

Non Raceday Inquiry RIU v M P Breslin - Reserved Decision dated 3 July 2017 - Chair, Mr Murray McKechnie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A NON-RACEDAY JUDICIAL COMMITTEE

IN THE MATTER of the New Zealand Rules of Thoroughbred Racing

BETWEEN THE RACING INTEGRITY UNIT (RIU)

INFORMANT

AND MICHAEL PATRICK BRESLIN

Class A Licensed Horseman

RESPONDENT

Non Raceday Judicial Committee: Mr Murray McKechnie Chairman & Mr Alan Harper

Present: Mr Brian Dickey counsel for the Racing Integrity Unit

Mr Paul Paino counsel for Mr Breslin

Mr Michael Breslin

Mr Nigel McIntyre Registrar

RESERVED DECISION OF NON-RACEDAY JUDICIAL COMMITTEE

DATED THIS 3rd DAY OF JULY 2017

1. INTRODUCTION

1.1 In November 2016 the Racing Integrity Unit laid three (3) informations against Mr Michael Breslin who is a Class A Trainer based at Awapuni. At the commencement of the hearing on 26 June 2017 at Riccarton Racecourse counsel for the RIU sought to withdraw informations A7089 and A7090. That application was granted. The hearing proceeded in respect of information A7088 and concluded around noon on 27 day of June 2017.

2. THE CHARGE NOW FACED BY MR BRESLIN

2.1 The charge now faced by Mr Breslin is that on or about 5 day of November 2016 at Christchurch in the Racecourse Hotel he did an act detrimental to the interests of racing in that he did commit an indecent act against a female, Complainant "A" whom we shall refer to as "A" then aged eighteen (18) years who was also a licence holder under the New Zealand Thoroughbred Rules of Racing.

2.2 Rule 801(1)(s)(i) provides that a person commits a serious racing offence either by himself or in conjunction with any other person or does who permits or suffers to be done any act which a Judicial Committee deems fraudulent, corrupt or detrimental to the interests of racing. Rule 801(2) provides that a person who commits a serious racing offence shall be liable to:

- a) Disqualification for a specific period or life; and/or
- b) Be suspended from holding or obtaining a licence for a period not exceeding twelve (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. JURISDICTION

3.1 Mr Paino counsel for Mr Breslin raised an issue as to whether or not the conduct complained of was something on which a Non-Raceday Judicial Committee could adjudicate. It was submitted that the alleged conduct was not sufficiently connected with racing for it to fall within the jurisdiction of a Non-Raceday Judicial Committee. Both counsel were referred to the judgment in *Carter v*

The Judicial Control Authority, High Court Hamilton, CIV-2006-419-841, Harrison J, 7 December 2006. In that judgment His Honour held that whether or not a particular complaint fell within the scope of the rules was a matter for determination by the Non-Raceday Judicial Committee or an Appeals Tribunal as the case might be. His Honour drew attention to Article 18(1)(a) of New Zealand Thoroughbred Racing's constitution which provides:

The Rule shall apply to all races and race meetings AND ALL MATTERS CONNECTED WITH RACING and shall apply to and be binding on all persons and bodies described therein, where appropriate, horses.

[EMPHISIS ADDED]: see paragraph 15 of judgment of Harrison J.

As to the application of the reasoning in *Carter v The Judicial Control Authority* see the decision of the Non-Raceday Judicial Committee in *McKenzie v D*, 9 July 2008.

3.2 Following the submission made by Mr Paino and after hearing a response from Mr Dickey counsel for RIU the Committee ruled that the conduct complained of did come within the jurisdiction of the Committee and a ruling to that effect was then delivered. That ruling is annexed to this decision and is to be read as part of this decision. The Committee has located the decision of the Non-Raceday Judicial Committee with reference to conduct of male apprentice jockeys engaging in objectionable behaviour. The issue of jurisdiction did not arise in the course of that hearing and thus the decision is of no assistance.

4. THE EVIDENCE FOR THE RIU

4.1 The 5th of November 2016 was the first day of the New Zealand Cup Carnival at Riccarton Racecourse. Mr Breslin had brought horses from the North Island to participate in the Cup Carnival. It was the case for the RIU that the Complainant A had been at the race meeting at Riccarton and at the conclusion of racing went to the Racecourse Hotel which is immediately across the road from the southern boundary of the Riccarton Racecourse. Late in the evening towards midnight it is said that Complainant A was seated on a barstool in the hotel while her partner was playing pool at a nearby pool table. It was alleged that Mr Breslin sat next to Complainant A. It was accepted in evidence that Complainant A and Mr Breslin had not previously met. It was alleged that Mr Breslin placed his left hand on Complainant A's back and then moved his hand down towards her buttocks over her dress. It is alleged that Mr Breslin then moved his hand further down the Complainant's right leg and that his hand went under her dress and was moved up her inner thigh. It is further alleged that Mr Breslin's hand remained in this position for some time and that during part of the time his thumb was moving across Complainant A's bare flesh.

4.2 Complainant A gave a detailed account of events to the Committee. She was accompanied to the hearing by a support person. A screen was in place in order to protect the Complainant from the viewing of Mr Breslin – this in accordance with standard practice followed in the criminal courts where allegations of indecency or sexual abuse have been made. The Complainant A was cross examined in detail.

4.3 In her evidence in chief the Complainant told the Committee that she was aged eighteen (18) years and was a licenced track work rider employed at a Riccarton stable. She explained that this work involved leading horses on race-day and travelling with horses from the stable throughout the South Island. She told the Committee that following race-days at Riccarton the Racecourse Hotel was what she described as "the go to place" for members of the racing fraternity. She further explained that on 5 November 2016 following the races she had gone to the hotel with her partner. This person whom we shall refer to as "Y" is a licenced jockey. The Complainant told the Committee that a longstanding friend whom we shall refer to as "S" accompanied them to the hotel. For a time their group was joined by a Canterbury based trainer but that person left the hotel before the relevant events took place. "A" told the Committee that she had drunk five (5) Black Russians. These are drinks made up of vodka and Kahlua. She said she had also drunk coke. She also told the Committee that she had drunk a shot of Baileys. She described herself as being "tipsy". When asked by counsel for the RIU to describe her state of sobriety by reference to a scale of 1 – 10 she answered that she would have been between No 5 and No 6. "A" told the Committee that her friend "S" was "very drunk". "A" explained that she was sitting on a barstool about one metre from the pool table and that her partner was playing pool with acquaintances from within the racing fraternity. Sometime near midnight when the hotel had indicated that it was about to close a man came and sat on the barstool next to her and conversation began. That person was Mr Breslin. "A" told the Committee that her partner "Y" introduced her to Mr Breslin and she further told the Committee that she explained to Mr Breslin that she and "Y" were recently engaged and that she showed him her engagement ring. She went on to say that after about two minutes she felt Mr Breslin's left hand on her right buttock. She said that the dress she was wearing was tight and layered. Further she explained that Mr Breslin had not said anything when putting his hand on her buttock and that she got "a bit of a shock". She told the Committee that Mr Breslin "looked like he had had a lot to drink". "A" went on to say that after some twenty or thirty seconds Mr Breslin's hand moved lower to the hem of her dress. She then said that his hand went under her dress onto her thigh just below her right buttock. "A" said that Mr Breslin hand's was on her inner thigh and some 3 centimetres away from her vagina. "A" told the Committee that when this happened she began texting her partner "Y".

4.4 The RIU obtained a video from within the bar. This showed the position of the relevant parties at the time that "A" was speaking of. At various times throughout the period recorded in the video "A's" partner "Y" was standing only a pace or two away from her. She nevertheless chose to text him rather than speak to him directly about what she said was taking place. The text messages have been printed out and are Exhibit 1. These text messages make it clear that the Complainant was upset by Mr Breslin's actions and that she

wanted help from her partner "Y". "A" told the Committee that when Mr Breslin's hand was placed on her thigh she "froze". "A" spoke of previous experiences and having flashbacks. She was not questioned as to what was involved in those previous experiences. She said – her words – "I played dumb". The video recording in the bar showed "A" moving off the stool and taking up another seat towards the position of the camera and on the other side of "S" so that she was no longer sitting next to Mr Breslin. It was "A's" account that before she moved from the stool her partner "Y" had come back from the pool table and said to Mr Breslin words to the effect "what is going on, she is my girlfriend". "A" recounted that Mr Breslin then took his hand away, lifted his hands up and said "sorry, sorry".

4.5 "A" told the Committee that while the events recounted above were taking place she had what she described as "flashbacks" and was petrified. She said that Mr Breslin's hand was underneath her dress and touching the bare skin of her inner thigh for something like 30 to 40 seconds. She said he did not say anything to her during this time. "A" told the Committee that she was scared. She went on to relate that after she had moved to the second stool she grabbed car keys and left the bar. She was accompanied by her friend "S". They walked towards Yaldhurst Road.

4.6 While down Racecourse Road and approaching Yaldhurst Road "A" became aware of someone behind her and the friend "S". She related that they crossed the road and while doing so observed that the person behind them was Mr Breslin. She recounted that he said "we need to talk about this". "A" said that she was scared and that she ran off and hid in a hedge alongside the road. She said that her friend "S" spoke to Mr Breslin and threatened to hit him with the shoes which "A" had been wearing but which she had taken from her feet and which were being carried by "S". Soon afterwards "A's" partner "Y" arrived in a courtesy van from the Racecourse Hotel and "A" got into that van and left the scene.

4.7 When cross examined by Mr Paino "A" recounted that she had said to her friend "S" "this guy is touching me". "A" went on to say that "S" was very drunk and said to her "you will be alright". "A" repeated in cross examination that the touching on the inside of her thigh went on for approximately 30 seconds. "A" was challenged that she had not told Mr Breslin that she was engaged to "Y". She was adamant that she did give Mr Breslin that advice and she told the Committee that when she was introduced to Mr Breslin she knew who he was and that she recognised him as a prominent North Island trainer. In answer to a question in cross examination "A" said that what had happened caused her to have "a most disgusting feeling". She told the Committee that she was disappointed that her partner "Y" had not responded to her distress and had continued to play pool. When asked why she had not moved away earlier "A" repeated her earlier evidence that she had "frozen" and that she could only think "Y" help".

4.8 The next witness for the RIU was "A's" partner "Y". He told the Committee that he was a licenced jockey of some years' experience and had been "A's" partner for some 2½ years.

He said he had been drinking beer and "was a bit tipsy". When asked about his state of sobriety by reference to 1 – 10 he indicated that he thought he was between No's 5 and 6. He confirmed that he had been playing pool. He told the Committee that he knew Mr Breslin and that he saw him sitting next to his partner "A". He said that he and Mr Breslin had a discussion about a horse that they had both been involved with at some earlier time. "Y" told the Committee that he spoke to Mr Breslin about being "partner of "A". He could not recall any reference to engagement or having had seen the engagement ring being shown to Mr Breslin. "Y" told the Committee that he heard his phone ring and responded to the text message by a return message saying "why are you ringing me I am right here". "Y" told the Committee that soon after that he saw Mr Breslin's hand come from underneath "A's" dress. He said that this hand appeared to have been somewhere in the groin area around the hip. "Y" told the Committee that he said to Mr Breslin "what are you doing"? Mr Breslin responded "I am sorry didn't realise your girlfriend". "Y" told the Committee that he then said to Mr Breslin "you shouldn't be doing that". "Y" recounted that his partner "A" appeared to be shaken up and had said to him "you should be looking after me". "Y" said that "A" had a shocked look on her face.

4.9 "Y" recounted that he had continued to play pool for some time and then got a courtesy van and headed towards where he believed "A" and her friend "S" would have been walking towards the latter's home. He came upon "S" and Mr Breslin. He recounted that "A" was hiding in the bushes. He said he shouted to Mr Breslin "you are a creep". The Committee was told that Mr Breslin was walking away and "Y" said that he (Mr Breslin) did not speak. "Y" estimated that these events with the courtesy van would have been at around 12.30a.m. in the morning.

4.10 "Y" told the Committee that around midday on the following day he rang Mr Breslin. He recounted that Mr Breslin told him "glad you called. Thought about calling you. Really sorry about last night. Can I give her a dinner voucher". "Y" recounted that Mr Breslin then went on to say "it won't make up for my acting and I had had too much to drink, that is no excuse". "Y" said that he told Mr Breslin that he did not think "A" would want to see him. He said he discussed the position with "A" who told him she did not want to meet with Mr Breslin. "Y" said that he told Mr Breslin that they would need to catch up and that there was then some discussion about meeting at the stables later that afternoon. Apparently that did not happen. "Y" then recounted that on the following Monday he was involved in track work at Riccarton and saw Mr Breslin on course. They spoke. He said Mr Breslin approached him and handed him a \$100 note. When doing this "Y" told the Committee that Mr Breslin said "I am really sorry take "A" out for dinner" and "Y" went on to recount that Mr Breslin said "I need to be more careful when I am drinking".

4.11 "Y" further told the Committee that he and "A" subsequently made inquiries as to how to report the conduct complained of and within a few days they were spoken to by RIU investigators Messrs Neil Grimstone and Peter Lamb. "Y" said that he handed the \$100

note to the RIU investigators.

4.12 In cross examination "Y" was challenged about where Mr Breslin's hand had been upon Complainant "A" and responded by saying that it was definitely a lot higher than "above the knee". Further "Y" in answer to a question told the Committee that Mr Breslin had said when challenged "I didn't realise it was your girlfriend". "Y" was challenged as to why he had not responded more promptly to what he said he saw and he answered by saying "I didn't realise how serious it was".

4.13 The next witness called for the RIU was the Complainant "A"'s friend named "S". This person told the Committee that she is a licenced stable hand of many years' experience attached to a stable in Riccarton and that she had known both "A" and "Y" for many years. The Committee was told that "S" had not been at the races on 5 November 2016 but had been working at the Riccarton stables to which she was attached. She went to the Racecourse Hotel following the racing. "S" told the Committee that 90% of the patrons at the Racecourse Hotel following the race meeting would have been persons involved with the racing that had taken place at Riccarton. When asked by Mr Dickey about her level of intoxication on the scale of 1 – 10 "S" replied that she thought she was at No 5. "S" recounted that when Mr Breslin put his hand on "A's" right buttock she had grabbed "A's" other buttock. She said when she did this that she was (her words) "pretty drunk". "S" did not give any evidence of seeing Mr Breslin's hand in, near or under the skirt being worn by Complainant "A". "S" gave evidence that she and "A" had left the hotel to walk to her home in the neighbourhood. "S" recounted that some distance from the hotel Mr Breslin had been seen near them and that when "A" saw him she ran away and hid in nearby bushes. The Committee was told that Mr Breslin said that he wanted to talk to "A" and that he had persisted in saying that he was sorry. "S" said that she responded to Mr Breslin by telling him to "F... off before I put these shoes around your head". Soon after the courtesy van arrived and "A" came from the bushes and got into the van. "S" did not get into the courtesy van and continued to walk towards her home.

4.14 In cross examination "S" acknowledged that she had started drinking that day at about 11.30a.m. while at work and had then done further work in the afternoon before going to the hotel and that she had been there for some 6½ hours. "S" told the hearing that she had known Mr Breslin for some twenty (20) years.

4.15 Mr Neil Grimstone is the Investigations Manager of the RIU. He produced in evidence the video spoken of above as Exhibit 2. His first contact with Complainant "A" was on the Tuesday following the events that had occurred on the Saturday evening. With a colleague from the RIU Mr Chris Allison, Mr Grimstone interviewed Mr Breslin on Thursday 10 November 2016 in the judicial room at Riccarton Racecourse. The interview was recorded and that recording was played to the Committee. In addition the video had been transcribed and the Committee was furnished with a written record. The recording is Exhibit 3 and the transcript Exhibit 4.

4.16 Mr Grimstone was cross examined by Mr Paino about the role of the New Zealand Police. It was established in the course of cross examination that there had been a complaint made to the police who had conducted an investigation during the course of which they had interviewed both Complainant "A" and Mr Breslin. Mr Grimstone related that he had been told by the police that the RIU investigation and the police investigation could run parallel. He identified the police officer who provided that information.

4.17 In answer to further questions from Mr Paino Mr Grimstone confirmed that no criminal charge had been laid against Mr Breslin but that he had been issued with what is known as "a police warning". Mr Grimstone was asked about why the police chose not to lay a criminal charge against Mr Breslin. The Committee was told of the police conclusion and how that came to be arrived at. That is not recounted here as the Committee does not consider that it is in anyway bound by the police inquiry the nature of which is necessarily not fully known.

5. THE CASE FOR MR BRESLIN

5.1 The first issue was the question of jurisdiction spoken of above in respect of which the Committee issued a written ruling which is attached to and is part of this decision.

5.2 After the delivery of the ruling on the question of jurisdiction Mr Breslin gave evidence. He told the Committee that he was aged 54 years, was in a long-term relationship and had two children aged 13 and 4. He recounted that he had 30 horses in his stable. He explained to the Committee that he had been interviewed by the police in January 2017 and issued with the warning spoken of earlier in May of this year.

5.3 It was Mr Breslin's evidence that on 5 November 2016 he had three runners on the first day of the Cup Carnival at Riccarton. He said that after the races he went to the Avonhead Motel where he was staying at around 6.30p.m. He drank some wine. He did not have a meal. He went to the Racecourse Hotel at around 8.30p.m.

5.4 Mr Breslin, like other witnesses, was asked to indicate his sobriety by reference to the scale of 1 – 10. He said that he thought he was between No 7 and 8 and further that his sobriety was at about the same level as the RIU witness "S".

5.5 Mr Breslin explained that he had sat next to the Complainant "A" for some 10 to 15 minutes. He acknowledged touching her buttock over her clothing. He said that conversation with her carried on without any change. Further that "A's" partner "Y" was directly in front of him for some of this time and that they had been talking about a horse with which they had both been involved at some earlier time. Mr Breslin said that he had been introduced to "A" by "Y". He said that there was no mention of "A" being "Y's" partner. Mr

Breslin said that he and “Y” had known each other for something like twelve (12) years.

5.6 Mr Breslin told the Committee that he did not see any engagement ring about which “A” had spoken of in her evidence. He went on to say that he had moved his hand down to the hem of her dress. He said that he saw no sign that she was unhappy. He told the Committee that he had moved his hand under her dress and that part of his hand was on her inside thigh. He said his hand was nowhere near the vagina of Complainant “A”.

5.7 It was Mr Breslin’s account that sometime after his hand had been placed under the Complainant’s dress that her partner “Y” announced that “A” was his girlfriend. Mr Breslin said that he had seen “A” texting but did not read the texts. He went on to say that when “Y” told him that “A” was his girlfriend and that he should not have been doing as he did, he (Mr Breslin) took his hand out from under the dress and said “I am really sorry”. He recounted how Complainant “A” then moved to another stool so that there was a person now seated between Mr Breslin and the Complainant. The video from the bar shows that this person was the witness “S”.

5.8 Mr Breslin told the Committee that there was at no time any reference to “A” being a person licenced under the Rules of Racing.

5.9 It was Mr Breslin’s evidence that sometime soon after the event spoken of he set out to walk back to his motel. After he had got some way towards the motel he said he saw a person running across the road. The evidence established that this was the Complainant “A”. There was then conversation with the witness “S”. Mr Breslin’s account was that he had said to “S” “I want to say sorry if I upset you”. He said he was about 10 metres away from “S” and “A” when he first saw them. He said he was not following them rather he was walking back to his motel.

5.10 Mr Breslin acknowledged that “A’s” partner “Y” had rung him the next morning and that there had been discussion about a meal voucher. Mr Breslin said that he had the feeling that he had to do something nice.

5.11 Mr Dickey questioned Mr Breslin as to why he had acted in the way that he had himself explained in evidence. Mr Breslin responded that he believed that Complainant “A” was “showing an interest in me”. Mr Breslin further said that “A” had not made any response objecting to what he was doing. Further that she had not moved away. Further again that – Mr Breslin’s language – “there were no vibes to suggest problems”.

5.12 Mr Dickey pointed out to Mr Breslin that he was aged 54 and the Complainant aged 18. Mr Breslin responded by saying that he had never thought about the Complainant’s age.

5.13 Mr Breslin told the Committee that he thought that the Complainant had found him attractive and that she was possibly interested in him. Further that there was an “acceptance” of what he was doing and that she was “engaging”. To the same effect Mr Breslin said “she showed an interest”.

5.14 Mr Breslin demonstrated with his hand that on his account half of his hand was under the dress against the skin of the Complainant’s thigh. When it was put to him that he had pushed his hand further under the dress and further up the thigh of the Complainant he denied that.

5.15 When asked about his sobriety Mr Breslin told the Committee “I was drunk”. He further said that he was not suggesting that the Complainant was drunk.

5.16 Mr Dickey asked Mr Breslin why, if he had done as little as he recounted in his evidence to the Committee, did he make such extensive apologies to Complainant “A” and pass a \$100 note to her partner “Y”. Mr Breslin was not able to provide a credible response.

6. ASSESSMENT OF THE EVIDENCE

6.1 All persons who gave evidence save for Mr Grimstone were speaking of events which took place late in the evening after all had been drinking significant quantities of alcohol. That drinking had gone on over many hours. Some of the witnesses were clearly more affected by alcohol than others but it is nonetheless clear to the Committee both from the oral evidence and the viewing of the video that all were affected by alcohol to a significant degree. In these circumstances the evidence of those persons must be approached with caution.

6.2 The account given by Complainant “A” and the explanation given by Mr Breslin differ by reference to the extent of the alleged touching. The Complainant’s evidence is that it was first on her right buttock, then under her dress and on her inner thigh moving up towards her vagina. Mr Breslin’s account is that the touching of the buttock is acknowledged but that the touching under the skirt when his hand was against her thigh was not as extended as is alleged by the Complainant. Mr Breslin does acknowledge touching under the skirt – both in his interview and in his evidence before the Committee.

6.3 It is the case put forward for Mr Breslin that his touching does not amount to an indecent act because he genuinely believed that there was no objection to what he was doing. It is said by his counsel that if he genuinely held such a belief then he cannot have had the necessary intent to do something which meets the definition of indecency.

6.4 The Committee found the Complainant "A" to be straightforward and entirely sincere in her evidence. That view was reinforced in the course of cross examination. While it might, at first appearances seem curious that the Complainant did not respond promptly to what was happening, there is no credible evidence to suggest that she in any way encouraged or consented to what was taking place. She spoke of having had previous experiences which caused her in her own words "to freeze".

6.5 For Mr Breslin it is said that in the first place the touching was not as extensive as outlined by the Complainant and in the second place he genuinely believed that no objection was being taken to what he was doing. In so far as the extent of the touching is concerned and the extent to which Mr Breslin's hand moved up the thigh of the Complainant the Committee finds the Complainant's evidence persuasive. While both the Complainant and Mr Breslin were affected by alcohol the Committee is satisfied that Mr Breslin was significantly more impaired than was the Complainant. By his own admission he was drunk.

6.6 As to Mr Breslin's belief that no objection was being taken to his actions and that therefore they cannot be characterised as indecent his counsel pointed to a number of circumstances. First it was said that the Complainant was engaging with him. It was said that she was carrying on normally and appeared unconcerned about what was happening. Further again that she said nothing to Mr Breslin to ask him to desist. In support of this submission counsel pointed to passages in Mr Breslin's interview where he said that "I got the wrong vibes". All of these considerations it is suggested led Mr Breslin to the subjective belief that the Complainant was consenting to what was taking place or at the very least had no objection to it. It is said by Mr Breslin's counsel that if he genuinely had this belief, even if he were mistaken, he cannot be guilty of doing an act which is indecent.

6.7 The Committee asked Mr Breslin's counsel that if an honest belief may have been brought about by intoxication would such a belief provide a perpetrator with a sufficient explanation. Mr Paino replied that the state of intoxication may be relevant to the subjective belief of the person and thus relevant to that person's intent.

6.8 For the RIU Mr Dickey submitted that the honest belief of consent defence had in effect been made up afterwards to seek justification for what had occurred. Further he submitted that an intoxicated belief cannot provide a defence if the person who holds that belief has allowed themselves to impair their judgment by the intoxication. Mr Dickey pointed out that Mr Breslin had made repeated apologies and taken actions to redress his behaviour and that if it were at the low level which is now being contended that was inconsistent with his actions after he had been confronted and inconsistent with his actions in the days following.

6.9 As explained above the Committee is of the view that Complainant "A" was a truthful and reliable witness notwithstanding a measure of alcohol impairment. In so far as her evidence and that of Mr Breslin differ in relation to the extent of the touching the Complainant's evidence is preferred. Mr Breslin's account of the behaviour of the Complainant leading him to believe that there was no objection to what he was doing cannot be reconciled with the extent of the touching outlined by the Complainant. Moreover Mr Breslin's claimed belief is not supported by any actions of the Complainant other than her allowing the conduct to continue for some time before taking steps to put a stop to it.

6.10 The Committee is not persuaded that Mr Breslin genuinely believed that what he was doing was either acceptable or had been consented to by the Complainant. His judgment was significantly compromised by his acknowledged intoxication. He may have persuaded himself following this episode that his conduct was not indecent because of those matters to which attention was drawn earlier. However when the Committee looks at the events on the night and what people did and said on the night and studies the video the Committee's conclusion is that Mr Breslin knew that what he was doing was unacceptable and that the extent of his touching of the Complainant constituted an act which was indecent. As to what is indecent the law is that indecency is to be measured by regard to what right thinking people would consider was unacceptable and within the law. Reference *Milne v Police* [1990] 6CRNZ 636, Gault J. When determining if conduct in question is indecent the intention of the person said to have acted indecently is to be determined by what was said and done. "Indecent" is to be given the meaning it is accorded in general usage and is to be judged in the context of "time, place and circumstances".

6.11 Mr Breslin in his interview and in his evidence before the Committee acknowledged that he had placed his hand under the Complainant's dress on her inner thigh. His hand remained there for some time. Leaving aside the differing accounts given by the Complainant and Mr Breslin as to the extent of the touching of the thigh it is the Committee's view that once Mr Breslin's explanation of consent is set aside his own admissions in the statement and in his evidence are of an action which the Committee considers to be indecent.

7. BURDEN OF PROOF

7.1 This is a civil proceeding not a criminal proceeding. The Rules of Racing expressly provide that proof is upon the balance of probabilities.

7.2 It has been established at the highest level that where allegations of misconduct are made in disciplinary proceedings it is necessary that where the allegation is most serious the evidence is required to be more compelling. The leading authority is the judgement of the Supreme Court in *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR. The judgment of the Supreme Court made it plain that while compelling evidence is required that is not to the criminal standard of proof beyond reasonable doubt.

7.3 The Committee is satisfied that having regard to *Z v Dental Complaints Assessment Committee* judgment in the Supreme Court the proof here is compelling and sufficient to satisfy the test laid down by the Supreme Court.

8. DETERMINATION

8.1 By reference to the analysis of the evidence above and by reference to the standard of proof required in proceedings of this kind it follows that the Committee finds the allegation of an indecent act by Mr Breslin to have been proved.

9. IS THE CONDUCT OF MR BRESLIN DETRIMENTAL TO THE INTERESTS OF RACING

9.1 Rule 801(1)(s)(l) is set out earlier in this decision.

9.2 In order to determine whether the act in question is detrimental to the interests of racing it is necessary for the Committee to examine the circumstances in which the conduct took place and how that may have reference to the interests of racing.

9.3 As earlier explained the Racecourse Hotel is “the go to place” following race meetings at Riccarton. The 5 November 2016 was not any ordinary race day. It was the first race day of the New Zealand Cup Carnival. That is perhaps the most significant meeting in the Canterbury Jockey Club calendar. The evidence established that there were a large number of people at the hotel following the race meeting. The Committee accepts the evidence that a significant proportion of those people were involved with the thoroughbred racing industry. The Committee knows from its own knowledge that Mr Breslin frequently brings horses to Riccarton and has enjoyed significant success. He knew the role of the Racecourse Hotel in the social life of the racing fraternity. Further the people he was with when he entered the bar and the area where the Complainant was present were people from within the racing fraternity. He knew the witness “Y”. He knew the witness “S”. It also emerged in evidence that there were other people in the room with whom he was acquainted. It is accepted by the Committee that he had not previously met the Complainant “A”. However what is important is that he met her in the context of a social event following a race meeting and must have had an appreciation that she could well have been involved in some way with thoroughbred racing. The evidence established that the Complainant “A” is licenced as explained above. Conduct of the kind proven against Mr Breslin is unacceptable towards any persons and certainly unacceptable by a senior trainer aged 54 years towards a youthful female licenced stable hand aged only 18 years. Conduct of the kind found to be proven here is wholly inappropriate and to allow it to go without a meaningful sanction would, in the Committee’s view, be detrimental to the wider interests of racing. Further it would send an unfortunate and quite mistaken message about the relationship between men and women in the industry and between those who are more senior in relation to those who have junior positions. For these reasons the Committee holds that the conduct found to have been proved is and was detrimental to the interest of racing.

10. STEPS FROM HERE

10.1 There was discussion between the Committee and counsel as to the steps to be taken following the issue of this reserved decision. In consequence of those discussions these directions are made:

- a) Penalty submissions are to be filed and served by the RIU not later than 4.00p.m. on the 14th day of July 2017;
- b) Penalty submissions are to be filed and served on behalf of Mr Breslin not later than 4.00p.m. on the 28th day of July 2017;
- c) There are presently in place name suppression orders in respect of all witnesses and Mr Breslin. Those suppression orders are to remain in place until further order of the Committee;
- d) The Penalty submissions from both parties should also address the question of name suppression. The Committee heard preliminary submissions on this issue from counsel at the conclusion of the hearing but it was agreed that further submissions could be made once the reserved decision had issued. That now having taken place further submissions are sought from both parties in relation to name suppression in respect of the RIU witnesses, save perhaps for Mr Grimstone, and in relation to Mr Breslin;
- e) This decision will not issue until the outstanding questions have been determined that is to say penalty, name suppression and costs which is spoken of in the next paragraph;
- f) The submissions on penalty and name suppression should also address the issue of costs *inter partes*. Those submissions should also address the question of costs that might appropriately be paid to the Judicial Control Authority.

Dated this 3rd day of July 2017

Murray McKechnie

Chairman

Signed pursuant to Rule 920(4)

BEFORE A NON-RACEDAY JUDICIAL COMMITTEE

IN THE MATTER of the New Zealand Rules of Thoroughbred Racing

BETWEEN THE RACING INTEGRITY UNIT (RIU)

INFORMANT

AND MICHAEL PATRICK BRESLIN

Class A Licensed Horseman

RESPONDENT

Non Raceday Judicial Committee: Mr Murray McKechnie Chairman & Mr Alan Harper

Present: Mr Brian Dickey counsel for the Racing Integrity Unit

Mr Paul Paino counsel for Mr Breslin

Mr Michael Breslin

Mr Nigel McIntyre Registrar

RULING NO 1

DATED THIS 26 DAY OF JUNE 2017

1. At the conclusion of the evidence for the Racing Integrity Unit Mr Paino counsel for Mr Breslin was invited to address the Committee. Mr Paino submitted that the events which have led to the charge being laid against Mr Breslin were not sufficiently connected with racing and that in consequence the Judicial Control Authority whether by a Non-Raceday Judicial Committee or an Appeals Tribunal did not have jurisdiction to determine whether the conduct was or was not in breach of the rules of racing.

2. The evidence thus far demonstrates that on 5 November 2016 which was the first day of the New Zealand Cup Carnival at Riccarton a large number of racing persons went from the racecourse either directly or indirectly to a nearby hotel that is known as the Racecourse Motor Lodge and has been described by Mr Dickey counsel for the RIU and by some of the witnesses as "the go to place" following race meetings at Riccarton. It is alleged that around midnight Mr Breslin who was sitting next to the Complainant touched that person in a manner which was inappropriate and which may have amounted to an indecent act.

3. In essence Mr Paino submitted that this conduct, if proven, was not sufficiently connected with the conduct of racing for it to be within the jurisdiction of this Non-Raceday Judicial Committee.

4. In response Mr Dickey submitted that it was well known that following race meetings at Riccarton large numbers of those involved in the industry went to this nearby hotel and that all must have known that those who were there more than likely had some connection with racing. Mr Breslin was acquainted with the Complainant's partner a licenced jockey who we shall refer to as "Y" and the evidence established that "Y" and Mr Breslin had some discussion that evening about a horse with whom both had been involved. It is clear from "Y's" evidence that he and Mr Breslin had been acquainted for some years. The Complainant for her part said that she had not previously met Mr Breslin.

5. Mr Paino in support of the position he takes relies upon the judgment of Harrison J in *Carter v The Judicial Control Authority* High Court Hamilton, CIV-2006-419-841, 7 December 2006. That case involved an allegation of misconduct against the licenced trainer Carter. It was said that he had sent abusive text messages to persons well known in the racing industry and in thoroughbred sales with whom he was acquainted and with whom differences had arisen. His Honour pointed out that the rules under the constitution of NZ Thoroughbred Racing Article 18(1)(a) provide that the rules apply to all races and race meetings and then emphasised **AND ALL MATTERS CONNECTED WITH RACING** [emphasis added] and shall apply to and be binding on all persons and bodies described therein where appropriate. His Honour went on to say that whether or not the subject matter of a particular complaint falls within the scope of that rule is for the Judicial Committee or the Appeals Tribunal to decide.

6. The Committee heard extended submissions on this issue from both counsel and then took a brief adjournment. During that adjournment the Committee recalled that there was a case some years ago involving a number of male apprentice jockeys sending abusive texts with a sexual overtone to a female apprentice jockey. The Committee has been able to identify the names of one of the male apprentice jockeys which we need not publish here. The Committee have made inquiries of the Executive Officer of the JCA to track down the decision in that case. This Committee is clear that the Committee which heard that case accepted that there was jurisdiction even although the conduct was not related directly or perhaps on one view of it even indirectly connected with the conduct of races or race meetings.

7. The Committee has reached the view albeit subject to further consideration that what is alleged against Mr Breslin does come within matters connected with racing. This is essentially because what happened at the Racecourse Hotel was an extension of the events which had occurred on track at Riccarton. A significant number of people who had been at Riccarton went to the hotel. That was, we are told, standard practice and Mr Breslin certainly knew "Y's" connection with racing. Mr Breslin must necessarily have known that a large number of the people who were present at the hotel throughout that evening were connected with racing. Subject to consideration of the decision referred to above involving the text messages between male apprentice jockeys and a female jockey the

ruling we make is that we do have jurisdiction to hear this matter and accordingly it is now to proceed subject to, as we have just noted, any further consideration that might be necessary following receipt of the decision spoken of in paragraph 6.

8. This concludes the ruling.

DATED this 26 day of June 2017

Murray McKechnie

Chairman

Penalty: