

**Non Raceday Inquiry RIU v J Goode - Decision as to Penalty dated 31 May 2017 - Chair, Prof G Hall**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY  
UNDER THE RACING ACT 2003**

**IN THE MATTER** of the New Zealand Rules of Greyhound Racing

**BETWEEN RACING INTEGRITY UNIT**

**Informant**

**AND Mr John Goode**

Licensed Greyhound Trainer

**Respondent**

**Information No.** A7212 to A7216

**Judicial Committee:** Prof G Hall, Chairman

Mr R McKenzie, Member of Committee

**Appearing:** Mr D Matthews and Mr P Lamb, for the Informant

The Respondent in person, with the assistance of Mr B Cuttance

**DECISION OF JUDICIAL COMMITTEE AS TO PENALTY**

[1] The respondent, Mr Goode, is a licensed Public Trainer under the New Zealand Greyhound Rules of Racing. He has been licensed in the Greyhound industry for more than 12 years.

[2] In our decision of 12 April last, we found the following Informations to be proved:

Information No A7212: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode misconducted himself by abusing and using foul language to RIU Investigator, Mrs K Williams. This is a breach of r 87.1.o of the Greyhound Racing New Zealand Rules of Racing.

Information No A7213: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode refused to provide a urine sample when requested and refused to sign the notification form requesting such sample. This is a breach of r 87.4.a of the Greyhound Racing New Zealand Rules of Racing.

Information No A7214: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode failed to wear a tie as per the Club's dress code. This is a breach of r 87.1.y of the Greyhound Racing New Zealand Rules of Racing.

Information No A7215: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode failed to obey the lawful order of Stipendiary Steward, Mr S Wallis. This is a breach of r 87.1.p of the Greyhound Racing New Zealand Rules of Racing.

Information No 7216: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode abused Stipendiary Steward, Mr S Wallis in the kennel block area of Addington Raceway. This is a breach of r 87.1.g of the Greyhound Racing New Zealand Rules of Racing.

[3] The penalty rule is r 88.1. This provides:

*Any Person found guilty of an offence under these Rules shall be liable to:*

a. a fine not exceeding \$10,000.00 for any one (1) offence; and/or

b. Suspension; and/or

c. Disqualification; and/or

d. Warning Off.

[4] We required the parties to provide written submissions as to penalty.

[5] We received the informant's submissions on 26 April and separate submissions from Mr Goode on 10 May and from Mr Cuttance, who has been assisting the respondent, on 11 May.

[6] The informant has submitted there are four relevant principles of sentencing:

Penalties are designed to punish the offender for his/her wrongdoing. They are not retributive in the sense that the punishment is disproportionate to the offence but the offender must be met with a punishment.

In a racing context, it is extremely important that a penalty has the effect of deterring others from committing like offences.

A penalty should reflect the disapproval of the JCA for the type of behaviour in question.

The need to rehabilitate the offender should be taken into account.

[7] The RIU identified the following precedents with respect to Informations A7212 and A7216 (misconduct towards Racing Investigator, Mrs Williams and Stipendiary Steward, Mr Wallis).

*RIU v McPhee* (6 December 2011) — GRNZ trainer charged with abusing/threatening a Racing Investigator [we note the language used is not disclosed in the decision] — 40-year unblemished record — 6 months' disqualification;

*RIU v Hodgson* (4 March 2015) — GRNZ trainer used offensive language to a Steward — \$400 fine (starting point \$650) — amended charge admitted — lengthy unblemished record;

*RIU v Weir* (19 April 2017) — GRNZ trainer used offensive language to a Steward — (use of words f\*\*k and f\*\*king as expletives) — upset at injury to dog — 2nd breach — admitted — remorse — fined \$500;

*RIU v Dickson* (11 February 2017) — HRNZ trainer/driver charged with misconduct (offensive language towards a Steward — (use of word f\*\*king as an expletive) and failing to comply with a direction — admitted — breach out of character — fine \$850 (starting point \$1000).

[8] The RIU sought a monetary fine, with a starting point of \$1500 for the abuse of Mrs Williams and period of disqualification or suspension with a starting point of six months for the abuse of Mr Wallis.

[9] The RIU identified the following precedents with respect to Information A7213 (failure to comply with a requirement to provide a urine sample).

*RIU v Robb* (23 March 2014) — 2nd offence — refusing sample — admitted — respondent stated he was leaving the industry — 6 months' disqualification;

*RIU v Ramage* (24 July 2012) — failed to supply sample — dehydrated — defended — 9 months' suspension;

*RIU v Kennett* (September 2015) — 2nd offence — failed to supply a sample — admitted — 10 months' suspension;

*RIU v Moka* (17 May 2012) — unlicensed track worker — failed to turn up — thought would show cannabis — 7 months' suspension;

*NZTR v Thornton* (25 May 2010) — track rider — stated he was not going to supply — 6 months' disqualification.

[10] The RIU sought a suspension or disqualification with a starting point of 12 months.

[11] With respect to Information A7214 (fails to comply with Club's dress code), the RIU submitted a fine of \$50 was appropriate, as per the Schedule of Minor Infringements for GRNZ, it being a 1st offence.

[12] The RIU identified the following precedents with respect to Information A7215 (fails to obey a lawful order):

*RIU v McInerney* (August 2014) — GRNZ licence holder charged with failing to obey a direction of a Steward — chose to trial dogs instead of attending Stewards' Room when directed — fined \$300;

*RIU v Mann* (1 December 2015) — GRNZ trainer charged with failing to comply with a lawful order of a Steward — fined \$350.

[13] The RIU sought a monetary fine with a starting point of \$500 for this breach.

[14] The RIU acknowledged that the respondent had not previously been charged with any similar offending.

[15] The RIU emphasised that it was expected that licence holders would at all times act professionally, properly and honestly. Any failure to follow the Rules was to be regarded as an affront to not only the Stewards but also to the Greyhound industry. The attitude displayed by Mr Goode throughout this incident was said to be “unprofessional and unwarranted”. His behaviour could at best be described as “belligerent and reprehensible, displaying a total disregard for Stewards and the GRNZ industry rules”. The language that he used towards RIU staff was clearly offensive and insulting, with this language being overheard by civilians at times.

[16] The RIU submitted these breaches of the GRNZ Rules were to be viewed seriously and that any penalty should act as a deterrent to others from behaving in a similar manner. The informant emphasised that Mr Goode had failed to acknowledge his offending throughout and had not shown any remorse.

[17] The facts in this matter were described by the RIU as “clear and disturbing”. Mr Lamb submitted that the level of offending was in the mid to high range and he was seeking penalties to reflect that.

[18] The JCA Penalty Guidelines (2015) were noted not to list starting points for these types of offending in relation to Greyhound Racing. It was submitted that it could thus be inferred that the starting points were “fact dependent”. Both the Harness and Thoroughbred codes had a \$1500 starting point for offensive, insulting, abusive language or behaviour to RIU and Administration Officials.

### **Respondent's submissions**

[19] We have received submissions from both Mr Goode and Mr Cuttance, who has been Mr Goode's support person. Whilst the provision of two separate submissions is unusual, we have read both sets of submissions.

[20] Mr Cuttance's submissions as to penalty primarily challenged and disagreed with the findings of this Committee that the breaches of the respective rules had been proved and whilst we have considered these submissions, we have not found them to be helpful in our determining penalty.

[21] Mr Goode emphasised his financial circumstances. He stated he was on a pension, and with that being his sole income, his going to the High Court was beyond his means. We understand this to be a reference to our statement at [109] of our decision of 12 April that his concern that the Registrar had failed in his duty to maintain the Register, as required by s 33(1) of the Incorporated Societies Act 1908, was a matter that that Act dealt with in s 21(4), and that provision was made for application to the High Court. We further note that this course of action remains open to Mr Goode should he be able to satisfy the requirements of that section.

[22] Mr Goode said he was a hobby trainer with three dogs. He had been an owner trainer for over 30 years. He had a clean record. He was “not in the game for money, but for the love of the dog”. He said his involvement in the industry costs him money.

[23] Mr Goode emphasised that “the rule was a fake rule”, and he was “blindsided into being told to do a drug test in front of an audience”. He said, “They got the reaction they deserved.”

[24] With reference to the significance and seriousness of his breaches of the Rules, Mr Goode stated: “The drug testing of licensed persons under the guise of it being safety sensitive is bullshit, they do not employ me, and I will not submit to their standover tactics. I make no apology for my actions on that day, in fact I can now live with myself for standing up to it. I disagree completely that this is a serious matter. What it is, is a bunch of Gestapo that didn't like being told to get f\*\*ked.”

[25] Mr Goode continued by stating he had served a disqualification by way of a warning off from 5 December 2016 to 16 February 2017. This is a matter we will take into account in determining penalty.

[26] Mr Goode said he was in no position to pay any costs or to pay any fines, except the tie charge. He stated his “sole focus now will be looking after three redundant Greyhounds and their associated costs. My sole income is the pension, I have little assets except two run down vehicles.”

[27] Mr Goode concluded his submissions by stating the RIU's submission that he pay the costs of two sets of lawyers was “outrageous”.

### **Decision**

[28] Mr Goode is to be sentenced for a number of breaches of the Rules, which we found proved in our decision of 12 April. That decision should be read together with this decision.

[29] When we stand back and look at what is the appropriate penalty to hold the respondent accountable and to uphold the integrity of the Rules of Greyhound Racing, we find we are driven to a combination of concurrent and cumulative penalties. Were we not to do so, we believe the accumulation of the penalties would be disproportionate to the charges in respect of which Mr Goode has been found to be in breach.

[30] We state at the outset that we have some sympathy for the predicament in which Mr Goode found himself. There is a foundation to his allegation that GRNZ failed to follow the correct procedure in amending the Rules, in that they had failed to properly notify licence holders of the amendments. Rule 87.4.a was introduced on 1 February 2016 following registration by the Registrar of

Incorporated Societies on 19 January 2016. Neither party was able to produce evidence of compliance with r 8 of the Rules of Greyhound Racing. The informant accepted in their submissions as to breach that it was unlikely the necessary notification of the amendment had occurred by way of publication in the industry magazine or placement on the Association's website. Mr Goode has alleged the Association was dysfunctional at this time and many amendments were not properly notified.

[31] However, in determining whether the respondent had breached r 87.4, we were concerned with the issue — was this rule in force? We answered that question in the affirmative in our decision of 12 April. Nonetheless, it was purely fortuitous that the Incorporated Societies Act 1908 “saved the day” for the informant in that s 21(3) of that Act provides: “[R]egistration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled.”

[32] Mr Goode had a valid point when he submitted that licence holders were deprived of the opportunity to acquaint themselves with the amendments to the Rules. But that said, this did not justify his actions, particularly when regard is had to the nature of his response to the requirement made by Mrs Williams that he provide a urine sample. His response of using profane language and making a rude finger gesture rather than questioning the basis for Mrs Williams' requirement that he give a sample is simply not acceptable and, as found in our decision of 12 April, was in breach of the Rules. However, with respect to penalty, this background to the various breaches (other than the breach of the dress code) is a relevant mitigating factor.

[33] In considering whether to disqualify or suspend Mr Goode, we have had regard to the seriousness of the breaches and the consequences for his dogs were a disqualification rather than a suspension to be imposed. We note the informant's submissions are in the alternative with respect to this issue and we believe the matter can be appropriately dealt with by way of a suspension rather than a disqualification.

[34] We note that Mr Goode has no record of any breaches of the Rules of the kind that are before us today. While we accept the RIU's submission that a deterrent penalty is required, we place greater emphasis on general rather than specific deterrence because of the respondent's previous good record. This offending is out of character and Mr Goode's total absence of remorse for his actions and continued belligerent stance is thus all the more puzzling.

[35] The most serious charge is the failure to provide a urine sample (Information A7213). We do not accept that Mr Goode believed he would not be afforded privacy with respect to this, ie that persons other than the tester would be in the vicinity, or that his being told in the Greyhound office that he was required to provide a sample was an unwarranted affront to his dignity. *Kennett* is authority for the fact that where there is a difference of gender between tester and respondent, this is not a defence with respect to a refusal and we attach only little weight to any alleged discomfort Mr Goode felt with respect to this aspect of the matter.

[36] The penalties in *Kennett* and *Ramage* were suspensions of their horsemen's licences for ten and nine months, respectively. *Ramage* was also a defended charge. This was Mr Goode's first breach of the Rules, whereas Mr Kennett was being sentenced for a second breach. The starting point in *Kennett* was 12 months' suspension. *Robb* was a second offence of failing to provide, and the penalty was six months' disqualification, in circumstances where the respondent did not attend the hearing and stated he was leaving the industry. Assessing the respondent's culpability with reference to these cases, we believe a starting point of ten months' suspension is appropriate. We make a two-month reduction for the unusual circumstances of this case (the failure to notify licence holders as previously described) and the respondent's clear record under this rule. The suspension is thus one of eight months.

[37] The abuse of Mrs Williams (Information A7212), which occurred within the hearing of a number of industry workers, was clearly a totally inappropriate and an unnecessary over-reaction on the respondent's part. We are unable to give any credit for remorse with respect to this breach, as Mr Goode has simply demonstrated none. Neither party has been able to draw to the Committee's attention a case that has similar circumstances. *McPhee* is relied upon by the respondent. Two charges were laid in that case, but the charge relating to his calling a female licence-holder a “slut” and a “liar” was not proceeded with. The penalty was six months' disqualification, which was imposed on the charge that related to unspecified abuse of and threats to a (male) deputy Race Course Investigator. Mr Goode, in addition to telling Mrs Williams to “Go get f\*\*ked” on two occasions, made an offensive finger gesture towards her. There is no reference to there being any gestures in *McPhee*, whilst Mr Goode made no threats to Mrs Williams.

[38] We also have to impose penalty for the abuse of Mr Wallis (Information A7216). In that regard, this case is similar to *McPhee*. Mr Wallis's evidence, which we have accepted, was that Mr Goode directed abusive and foul language at him, calling him a “lying wormy c\*\*\*” and telling him that he “could go and f\*\*k off as well”. Mr Goode continued with the profanities for a brief period then proceeded to verbally threaten Mr Wallis by saying, “You are lucky I don't whack you now” or words to that effect. Mr Wallis said at this time Mr Goode had his fists up to Mr Wallis's face; they were about a foot away. He was also that close when he used the foul language.

[39] The breaches in the cases of *Hodgson* and *Weir*, where offensive language was used to a Steward, were met with fines of \$400 and \$500, respectively. The rule in each of those cases was r 87.1.f, and not r 87.1.g. The fine in *Dickson*, where the charge was misconduct, and the word “f\*\*king” was used as an expletive, including once with reference to a (male) Steward, was \$850.

[40] We believe concurrent suspensions of four months for each of the two abuse breaches, cumulative upon the previous eight months' suspension, is necessary to hold Mr Goode accountable and to denounce his conduct, deter him and others who might think abuse and threats are an appropriate response to a direction from a Steward. Were we sentencing for these two misconduct breaches

alone, the suspension would have been at least six months but we have had regard to what is known as “the totality principle” and have stood back and assessed what penalties by way of suspension (and fine) are appropriate in the circumstances of this case to mark the need to uphold the Rules of Greyhound Racing.

[41] We observe that the RIU sought to have the penalties for Informations A7212 and A7216 dealt with cumulatively. These Informations relate to the abuse of different Stewards. As in one case the submitted penalty was a fine and the other a disqualification/suspension, we assume the reference was to Informations A7213 and A7216 (where the submitted penalties were in each case disqualification/suspension). In any case, we have imposed cumulative suspensions on Informations A7212/A7216 and A7213 (misconduct and failure to comply with a requirement to provide a urine sample), as these breaches are clearly different in character. Although the misconduct charges relate to different Stewards and occurred at different times of the day, we believe they have arisen out of the respondent’s loss of temper that day, and thus concurrent suspensions are not inappropriate.

[42] With respect to fines, \$50, which would equate to the infringement fee under r 87.3 (sixth schedule “Minor Infringements”), is imposed for Information A7214, the failure to comply with the Club’s dress code. The circumstances of this breach again do not bring any credit to Mr Goode, who upon being advised by Mr Renault, Stipendiary Steward, that he was required to wear a tie, replied he knew the policy but was refusing to wear it. Mr Renault directed Mr Goode to wear a tie and he again refused. He was not wearing a tie when he loaded his dog and we are told that this was clearly evident on Trackside TV.

[43] That leaves the penalty for the failure to comply with directions from Mr Wallis (Information A7215). Relevant cases are *Mann* and *McInerney*. The penalties there were fines of \$350 and \$300. A fine of \$300 is appropriate in Mr Goode’s case. Again, if this were the only breach we were to find proved against Mr Goode, the fine would have been higher.

[44] The provisional outcome is thus a penalty of 12 months’ suspension and fines totalling \$350. However, we have to take into account that Mr Goode was warned off for some 10 weeks in December 2016 to February 2017. We adopt a little rounding and reduce the period of suspension to 10 months. The suspension commences on 10 June 2017 and concludes on 1 April 2018. We reiterate that were it not for the fact that there had been oversights in the promulgation of the amendments to the Rules of Greyhound Racing, the penalties we would have imposed on Mr Goode would have been significantly higher.

#### **Costs**

[45] The RIU have sought costs in the sum of approximately \$9000. This includes \$4500 in legal fees for preparation and prosecution of the case before this Committee, and \$4480.69 by way of GRNZ legal fees from the law firm Simpson Grierson, for confirmation of the validity of the GRNZ Rules and constitution process. The Association are far from blameless in this saga. We have already emphasised that had the amendments to the Rules been properly advertised, Mr Goode and licence holders generally, would have had a significantly greater opportunity to have acquainted themselves with the drug testing rules. We suspect that s 21(3) of the Incorporated Societies Act was a “eureka moment” for the informant. Were there not this provision, we may have found the drug testing rules to have been invalid. An order to meet GRNZ legal fees is not appropriate in such circumstances.

[46] We order costs in the sum of \$1800 to the RIU, which is 40 per cent of their legal fees in prosecuting these matters. We believe such a sum to be just and reasonable, having regard to the respondent’s financial circumstances.

[47] With respect to witness expenses, the RIU have sought the payment of \$73.10 for each of their four civilian witnesses. This is a calculation based on the District Court Witnesses Fees Regulation (\$50 per half day) and travel expenses based on a distance of 30 kms. Rule 66.12 provides that a Committee “may order all or any of the costs and/or expenses of any party to the proceedings of and incidental to the hearing of the Information”. We do not have to determine whether witness costs would come within this provision, as we believe in the particular circumstances of this case an award for expenses of this nature would not be appropriate.

[48] A small contribution to the costs of the JCA is also just and reasonable. There was a full-day hearing of the matter and there have been a number of teleconferences, together with the issuing of the relevant minutes thereafter.

[49] Again, we have regard to Mr Goode’s financial circumstances, and order him to pay costs in the sum of \$1500 to the JCA.

Dated at Dunedin this 31st day of May 2017.

Geoff Hall, Chairman

**BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY  
UNDER THE RACING ACT 2003**

**IN THE MATTER** of the New Zealand Rules of Greyhound Racing

**BETWEEN RACING INTEGRITY UNIT  
Informant**

**AND Mr John Goode**  
Licensed Greyhound Trainer  
**Respondent**

**Information No.** A7212 to A7216

**Judicial Committee:** Prof G Hall, Chairman Mr R McKenzie, Member of Committee

**Appearing:** Mr D Matthews and Mr P Lamb, for the Informant

The Respondent in person, with the assistance of Mr B Cuttance

**Date of hearing:** 25 January 2017

## **RESERVED DECISION OF JUDICIAL COMMITTEE**

[1] The respondent, Mr Goode, faces the following charges:

**Information No A7212: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode misconducted himself by abusing and using foul language to RIU Investigator, Mrs K Williams. This is an alleged breach of r 87.1.o of the Greyhound Racing New Zealand Rules of Racing.**

**Information No A7213: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode refused to provide a urine sample when requested and refused to sign the notification form requesting such sample. This is an alleged breach of r 87.4.a of the Greyhound Racing New Zealand Rules of Racing.**

**Information No A7214: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode failed to wear a tie as per the Club's dress code. This is an alleged breach of r 87.1.y of the Greyhound Racing New Zealand Rules of Racing.**

**Information No A7215 – 2 breaches: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode failed to "obey with" lawful orders of Stewards, S Renault and S Wallis. This is an alleged breach of r 87.1.p of the Greyhound Racing New Zealand Rules of Racing.**

**Information No 7216: THAT, on 25 November 2016 at a race meeting conducted by Christchurch Greyhound Racing Club at Addington Mr Goode abused Steward, S Wallis in the kennel block area of Addington Raceway. This is an alleged breach of r 87.1.g of the Greyhound Racing New Zealand Rules of Racing.**

[2] The informant produced authorisation in a letter dated 28 November 2016 from Mr Godber, General Manager RIU, to lay the informations.

[3] The charges as outlined in informations A7212, A7213, A7215, and A7216 were heard at Addington Raceway on 25 January. Mr Goode admitted the charge in information A7214.

[4] The respective rules provide:

*87.1 Any person (including an Official) commits an offence if he/she:*

*1.g. assaults, obstructs, impedes, abuses, threatens or insults the Board, any member of the Board, a Club, any member of a Club Committee, any Steward, any member of a Judicial Committee and any member of the Appeals Tribunal or any other Official;*

*1.o. has, in relation to a Greyhound or Greyhound racing, done a thing, or omitted to do a thing which is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

*1.p. disobeys or fails to comply with the lawful order of a Steward or other Person having Official duties in relation to Greyhound racing;*

*1. y. being a Handler of a Greyhound fails to comply with the Board's dress standards;*

*87.4. a. A Steward or Racecourse Investigator may require a Handler, or any other Licensed Person who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, to supply a Sample at a time and such place nominated by the Steward or Racecourse Investigator. If so, such Handler, or any other Licensed Person must comply with such a requirement. Any Handler, or any other Licensed Person who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse acting in contravention of this Rule shall be reported to Association by the Steward or Racecourse Investigator dealing*

*with the breach and the Association shall consider whether, in addition to any penalty which may be imposed by the Judicial Committee, such person's Licence should be revoked, varied or suspended (including having conditions imposed on it), under r 107 of these Rules.*

[5] The respondent had indicated at the teleconference held on 9 December 2016 that he would admit the breach alleged in information A7215. However, when the charge was read at the hearing he indicated he wished to defend that charge also. An adjournment was granted at the request of the informant to allow counsel to take instructions, following which the informant sought and was granted leave to amend the charge to reflect only an alleged failure to obey the lawful order of Stipendiary Steward, Mr Wallis, as Mr Renault was not present to give evidence. We permitted Mr Goode to change his plea on this charge to one of not admitted.

[6] Evidence was heard from witnesses for the informant on the charges that were denied, and the respondent, with the assistance of Mr Cuttance, cross examined these witnesses and made oral submissions with respect to his defence to these charges.

[7] Mr Goode accepted at the hearing that he is a licensed Greyhound trainer, that Mrs Williams is a Racecourse Investigator, and that Mr Wallis is a Stipendiary Steward. These matters were thus not in issue.

[8] During the course of the hearing the respondent raised for the first time the issue of whether r 87.4.a had been properly enacted. It was evident that in order to respond to this submission the informant would need to research the records of the New Zealand Greyhound Racing Association (NZGRA).

[9] The hearing was adjourned prior to the summing up from each of the parties to enable the informant to investigate the procedural failings that were alleged by Mr Goode with respect to this rule.

[10] An extension of time in which to file submissions was granted to both parties by the Committee, at the request of each party.

[11] The informant filed written submissions on 27 February and a brief response to Mr Goode's submission on 6 April.

[12] The respondent filed his submissions on 30 March.

#### **Informant's case**

[13] The informant alleged that Mr Goode on 25 November 2016:

Refused to provide a urine sample when required to do so by investigator Mrs Kylie Williams;

Misconducted himself by using foul language against Mrs Williams, namely the words "Go get f\*\*\*\*d" and by giving her a two-fingered gesture;

Refused to comply with a lawful order of steward Mr Wallis, who directed him to go to the Stewards' Room to have a discussion about his earlier behaviour;

Abused Steward, Mr Wallis by calling him a "lying wormy c\*\*\*\*" and making gestures of physical aggression towards him.

[14] The informant's first witness was Mrs Kylie Williams, a Racing Investigator, attached to the RIU. She stated that on 25 November last, she attended a Greyhound race meeting conducted by the Christchurch Greyhound Racing Club at Addington. Drug testing of selected licensed persons was programmed on that day.

[15] Testing was carried out pursuant to r 87.4.a and was conducted using the services of the Drug Detection Agency (TDDA). At approximately 11.06 am she spoke to Mr John Goode in the Secretary's Office at the Greyhound Racing complex. Also present in the office at that time were a number of Greyhound Racing employees.

[16] Mrs Williams introduced herself to Mr Goode, who acknowledged that he knew who she was. She advised him that the RIU were conducting drug testing that day on licensed persons and that he was one of those persons to be tested. He replied that he had not been drinking.

[17] Mrs Williams said she informed him that the RIU was not testing for alcohol and that they were conducting drug testing. Mr Goode replied that Mrs Williams could "Go and get f\*\*\*\*d" and walked away. He began to walk up the stairs in order to leave the office and she asked him to come back. Mr Goode stopped on the stairs, turned around, and again said that she could "Go and get f\*\*\*\*d". He then gave Mrs Williams the two-finger gesture and walked out. She believed the Greyhound Racing Club staff present in the office witnessed these words and actions of Mr Goode. Mrs Williams said she had no other dealings with Mr Goode that day.

[18] Mr Goode left the racecourse without providing a sample of urine as directed. Mrs Williams stated he was therefore deemed to have refused to provide a sample for analysis.

[19] When questioned by the respondent, Mrs Williams said she could see the respondent very clearly when he gestured at her. He was walking up the stairs and was 5 to 8 metres away from her.

[20] Mr Cuttance questioned Mrs Williams as to why Mr Goode was to be tested. She said there were 13 names on the list, nine of which were tested. She explained not all persons on the list had turned up at the course that day and the respondent was the last person due to be tested. She agreed it was a pre-determined list that was based on information received from Stipendiary Stewards. It was a list of persons in respect of whom it was believed they would be likely to test positive. She understood that there had been a smell of cannabis in the kennelling area at an earlier meeting and this was the reason for the testing.

[21] Mrs Williams had been given the list and she reiterated that whilst the names had not been randomly selected, she had no role whatsoever in selecting the names on the list. All the names were those of males, except one, and that female had not been tested, as she was not at the course.

[22] The RIU regularly used the services of the TDDA. The tester was female. Mrs Williams explained there was not a requirement that the tester be the same gender as the person being tested. She referred to the Kennett case (9 September 2011) in this regard.

[23] Mrs Williams confirmed she had told Mr Goode that it was a drug test and when he replied he had not been drinking, she said the test was not for alcohol but was for drugs. She thought she had spoken to Mr Goode for about a minute.

[24] Mrs Williams confirmed the abusive words she alleged Mr Goode had used were spoken in a normal conversational volume when he was about half a metre away from her. Mrs Williams was adamant the words used were "Go and get f\*\*\*\*d" and not "Get f\*\*\*\*d" as Mr Goode alleged to her in questioning. She said in her experience in racing administration no one had ever spoken to her in these terms before.

[25] When questioned whether she could see up the stairs, Mrs Williams replied she could, as she was standing beside the table. Mr Goode was almost at the top of the stairs when he turned around and made the offensive gesture. She saw the gesture, which was not subtle, very clearly.

[26] Mrs Williams agreed there was nothing unusual about Mr Goode's demeanour on the day. He was not staggering and there was no evidence of drugs or alcohol. She believed he had been summoned to attend for the test by the Stipendiary Stewards in person.

[27] Mrs Williams stated that to her knowledge this was the first time members of the Greyhound Racing industry had been tested. The testing had resulted in two positive readings. She explained the rule had only been introduced in February 2016. She thought the testing had been advertised in the industry's monthly magazine, but was not personally certain that this was the case.

[28] Mr James Smith was the next person to give evidence. He stated he was the Race Starter for the Christchurch Greyhound Racing Club. On 25 November 2016, he was present at the Secretary's Office at Addington. It was before a race meeting and he was sitting in the office with several other staff members. He was eating his lunch just after 11.00 am. Also present were Mrs Williams and Mr Goode.

[29] Mr Smith could see Mrs Williams talking to Mr Goode. Mr Goode then said to Mrs Williams, "Get fucked". Mr Goode then walked up the stairs to leave the office. Mrs Williams asked him to come back. Mr Goode turned around and told Mrs Williams to "Go get f\*\*\*\*d" again. He then gave her the fingers. This was quite blatant. Mr Goode walked out the door, slamming it behind him. A number of staff witnessed this incident.

[30] Mr Smith explained his attention was drawn to the conversation due to the foul language. It had been very quiet and prior to this time he could not hear what Mrs Williams and Mr Goode were saying. He saw Mr Goode very clearly give the fingers to Mrs Williams when he was half way up the stairs.

[31] When questioned by Mr Cuttance, he said it was the nature of the language that had drawn his attention. There may have been raised voices, however, he was not sure as to this. As to the words used, he said the first time it was "Get f\*\*\*\*d". The second time when Mr Goode spoke on the stairs it was "Go and get f\*\*\*\*d" or "Go get f\*\*\*\*d". He reiterated to the best of his recollection that was

exactly what he had heard. He was 5 to 7 metres away at the time of the first statement and 12 to 15 metres away on the second occasion. Mr Goode was not yelling but had raised his voice and had slammed the door as he was leaving. He said Mrs Williams had said to Mr Goode after the first words, "Please come back", but Mr Goode had continued up the stairs. He agreed Mrs Williams had said, "Did anyone hear that?" after Mr Goode had spoken on the second occasion. He had replied, "Yes".

[32] Mr Smith acknowledged his relationship with Mr Goode was not the best. They had had a running battle. It was greyhound related but had nothing to do with this incident. He agreed that the respondent did not appear to be drug or drink impaired.

[33] The next witness for the informant was Ms Stephanie Wigley. She stated she was the Office Administrator for the Christchurch Greyhound Racing Club. On 25 November 2016, she was present at the Secretary's Office at Addington. It was before a race meeting and she was sitting in the office with several other staff members just after 11.00 am. Also present were Mrs Williams and Mr Goode. Ms Wigley could see Mrs Williams talking to Mr Goode. He then walked up the stairs to leave the office. Mrs Williams asked him to come back. Mr Goode turned around and told Mrs Williams to "Go get f\*\*\*\*d". He then gave her the fingers. He walked out the door, slamming it behind him.

[34] Ms Wigley said she had heard Mr Goode's statements very clearly and had seen his hand gesture. She had a full view of him waist down when he was on the stairs and he had bent down to make the gesture. She thought he was 1/2 to 1/4 of the way up the stairs. She estimated Mr Goode was 20 metres away from her. His words were "elevated" and he had said, "Go get f\*\*\*\*d".

[35] As she recalled, Ms Wigley believed Mr Lamb had asked her to give a statement. She said she had spoken to the RIU and they had typed up her statement. She had read it and signed it. The statement was not in her own words but it was what had happened on the day.

[36] Ms Wigley said there was nothing about Mr Goode's demeanour that concerned her. He was acting normally.

[37] When questioned as to how many times she heard the respondent use the "f word", she replied she thought she heard it twice and was sure it was once. That was when he was on the stairs. She was certain the words he used were "Go get f\*\*\*\*d."

[38] Ms Pauline Munro gave evidence that she was the Kennelling Identification Steward for the Christchurch Greyhound Racing Club. On Friday 25 November 2016, she was present at the Secretary's Office at Addington. It was before a race meeting and she was sitting in the office with several other staff members just after 11.00 am. Also present were Mrs Williams and Mr Goode. She could see Mrs Williams talking to Mr Goode. He then walked up the stairs to leave the office. Mrs Williams asked him to come back. Mr Goode turned around and told Mrs Williams to "Go get f\*\*\*\*d". He then gave her the fingers. He walked out the door, slamming it behind him.

[39] Ms Munro said she had seen the respondent clearly as she was looking directly up the stairs. She also very clearly heard the words "Go get f\*\*\*\*d". She was about 3 or 4 metres away at the time. The words were spoken first as Mr Goode walked away from Mrs Williams and the gesture and the words a second time were when he was on the stairs. His voice was raised. She thought he was getting a bit angry. She was not certain whether Mrs Williams had stood up and moved away from the desk. She thought she was sitting at the desk the whole time. She had definitely told Mr Goode to please come back when he walked away.

[40] Ms Munro said she agreed with the words on the piece of paper she had signed and that was why she had signed it. She would not have signed it if it were not right. She also said there was nothing about Mr Goode's demeanour that concerned her.

[41] Ms Munro agreed that the word "f\*\*k" was used in social company. It did not offend her, although that would depend on the circumstances. On this occasion, it did offend her because of Mrs Williams's status and the context in which the word was used. It was in the workplace when people were carrying out their duties. She said she believed there was a difference between using the word "f\*\*k" and the expression "Go get f\*\*\*\*d". She, herself, would not use those words.

[42] The next witness for the informant was Ms Robyn Herbert, who stated she was the Security Officer for the Christchurch Greyhound Racing Club. On Friday 25 November 2016, she was present at the Secretary's Office at Addington. It was before a race meeting and she was sitting in the office with several other staff members just after 11.00 am. Also present were Mrs Williams and Mr Goode. She could see Mrs Williams talking to Mr Goode. He then walked up the stairs to leave the office. Mrs Williams asked him to come back. Mr Goode turned around and told Mrs Williams to "Go get f\*\*\*\*d". He then gave her the fingers. He walked out the door, slamming it behind him.

[43] Ms Herbert said she was 3 to 4 metres away from the respondent when he turned around and spoke to Mrs Williams. She heard

him very clearly. She believed Mrs Williams was standing between the table and the bench at this time. She only heard the words being used once. The finger gesture was made when Mr Goode was halfway up the stairs. He gestured twice. The words used were definitely "Go get f\*\*\*\*d". He had sworn when Mrs Williams had asked him to come back.

[44] Ms Herbert had said she would be a witness when Mrs Williams had asked the other persons present whether they had heard what Mr Goode had said. She said Mr Renault took her statement and she signed it after she had read it. It was correct. She would not have signed it otherwise.

[45] Ms Herbert said Mr Goode was very very angry but he did not appear to be impaired on the day. He had slammed the door when he left. It was just like a naughty child would slam the door.

[46] The final witness was Mr Scott Wallis, a Stipendiary Steward attached to the RIU. He said on Friday 25 November 2016 he was on duty at the meeting conducted by the Christchurch Greyhound Racing Club at Addington. At about 12.15 pm he spoke to licensed trainer Mr John Goode. Mr Goode was sitting at the front of the kennel block by himself at that time. Mr Wallis requested him to go to the Stipendiary Stewards' room to discuss an earlier incident between himself and Racing Investigator, Mrs Kylie Williams. Mr Goode's reply to that request was "Oh that f\*\*\*ing mole up there."

[47] Mr Wallis said he replied that there was no need to speak like that. Mr Goode then directed abusive and foul language at Mr Wallis, calling him a "lying wormy c\*\*t" and telling him that he "could go and f\*\*k off as well". Mr Goode continued with the profanities for a brief period then proceeded to verbally threaten Mr Wallis by saying "You are lucky I don't whack you now" or words to that effect. Mr Wallis said at this time Mr Goode had his fists up to Mr Wallis's face; they were about a foot away. He was also that close when he used the foul language. He said Mr Goode was usually fine to deal with. There had been no issues in the past. He was shocked at his language and very surprised by his response. He appeared to be very very angry. At the time, he said there was a low (not even waist high) fence between them. It was so low that a person could just step over it.

[48] Mr Wallis said he asked Mr Goode twice to go to the Stewards' room. He gave him two directions to that effect. He had asked him to go because he was aware Mr Goode had told Mrs Williams to "Get f\*\*\*\*d". He did not ask him for an explanation. When Mr Goode did not respond the first time, he went and got another Stipendiary Steward, Mr Renault, and he again directed Mr Goode to the Stipendiary Stewards' room, in the presence of Mr Renault.

[49] He was aware he needed a witness to the direction and that was why he had called Mr Renault. He said he gave the direction in the presence of Mr Renault. He told Mr Goode to go and see Mr Quirk (who is a Stipendiary Steward). He said his asking him to do this was the direction. Mr Goode said nothing to him at this time. He had no further dealings with Mr Goode that day but he understood Mr Goode never went to the room. He confirmed that Mr Renault never said anything to Mr Goode.

[50] Mr Goode questioned Mr Wallis as to when r 87.4.a came into effect. Mr Wallis replied that it was last year. This could be the first time the rule had been used although he believed it had been used at Wanganui previously. He agreed with Mr Goode that Mr Goode did not appear drugged or drunk. He also acknowledged he had not told Mr Goode why he had to go and see Mrs Williams. The second time he had told Mr Goode he needed to go to the Stewards' room to talk with Mr Quirk about the earlier matters. Mr Goode did not comply. It would have been about a 15-metre walk to the room.

### **Respondent's oral submissions**

[51] Mr Goode questioned the validity of r 87.4. He believed it had come into existence in October 2015 when the various clubs had voted on remits and this was one that was passed. It was contentious; it was not unanimous. He submitted it had not been publicly notified in the official magazine and had not been placed on the website, as was required by the constitution. He was thus unaware of the rule. He was familiar with the alcohol rule. This was why he had said he had not been drinking. He acknowledged that Mrs Williams had said this was a drug test. He was concerned all this was taking place in the office in front of people he knew and the veterinarian. He said he "saw red" because it was in front of his peers and in his mind, he thought the rule did not exist.

[52] Mr Goode continued by stating the Greyhound Racing head office was dysfunctional for a time and all the rules that emanated from the 2015 conference were null and void. There was thus no power or authority for the Stipendiary Stewards to require him to take a drug test. He had read the greyhound journal from cover to cover and there was no mention of the rule. It was not on the website. He said other trainers he had spoken to did not know about the rule either. There was no danger when walking a dog to the traps, so he believed the fact this was seen as a safety sensitive issue was a nonsense.

[53] Mr Goode said he had been "frog marched" to the Secretary's Office. He thought it was about an abusive email he had sent to the

Wanganui Greyhound Club concerning the use of devices to test for alcohol. He was angered, as he does not drink, and thought it was "political". Drugs had not crossed his mind and it added to his surprise to be told in front of an audience that he was to be drug tested. He thought this was demeaning and an attack on his character, and that was why he said, "Get f\*\*\*\*d".

[54] Mr Goode said the fact that other people were listening in to the conversation he was having with Mrs Williams when he was about to be tested made him angry. He said the words he used were "Get f\*\*\*\*d". He said he turned on his heels and slammed the door. He did not remember making any gesture.

[55] Mr Goode stated that the word "f\*\*k" was commonly used in everyday conversation and in using that word he was not using abusive or foul language. It was merely an exclamation of annoyance; it was not threatening. It was part of his vocabulary. He had had a background as a seaman and had worked below decks. The word was ingrained in him. It had been used recently on Trackside in an interview after a race and was used by protesters through megaphones. It was nothing more than slang; like "bugger" and "bastard". There were no children present and in the context of adults, such as Racecourse Investigators, its use was "nothing".

[56] The words he had had with Mr Wallis he could not recall, but they were not what Mr Wallis had said. It was a "robust conversation". The Committee only had Mr Wallis's word that those were the words he used. He acknowledged he had had a meeting with Mr Wallis and had been asked to go and report to Mr Quirk and had not done so.

[57] Mr Goode emphasised that the confrontations were all instigated by the RIU and there had always been a fence between him and Mr Wallis. He had been "blindsided" by being asked for a drug test. This had angered him but it was not a shouting match.

[58] Mr Goode believed the four civilian witnesses (those present in the office) were a "jack-up" or a "fait accompli". Their statements were not in their own words. Mr Renault had written them. They had simply signed on the dotted line. He alleged the witnesses had been coerced into signing their statements and that there were discrepancies in their oral evidence.

[59] Mr Goode stated he had been "warned off" by a letter he had received on 7 or 8 December last. He asked the Committee to look into this for him. (We explained that this was a decision of GRNZ. The informant acknowledged that they had made a recommendation to this effect to GRNZ. We suggested to the informant that perhaps this matter could be revisited in light of the fact that the hearing would be adjourned and there would be a reserved decision. We understand the warning off was lifted a few days after the hearing.)

[60] Mr Goode concluded by stating "the rule does not exist" and that "constitutional errors with r 87.4 rendered enforcement of the rule ultra vires." There was no person with the authority to require him to take a drug test. He had been in Greyhound Racing for 31 years and any previous breaches had been for minor matters.

## **Informant's written submissions by way of summing up**

### **The charge of failing to provide a urine sample**

[61] The informant submitted there was no dispute that Mrs Williams required Mr Goode to provide a urine sample pursuant to the requirements of r 87.4.a of the Rules.

[62] The respondent's argument was identified as being that r 87.4.a was a nullity, as it had not been passed in accordance with r 8 of the Greyhound Racing Rules. Rule 8 states:

#### *Amendments to these rules or regulations*

*8.1 The Rules of Racing or any of them may from time to time be amended or revoked by unanimous resolution of the Board of which not less than fourteen days' notice has been given to each Board member. Prior to any amendment, revocation or addition to the Rules of Racing being considered by the Board, the proposed amendment, revocation or addition shall be notified to:*

- a. every Club;*
- b. the Judicial Control Authority;*
- c. the Integrity Service Provider; and*
- d. the New Zealand Racing Board.*

*In addition, details of any proposed amendment, revocation or addition to the Racing Rules shall be placed on the Association website and published in the Association's industry magazine no later than 20 days prior to the Board meeting at which the amendment, revocation or addition will be considered.*

*No amendment to the Rules of Racing shall be made by the Board without the prior written consent of the New Zealand Racing Board and the prior consent of clubs holding not less than two thirds of the votes able to be cast by all Clubs at a general meeting of the Association. Such consent by the Clubs may be provided to the General Manager by email and/or by telephone.*

8.2 These Rules other than the Rules of Racing or any of them may from time to time be amended or revoked by a Special Resolution passed at a General Meeting or Special General Meeting of which fourteen days' notice has been given. Prior to any amendment, revocation or addition to the Rules being considered at a General Meeting or Special General Meeting, the proposed amendment, revocation or addition shall be notified to:

- a. every Club;
- b. the Judicial Control Authority; and
- c. the New Zealand Racing Board.

Any report or recommendation by the Judicial Control Authority or the New Zealand Racing Board shall be provided to the General Meeting.

[63] The respondent alleged at the hearing that GRNZ had failed to advertise the proposed introduction of s 87.4.a both on its website and in the industry magazine no later than 20 days before the meeting at which the rule was introduced.

[64] The informant stated that GRNZ had sought a legal opinion from their legal advisors as to the validity of r 87.4.a. A copy of this legal opinion was attached to the informant's submissions, with the permission of GRNZ (Exhibit A).

[65] The informant acknowledged that Mr Goode was correct in submitting that the procedure prescribed under r 8 of the Rules was not followed to the letter. In particular, the proposal to introduce s 87.4.a was not advertised on the GRNZ website within the required timeframe before the meeting at which it was to be voted on. Additionally, there was some doubt as to whether it was advertised in the industry magazine within the required timeframes. (The informant did not place before this Committee any evidence that demonstrated it had been.)

[66] The informant submitted that this was not fatal to the rule's validity. GRNZ is an incorporated society under the Incorporated Societies Act 1908. The procedure under which a society may alter its rules is set out under s 21 of this Act which provides:

*Alteration of rules*

(1) A society may from time to time alter its rules in manner provided by the said rules, but subject to the provisions of this Act.

(2) Every alteration of the rules must be—

(a) in writing; and

(b) signed by at least 3 members of the society; and

(c) delivered to the Registrar accompanied by a certificate by an officer of the society or a solicitor certifying that the alteration has been made in accordance with the rules.

(3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Act, shall register the alteration in like manner as in the case of the original rules, and the said alteration shall thereupon take effect according to the tenor thereof. Such registration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled.

(3A) Notwithstanding anything in subsection (3) of this section, the High Court, on an application made to it by any member of the society, may in its discretion, if it is satisfied that any such condition as aforesaid has not been duly fulfilled, declare the alteration to be void in whole or in part, and order that the registration be cancelled in whole or in part, and may by the order give such directions and make such provisions as seem just in the circumstances of the case. On the delivery to the Registrar of a sealed copy of the court's order he shall forthwith amend the register accordingly.

(4) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(5) In the case of any alteration of the name of a society the Registrar may, in his discretion, refuse to register the alteration until the making thereof has been publicly advertised in such manner as the Registrar thinks fit.

[67] Counsel for the informant emphasised that s 21(1) allows a society to alter its rules in the manner provided by its rules, but subject to the provisions of the Incorporated Societies Act. The procedure to be followed is set out in s 21(2). The Registrar must then register the alteration if satisfied of the matters specified in s 21(3).

[68] Counsel produced a copy of the certification of alteration of rules relevant to rule 87.4.a (Exhibit B). The informant submitted there could be "no doubt that s 21(2) and (3) of the Incorporated Societies Act was complied with".

[25] With reference to s 21(3), the informant noted that whilst there may have been defects in following the procedure under the Greyhound Racing Rules to amend or alter a rule, the Rules are subject to the provisions of the Incorporated Societies Act. Section 21(3) overrides any alleged defect in the passing of a rule once it is registered. The informant submitted, therefore, that r 87.4.a was

valid and could be enforced against Mr Goode on 25 November 2016.

[69] The informant submitted that if Mr Goode wished to challenge the validity of the rule, this was not the appropriate forum for him to do so. Section 21(3A) of the Incorporated Societies Act was said to detail the procedure, which must be followed for such a challenge, although we note a more accurate description of this provision is that it sets out the powers of the High Court on hearing such an application.

[70] The informant concluded their submission by stating with respect to this charge: "Whether or not [r] 8 of the Greyhound Racing Rules was complied with to the letter in passing r 87.4.a, registration of an alteration to an incorporated society's rules is "conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled". The rule was therefore valid and enforceable on 25 November 2016.

#### **Abusing and using foul language towards Ms Kylie Williams**

[71] The informant submitted that evidence was given by Mrs Williams, James Smith, Stephanie Wigley, Pauline Munro and Robyn Herbert that Mr Goode had told Mrs Williams to "Go get f\*\*\*\*d" and given her a two-fingered gesture while in the Secretary's Office of the Greyhound Racing complex.

[72] It was alleged by Mr Goode that there was collusion in the witnesses' statements and that their statements were presented to them as a *fait accompli* to be signed. The informant made three points in response.

[73] Each witness gave evidence in accordance with their statement and did not resile from their evidence in cross-examination. Each statement contained the following advice, which each witness had initialled and/or signed: "I have read this statement. I understand its contents, which are true and correct. I have been told that I can change, add, delete or alter anything I wish. I have given this statement of my own free will, without any threats, promises or inducements. I declare that this statement is true and correct to the best of my knowledge and belief and I have made the statement knowing that if it is to be tendered in evidence I will be guilty of an offence if I have wilfully included in it anything which I know to be false or do not believe to be true." The witnesses confirmed in oral evidence that their statements were the truth and that they would not have signed them if they were not true.

[74] The informant submitted that whilst there were some slight inconsistencies in the accounts given in oral evidence by the witnesses, this was to be expected when dealing with multiple person's recall and this also further undermined any suggestion of collusion. All witnesses were clear that Mr Goode had told Mrs Williams to "Go and get f\*\*\*\*d" and had performed an offensive gesture once or twice. Little, they alleged, turned on whether Mr Goode did this once or twice, as a single instance would be enough to constitute abusive behaviour.

[75] In respect of the allegation that he told Mrs Williams to "Go get f\*\*\*\*d", Mr Goode's argument was that the meaning of the word "f\*\*k" was imperative, and that he simply said "Get f\*\*\*\*d" rather than "Go get f\*\*\*\*d". He claimed that saying, "Get f\*\*\*\*d" was not obscene, but was rather a way of saying "No" forcefully. The informant submitted that the Committee could reject this argument. Whether the words "Get f\*\*\*\*d" or "Go get f\*\*\*\*d" were used, and whatever the intent behind the words used, it was clear that Mr Goode was "abusing and using foul language" (to use the wording of the charge) against Mrs Williams, and thereby committed an act of misconduct. Mr Goode also gave evidence that he "saw red" and said "Get f\*\*\*\*d" which was in line with the evidence called by the informant.

[76] The informant further submitted that Mr Goode's propensity to use foul and abusive language when upset about matters relating to Greyhound Racing was also demonstrated by the email exchange he produced in evidence where he stated the following to the secretary of the Wanganui Greyhound Racing Club: - "Shove it up your arse you pricks. Keep your f\*\*\*\*\*g machines out[r] [sic] of my way."

[77] The informant concluded this aspect of their submission by stating that "the Committee can be satisfied that Mr Goode abused and used foul language to Mrs Williams on 25 November 2016 and that this charge has therefore been made out."

#### **Failing to comply with direction of Mr Scott Wallis and abusing Mr Wallis**

[78] The informant highlighted the fact that towards the end of the hearing, when questioned by the Committee, Mr Goode had acknowledged that Mr Wallis had given him a direction. This was in accord with Mr Wallis's evidence that he gave Mr Goode the direction in no uncertain terms.

[79] Mr Wallis's evidence was that Mr Goode called him a "lying wormy c\*\*t" and told him to "Go and f\*\*k off as well", then threatened

him by saying "You are lucky I don't whack you now" or words to that effect. When asked about the specifics of his conversation with Mr Wallis, Mr Goode indicated that he could not recall using the 'c word'.

[80] Mr Wallis's account, the informant alleged, was entirely consistent with the way other witnesses described Mr Goode's demeanour on that day. The informant thus submitted that Mr Wallis's evidence was credible, and that Mr Goode's lack of recollection of the discussion did "not go near casting doubt" on Mr Wallis's evidence. It was therefore submitted that the Committee should find these two charges to be proved.

#### **Failing to wear a tie**

[81] Mr Goode pleaded guilty to this charge at the start of the hearing.

#### **Respondent's submissions**

##### **Charge A7213 – Alleged breach of r 87.4.a**

[82] The respondent submitted that r 87.4, along with a number of other new rules and amendments to existing rules, were lodged with the Registrar of Incorporated Societies on 18 January 2016. These rules were stated to be effective from 1 February 2016. The Rules and Amendments were accompanied with a certificate under s 21 of the Incorporated Societies Act 1908 ostensibly certified in the name of James Leach, General Manager, New Zealand Greyhound Racing Association Incorporated. This certificate stated inter alia that James Leach certified that the alteration had been made in accordance with the rules of the society.

[83] The respondent emphasised that this certificate did not appear to have been signed or dated by Mr Leach as required and the certificate was therefore a falsity as the alteration to the rules, including the inclusion of the new r 87.4.a were not made in accordance with the rules of the society.

[84] Mr Goode stated that he had given "evidence" at the hearing that the Association had failed to publish notifications of the proposed law changes in accordance with r 8 of the Greyhound Racing Rules. He therefore submitted that the failures highlighted in his evidence had now been "accepted by the Association in para 15 of its Counsel's submissions". He disputed the Association's counsel submission that these omissions were minor in nature and that as the changes to the Association's Rules had been registered by the Register of Incorporated Societies, any failure to follow the Association's own rules in regard to the amendments were saved by s 21(3) of the Incorporated Societies Act.

[85] Mr Goode submitted that the failures of the Association to meet the requirements of its own rules in effecting the amendments were far from minor. He added that the purpose of ensuring that amendments were published on the Association's web site and in the industry magazine was to ensure that all persons that might be affected by the proposed amendments were able to be aware of such amendments and consequently have an opportunity to make submissions on them. These were "fundamental failures" in that persons who might be affected by such amendments, and this could include the livelihood of a substantial number of persons involved in the industry, were in effect precluded from making submissions.

[86] Mr Goode also submitted the fact that the certificate provided to the Registrar in support of the registration of the amendments was fundamentally false in that it was not completed as being signed by the Association's Manager. Thus, the Registrar had "totally failed in his duty to maintain the Register as required by s 33(1) of the Incorporated Societies Act 1908 and therefore the failures to follow the rules of the Association and the requirements for registration should not be saved by the provision in s 21(3)".

[87] As an alternative to these submissions, Mr Goode submitted in respect of charge A7213, that the informant must lay the charge in respect of the rule under which the charge is laid. Charge A7213, he submitted, did not reflect the requirements of r 87.4.a. This rule, includes of number of separate elements each of which must be proven before liability for a breach of the rule can be established. Mr Goode submitted that the informant had failed to provide any evidence as to what "safety sensitive activities" had been published and further any evidence that on the day that the alleged offence was alleged to have occurred that he did, intended to, or was likely to carry out any such safety sensitive activity. The failure to prove this aspect of the rule, he said "means there was no authority for the informant or its servant or agent to require [him] to provide a sample and that this provides a good defence to charge A7213".

[88] Mr Goode identified a further requirement of r 87.4.a to be that the Steward or Racecourse Inspector must nominate a time and place for the handler or other licensed person to provide the required sample. The evidence of Mrs Williams was that she introduced herself to him and that he acknowledged that he knew who she was. Mr Goode emphasised that in her evidence Mrs Williams stated: "I advised him that the RIU were conducting drug testing that day on licensed persons and that he was one of those persons to be tested. He replied that he hadn't been drinking. I informed him that the RIU wasn't testing for alcohol and that we were conducting drug

testing.” Further evidence of Ms Williams was: “I had no other dealings with Mr Goode that day.”

[89] In regard to the evidence of Mrs Williams, Mr Goode submitted: “That no time and place was nominated for the provision of the sample; and That Ms Williams made no statement of requirement or stated to me the time and place as to where the testing was to take place, I also submit that this is supported by the charge as laid which states “...after being requested...” and as such this makes it clear that no requirement was made in terms of the rule, but at the most it was a simple request.”

[90] Mr Goode further submitted that the failure to prove the requirement provision and that he failed to attend at a specified time and place as required by the rule provides a good defence to charge A7213.

**Charge A7212 – Alleged breach of r 87.1.o — abusing and using foul language to RIU Investigator, Mrs Williams**

[91] Mr Goode commenced his submission with respect to this charge by stating the evidence given by the Association related to the alleged response Mr Goode gave to RIU Investigator, Mrs Williams, after she made a statement to him that he was one of the persons to be tested by the RIU. He responded by stating that he had not been drinking, to which she responded that the RIU was not testing for alcohol but for drugs. He submitted that the rule under which he had been charged must be read as a whole and clearly the response he gave to Mrs Williams when she advised him that he was to be tested for drug use was “neither negligent, dishonest, corrupt, nor fraudulent. The legal principle of ejusdem generis requires that the general words improper or constitutes misconduct must be read in context with the preceding list of unlawful activities and be limited to activities within that class.”

[92] Mr Goode said he was unaware that there was any rule relating to drug testing. Because of his lack of knowledge of such a rule as a result of the Association’s failure to abide by its own rule to publish the proposed changes to the Rules on the Association’s website and in the industry magazine, he remonstrated with a “strong response” to Mrs Williams. His statements to Mrs Williams were not intended to be personal to her but to the implication that the Association had the authority to require him to take a drug test. His “evidence as given at the hearing was that that he did not say to Mrs Williams the words “Go get f\*\*\*\*d” but that he merely said “Get f\*\*\*\*d”. Mr Smith confirmed this while being cross-examined, “when he admitted that the written statement he had signed (not made) was incorrect”.

[93] Mr Goode submitted that although the use of the word “f\*\*k” in any context might be considered as abhorrent, intemperate or unwarranted by some people it is a word that in today’s world is often used by people in many contexts including in publications and the media, especially in social media.

[94] Mrs Williams in her evidence stated that he had said to her she could “Go and get f\*\*\*\*d” and that while on the stairs she could “Go and get f\*\*\*\*d”. The witness statements of Herbert, Munro, Smith, and Wigley, which were allegedly prepared by Mr Renault, were all identical in that those statements stated that he had said to Mrs Williams the words “Go get f\*\*\*\*d”.

[95] Mr Goode submitted that under cross-examination of each of these witnesses during the hearing that their statements “failed to stand up to scrutiny” and as such could not be relied upon. Under cross examination Mr Smith admitted that what he said was “Get f\*\*\*\*d” and not what had been alleged in his witness statement.

[96] The evidence was that Stipendiary Steward, Mr Renault, prepared all these witness statements. Mr Goode submitted that it was clear that Mr Renault did not interview each of the witnesses separately, for if he had, he would not have prepared a generic witness statement which he simply asked each witness to sign. Mr Renault failed to appear as a witness. Accordingly, it was his submission that all of these witness statements should be considered unreliable and rejected as evidence. It was his further submission that even if he did use the words as alleged by Mrs Williams, these words could not be interpreted as constituting a negligent, dishonest, corrupt or fraudulent activity as covered by r 87.4.o.

**Charge A7215. Failure to obey with lawful orders of Stewards Mr Renault and Mr Wallis contrary to r 87.1.p.**

[97] Mr Goode questioned whether he had disobeyed or failed to comply with a lawful order? The charge alleged that he failed to comply with a lawful order given to him by Stewards, Mr Renault and Mr Wallis. Mr Goode submitted that “the summary of facts presented to the hearing by the informant stated that the only directive given to me by Steward Renault was to wear a tie. Mr Renault had presented no evidence to the hearing either by way of a witness statement or in person. Accordingly, it is my submission that any information relating to Steward Renault cannot be taken as evidence in respect of any of the charges.” (We note the charge was altered on the day of the hearing to an order given by Stipendiary Steward, Mr Wallis.)

[98] Mr Goode alleged that in his oral evidence and during cross examination Mr Wallis displayed a good deal of uncertainty as to what he actually said to Mr Goode and whether he simply requested Mr Goode to go to the Stipendiary Stewards’ room or whether gave an

order to go to the room. The evidence of Mr Wallis as contained in his witness statement was that he requested Mr Goode to go to the Stipendiary Stewards' room and then later in the presence of Mr Renault that he directed him to the Stipendiary Stewards' room.

[99] Mr Goode submitted there were two questions to be considered in respect of this charge. First, could a request or a directive to attend the Stipendiary Stewards' Room be considered to be a lawful order in terms of r 87.1.p and did Mr Wallis give him an order or simply a request? Mr Goode's submission was that, based on the totality of the evidence and cross examination as presented at the hearing, that the evidence of Mr Wallis did not show that what he asked of him met what could in reasonable terms be considered a lawful order and further that it had not been sufficiently established that he made anything more than a request. Accordingly, the evidence failed to reach the required standard to establish the charge laid under r 87.1.p even on the lower test of the balance of probability and this charge should be dismissed.

#### **Charge A7216 Abused Steward Mr Wallis contrary to r 87.1.g**

[100] Mr Goode submitted that any statement he was alleged to have made to Mr Wallis in respect of Mrs Williams was irrelevant to this charge as the charge specifically states that it relates to words he was alleged to have directed at Mr Wallis.

[101] Mr Goode quoted from Mr Wallis's brief of evidence:

Mr Goode directed abusive and foul language at me, calling me a "lying wormy c\*\*t" and telling me that I "could go and f\*\*k off as well". He continued with the profanities for a brief period then proceeded to verbally threaten me by saying "you are lucky I don't whack you now" or words to that effect.

[102] Mr Goode acknowledged that although he used "robust language" in talking to Mr Wallis he denied that he used the words as quoted above from the evidence of Mr Wallis. He specifically denied that he used the "c" word. Although he did not deny that profanities were often part of his vocabulary. He said he was not prone to the use the "c" word for an obvious reason and as he had more respect for female genitalia.

[103] Mr Goode also denied that he made a specific threat of harm to Mr Wallis. He emphasised that Mr Renault had not been called as a witness to corroborate the evidence of Mr Wallis and the failure of Mr Renault to appear at the hearing or to provide a brief of evidence should be taken as an indication that he would not support the evidence of Mr Wallis.

[104] Mr Goode further submitted that this charge must be determined on the simple credibility of the evidence of Mr Wallis which he submit was unreliable and was simply based on his demonstrated bias against Mr Goode.

#### **Informant's response**

[105] The informant filed a brief response on 6 April to the respondent's submissions. These highlighted the fact that the charge under r 87.4.a was in respect of the respondent's actions under the Rules in his capacity as a "Handler" and reiterated that s 21(3) of the Incorporated Societies Act provides that registration is "conclusive evidence" that all conditions precedent to the making of the rule have been fulfilled.

#### **Decision**

[106] We deal with the issues in the order that they have been addressed in the parties' submissions.

[107] The first is the "constitutional issue", as Mr Goode describes it. This is the failure of GRNZ to properly notify licence holders of the amendment to the Rules. Rule 87.4.a was introduced on 1 February 2016 following registration by the Registrar of Incorporated Societies on 19 January 2016. Neither party has produced evidence of compliance with r 8 of the Greyhound Racing Rules. And the informant accepts in their submissions that it is unlikely the necessary notification of the amendment occurred by way of publication in the industry magazine or placement on the Association's website. Mr Goode alleges the Association was dysfunctional at this time and many amendments were not properly notified. We are concerned, however, only with whether r 87.4 is in force.

[108] The parties differ on their conclusions as to the consequences of the GRNZ "oversight". Mr Goode states that the rule is a nullity. He also submits the certificate is not signed or dated by Mr Leitch. The informant submits the rule is saved by the Incorporated Societies Act 1908. Significantly, this Act provides in s 21(3), in part: "[R]egistration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled."

[109] The key words are "conclusive evidence". This provision has the effect that we do not need to go behind the rule and satisfy ourselves that every step in the process has been duly complied with. We have some sympathy for Mr Goode in that his argument that the correct procedures were not followed may indeed be correct, but this is to no avail with respect to these charges. We are bound to

give effect to s 21(3) of the Incorporated Societies Act and, indeed, we would conclude the purpose of the provision is clearly to obviate the need for such inquiries to be made. Mr Goode's concern that the Registrar had failed in his duty to maintain the Register, as required by s 33(1) of the Act, is a matter that the Act deals with in s 21(4), in that provision is made for application to the High Court. This course of action remains open to Mr Goode should he be able to satisfy the requirements of that section.

[110] We turn to the elements of the charges.

[111] We first consider information A7213, which is the breach of r 87.4.a.

[112] We are satisfied as a licensed Greyhound trainer Mr Goode is a "Handler" (as defined in r 3) for the purpose of r 87.4.a. We thus do not need to determine the issue of whether or not he is carrying out etc a safety sensitive activity (as defined in r 3). We are further satisfied that he was required to provide a urine sample by Racecourse Investigator, Mrs Williams, and that he refused to do so in quite unequivocal terms by his language, immediate conduct and subsequent failure to present himself at the room where the testing was taking place.

[113] Mrs Williams gave evidence that she advised Mr Goode that the RIU were conducting drug testing that day on licensed persons and that he was one of those persons to be tested. Mr Goode replied that he had not been drinking. Mr Goode did not return to the testing room in order to provide a sample. Mr Goode later left the course.

[114] Mr Goode's submission that no time and place for the test had been specified and therefore he was not in breach of the rule, has no substance when his subsequent conduct made it impossible for Mrs Williams to convey to him any further details of the testing. We are satisfied Mrs Williams made it clear to Mr Goode that he was to give a urine sample for the purpose of testing for drugs. This is the very fact that had elicited his angry response.

[115] We thus find that Mr Goode was required to provide a urine sample and in leaving the racecourse without providing a sample of urine, as directed, he has failed to comply with the requirement made of him by Mrs Williams.

[116] With respect to information A7212, the misconduct charge, we have had regard to the evidence of the informant's witnesses. We are satisfied that despite the clear duplication of the wording in the statements that each witness signed, they were recalling events as they believed these had unfolded on the day.

[117] A map of the layout of the Secretary's Office was drawn by Mr Goode and this was introduced as Exhibit 1. Each party when giving evidence indicated where they were in the room and where Mrs Williams and Mr Goode were at the relevant times. We also viewed the Secretary's Office.

[118] Mr Goode, with the assistance of Mr Cuttance, questioned each witness as to his or her statements. Each was adamant that the signed statement was correct. They all took the opportunity in examination and cross-examination to elaborate upon these statements. There were some minor discrepancies in their recollections (eg the number of times the words were spoken — Ms Wigley was certain it was at least once, on the stairs, and it may have been twice; other witnesses said it was twice — and the specific words that were used) but nothing that would lead us to the view that the Investigators had "put words into their mouths" and had thereby unduly influenced their recall of the relevant events, as Mr Goode has alleged.

[119] One key aspect of Mr Goode's questioning was to establish what words he used. Mrs Williams said the expression was "Go and get f\*\*\*\*d", Mr Smith in cross examination said the words on the second occasion may have been "Go and get f\*\*\*\*d" and on the first occasion were "Get f\*\*\*\*d". Ms Herbert, Ms Wigley and Ms Munro said the words were "Go get f\*\*\*\*d". Only Mr Smith stated that the words were simply "Get f\*\*\*\*d", which is what Mr Goode alleges he said. We see no difference in effect or import with respect to these three expressions. However, we are satisfied that the preponderance of the evidence is to the effect that Mr Goode said to Mrs Williams "Go get f\*\*\*\*d", and this is what we find. This was on two occasions. The first was after she had informed Mr Goode that he was required to give a urine sample for the purpose of drug testing, and secondly as he walked up the stairs. These words were followed by an obscene finger gesture as he turned towards Mrs Williams on the stairs, and before he walked out slamming the door. We find this gesture was made only the once, although we note Ms Herbert believed it was made twice.

[120] The evidence is that Mr Goode's voice was raised at the time. We are satisfied that these words had not been shouted out to Mrs Williams but it was clearly loud enough to draw the attention of the other persons who were present in the room.

[121] Mr Goode stated that the word "f\*\*k" was commonly used in everyday conversation and in using that word he was not using

abusive or foul language. It was merely an exclamation of annoyance; it was not threatening. We emphasise the word was not used by him as an exclamation of annoyance. He told Mrs Williams to "Go get f\*\*\*\*d" on two occasions. This is significantly more than an exclamation of annoyance. These words have clear pejorative connotations.

[122] We are in no doubt that this conduct falls within r 87.1o. Mr Goode has misconducted himself both by using foul language to Mrs Williams, namely the words "Go get f\*\*\*\*d" and by giving her a two-fingered gesture. We have not overlooked Mr Goode's submission that the rule should be viewed with reference to the ejusdem generis rule of statutory interpretation. The thrust of this argument being that the earlier more specific words relate to more serious and fraud related conduct, although we note also the preceding word is also general in purport, it being the word "improper". Our reading of this rule is that it is intended to deal with conduct that is likely to bring Greyhound Racing into disrepute. Thus, we find the "catch all" expression "misconduct" fits appropriately within this provision and encompasses Mr Goode's behaviour.

[123] With respect to information A7215, the informant has to establish that Mr Goode failed to comply with the lawful order of Stipendiary Steward, Mr Wallis. Mr Goode has accepted that Mr Wallis is a Stipendiary Steward. There is no need in our view for a Steward to use the word "order" or "direct", in the sense that "I order you to ...." or "I direct you to....". A Stipendiary Steward needs simply to make it clear by words and perhaps on occasion by conduct (eg pointing in the direction of the room) to a licence holder, what is required of him or her. Nonetheless, the informant's submissions highlight the fact that towards the end of the hearing, when questioned by this Committee, Mr Goode acknowledged that Mr Wallis had given him a direction. This was in accord with Mr Wallis's evidence that he gave Mr Goode a direction in no uncertain terms.

[124] We are satisfied that Mr Goode, as a result of the conversation he had had with Mr Wallis, was aware that he was required to report to the Stipendiary Stewards' room. He did not do so. He left the racecourse. We thus find the charge under r 87.1.p proved.

[125] We turn to the abuse of Mr Wallis (A7216). The confrontation with Mr Wallis was clearly not called for. Mr Wallis was simply requiring Mr Goode to go to the Stipendiary Stewards' room to sort out the matters that had remained unresolved on the day. Mr Goode's response was to get into Mr Wallis's face and to raise his fists. He then used abusive language in referring to Mrs Williams and then in his reference to Mr Wallis himself. Surprisingly, the charge does not refer to the words used in respect of Mrs Williams but just those directed at Mr Wallis. Mr Wallis's evidence was that Mr Goode called him a "lying wormy c\*\*t" and told him to "Go and f\*\*k off as well". He then threatened Mr Wallis by saying, "You are lucky I don't whack you now" or words to that effect. When referring to the specifics of his conversation with Mr Wallis, Mr Goode acknowledged he had used "robust words" but was unable to recollect the exact words he had used other than to say he would not have used the 'c word', as he had too much respect for female genitalia to do so.

[126] The context in which Mr Goode spoke these words to Mr Wallis is relevant. He was close to Mr Wallis's face and, as we have noted at one point in the conversation, at least, he had his fists raised. We note there was a low fence between the two parties. This was of such a height as to be of little solace to Mr Wallis should Mr Goode have decided to take the matter further. Fortunately, of course, he did not, but we accept that the fence would have been little impediment to Mr Goode should he have so wished.

[127] Mr Wallis's account, the informant alleged, was entirely consistent with the way other witnesses described Mr Goode's demeanour on that day. (We take this as being a reference to the fact he was upset or angry at being required to give a drug test, as we note all the witnesses stated there was nothing about Mr Goode's demeanour that suggested he was under the influence of alcohol or drugs.) The informant thus submitted that Mr Wallis's evidence was credible, and that Mr Goode's lack of recollection of the discussion did "not go near casting doubt" on Mr Wallis's evidence. We accept that Mr Goode was clearly upset at the time he spoke to Mr Wallis. Mr Wallis was unshaken in his evidence as to what was said and done by the respondent when they spoke outside the kennel block. We thus accept the informant's submission in this regard and find the charge of breaching r 87.1.g to be proved.

[128] The breach of r 87.1.y in failing to wear a tie is admitted. We thus find that the charge in information A7214 is proved.

[129] We thus find the breaches of rules 87.1.g, o, p, y and 4.a, as in informations A7212 to A7216 to have been proved.

[130] We require the parties to provide written submissions as to penalty. The informant is to file their submissions by 4 pm 26 April. The respondent is to file his submissions by 4 pm 10 May. Should there be an application for costs, this is to be included in these submissions.

Dated at Dunedin this 12th day of April 2017.

Geoff Hall, Chairman

**Penalty:**