

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Currie v Queensland Racing Integrity Commission*  
[2019] QCAT 51

PARTIES: **BENJAMIN MARK CURRIE**  
(applicant)  
v  
**QUEENSLAND RACING INTEGRITY  
COMMISSION**  
(respondent)

APPLICATION NO/S: OCR043-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 March 2019

HEARING DATE: 21 February 2019

HEARD AT: Brisbane

DECISION OF: Member Olding

ORDERS: **The decision made by the Queensland Racing Integrity Commission on 18 February 2019 is stayed until five (5) business days after the determination of the internal review of that decision or further order of the Tribunal.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where Stewards purported to immediately suspend horse trainer’s licence – where serious charges laid but not heard – whether stay should be granted pending internal review

PROFESSIONS AND TRADES – LICENSING OR REGULATION – OTHER PROFESSIONS, TRADES AND CALLINGS – where Stewards purported to immediately suspend horse trainer’s licence – where serious charges laid but not heard – whether stay should be granted pending internal review

*Racing Act 2002 (Qld), s 113(3)(d)*  
*Racing Integrity Act 2016 (Qld), s 10, s 244*

*Australian Rules of Racing, r AR.1, r AR.8(z), r AR.53(6), r AR.64H, r AR.175(a), r AR.175(n), r AR.178E*  
*Powers under the Rules of Racing (Qld), s 6.2, s 6.3*

*Standard for Licensing Scheme Thoroughbreds V2.00*  
(Qld), s B1.9, s B1.10

*Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337

*Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1

*Munt v Queensland Law Society Incorporated* [2015] QCAT 451

*Stewards of Queensland Racing Limited v Stephenson* [2009] QRAT 16

#### APPEARANCES & REPRESENTATION:

Applicant: J E Murdoch QC instructed by O'Connor Ruddy & Garrett

Respondent: S McLeod SC instructed by the Queensland Racing Integrity Commission

#### REASONS FOR DECISION

- [1] The applicant, Mr Currie, applied for a stay of a decision of the Stewards made on 18 February 2019 to immediately suspend his racehorse trainer's licence and impose other restrictions.
- [2] The decision followed the Stewards laying against Mr Currie serious charges, including charges involving allegations of animal cruelty, alleged to have occurred between 31 January 2016 and 18 April 2017. Mr Currie has indicated that he will plead 'not guilty' to all of the charges. Whether the charges are substantiated has not been determined.
- [3] On 21 February 2019, following an urgent oral hearing, I ordered that the decision to immediately suspend Mr Currie's licence and impose other restrictions be stayed until five business days after the determination of the respondent Commission's internal review of the decision or further order of the Tribunal.
- [4] It was agreed with the parties' representatives that, in view of the urgency of the matter, I should make and communicate my decision on the day of the hearing, with reasons for the decision to follow at a later date. These are those reasons.

#### **The Tribunal's task**

- [5] It is important to understand the limited nature of the Tribunal's role in this application – what is, and is not, the Tribunal's task.
- [6] The sole task of the Tribunal is to determine whether the decision to immediately suspend Mr Currie's licence and impose other restrictions should be stayed until the Commission completes an internal review of *that* decision. The internal review is required to be completed within 20 business days of Mr Currie lodging his application for internal review; that is, by on or about 19 March 2019.

- [7] It is common ground that, in deciding whether to grant a stay, the Tribunal must consider whether Mr Currie has established:
- (a) that he has an arguable case in the internal review; and
  - (b) whether the balance of convenience favours the granting of the stay.<sup>1</sup>
- [8] Importantly, it is not the Tribunal's role at this time to determine whether the recent charges (or the earlier charges noted below) are substantiated or, if so, the orders that should be made. Nor is it, strictly speaking, the Tribunal's role to determine whether Mr Currie has an arguable case that the charges are not substantiated. However, it is necessary to consider the submissions made in relation to the alleged foundation for the charges as that may be relevant to whether there is an arguable case that his licence should not be immediately suspended or the other restrictions imposed.
- [9] Nor is it the Tribunal's role at this time to determine whether the decision to immediately suspend Mr Currie's licence and impose other restrictions should be stayed until it is determined whether the charges are substantiated. The Tribunal's role at this time is merely to determine whether the decision to immediately suspend Mr Currie's licence and impose other should be stayed until completion of the Commission's internal review of that decision.
- [10] It is now the Commission's role to determine the internal review. If the Commission confirms the original decision, the suspension of Mr Currie's licence and the other restrictions will take effect from five business days after the decision on the internal review (subject to any further stay that may be granted). Again, it is no part of my role to consider whether any further stay that might be sought after the internal review should be granted. If the Commission substitutes a new decision that does not involve immediate suspension or other restrictions, Mr Currie will be free to carry on his business pending determination of whether the charges are substantiated and, if so, the appropriate sanction.
- [11] Thus, the Tribunal's current task is effectively to decide whether Mr Currie should be permitted to carry on his business between the hearing of the stay application on 21 February 2019 and the determination of the internal review which must occur by or around 19 March 2019. In other words, whether the decision to immediately suspend Mr Currie's licence and impose other restrictions should be stayed for a period of around 19 business days at most from the date of the hearing (plus five days to enable Mr Currie to exercise his right to external review if the Commission confirms the decision).

### **Summary of legislative framework**

#### *Power to immediately suspend licence and impose other restrictions*

- [12] The decision to immediately suspend Mr Currie's licence and impose other restrictions purported to be made under Rule AR.8(z) of the *Australian Rules of Racing* (the Rules), which is in these terms:

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<sup>1</sup> See, for example, *Munt v Queensland Law Society Incorporated* [2015] QCAT 451 per Thomas J at [31].

Notwithstanding anything contained within these Rules, and not in limitation of any power conferred by these Rules, where a person has been charged with a breach of these Rules (or a local rule of a Principal Racing Authority) or a person has been charged with the commission of an indictable criminal offence, the Stewards pursuant to the authority delegated by the Principal Racing Authority, if of the opinion that the continued participation of that person in racing might pose an unacceptable risk to, prejudice or undermine the image, interests or integrity of racing, may:

(a) suspend any licence, registration, right, or privilege granted under these Rules to that person;

(b) prevent any horse owned (or part-owned) or leased by that person from participating in any race or official trial;

(c) order that any registration of the transfer of ownership and/or training of a horse related to that person not be effected;

(d) make any other direction or order related to the person which is in the interests of racing,

pending the hearing and determination of the charge under these Rules, the relevant local rule or the relevant criminal charges.

[13] The expression ‘Principal Racing Authority’ is defined in Rule AR.1 as:

(a) a body, statutory or otherwise, that has the control and general supervision of racing within a State or Territory (provided any Member thereof is not a direct Government appointee), and means . . . in the State of Queensland, Racing Queensland Limited . . .

[14] Accordingly, on its face, Rule AR.8(z) vests the power to make the orders in the Stewards pursuant to authority delegated by the Racing Queensland Limited.

[15] However, my attention was drawn to a ‘Standard’, made by the Commission and styled as follows:

**Powers under the Rules of Racing**

A standard to clarify the powers and functions under the Rules of Racing in accordance with the provisions of the *Racing Act 2002* and *Racing Integrity Act 2016*.

[16] Sections 6.2 and 6.3 of this Standard provide that:

6.2 In applying the Rules of Racing for a code of racing, if a rule provides for an entity to perform a function that is a function of the Commission, the Commission and not the entity may perform the function or take the action, including –

- a. appointing stewards; and
- b. penalising participants

*Note – See section 10 of the Racing Integrity Act 2016 [followed by other examples of matters relevant to the performance of the Commission’s functions].*

6.3 Without limiting subsection 6.2, in applying the rules of racing for a code of racing, a reference to the ‘Principal Racing Authority’, ‘control body’, ‘controlling body’ or ‘Racing Queensland’ in a rule about a matter relevant to the performance of a function of the Commission is taken to be a reference to the Commission.

- [17] Under section 10 of the *Racing Integrity Act 2016* (Qld) (Racing Integrity Act), the functions of the Commission include to license industry participants (s 10(1)(a)) and to make decisions about disciplinary matters (s 10(1)(j)).
- [18] Thus, Rule 8.A(z) is to be read as empowering ‘the Stewards pursuant to the authority delegated by the [Commission]’ to make orders in the circumstances prescribed by the Rule.
- [19] My attention was also drawn to the Commission’s *Standard for Licensing Scheme Thoroughbreds V2.00* made pursuant to s 64 of the Racing Integrity Act which requires the Commission to make a standard for a licensing scheme for each code of racing. It will be necessary to return to this Standard in more detail.

*Internal review of the decision*

- [20] Under s 243 of the Racing Integrity Act, an ‘interested person’ may apply for an internal review of an ‘original decision’. It is uncontroversial that Mr Currie is an interested person and that the decision to immediately suspend Mr Currie’s licence and impose other restrictions is an original decision.
- [21] The Commission must make a decision on the internal review and give the interested person notice of the decision ‘within business 20 days after receiving’ the application for internal review: s 245(1). If it fails to do so, the Commission is taken to have confirmed the original decision: s 245(8).

*Power to grant stay*

- [22] Section 244(1) provides that an application for an internal review does not stay the original decision, but the interested person may apply to (in the current context) the Tribunal for a stay.
- [23] However, the Tribunal’s powers are limited by s 244(6), which provides:

(6) The period of the stay must not extend past the time when the commission makes an internal review decision about the original decision and any later period the relevant body [that is, the Tribunal in the current context] allows the applicant to enable the applicant to appeal against, or apply for an external review of, the internal review decision.

**Facts**

- [24] The following facts are not in contention:
- (a) Mr Currie is a licensed horse trainer who conducts a business known as ‘Currie Racing’ in partnership with his father, Mark Currie.
  - (b) Currie Racing is one of the largest thoroughbred racing stables in Queensland, operating through three stables leased from Toowoomba Turf Club as well as

stables at Mr Currie's parents' property and having, as at 18 February 2019, some 85 to 90 horses in work and 15 permanent employees as well as casual staff and contractors providing services to the business.

- (c) On 7 April 2018, Stewards came to Currie Racing's stables, interviewed Currie Racing employees and Mr Currie's father, and later Mr Currie who provided them with CCTV equipment from the stables.
- (d) On 28 May 2018, Mr Currie was charged with 31 breaches of the Rules and on the same day the Stewards made orders under AR.8(z) of the Rules preventing Mr Currie from nominating or racing any horses. Those orders were previously stayed pending determination of an application to the Tribunal in relation to the 28 May 2018 charges.
- (e) On Friday, 15 February 2019, Mr Currie's solicitor, Mr M E O'Connor, received an email from the Chief Stipendiary Steward - Thoroughbreds, Mr Peter Chadwick, enclosing a letter outlining seven additional charges alleging breaches of the Rules.
- (f) A further letter also enclosed with the email requested Mr Currie to attend a Stewards hearing on Monday, 18 February 2019 at 10:00 am to give reasons why the Stewards ought not exercise their powers under Rule AR.8(z) to immediately suspend Mr Currie's licence and impose other restrictions.
- (g) On the same day – 15 February 2019 – the Commission released a press release noting that Mr Currie had been issued with seven more alleged breaches of the Rules (that is, in addition to the earlier charges issued in 2018) and outlining the alleged breaches.
- (h) On Saturday, 16 February 2019 at 12:43 pm, Mr O'Connor emailed Mr Chadwick seeking an adjournment of the show cause proceedings to enable Mr O'Connor to obtain instructions from Mr Currie and to enable Mr Currie to make enquiries. Mr O'Connor also sought a brief of the evidence upon which the Commission relied.
- (i) On Sunday, 17 February 2019 at 11:30 am, Mr O'Connor received a response from Mr Chadwick advising that the show cause hearing would proceed as scheduled on Monday, 18 February 2019. A brief of evidence was not provided.
- (j) The show cause proceeding was heard by Mr Chadwick and two other Stewards, Mr Zimmerman and Mr Boyle.
- (k) Shortly after commencement of the show cause hearing, Mr J E Murdoch QC, who appeared for Mr Currie, renewed the request for an adjournment. That request was also refused.
- (l) During the hearing, it emerged that Mr Chadwick had had prior discussions with the Queensland Integrity Commissioner, Mr Ross Barnett, about the case, and that Mr Boyle had read the press release before the hearing. Mr Zimmerman had printed the press release but said he had not read it before it was tendered in evidence at the show cause hearing.

- (m) Mr Murdoch submitted that the Stewards should recuse themselves on the basis of apprehended bias. The Stewards rejected the submission.
- (n) At 7:00 pm on the day of the hearing (Monday, 18 February 2019), the Stewards delivered their decision, suspending Mr Currie's licence immediately and making other orders under Rule AR.8(z) as set out below.
- (o) Mr Murdoch requested that the Stewards provide reasons for their decision. This request was also refused.
- (p) On 19 February 2019, Mr Currie applied to the Tribunal for a stay of the Stewards' decision pending the outcome of his request for an internal review of the decision also made that day. The Commission opposed the granting of the stay.

### **The charges**

[25] The charges are summarised below:

#### *Charge 1*

- (a) That on 16 April 2017 Mr Currie raced the horse *Rock Spark* and after the race failed to report without delay that the horse had bled from one nostril – allegedly in contravention of Rule AR.53(6).

#### *Charge 2*

- (b) That between 13 April 2017 and 18 April 2017 Mr Currie, in advertising *Rock Spark* for sale, dishonestly failed to disclose that the horse had bled on 6 April 2017 – allegedly in contravention of AR.175(a).

#### *Charge 3*

- (c) That between 1 February 2016 and 31 July 2016 Mr Currie commissioned an act of cruelty to the horse *Cordon Rouge* in that Mr Currie used, or instructed an unknown person to use, on the horse an electric or electronic apparatus designed to deliver an electric shock – allegedly in contravention of AR.175(n).

#### *Charge 4*

- (d) That between 1 March 2016 and 7 March 2016 Mr Currie used or instructed an unknown person to use such a device on an unknown horse - allegedly in contravention of AR.175(n).

#### *Charge 5*

- (e) That on 31 January 2016 Mr Currie without the permission of the Stewards caused to be administered a medication Boost Paste to the horse *Honey Toast* on a race day prior to the horse running in a race – allegedly in contravention of AR.178E.

*Charge 6*

- (f) That on 16 April 2017 Mr Currie permitted the horse *Dog Days Are Over* to participate in a race where the horse had been subject to shockwave therapy during the seven clear days prior to the race – allegedly in contravention of AR.64H.

*Charge 7*

- (g) That on 31 May 2016 Mr Currie failed to report to the Stewards without delay that the horse *Deep Down* displayed blood in one nostril – allegedly in contravention of AR.53A(6).

**The Stewards' orders**

[26] The orders made by the Stewards at the end of the show cause hearing were that 'until the hearing of the 7 charges laid on Friday 15 February 2019':

- (a) pursuant to AR.8(z)(a), Mr Benjamin Currie, your Trainer's licence be suspended effective immediately;
- (b) pursuant to AR.8(z)(b), to prevent any horse owned (or part-owned) or leased by Mr Benjamin Currie from participating in any race or official trial;
- (c) pursuant to AR.8(z)(d), to decline to receive any nomination or entry for a horse owned (or part-owned) or leased by Mr Benjamin Currie;
- (d) pursuant to AR.8(z)(d), in respect of nominations either trained or owned (or part-owned) or leased by Mr Benjamin Currie, which have been received, to reject those nominations or entries;
- (e) pursuant to AR.8(z)(c), in respect to the transfer of ownership of horses owned (or part-owned) or leased by Mr Benjamin Currie and/stable returns for the transfer of horses Trained (sic) by Benjamin Currie, are subject to the approval of the Chief Stipendiary Steward;
- (f) pursuant to AR.8(z)(c), in respect to the horses currently under your care that you ensure that in the interim for a period of 10 days you provide adequate care, to these horses pending other suitable arrangements for their care or transfer. Should you require any further extension of time for their care or transfer, an application may be made to the Chief Stipendiary Steward.

[27] The delivery of these orders was followed, apart from advice of appeal rights, by these brief comments:

We understand that the timing of these orders impacts yourself Mr Benjamin Currie, your employees, and your owners, whom we sympathise with, however in the opinion of the stewards the integrity and reputation of the sport is paramount.

**The parties' submissions**

[28] Mr Murdoch, who appeared for Mr Currie, drew attention to various alleged deficiencies and weaknesses relating to the charges in support of a submission that Mr

Currie has an arguable case that the Commission, in determining the internal review, should substitute a different decision which would not involve immediate suspension of Mr Currie's licence and imposition the other restrictions. He also pointed to evidence of the impact of the orders on Mr Currie and his employees, contractors and horses in support of his submission that the balance of convenience favoured granting a stay.

- [29] Mr McLeod, who appeared for the Commission, emphasised that Mr Currie could have, but chose not to, put on evidence seeking to explain the text messages that were the basis for many of the charges, and emphasised the serious nature of the charges.
- [30] As a precursor to assessing whether there is a good arguable case for a different decision on internal review, I have considered whether there is an arguable case for the alleged deficiencies identified by Mr Murdoch.
- [31] However, before turning to those matters, it is necessary to consider aspects of the *Standard for Licensing Scheme Thoroughbreds V2.00*.

### ***Standard for Licensing Scheme Thoroughbreds V2.00***

- [32] Sections B1.9 and B1.10 of this Standard provide:

#### **B1.9 Show Cause Notice**

The Commission may issue a show cause notice to a licence holder requiring them to attend a hearing and demonstrate why they should not be suspended, cancelled or have conditions imposed. Examples of reasons for this include:

- recommendations from an inquiry by Stewards;
- evidence or allegations of a failure by the licence holder to comply with a requirement or condition of their licence or a requirement under the racing legislation, a standard, including this Standard for a Licensing Scheme or the Rules of Racing; or
- any reason that may otherwise be grounds for an immediate suspension of the licence.

The person who receives the show cause notice must be given a period of time, no less than twenty-eight (28) days from the date of receiving the notice, to provide submissions to the Commission regarding the content of the notice and proposed actions contained in the notice.

The Commission must consider all relevant submissions made by the person within the relevant show cause period stated in the show cause notice.

#### **B1.10 Immediate Suspension of a Licence**

The Commission may immediately suspend any licence issued where:

- . . . , or
- the Commission forms the belief that the safety of persons or animals are in danger, or
- . . . , or

• a licence holder has been charged, found guilty of or pleaded guilty to an offence against a law in Queensland, whether or not a conviction has been recorded, including but not limited to:

- an offence against the Racing Act or Racing Integrity Act;
- dishonesty, fraud, forgery, match-fixing;
- cruelty to animals;
- assault, including aggravated and sexual assault;
- trafficking or supply of drugs, illicit or illegal substances.

Examples of reasons for immediate suspension of a licence include:

- evidence of animal cruelty committed by a licence holder; or
- failure to provide food, water, housing and appropriate treatment to a licensed animal indicating a lack of care for the welfare of the animal; or
- failure to comply with a requirement of the Racing Act or Racing Integrity Act; or . . .

Should the Commission immediately suspend a licence, the Commission must:

- inform the licence holder in writing as soon as possible within seven (7) days;
- provide reasons in writing to the person;
- advise the suspended person of their rights to request in writing, a show cause hearing of the matter within twenty-eight (28) days of the request being received by the Commission;
- provide the applicant with an opportunity to be heard and to call evidence in defence of the allegations should they request a hearing;
- advise in writing the outcome and reasons for the decision resulting from any show cause hearing.

The Commission may, at its discretion, direct the licence holder to attend a hearing to show cause regarding why their licence should not be suspended.

Please note: The process of making a decision in relation to the immediate suspension of a licence is subject to the principles of natural justice.

Section 240 of the Racing Integrity Act provides for the appeal and review rights available to a licence holder who has had their licence immediately suspended.

[33] Mr Murdoch emphasised that under s 113(3)(d) of the *Racing Act 2002* (Qld), if there is an inconsistency between this Standard and the Rules, the Standard prevails. Section B1.10 of the Standard provides additional grounds for immediate suspension – such as where the Commission forms the belief that the safety of animals may be in danger – and provides examples of grounds for immediate suspension, including

evidence of animal cruelty. These appear to me to be additional to, rather than inconsistent with, Rule AR.8(z).

- [34] Mr Murdoch submitted that, in accordance with s B1.9, Mr Currie should have been given at least 28 days from receipt of the show cause notice to make submissions. In fact, he was advised on Friday afternoon (15 February 2019) that the show cause hearing would be on Monday morning (18 February 2019). It will be recalled that the show cause hearing proceeded on the Monday morning in spite of the request for more time made by Mr O'Connor on the preceding Saturday and a further request for an adjournment made at the start of the show cause hearing on Monday morning.
- [35] The interaction between s B1.9 and s B1.10 is not as clear as it could be. There is no express requirement for the Commission to give a show cause notice or conduct a show cause hearing. However, once a show cause notice is given under s B1.9, the 28-day period for submissions applies.
- [36] Section B1.9 appears to apply to intended suspensions of licences generally. Section B1.10 is concerned only with immediate suspension of a licence. Nevertheless, s B1.10 contemplates that the Commission may, as a matter of discretion, direct a licence holder to attend a show cause hearing.
- [37] It is not necessary or appropriate for me to finally decide whether, once a show cause hearing is scheduled under s B1.10, the 28-day period for submissions under s B1.9 applies. I am satisfied that there is at least a good arguable case that it does apply. It is perhaps the more natural reading of the sections, read together, that, if a show cause notice is given, the 28-day period for submissions is engaged. This is supported by the reference in the third dot point in s B1.9 to grounds related to immediate suspension.

#### **Power of Stewards to make decision – the delegation point**

- [38] As noted, the power to immediately suspend a licence is vested in ‘the Stewards pursuant to the authority delegated by the [Commission]’. Mr Murdoch submitted that this requires a specific delegation. Mr McLeod advised that the Stewards had considered a submission to this effect and satisfied themselves that they had appropriate letters of delegation. I stood the matter down briefly to allow for the letters to be located and produced.
- [39] A copy of one of the letters – which was taken to be representative of all three – was handed up by Mr McLeod when the hearing resumed. The letter, dated 1 July 2016, is addressed to one of the Stewards, Mr Boyle, signed by the Racing Integrity Commissioner, Mr Barnett, appointed Mr Boyle as a Steward, and went on to say:

As a Steward, you are to exercise all the powers vested in the Stewards by the Racing Rules.

- [40] Notwithstanding this sentence, Mr Murdoch submitted that the letter merely appoints Mr Boyle as a Steward. It does not contain, as Mr Murdoch says Rule AR.8(z) requires, a specific delegation of the power to immediately suspend a licence and impose other restrictions. Mr McLeod submitted that the letter provides the necessary delegation.

- [41] Again, it is not necessary or appropriate for me to decide which is the better view. There is in my view at least an argument that a mere appointment as a Steward, even accompanied by the statement that the appointee is ‘to exercise all the powers vested in the Stewards by the Racing Rules’, does not constitute a delegation of the immediate suspension power. The power is an extraordinary one and it would not be surprising if a specific delegation were required before it could be exercised. The Rule in its terms contemplates this power being conferred on the Stewards not by the Rules, as the letter references, but by delegation.
- [42] On the other hand, the quoted sentence in the letter would have no work to do if it were merely stating the obvious; that, upon appointment as a Steward, Mr Doyle would have all the powers vested in Stewards. I accept that it is reasonably open to the construction that it delegates to Mr Doyle all powers capable of being vested in the Stewards by the Rules.
- [43] However, I consider that there is a good arguable case that Rule AR.8(z) requires a specific delegation of power to the Stewards (if it were otherwise the relevant words would be otiose) and that the letter does no more than appoint Mr Doyle as a Steward and confirm that he may exercise the powers that the Rules vest in Stewards and not the Rule AR.8(z) power which is to be conferred by delegation.
- [44] Mr McLeod did not submit that any deficiency would be saved by principles of ratification or the presumption of regularity.

### **Procedural fairness**

- [45] Mr Murdoch argued that the decision to immediately suspend Mr Currie and impose the other restrictions was infected by denial of procedural fairness. The issues that raise questions of procedural fairness fall into two categories.
- [46] The first relates to the alleged failure to give Mr Currie sufficient opportunity to be heard on the show cause notice consequent upon the short time between Mr Currie receiving notice of the show cause hearing on Friday afternoon and the hearing on Monday morning, including the refusal of Mr O’Connor’s request on Saturday to defer the hearing and the refusal of Mr Murdoch’s request for an adjournment at the start of the hearing on Monday morning; and the refusal to provide a brief of evidence.
- [47] The second relates to the submission that the Stewards should have recused themselves on the basis of apprehended bias following the admission that the chair had discussed the case with the Racing Integrity Commissioner, given the Commissioner’s role as head of the Commission which employs the Stewards and potentially as the internal reviewer of the Stewards’ decision.

### *Relevance of procedural fairness*

- [48] During the hearing, I queried whether any denial of procedural fairness by the Stewards would be able to be corrected on internal review, by the internal reviewer giving Mr Currie a proper opportunity to be heard and care being taken in the selection and conduct of the reviewer to ensure that actual, or apprehension of, bias would not arise. Put another way, if the internal reviewer stands in the shoes of the Stewards and makes fresh decision after a merits review, how would any denial of procedural fairness in the making of the original decision be relevant to the internal review? However, Mr McLeod indicated that if the internal reviewer found there had been a

denial of procedural fairness by the Stewards that would be a basis for the internal reviewer deciding not to confirm the original decision.

- [49] Assuming, without deciding (since it was not argued in detail at the hearing) that a finding of denial of procedural fairness by the Stewards may lead to the internal reviewer declining to confirm the original decision on the basis of the material before the Stewards and substituting another decision, it is necessary to consider the content of the obligation.

*Content of procedural fairness obligation*

- [50] What is required to afford procedural fairness depends on the circumstances in which the issue arises rather than immutable rules; it has been said to require avoidance of ‘practical injustice’.<sup>2</sup> The discussion that follows, so far as it relates to the opportunity to be heard, is mainly relevant if, contrary to Mr Murdoch’s submissions, the requirement under s B1.9 of the Standard to give the trainer 28 days’ notice of a show cause hearing does not apply.
- [51] In the current context, there are competing considerations evident on the face of the Rules.
- [52] On the one hand, the power to order *immediate* suspension of a person’s licence is only engaged where ‘the continued participation of that person in racing might pose an unacceptable risk to, prejudice or undermine the image, interests or integrity of racing’. The degree of swiftness that may be required to ensure that risk is mitigated may militate against significant time delays for preparation of submissions.
- [53] On the other hand, the very severity of the potential orders, which may be made upon charges merely being laid, not proven, calls for great care on the part of those in whom the power is vested. This in turn suggests an appropriate opportunity to be heard, which in turn implies sufficient time and material to allow a trainer to prepare for the show cause hearing.
- [54] Wherever the balance between those factors might ultimately be held to lie, there is in my view a good arguable case that less than one business day, essentially comprising the weekend, between notification of the charges and the show cause hearing to determine whether Mr Currie’s licence should be immediately suspended and other restrictions imposed, falls short of a procedurally fair process. It arguably denied Mr Currie ‘practical justice’.
- [55] Similarly, there is in my view an arguable case for apprehended bias if a decision-maker discusses a case in advance with a person who is both head of the person’s employer organisation and potentially to be the internal reviewer of the decision. Applying the accepted, two-stage approach<sup>3</sup> to apprehended bias: there is a logical connection between the identified discussion and a fear that the matter might be decided based on the views of that person rather than its merits that could lead a fair-minded lay observer to apprehend that the decision-maker may not bring an unbiased mind to the matter.

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<sup>2</sup> *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1, [81].

<sup>3</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, [8].

- [56] On the other hand, and without making any observation on the wisdom of so doing, I do not see the issuing of a press release announcing the charges going to actual or apprehended bias, nor the fact that one or more of the decision-makers read the press release before making decision. The relevant press release does not deal with whether immediate suspension or other restrictions should be ordered, which was the only decision before the Stewards.

### **Evidence**

- [57] Both parties made submissions regarding evidence of the allegations against Mr Currie.
- [58] In fact, no direct evidence was produced. However, the charges were particularised by reference to alleged facts comprising what purported to be transcripts of text messages exchanged by Mr Currie with his father and others. It is not clear on the face of the allegations whether each series of exchanges comprises the whole of that series or whether, for example, there are prior or later messages around the same time that might provide further context.
- [59] The Commission seeks to rely upon the text exchanges to support the allegations. Mr McLeod emphasised that Mr Currie could have given evidence to explain why each series of text messages did not support the relevant allegation. He did not do so.
- [60] Mr Currie did file an affidavit, on which he was not cross-examined, in which he deposed:

In respect of the allegations of animal cruelty by use of a jigger, I say that I have never used nor have I had anyone else use a jigger at any time on any of my horses. Further, there is no evidence of jiggers being found in or about my stable or anywhere else. I have never possessed or owned a jigger. My horses receive regular veterinary attention and I have never been subject to any complaint relating to animal cruelty or neglect.

- [61] Aside from the denial apparently relating to the animal cruelty charges (Charges 3 and 4) referred to in the previous paragraph, Mr Currie's affidavit did not specifically confront the content of the charges. Rather, he simply opined that 'there is no satisfactory evidence upon which QRIC could rely to prove those charges' and raised the allegations of lack of procedural fairness and bias.
- [62] Mr Murdoch argued that there was no evidence on which the Stewards could form the opinion that 'the continued participation of [Mr Currie] in racing might pose an unacceptable risk to, prejudice or undermine the image, interests or integrity of racing' under Rule AR.8(z). To the extent that the submission relied upon the absence of direct physical evidence, I would infer for current purposes that the transcripts of text message exchanges included with the charges reproduce transcripts made from the relevant mobile phones. The strength of the argument that the content of those exchanges is not capable of supporting the charges cannot be assessed without considering the tranches of text messages for each charge.

### *Charge 1 – alleged text messages*

- [63] This charge, it will be recalled, relates to failing to report without delay that the horse *Rock Spark* had bled from one nostril.

[64] The relevant text messages are alleged to have occurred on 6 April 2017, as follows:

<u>Time</u>	<u>Parties to exchange</u>	<u>Content</u>
2:44 pm	Mr Currie to Mr Currie's father	'Bled that cunt'
		'He's fucked'
	Father to Mr Currie	'Yep'
2:46 pm	Mr Currie to Tony Khoury	'Bled that thing'
2:54 pm	Father to Mr Currie	'Drop rock down here'
	Mr Currie to father	'Selling'
	Father to Mr Currie	'Yep'

[65] Again, it is not my role to determine whether this evidence substantiates the charges. Given the cryptic nature of these texts, and in particular the absence of a clear reference to *Rock Spark*, I accept that there is a good arguable case that they are not capable of proving the charges.

*Charge 2 – alleged text messages*

[66] As noted above, this charge relates to alleged dishonest action in failing to disclose to potential purchasers that *Rock Spark* bled at Gatton on 6 April 2017 when the horse was advertised for sale between 13 and 18 April 2017.

[67] The texts in relation to this charge alleged to have been sent on 11 April 2017 comprised exchanges between Mr Currie and 'Bloodstckauktion' (sic) which included Mr Currie allegedly texting 'has had a bleed but has had heaps of runs since then'.

[68] I accept that this is capable of establishing that Mr Currie represented that *Rock Spark* had no recent bleeds. It is not clear how it establishes that the horse in fact had a recent bleed unless the text messages recounted for Charge 1 are considered to do so. There is also no evidence of the horse being advertised for sale in the period particularised in the charge or at all.

[69] In those circumstances, based on the 'facts' particularised in the charge, it is difficult to see how the particulars relating to advertising for sale would be proven. Although not authoritative, there is also an argument, based on a decision of a predecessor tribunal, that the Rule does not extend to selling activities.<sup>4</sup> I accept there is a good arguable case that the texts are not capable of proving the charges.

<sup>4</sup> *Stewards of Queensland Racing Limited v Stephenson* [2009] QRAT 16.

*Charge 3 – alleged text messages*

[70] This is an animal cruelty charge relating to the alleged use of an electric or electronic apparatus designed to deliver an electric shock on the horse *Cordon Rouge*.

[71] The text messages alleged to have been exchanged on 29 July 2016 are:

<u>Time</u>	<u>Parties to exchange</u>	<u>Content</u>
11:54 am	'Shane C' to Mr Currie	'Cordon roughie tomorrow?'
		'Rougue'
		'Might go down'
11:55 am	Mr Currie to 'Shane C'	'Yep harped up, claim, mile 3 <sup>rd</sup> up'
11:55 am		'Surely'

[72] Mr Murdoch submitted that the expression 'harped up' is a slang term which applies when a racehorse has been finely tuned and is ready to run well after skilled preparation and trial gallops. The difficulty with that submission is that, as I confirmed with Mr McLeod, it is not admitted by the Commission and there was no evidence before me on which I could make a finding on the slang meaning of this expression.

[73] However, the comments in the texts are so cryptic that it is, in my view, impossible to deny that a good arguable case that the texts do not support the charge could be made, especially so when supported by Mr Currie's affidavit denying ever using jiggers and in the absence of any physical evidence of the prohibited apparatus being found at Mr Currie's stables or elsewhere.

*Charge 4 – alleged text messages*

[74] This is another animal cruelty charge relating to the alleged use of an electric or electronic apparatus designed to deliver an electric shock on 'an unknown horse'.

[75] The sole allegation under the heading 'Facts to be relied upon' is that at 6:37 am on 5 March 2017 a text in these terms was sent from Mr Currie's mobile phone to an unknown recipient:

Harped him up Wednesday morning. Changed his shoeing. Tried two new pain killers and drenching him tomorrow. Haha.

[76] Again, my task is hindered by the absence of a proper basis on which to determine whether, in its context, the expression '[h]arped him up' should take the sinister meaning implicit in the charges or is capable of bearing the broader meaning submitted by Mr Murdoch. Faced with Mr Currie's sworn denial of the use of a jigger, and on the material before me, there is in my opinion a reasonable argument that the texts do not support the allegation.

*Charge 5 – alleged text messages*

[77] This charge relates to the alleged administration of ‘Boost Paste’ to the horse *Honey Toast* contrary to the prohibition on administering ‘any medication’ to a horse on race day prior to the horse running in a race.

[78] The email exchanges alleged to have occurred on Sunday 31 January 2016 indicate that Mr Currie’s associate gave a horse, which is not named in the exchange reproduced with the ‘facts’ alleged in the charge letter, Boost Paste in the morning when the horse was to race in the afternoon.

[79] ‘Medication’ is defined in Rule AR.1 as:

any treatment with drugs or other substances

[80] ‘Treatment’ is not defined.

[81] Mr Murdoch advised that a submission would be advanced on the hearing of the charges that Boost Paste is not a ‘medication’ as defined as it is not a ‘treatment’ being ‘no more than a feed supplement i.e. containing no drugs or prohibited substances’. I note that the definition of ‘medication’ is not limited to treatment with drugs or *prohibited* substances.

[82] In the absence of any material supporting this submission, I am unable to assess the strength of the argument. Accordingly, I am not satisfied that Mr Currie has an arguable case that Boost Paste is not a ‘medication’.

*Charge 6 – alleged text messages*

[83] This charge relates to the allegation that Mr Currie caused ‘shockwave’ therapy to be administered to the horse *Dog Days Are Over* less than seven clear days prior to the horse racing on 16 April 2017.

[84] The text messages alleged to have been exchanged on 13 April 2017 are between Mr Currie and a second person, referred to as ‘Bronco’ in the opening sentence of the ‘Facts to be relied upon’ but as ‘Britnell’ in the transcript reproduced in the charge letter, as below:

<u>Time</u>	<u>Parties to exchange</u>	<u>Content</u>
6:47 am	Mr Currie to second person	‘How many did you shockwave?’
6:54 am	Second person to Mr Currie	‘Just Kuznetsova. Who else do you want it on?’
6:56 am		‘Hit dog days wild looking fetlocks?’
7:00 am	Mr Currie to second person	‘Yeah. It’s best in the muscles. So anything half sore in the back, or anything that tiesup (sic) a bit. Do hamstring.’

	Second person to Mr Currie	'Righto no worries'
7:09 am	Second person to Mr Currie	'Do you hit them every day with it?'
7:10 am	Mr Currie to second person	'Nah'
		'Like once a week'
	Second person to Mr Currie	'Righto sweet'

[85] Although the exchange does not expressly state when the therapy would be administered to *Dog Days Are Over*, there is nothing to indicate that it would be at some future time after the forthcoming race and therefore outside the seven-day period.

[86] Mr Murdoch's submissions focussed on the nature of the charge rather than Mr Currie's prospects of mounting a successful defence, pointing out that the use of shockwave therapy is not an animal cruelty issue. As Mr McLeod agreed, this is implicit in Rule AR.64H(1): shockwave therapy is not forbidden absolutely but only if administered during the seven days before a race.

*Charge 7 – alleged text messages*

[87] This charge relates to the alleged failure of Mr Currie to without delay report to the Stewards that the horse *Deep Down* displayed blood at one nostril.

[88] The alleged text messages include Mr Currie texting his father on 31 May 2016 that:

Deep down bled this morning too

[89] There were various other texts canvassing options.

[90] I am unable to identify a reasonable argument that the text messages are not capable of supporting the charge having regard to the timing of the text to Mr Currie's father on 31 May 2016 specifically identifying the horse and its participation in the race on 16 April 2016.

[91] Mr Murdoch pointed out that this charge applies where there is bleeding from one nostril. More serious restrictions apply under Rules 53.A and 53.B where there is an 'attack of bleeding', which requires bleeding from both nostrils. Even if proved, Mr Murdoch submitted, the lesser charge would not warrant suspension or cancellation of Mr Currie's licence.

**Is there an arguable case?**

[92] Whether the internal reviewer should confirm the original decision to immediately suspend Mr Currie's licence and impose the other restrictions requires the exercise of discretion by reviewer.

- [93] The question for the Tribunal is whether there is a good arguable case that the reviewer should substitute a different decision; in particular, a decision not to immediately suspend Mr Currie's licence and impose the other restrictions.
- [94] Mr Murdoch described the immediate suspension as Draconian. Rule AR.8(z) undoubtedly confers a strong power that is capable, if exercised inappropriately, of causing substantial hardship and injustice. However, extraordinary as it is, the power is provided by the Rules and is no doubt there for use where necessary to achieve the objects of the regulatory regime. Mr Murdoch did not submit that the immediate suspension power was outside the rule-making power.
- [95] It is also true that the time between the original decision and the decision on the internal review is limited, as the review is required to be completed within 20 business days. Therefore, it might be said that the risks of not acting immediately are also limited. Nevertheless, the Racing Integrity Act specifically provides that a decision of the Stewards is not stayed by an application for internal review. The Act contemplates that decisions will take effect forthwith unless the Tribunal rules otherwise.
- [96] There is also force in Mr McLeod's submission that Mr Currie had the opportunity to explicitly respond to and seek to explain the various text messages but chose not to do so. On the other hand, the exchanges occurred some years ago and the time available to prepare such a response was limited.
- [97] On balance, having regard to:
- (a) the limited nature of the evidence for various charges;
  - (b) the arguable case for defending some of the charges identified above;
  - (c) Mr Currie's sworn denial relating to the most serious animal cruelty charges;
  - (d) the case for immediate suspension and other restrictions in the case of the charges not alleging cruelty not being strong,

I am satisfied that there is a good arguable case for the internal review to substitute a different decision.

- [98] There is, in my view, a good argument that the risk of injustice arising out of immediate suspension and other restrictions in these circumstances is too great when balanced against the limited potential impact on the integrity and reputation of the industry by allowing Mr Currie to carry on his business pending the hearing of the charges. In that regard, it is notable that there is no evidence of any recent breaches of the Rules. It is not a case where there is evidence suggesting an ongoing current risk of animal cruelty. I also observe that, as I was advised, the relevant mobile phones were seized more than six months ago; one would have expected more swift action if the allegations were of such potential impact that immediate suspension and other restrictions would be appropriate.
- [99] Whether such an argument succeeds is a matter for the internal reviewer and the implications to be drawn from the text messages are matters for those who ultimately determine whether the charges are substantiated. It is sufficient for current purposes if I conclude, as I have, that there is a good arguable case that a different decision

should be made on the internal review regarding whether immediate suspension and other restrictions should be ordered.

- [100] If they are relevant, my conclusions in relation to Mr Murdoch's submissions on procedural fairness issues and the delegation point would also favour Mr Currie, but I would reach the same view in any case.

### **Balance of convenience**

- [101] Mr Currie's affidavit, which was not challenged, deposed to significant financial impacts that the decision to immediately suspend his licence and impose the other restrictions would have, including the closure of his stables and the loss of his livelihood, with flow on effects for his employees and contractors. I accept that the orders would have these effects and that the damage, as Mr Currie deposed, would be irreparable. However, as Mr McLeod pointed out, these are inevitable consequences of the exercise of the power that the Rules confer.
- [102] In response to my querying why the Commission says that the balance of convenience favours not granting the stay, Mr McLeod pointed to the serious nature of the charges, the implication being that a delay of around 20 business days in the suspension of the licence taking effect would not be consistent with maintaining the reputation and integrity of the industry. In other words, because of the serious nature of the charges, and noting Mr Currie's limited response to them, the balance favours protecting the reputation and integrity of the industry by not staying the decision.
- [103] I am persuaded that the balance favours not subjecting Mr Currie and his employees and contractors to the severe consequences of immediate suspension. I do not consider a delay of less than 25 business days at most before the orders take effect, if the internal review decision is confirmed, will be significantly detrimental to the reputation and integrity of the industry and, as noted, there is no evidence to suggest that horses are currently at risk necessitating immediate closure of Currie Racing's stables. As these reasons make clear, if the Commission confirms the decision, the suspension and other restrictions will be reinstated.
- [104] The laying of the charges has already been brought to public attention by the release of press release outlining the charges, which indicates to the industry and the public at large that the Commission is actively pursuing its statutory duty by investigating potential breaches of the Rules. I do not consider that the impact on the reputation and integrity of the industry of this short delay in the orders taking effect (if they are not altered on internal review), if indeed there is any such impact, is sufficient to outweigh the adverse impact upon Mr Currie and those whose livelihoods are linked to the continued operation of Currie Racing.

### **Disposition of the application for stay**

- [105] In view of these considerations, I concluded that a stay should be ordered. By agreement with the parties, the stay is until five days after the determination of the internal review. The period of five business days is sufficient for Mr Currie, if he wishes to do so, to seek external review of the internal review decision.