APPLICATION NO. 774

THE RACING PENALTIES APPEALS TRIBUNAL

DETERMINATION AND REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELANT:	**TERRENCE COLIN ROLFE**
APPLICATION NO:	**A30/08/774**
PANEL: (CHAIRPERSON)	**MR D MOSSENSON**
DATE OF HEARING:	**19 FEBRUARY 2015**
DATE OF DETERMINATION:	**26 MARCH 2015**

IN THE MATTER OF an application by Terrence Colin Rolfe for leave to appeal to the Tribunal pursuant to s 13(3) of the *Racing Penalties (Appeals) Act* 1990 against the decision by the Albany Harness Racing Club Inc to reject Mr Rolfe's membership application.

Mr T C Rolfe as applicant represented himself.

Mrs S Dymock, in her capacity as Vice-President of the Albany Harness Racing Club Inc, represented the Club.

BACKGROUND

The applicant for leave to appeal, Mr T.C. Rolfe, is a retired police officer who has participated widely in the harness racing industry for several decades. Over that period he has been president of the Toodyay Race Club for five years, a member of the Northam Harness Racing Club committee, a Stipendiary Steward and currently is a licensed Harness Racing Driver (Class C). Mr Rolfe applies to this Tribunal for leave to appeal against the

refusal by the Albany Harness Racing Club Inc (**the Club**) to accept his application to join the Club as a member.

The application for leave was made out of time. I exercised my discretion pursuant to s17(2) of the *Racing Penalties (Appeals) Act 1990* ("RPA Act")and extended time to accept the late application.

An incident occurred at the Club's annual general meeting held on 19 October 2014 concerning the applicant, the applicant's friend Mr Graeme Meston, and the Club President Mr Terry Dymock. At this meeting, Mr Meston, who had recently been disqualified as a member by the Club, asked Mr Dymock why he had been disqualified. When Mr Dymock refused to answer Mr Meston's question the applicant addressed the meeting stating he believed the Club was constitutionally bound to respond to Mr Meston's question. No response was forthcoming. After the meeting, the applicant told Mr Dymock if the Club did not "deal" with Mr Meston's appeal in the manner the applicant believed the Club was compelled to under its constitution, the applicant on becoming a member of the Club would organize a special meeting of members to "deal" with the appeal.

A meeting of the Club's Committee took place on 8 December 2015 when a vote was undertaken regarding membership applications. Ten applications for membership were tabled. Only four were accepted. Six applications, including the applicant's, were rejected. The applicant's application apparently was unanimously rejected and no reason was given to the applicant.

Following the Club's rejection of the applicant's application, the applicant unsuccessfully sought to appeal the Club's decision to Racing and Wagering Western Australia and the Equal Opportunity Commission. The applicant also resubmitted his application which appears not to have been dealt with by the Committee of the Club at its January meeting.

The leave application was heard on 19 February 2015. I reserved my decision at the conclusion of the hearing after first having requested Mr Rolfe to produce some further documentary evidence in due course. Some time after the hearing the Club sought to produce some new material which I have not taken into account in reaching my decision.

I now set out my reasons for refusing the application.

REASONS

The Club is incorporated pursuant to the *Associations Incorporation Act 1987* (WA) ("AI Act"). The AI Act requires the rules of an association to provide for the qualification of members (s 16, schedule 1 clause 3). As to the general application of s 16, Buss JA in *Tiao v Lai (No 2)* [2010] WASCA 189 observed at 12-13:

"neither s 16 nor any other section in the Act specifies the content of the provision which must be made in respect of each of [the matters outlined in schedule 1]... the statute requires that some provision be made in respect of each of the matters set out in schedule 1, but each association decides upon the substance of the provision. Further, the Act does not provide that the matters specified in schedule 1 are exhaustive of the matters which may be dealt with in an association's rules... The Act does not restrict the nature, extent or content of any other matters that an association may include in its rules. The absence of such a restriction is consistent with the diverse objects and purposes of associations which are eligible for incorporation under the Act."

The objects of the Club are set out in clause 2.1 which, amongst other things, are:

> *(1) To foster and extend the sport of trotting in Albany ...and... to control the conduct of persons taking part in the sport of trotting within its jurisdiction in order to keep the sport of trotting clean and free from abuse".*

Clause 4.4(1) of the rules states "*any person who is over the age of 18 years is eligible to be elected as a full member".* Clause 3.20 deals with "Voting by the Committee". That provision specifies all questions at any committee meeting be decided by a majority of the votes of the members present and voting.

The question of the adequacy of the provision in the Club's rules is not an issue which I am called on to determine although it would appear the rules do comply with the requirements of schedule 1 clause 3 of the AI Act.

As Buss JA observed in Tiao (supra), although the AI Act requires an incorporated association such as the Club to make some provision for the qualification of members per schedule 1 clause 3, it is entirely up to the associated incorporation to determine the substance, nature and form of the procedure provided. Nothing has been presented to suggest the Club has not followed these rules when evaluating the applicant's application for membership.

The running of the Club is left to a small group of elected individuals who are entrusted by the general body of members to conduct and manage the affairs of the Club. If sufficient members were to lose faith or confidence in the management, the committee could always be replaced democratically at the next AGM.

The RPA Act's long title states it is an Act:

"to confer jurisdiction in respect of appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound

racing, horse racing and harness racing, and for related purposes."

Section 13(1) of the RPA Act empowers the Tribunal to hear an appeal from an aggrieved party to a determination or finding relating to Racing and Wagering Western Australia, a steward or a racing club in certain circumstances. These circumstances include, where a person or a runner is suspended or disqualified, a fine has been imposed and a "warning-off" has been given (ss 13(1)(a)-(c)). Although s13(1)(d) of the RPA Act further empowers the Tribunal to grant leave to appeal a determination "*on any matter*" it sees fit regarding racing clubs, stewards or Racing and Wagering Western Australia, this is not an unfettered discretion which can be exercised to grant leave to appeal all determinations by a racing club. A proper application of the principles of statutory interpretation is necessary to put those broad words in the provision into proper perspective. According to Butterworths' *Statutory Interpretation in Australia* (8th ed), the principle of statutory construction *ejusdem generis* posits where in a section of legislation a clear genus or class of things is followed by a general phrase or proposition, that general phrase or proposition is restricted to the class of things preceding it. In this case, the genus or class of things dealt with under s 13(1) of the RPA Act is clearly punitive in nature in the context of disciplinary determinations made by bodies, organisations or officials involved in racing. This means that on a proper interpretation, the discretion to grant leave to appeal under s 13(1)(d) of the RPA Act is restricted and confined to being in relation to a determination on any matter concerning or akin to punishments, fines, suspensions, disqualifications flowing from disciplinary proceedings related to racing.

The applicant seeks leave to appeal the Club's determination on the basis that he was entitled to but not given reasons for the rejection of his application. The applicant implied that he and Mr Meston had been the victims of undue influence or unconscionable conduct by the Club arising from the applicant's and Mr Meston's earlier conflict with the Club regarding Mr Meston's membership. The applicant submits he is entitled to appeal pursuant to natural justice and procedural fairness. I do not agree.

As Mrs Dymock stated in her submission to the hearing, the vote that took place on December 8 2014 was a vote conducted by Committee for the purpose of extending Club membership to persons whom the Committee believed would keep the sport "*clean*" and "*free from abuse*". I have been presented with absolutely nothing which would suggest the applicant has done or would be capable of doing anything to sully the sport. Quite the opposite would appear to be likely based on the applicant's impressive record in the sport. Without knowing anything more regarding the applicant than what has previously been stated regarding him in the opening paragraph one would have thought the applicant would potentially be a valuable addition to the Club's membership base.

Essentially, the role of the Tribunal is limited to reviewing the penalty impositions on licensed persons who to have transgressed and breached the Rules of Racing. This Tribunal does not have the jurisdiction to make a finding regarding the general validity or lawfulness of the Club's rules or procedure for admitting members nor as to the wisdom of its decision making. Although the lawfulness issue may possibly be a valid question for a court with much broader powers and jurisdiction to consider, it is outside the scope of the RPA Act. The rejection of the applicant's application for membership by committee vote was unrelated to the imposing of any suspension, disqualification or other punishment of the applicant. Although the meeting possibly may have been acrimonious and the decision arguably may have not been correct on any objective basis of the facts and circumstances, there is no punitive element to the decision. The meeting simply involved a domestic or internal vote on the applicant's application for membership in accordance with the Club's constitution.

As the Tribunal lacks jurisdiction to address the affairs of a properly constituted Club which was going about its normal business of deciding whether to admit or reject a new member with no disciplinary or punitive implications involved, the application for leave to appeal is dismissed. The lodgment fee will, however, be refunded.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.