part-time in an administrative position in the racing industry, and his forewoman were not in a position to be able to take over roles currently performed by the respondent. Owners, who were currently supportive of Mr Breslin, despite knowing of his breach of the Rules, might have an adverse reaction were he to be suspended or disqualified. Once horses were removed from the stable, there would be less income to pay employees and for feed and related costs for the horses that remained.

[43] The Committee had found a substantial financial penalty, for a one-off incident, for a person with an exemplary record was a sufficient penalty. The Committee had correctly taken into account the consequences of a seven-month delay (nine months if this appeal was considered), the stressors that were put on the stable, and Mr Breslin's family situation, and decided that the penalty imposed, together with the other consequential impact, was adequate. It also had had regard to his counselling efforts and reports on the progress he had made.

[44] Mr Paino believed the RIU wanted to establish a benchmark case for serious racing offences. They had cited *NZTR v McAnulty* to this Tribunal but had not done so before the Committee. *McAnulty* involved premeditated, repetitive threats and offensive behaviour after having been warned to desist. It involved personal attacks on senior racing officials. They were described as "sustained", which was regarded as a serious aggravating feature. Unlike this case, it was not a one-off incident.

[45] The respondent concluded his submission by stating this was "an unusual case". It was not a case for suspension or disqualification and the financial penalty was sufficient and not manifestly inadequate.

Decision

[46] We accept, as do the parties in this case, that the Rules of Racing are primarily designed to ensure the integrity of the conduct of racing, and to uphold proper conduct by those licensed under the Rules. This principle is now so well established in the broader context of the disciplining of members of professional bodies, that perhaps no authority need be cited, but we note the decision in re *A Medical Practitioner* [1959] NZLR 784.

[47] Punishment is primarily the function of the criminal law. Significantly, after investigation of the matter, New Zealand Police did not prosecute Mr Breslin. They decided to warn rather than charge him. However, the charge in respect of which penalty was imposed in this case was not one of indecent assault but rather one of bringing racing into disrepute. This may be thought to be a fine distinction, but it is an important point of difference, nevertheless. This is the lens through which the respondent's actions must be viewed.

[48] We accept the appellant's submission that the respondent should have been alert to the clear possibility that the complainant was involved in the industry, as many of the people socialising at the Racecourse Hotel that evening could reasonably be expected to have been involved in the events of the raceday. Moreover, the group of which the complainant was part, comprised industry participants, and it may be that this is what attracted the respondent to associate with them and to sit on a barstool beside the complainant at the end of the evening.

[49] Mr Breslin has a clear disciplinary record. He has been a licensed trainer for 23 years. He has the support of a number of racing identities who have provided positive testimonials in the knowledge of the charges that he faced. We accept he apologised to the complainant both on the night of the incident and again the next day. Unfortunately, his actions later on the night only served to unsettle and upset the complainant further. We accept this was not his intention. Whether his actions were out of genuine concern for the complainant or simply an attempt to make the matter go away is more difficult to determine. We accept, however, that the respondent has insight as to impact of his behaviour upon the complainant and thus give him the benefit of any doubt on this issue. We have also had regard to his personal circumstances and the progress he has made in counselling.

[50] We have carefully considered whether disqualification or suspension is the appropriate penalty. We have regard to and take considerable assistance from the Judicial Committee's reasoning noted earlier in our decision at [12]. It is persuasive. The last factor identified there is particularly significant. This is the disruptive nature of either of these penalties on a licensed trainer, and the financial consequences, which flow therefrom, whether or not that person is a senior trainer. We have decided, after not a little hesitation, that disqualification or suspension is not required to mark either the gravity of the breach or the respondent's culpability.

[51] A key factor in our determining that such a penalty is not appropriate in this case is the fact that Mr Breslin did not previously know the complainant and thus this breach of the Rules is not a breach of trust involving an industry participant. Were there a relationship between complainant and respondent that was closely connected to racing, or if the breach had the hallmarks of an employer/employee power imbalance, we would view the matter very differently. That said, we are of the view that the penalty has to both recognise and give force to the need to protect the welfare and safety of young women where there has been interaction in a racing environment, as pertained in this case.

[52] Despite our not being of the view that it is necessary to mark the respondent's actions with a penalty of disqualification or a suspension, we are also firmly of the view that a fine of $8,000 does not sufficiently denounce the respondent's conduct and, as a consequence, does not uphold the integrity of thoroughbred racing and reinforce the standards expected of industry participants. In our view, the penalty is manifestly inadequate.

[53] We accept the appellant's submission that when a case is considered for comparative purposes the total financial impost upon the licence holder is not usually the source of reference, but rather the penalty imposed under the Rules (in this case r 801(2)). The primary consideration when imposing penalty should be what is appropriate for the breach when regard is had to its seriousness and the particular respondent's culpability. If a fine is determined to be the appropriate penalty, means should be a considered. In determining a person's ability to pay, regard may be had to the likelihood and, if known, the quantum of costs that will follow the event. But the fact that costs are ordered for a completely different purpose to the imposition of penalty must not be overlooked. Mr Breslin's personal costs in defending this matter, however, are not a relevant consideration when considering penalty.

[54] The Rules provide for a maximum fine of $50,000. This indicates that a financial penalty was viewed by those persons responsible for the drafting of the Rules as being an appropriate penalty for breaches that are not at the lower end of the scale of seriousness; ie that more serious matters are able to be met with a fine.

[55] That leads us to the issue of quantum. Both parties have made reference to *McAnulty.* We note the nature of the breach in that case was very different to that before us but the charge was under a related rule (misconduct). McAnulty's conduct (vile abuse) was directed at racing officials, was premeditated, ongoing, and continued despite warnings. It would be fair to say that Mr Breslin's actions, whilst clearly highly intrusive of personal bodily integrity and unacceptable, were not of that ilk. The penalty in *McAnulty* was 11 months' disqualification and a fine of $6,000. With respect to the fine, the starting point in that case was $7,500. We are refraining from imposing a disqualification and have regard to the level of the maximum fine, which is far from an insignificant amount. Thoroughbred racing has been tarnished by Mr Breslin's actions and the penalty must reflect that fact. We believe a fine of $14,000 is required to mark Mr Breslin's culpability and the extent to which his actions have brought the industry into disrepute.

[56] We add that on the evidence before us a fine at this level will have a significant impact on the respondent's finances, which we were told are not strong, despite the long hours he puts in and the success of his stable. That is our intention. Actions of the nature evident in this case threaten the very fibre of the racing industry. Participants of all ages are its life-blood. As we have said, were the respondent to have abused a position of authority, we would have determined he had no place in the industry for a not insignificant period of time.

[57] With reference to the significance of the publication of Mr Breslin's name, we believe that this is best viewed as simply a consequence of his conduct and the breach being found to be proved. There is no doubt publication will be embarrassing for the respondent but this is a usual consequence of the judicial process. As the Judicial Committee noted at [5.2], the respondent's conduct "is plainly known to many within the industry". The Committee made no final order for name suppression in its decision of 25 July. There is no appeal against this decision. We order the lifting of the interim suppression order that was made pending the appeal.

[58] The penalty of a fine of $8,000 is quashed and a fine of $14,000 is substituted.

[59] The issue of costs on this appeal has not been addressed. We require any written submissions to be filed with the JCA by 4 pm 16 October.

Dated at Dunedin this 9th day of October 2017.

Geoff Hall, Chairman

Penalty: