APPEAL – 640

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT:	**STEPHEN RAMON COOKSON**
APPLICATION NO:	**A30/08/640**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING:	**7 MARCH 2006**
DATE OF DETERMINATION:	**19 APRIL 2006**

IN THE MATTER OF an appeal by Stephen Ramon Cookson against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 9 August 2005 imposing a fine of $5,000 for breach of Rule 175(q) of the Australian Rules of Racing.

The appellant represented himself.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This is an appeal against conviction and penalty.

Introduction

The appellant was a person who described his occupation as an equine consultant. That is a term which is not mentioned in the Rules of Racing, and an occupation which needs no licence from the controlling body. His occupation included him spending time at a certain stables in the Lark Hill area, South of Perth. He was an equine consultant to a number of owners whose horses were kept at the stables. Mr Peter Graham was a licensed stablehand and owner. He too had an involvement with the stables at Lark Hill, in that he was an owner of horses which had been kept there. Both the appellant and Mr Graham had reason to be at the stables from time to time.

On Thursday 4 August 2005, both men were at the stables. There was an alleged assault, which came to the notice of the Stewards. Mr Graham suffered a broken nose. The appellant was the one alleged to have caused the broken nose. The racecourse investigator, Mr O'Reilly, interviewed both men on video later that same day. Both videos were played and became exhibits at the Stewards' inquiry, which commenced the next day 5 August 2005.

At the inquiry, the appellant was charged with an offence, the particulars of which included that he had caused the broken nose. The Stewards put the charge and particulars at pages 18 to 19 of the transcript (T18-T19) in the following terms:

> *'Mr Cookson, at this stage of the inquiry, the Stewards believe you have a charge to answer under the provisions of Australian Rule of Racing 175(q) and I'll read that rule to you. The Committee of any club or the Stewards may punish any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour. Now Mr Cookson, you're charged under that rule with improper conduct, the improper conduct being that you deliberately struck licensed stablehand and owner Mr Peter Graham in the face, resulting in Mr Graham suffering facial injuries.'*

The inquiry was adjourned and resumed on 9 August 2005. At the conclusion of the inquiry the appellant was convicted and fined. That is how this matter comes to be before the Tribunal.

The appellant lodged a notice of appeal against both conviction and penalty. The grounds of appeal are in the following terms:

> *'Decision incorrect at both law and fact. Application of 45(6) incorrect.*
>
> *Severity of sentence relative to similar cases grossly excessive.'*

Background

Mr Graham himself had been due to appear at a separate Stewards' inquiry on Friday 5 August 2005. His appearance there was in relation to the finding of a prohibited drug in a horse. The administration was alleged to have taken place at the Lark Hill stables. Pending the outcome of that particular inquiry, the Stewards had imposed certain restrictions on the operations of the stables at Lark Hill. One of those restrictions had been that no horses were to be worked at the Lark Hill property where the stables were situated. It is apparent from his video interview with Mr O'Reilly on 4 August that Mr Graham was expecting the outcome of

that inquiry to be that he would no longer be involved in the racing industry. He seemed resigned to that outcome, saying at one stage "I've had enough".

This separate inquiry concerning the drug offence became relevant to the assault inquiry. It was of importance to the appellant, because his business as an equine consultant directly related to the operations of the Lark Hill stables, and the restrictions imposed by the Stewards. Mr Graham's movements on the day of the alleged assault were related to the winding down of his involvement in the racing industry, as he was expecting to be a disqualified person by the end of the day on Friday 5 August. As he said at the inquiry on 5 August "I thought I'd come out and help and try and get some feed for the day (inaudible) until the horses are gone and I just thought I'd do the right thing because tomorrow, today I most probably wouldn't be going back there." (T6)

The evidence

Mr Graham said in his video that he arrived in his vehicle at the stables at about 9.00a.m. He had his young grandson in the vehicle with him. He opened the door, but did not get out of the car at all. He said that the appellant approached him, and said that he (the appellant) was owed money for agistment. Without anything more, the appellant then punched him. He described it as "one punch", and "a real hard one". Following that, the appellant made various threats to Mr Graham, and challenged him to get out of the car. Mr Graham said that he did not get out of the car at all until the appellant left, which was very soon after the assault and threats. At the time of being on video, Mr Graham had not cleaned his face. Clearly visible is a large amount of blood down the face, including blood which had come from a position on the skin on the bridge of the nose

Mr Graham confirmed at the inquiry that his version was correct (T5). At T15-16, he explained in more detail how the injury was caused. Again, he maintained his version of events that there was one punch from the appellant, and that he did not get out of the car.

The appellant admitted causing the injury to Mr Graham, but not in the way described by Mr Graham. He said in his video that he brought up with Mr Graham that he (the appellant) was owed money by Mr Graham. He said that Mr Graham got out of the car. Mr Graham pushed him with open hands to the chest area. He pushed back. Mr Graham pushed again. He pushed back once more. It was this second, or possibly third, push back by the appellant which caused the injury to the nose. He said that the open palm of one hand connected with Mr Graham's nose. The appellant showed on video a bruise to the palm of his right hand.

The appellant confirmed at the inquiry that his version was correct. In particular, he said that he did not punch Mr Graham (T10, T11, T21). He also said that he was not guilty of deliberately striking Mr Graham (T20). In his closing submission, he maintained that he was acting in self defence (T56 – "my intention was .....to keep him away from pushing me...") and provocation (T56 – "Okay, this time when he pushed, someone pushed back,...."). In his closing submission, at T52, he said that he had two defences to the charge, provocation and self defence. The appellant always acknowledged that he had broken Mr Graham's nose, but said that it was with the palm of his hand, by way of self defence, having been provoked , and with no intention of deliberately striking him. The appellant raised every defence which would have been available to him had he been in a criminal court.

The appellant called one witness, a Mr Crenham who corroborated in part his version of events. Mr Crenham was a casual worker at the stables, who was working nearby. He said at

T39 "I seen the car door open and Porky (Mr Graham) hop out of it and then pushed Steve and then Steve pushed him..."

The Stewards themselves called a further witness, Mr Bull, who said that he did not see the incident. His evidence was at odds with that of Mr Crenham, who had placed Mr Bull closer to the scene than Mr Crenham did.

.The finding of guilty

The Stewards gave their reasons for decision at T58 – T62

> *'Mr Cookson, the Stewards have considered the charge and carefully considered all the evidence. Firstly, the Stewards have turned their minds to the fact that you are not licensed by Racing and Wagering Western Australia and therefore, arguably not bound by the Rules of Racing. In addressing this matter, it is paramount to consider Section 45(6) of the Racing and Wagering Act 2003. In part, Section 45 subsection (6) (f and g) states that under the, under the heading Rules of Racing 6: Rules of Racing apply to and are binding on f) jockeys, drivers, stablehands, attendants, and all over persons participating in or associated with the keeping, training and racing of horses or greyhounds, and g) all persons attending race meetings or trials or wagering at race meetings. You've advised this inquiry that you are an equine consultant employed by the Bull stable. Your main function is to read and interpret blood profiles of race horses, you then advise Trainer Bull of your readings and appropriate treatment if required. In addition, you have a number of owners who you advise on and arrange horse ownerships. You have not shied away from recognising that you are a person who participates and associates with the keeping, training and racing of horses and openly state that your involvement said to extend to Group 1 level on the eastern seaboard. After deliberation the Stewards are more than satisfied that you are a person associated with the keeping, training and racing of horses and in our opinion, you are bound by the Rules of Racing. In regards to the charge before us, you have at the very least acknowledged that you came to make contact with the face of Mr Graham and have not denied that this contact was responsible for the injuries he sustained. You have, before this panel, conducted a thorough defence on your own behalf and raised a variety of matters in support of your plea of not guilty. Your impassioned closing submissions summarised many of the points raised through the proceedings. Some of these points do little in terms of defending the charge at hand. The determination of the charge is not of itself a difficult exercise once the matters of importance in its determination are distilled. You did preface your defence with the comments related to issues going to bias arising from reporting through the papers. RWWA, or more specifically the Stewards on this panel, are not responsible for what appears in the papers and if we were, we certainly would not be party to reporting that potentially brings the industry into disrepute. The determination of this matter is based solely upon the evidence before this panel and as professionals within the industry, within this industry for the determination of such matters, our determinations are untainted by outside considerations such as that raised by you. We've heard through the course of the inquiry evidence from several people who said to have witnessed various aspects of the meeting between yourself and Mr Graham on the day in question and in addition to the evidence each of you gave. None of the witnesses claimed to have witnessed the entire exchange but merely saw small portions of it. For that reason, their evidence is of little value or*

assistance. In addition to this, the little of what they did offer tended to contradict what other witnesses had offered. Mr Travis Bull, for example, had been placed from anywhere between in the paddock tending to fences according to him 300m away, to in the house having a cup of tea with one of the other witnesses. That other witness, Mr Crenham has himself walked past the two protagonists who engaged in a verbal altercation involved pushing between the parties, and according to him ignores it and goes about his business only to return some twenty minutes later to find Mr Graham bleeding from his nose. Clearly the exchange according to him was a prolonged one which according to you ended shortly after Mr Graham sustained the injury to his nose. Your own witness who you adjourned to call says he saw pushing between you but was twenty minutes later that he saw you leaving and Mr Graham bleeding. Even on that account, it is clear that if it happened that way then this initial push from Graham did not lead to the immediate response that led to his injury that as it might have done had it been a true case of self defence with provocation. The evidence of Mr Crenham, like that of the other witnesses, cannot be relied on to any great degree as he did not see the total exchange but only parts of it. Even if we ignore the other inconsistencies, it's is unclear from the evidence where matters stated finished exactly. In total the evidence of the witness did little to clarify events and only to serve, only served to muddy the waters. What is undisputed is that you came to make, that you came to make such contact with the nose of Mr Graham that had caused the injury that it did. By your own admission, when you first approached Mr Graham, you did so because there were a number of issues you had with him. It was clear to us that you were extremely angry with things Mr Graham was said to have done. That does not provide sufficient grounds of provocation for you to act in the manner you did when you struck Mr Graham. If there was any provocation in the matter, it is something that grew from pre-existing matters that lead you to approach Mr Graham in the first place. According to your own evidence Mr Graham did not want to cooperate with what you had sought from him. In your already angered state this was unlikely to do anything other than inflame an already volatile situation. You stated that he told you in no uncertain terms that he was not going to do the things you wanted and that he wanted you to go away. Clearly that added fuel to the fire that already existed, but that on its own does not, in our opinion, constitute such provocation that you would be forced to responding with force sufficient to cause injury. You were clearly the instigator in the exchange that lead to his nose being broken by you. The aspect of self-defence raised by you is dependent upon you being fearful in some way for your personal safety and then responding with like force as you put it, or sufficient force to protect yourself. It was not suggested by you that Mr Graham was doing anything other than trying to physically get away from, from him, if that. A clear indication that you were the aggressor and if anything Mr Graham may have been acting in self-defence. In fact everything we have heard from the protagonists indicates that Mr Graham wanted to get away from you. If all the background events you have described were true, then that is exactly what we would expect. You were the only one with the issues. You chose not to depart but to engage him further. If there was any contact initiated by Mr Graham, it was not of the threatening nature that would force you to react to a, in a forceful manner. The contact to Mr Graham's face was clearly of some considerable force. The injuries that were seen on the video and indeed, in person, were significant. There has been nothing demonstrated that, which would support a contention that such degree of force was necessary. Your own argument in defence of the charge on that ground

that you used light force therefore fails. What happened after you made contact with Mr Graham's face becomes of little relevance. Perhaps having sustained the injury caused by you, he felt motivated to ensure that you did not escape punishment for it. It doesn't alter the fact that you gave him such opportunity. The fact that he made no attempt to hide it, does not detract from the fact that you caused it. He did not break, he did not break his own nose. You did that for him and you did that in the absence of self-defence or such provocation that would warrant such action. The colourful background that is said to be a part of these events only provides a context which explains the obvious dislike between the parties, it does not of itself provide a defence to the charge. You have made reference in your submissions and Mr Graham has a long history of being an unreliable and untruthful person. In this case however, he has steadfastly maintained that you assaulted him. There is evidence of injury and you do not deny causing it but claimed, but claim matters of self-defence along with peripheral issues that of, that did not assist your cause. The fact that Mr Graham may be a proven liar and many other things does not of itself preclude the Stewards from finding his statements correct in this case if evidence exists that supports his version of events. Clearly in this case, your own evidence confirms that you caused the injury, the remaining evidence such that it is, does not support arguments relating to self-defence or provocation which would exonerate you from a guilty finding before, being made. In all of the circumstances before us and for the reasons announced, we find you guilty as charged, Mr Cookson.'

Appeal against conviction

In my opinion, it cannot be said that the Stewards' decision was "incorrect at law". The Stewards gave detailed reasons for decision. They dealt with the alleged bias raised by the appellant arising out of media reporting of the matter. They gave reasons for not relying the evidence of the witnesses Bull and Crenham. They dealt with the issues of provocation and self defence, because they had been raised during the evidence. They analysed the evidence given by both the appellant and Mr Graham, and gave reasons for preferring Mr Graham's evidence. No error of law was made in relation to those matters.

The Stewards gave specific attention to the question of whether the appellant was bound by the rules of racing. This was effectively the only matter of law raised by the appellant at this appeal. Sections 45(6)(f) and (g) of the Racing and wagering Western Australia Act 2003 are in the following terms:

45 (6)

Rules of racing apply to and are binding on –

(a).....

(f) jockeys, drivers, stablehands, attendants and all other persons participating in, or associated with the keeping training and racing of horses or greyhounds; and

(g) all persons attending race meetings or trials or wagering at race meetings.

Despite his acknowledgement at the beginning of the Stewards' inquiry that he was an equine consultant, attached to the stables in question and others, the appellant argued that the rules do not apply to him. He relied primarily on the fact that he held no licences, and had

previously been told that, because of his history, he would not be able to get a licence in any capacity. He relied also on the fact that the Lark Hill stables from which he principally operated were the subject of restrictions placed on them by the Stewards in relation to the pending inquiry concerning Mr Graham. The appellant's argument seemed to be that he was not participating in or associated with the keeping training and racing of horses because the Stewards were doing their best to keep him from being associated in any capacity as a licensed person.

It is worth noting that the appellant carried on his business as an equine consultant with the full knowledge of the Stewards. As he acknowledged on his video, he had previously been spoken to by Mr O'Reilly and been advised or asked to not "operate under the radar". The appellant complied with the Stewards' wishes in not crossing the line into activities which may have required a licence. As he said in his closing submission at T56:

> *"I work for fifteen or sixteen stables in Western Australia. Interstate stables, Group one's during the year where I got all their bloods and set up their program for their horses. I, not just Jeff Bull's stable, there is a list this long. And all these people have rang me and they've all put their hand up and said, Stephen at least you've always been fair with all of us and I've been fair with all you guys. I worked only under the buddy, buddy basis that I was allowed to do my equine consultancy. It was never, ever touching horses, handling horses, doing anything at all, and I have followed that to the letter, ..."*

The appellant's argument must fail. That he was not licensed, and apparently would not be licensed does not mean that he could not be participating in or associated with the keeping training and racing of horses. The words participating and associated should be given their ordinary and natural meaning, namely:

> **participate** *to take part, be or become actively involved, or share (in)*
>
> **associate** *to express agreement or allow oneself to be connected with; joined with another or others in an enterprise, business (etc.)*
>
> (Collins English Dictionary 2nd Australian edition 2001)

The appellant always maintained that he participated in and was associated with racing. He was correct. His argument here on the appeal is contrary to what he has asserted before the Stewards.

In his grounds of appeal, the appellant also says that the Stewards' decision was "wrong at fact". In my opinion, it cannot be said that the Stewards' decision was incorrect in fact. The appellant raised in argument here all of the points which he raised before the Stewards. Principally he put in his submission that Mr Graham was not a person to be believed, and that the assault could not have happened the way Mr Graham alleged. This was of course a matter of credibility of witnesses, Mr Graham included. It would be a rare case in which the Tribunal would disturb findings of fact made upon the credibility of witnesses. There is nothing in the appellant's submission that the Stewards were wrong in fact.

For the above reasons, I would dismiss the appeal against conviction

Appeal against penalty

The Stewards imposed a penalty of a fine of $5000.00. They gave their reasons at T64 as follows:

> *'Mr Cookson, the Stewards have considered the matter of penalty, taking into account all that you placed before us. This is a serious charge, the proper conduct of persons bound by the Rules of Racing is essential to the professional running of the racing industry. There have been several prominent press articles reported in the daily paper. These report (sic) have been damaging and detrimental to the racing industry, tarnishing the image and bringing the sport into disrepute. By your actions, you have initiated these reports. Mr Graham, a man of 64 years and fifteen years your senior, suffered a significant injury, that being a broken nose. Stewards believe that this penalty must encompass a deterrent factor, such conduct will not and cannot be tolerated and a clear message must be sent to racing participants that such behaviour will not be condoned. The Stewards acknowledge your cooperation with this inquiry and that is a mitigating factor. Also, this the first occasion that you have appeared before the Stewards in relation to a matter of this type. The Stewards have considered the provisions of ARR.196. The range of penalty for a breach of this type extends from a fine to lengthy periods of disqualification, that is years. After careful consideration, the Stewards believe that you should be fined the sum of $5,000.'*

The appellant did not allege any error in the way the Stewards went about the fixing of the penalty. He did not submit that there was any error of law or fact, or a failure to take into account any relevant consideration. Nor did the appellant refer us to any other cases, so as to demonstrate a range of penalties for offences of this type. He did make several statements to the effect that there are often assaults of this type between participants in the racing industry, and they are commonly either ignored or dealt with by way of minimum fines. Without any evidence to support both of those submissions, there is simply nothing on which the appellant's arguments could succeed.

I would dismiss the appeal against penalty

PATRICK HOGAN, MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL – 640

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESTNUTT (MEMBER)

APPELLANT:	**STEPHEN RAMON COOKSON**
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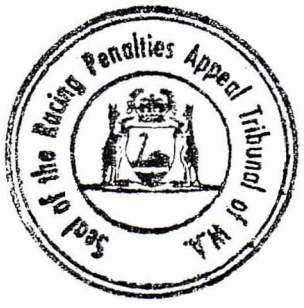
The appellant represented himself.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and have nothing to add.

WILLIAM CHESTNUTT, MEMBER



APPEAL – 640

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**STEPHEN RAMON COOKSON**
APPLICATION NO:	**A30/08/640**
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I agree with those reasons and have nothing to add.

DAN MOSSENSON, CHAIRPERSON