

HARNESS RACING VICTORIA (“HRV”)

RACING APPEALS AND DISCIPLINARY BOARD (“RAD BOARD”)

SHAYNE CRAMP and GREGORY CRAMP

Appellants

-and-

HARNESS RACING VICTORIA BOARD

(“THE CONTROLLING BODY”)

Respondent

HEARING:

Tuesday, 23 February 2016 (Note: Previously adjourned at the Request of the Appellants: 27/11/2015 to 18/12/2015; 18/12/2015 to 23/02/2016).

R.A.D. BOARD PANEL:

MR B.W. COLLIS Q.C. (Chairman)

MR RODNEY OSBORNE (Panel Member)

MR JOHN DENAHY (Panel Member)

REPRESENTATION:

Mr Hamish M. Cockburn appeared for Mr S. Cramp. Mr G. Cramp appeared for himself by way of telephone from Mildura. (Note: Request of Mr G. Cramp to HRV 16/02/2016), Mr Andy Rogers appeared for the Controlling Body.

DECISION APPEALED

By letters dated 4 November 2015, Mr John Anderson, Chief Executive of HRV, notified Mr S. Cramp and Mr G. Cramp that the Controlling Body pursuant to Rule 267(1) of the *Australian Rules of Harness Racing* (“the Rules”) decided that each of them be disqualified within the meaning of the Rules for a period of twelve years (12 years) back dated to commence on 2 February 2015 with respect to their

respective convictions of a criminal offence at the Melbourne Magistrates' Court on 3 September 2015.

Rule 267 of the Rules provides, at the time, as follows:

- “(1) Subject to sub-rule (2) of the Controlling Body may for such period and on such conditions as it thinks fit, disqualify a person who is convicted of a crime or an offence in any State or Territory of Australia in any country.*
- (2) The Controlling Body shall disqualify a person who is convicted of a crime or an offence in any State or Territory of Australia or in any country and sentenced to a period of imprisonment”.*

“Controlling Body” is defined in the Rules as meaning “an organisation which by convention, recognition or law is or is deemed to be in control of harness racing or in part of or in the whole of a country”.

It was no issue with respect to the parties that the Harness Racing Victoria Board was the Controlling Body in control of harness racing in the State of Victoria: (see also s.3 and the provisions of Part II of the *Racing Act (Vic)* 1958).

JURISDICTION

s.50C of the *Racing Act (Vic)* 1958) provides that the functions of the RAD Board are to:

- “(a) hear and determine appeals made under s.50J in relation to decisions made under the Rules to impose penalties on persons”.*

s.50J of the *Racing Act (Vic)* 1958 provides:

- “(1) A person may appeal to the RAD Board against a decision made under the Rules to impose a penalty on the person if:*
- (a) the penalty is a suspension, disqualification or warning off; or”*

At all relevant times Mr Shayne Cramp and Mr Gregory Cramp were each licensed to drive and train harness racing horses.

Notwithstanding the provisions contained in Rule 48(b) of the *Victorian Local Rules of Harness Racing*, no submissions were made by any party that the RAD Board did not have jurisdiction to hear and determine this Appeal.

HISTORY OF THE MATTER

1. In April 2013, the *Crimes Act (Vic)* 1958 was amended to include s.195C and s.195D.
2. In general terms, s.195C provides that it is an offence for a person to engage in conduct to corrupt the betting outcome of a race.
3. In general terms, s.195D provides that that it is an offence for a person to engage in conduct to facilitate a corrupt betting outcome of a race.
4. On 29 October 2014, money was wagered on behalf of Mr Shayne Cramp on a horse he was driving in Race 6 at the Mildura Harness Racing meeting held on that day.

Mr Shayne Cramp was subsequently charged by police with a breach of s.195D of the *Crimes Act (Vic)* 1958 with respect to this matter, but such charge was withdrawn by the prosecution on 3 September 2015 at the Melbourne Magistrates' Court.

5. On 12 November 2014 the following horses finished in order in Race 5 of the Ouyen at Mildura Harness Racing Meeting held on that day:
 - First "In Transit" driver S. Cramp, trainer S. Cramp.
 - Second "Tibytoa" driver G. Cramp, trainer S. Cramp.

- Third “Givssirabone” driver M. Bellman, trainer J. McGinty.
6. Evidence was given at the Magistrates’ Court hearing on 3 September 2015 that prior to Race 5 on 12 November 2014, Mr S. Cramp arranged a stable hand Mr David Clohesy to have an owner Mr Guiseppe Alicastro place a \$100.00 trifecta bet on the three horses finishing in the order they did in such Race 5. As a result, Mr S. Cramp realised a profit of \$820.00 from such wager.
 7. As a result of facilitating such wager on behalf of Mr S. Cramp, Mr Clohesy and Mr Alicastro were subsequently charged by HRV Stewards with breaches of the Rules with respect to the part each played in the placing of such bet on behalf of Mr S. Cramp. Mr Clohesy was disqualified by the RAD Board from Harness Racing for a period of two years and Mr Alicastro for a period of 18 months. At each hearing HRV Stewards submitted to the RAD Board that there was no evidence whatsoever that either man had been in any way involved in the fixing of the placings in Race 5 on 12 November 2014: (Note Rule 173 of the Rules).
 8. Mr Rogers on behalf of the Controlling Body referred the RAD Board to the evidence relating to telephone conversations of Mr S. Cramp and Mr G. Cramp with respect to Race 5 on 12 November 2014: see Transcript pp42-45 of Magistrates’ Court hearing on 3 September 2015.
 9. Mr S. Cramp and Mr G. Cramp were each subsequently charged by police with a breach of s.195C of the *Crimes Act (Vic)* 1958 with respect to the driving tactics of each of them in Race 5 on 12 November 2014, in that each of them engaged in conduct to corrupt a betting outcome of such race. The RAD Board viewed the video footage of Race 5 on 12 November 2014 and all members were of the opinion such footage corroborated the charges laid against each of them.

10. On 2 February 2015, HRV Stewards pursuant to Rule 183(d) of the Rules suspended the Harness Racing Licences held by Mr S. Cramp and Mr G. Cramp pending the outcome of the inquiry or investigation with respect to the outcome of Race 5 on 12 November 2014. Neither Mr S. Cramp nor Mr G. Cramp lodged any appeal with respect to such suspension.

11. At the Melbourne Magistrates' Court on 3 March 2015, His Honour Magistrate G.M. Lethbridge convicted Mr S. Cramp and Mr G. Cramp each of the offences under s.195C of the *Crimes Act (Vic)* 1958 following pleas of guilty by each of them. He directed that each of them be the subject of a Community Correction Order and that for a period of 12 months commencing on 3 March 2015:
 - (a) Mr S. Cramp perform 300 hours of unpaid community work;
 - (b) Mr G. Cramp perform 200 hours of unpaid community work.

The RAD Board was provided with a document outlining disposal of other pending charges pursuant to the *Sentencing Act*.

12. The RAD Board has read the whole of the Transcript of the Magistrates' Court Proceedings on 3 September 2015 and taken the same into account. The parties directed the RAD Board's attention to:
 - (a) matters appearing on page 25 of the Transcript where His Honour stated that although the bet involved was \$100.00, what had to be considered was the effect that it had on the whole Harness Racing Industry, in that the confidence of the public that racing is clean was threatened and as a result will not support it. Therefore, the whole Harness Racing Industry upon which hundreds if not thousands of people depend upon is in turn threatened;

(b) the matters appearing at pp36 and 37 of such Transcript in which His Honour Magistrate Lethbridge summarised his reason for convicting each man and the sentences he imposed upon each of them.

13. By letters dated 5 October 2015, Mr S. Cramp and Mr G. Cramp were notified by Mr Andy Rogers, General Manager, Integrity HRV of the fact that the Controlling Body had appointed an independent Sub-committee comprised of three members of the HRV's Integrity Council, namely His Honour (currently serving Magistrate) John Doherty, Mr John Schreck and Mr Noel Perry. A hearing was to take place before such Sub-Committee on Friday 23 October 2015 and that each Appellant was entitled to make submissions to such Sub-Committee as to what penalty if any should be imposed by the Controlling Body under Rule 267(1) of the Rules. Following such hearing such Sub-Committee would make recommendations to the Controlling Body as to whether the relevant Rule should be invoked and if so in what way.
14. A hearing before such Sub-Committee did take place on 23 October 2015. Mr J. Toll appeared for Mr S. Cramp. Mr G. Cramp appeared on his own behalf and Mr A. Rogers appeared on behalf of the Controlling Body. The RAD Board has been provided with a transcript of such hearing on 23 October 2015 and has duly read the same and has taken the same into account.
15. On or about 30 October 2015 such Sub-Committee gave its decision as to what recommendation it would make to the Controlling Body as to what it should do pursuant to Rule 267(1) of the Rules. Attached to such decision were written considerations it had taken into account in coming to such decision. The RAD Board has been provided with a copy of such decision and the written considerations. The RAD Board has read the same and taken account of such matters. The Sub-Committee recommended that the Controlling Body pursuant to Rule 267(1) of the Rules

disqualify Mr Shayne Cramp and Mr Greg Cramp under the Rules for a period of 12 years backdated to 2 February 2015.

16. By letters dated 4 November 2015 the Controlling Body (per Mr John Anderson, Chief Executive) notified Mr S. Cramp and Mr G. Cramp that each would be disqualified under the Rules for a period of 12 years backdated to 2 February 2015 pursuant to Rule 267 subsection (1) of the Rules.

DOCUMENTATION

The following documentation was tendered to the RAD Board for its consideration by each of the parties.

17. On behalf of the Controlling Body:
- (a) A Booklet containing:
 - (i) the said letters to each Appellant dated 5 October 2015;
 - (ii) Transcript of the proceedings in the Melbourne Magistrates' Court on 3 September 2015 together with various extracts including extracts of conviction;
 - (iii) Transcript of proceedings before Sub-Committee on 23 October 2015, and notes of various cases referred to;
 - (iv) recommendation of Sub-Committee (on or about 30 October 2015) together with written considerations;
 - (v) said letters dated 4 November 2015.
 - (b) Performance Records of Mr S. Cramp and Mr G. Cramp with respect to training, driving and earnings;
 - (c) Offence Records of Mr S. Cramp and Mr G. Cramp;
 - (d) Decision of Honourable Justice W.R. Haylen dated 1 March 2012 Re: Dean Atkinson.

18. On behalf of Mr S. Cramp:
 - (a) Outline of Submissions prepared by Mr Hamish M. Cockburn dated 22 February 2016;
 - (b) Statement of Mr Shayne Cramp dated 23 February 2016;
 - (c) Booklet of 13 decisions;
 - (d) Booklet containing numerous references, medical reports, hate mail and financial material.

19. On behalf of Mr G. Cramp:
 - (a) Statement of Mr G. Cramp dated 23 February 2016 (read to RAD Board by Mr G. Cramp);
 - (b) A number of exhibits to such Statement numbering 16 pages in total.

20. Submissions made with respect to various authorities the RAD Board was directed to:
 - (a) Such cases involved a variety of criminal conduct including animal cruelty, various assaults, drug trafficking, corruption involving payments to Stewards so that horses would not be drug tested, prohibited substances in horses, Jockey Betting on another horse in same race and what can be generally referred to as “race fixing” or engaging in conduct to achieve a corrupt result. The RAD Board simply notes the Submissions of Mr Cockburn that “race fixing” is too strong as regards terminology;
 - (b) The two authorities involving “race fixing” or engaging in conduct to achieve a corrupt result were *Lucas Sullivan*, Qld 2009, and *Chris Gleeson* 23 August 1996 in which he was disqualified for life, a ban which set aside in 2010;
 - (c) The RAD Board has read such decisions and given due regard to lengthy Submissions of each of the parties with respect to the same.

MATTERS NOT IN DISPUTE

21. This is a “*de novo*” hearing and it is for the RAD Board to determine upon the evidence before it and the Submissions of each of the parties what is a reasonable penalty to be invoked pursuant to Rule 267(1) of the Rules.
22. There was a number of matters which are not in dispute:
- (a) Each of these Appellants co-operated with this inquiry from a very early stage of the same;
 - (b) Each Appellant pleaded guilty;
 - (c) Each Appellant is remorseful and contrite for his conduct;
 - (d) Each Appellant has a long history in harness racing and there is nothing of any relevance in their Offence Records;
 - (e) Mr S. Cramp is only 32 years of age and had an extremely successful career up to this matter. He was leading Victorian trainer on two occasions;
 - (f) Disqualification has imposed severe financial impairment on each Appellant: Mr Shayne Cramp since being suspended by HRV Stewards on 2 February 2015 has lost income amounting to \$125,000.00 to \$150,000.00 per annum. Given the previous success there is every indication losses of this magnitude would continue indefinitely. He now earns \$700.00 per week. He is at risk of losing his family home. Mr G. Cramp has been engaged in harness racing most of his life and has few outside skills. He is now aged 58 years and is in receipt of Centrelink benefits;
 - (g) Disqualification has put immense pressure on Mr S. Cramp’s marriage. He is married with young children and his wife has had to return to the workforce;
 - (h) Disqualification has intensified Mr G. Cramp’s depression which he has suffered from since approximately 2001;

- (i) These matters have received immense public interest and each Appellant has been subjected to abuse etc. and loss of esteem within their communities;
- (j) In the past Mr S. Cramp had made gifts to charities and had supported his community in general;
- (k) Each of these offences is a serious offence and deserving of disqualification.

MATTERS IN DISPUTE

23. Although it was not disputed by Mr Cockburn that these are serious offences, it is the degree of seriousness that has to be considered. It was his submission that the degree of seriousness was at the low end and that given the effect of disqualification on his client, Mr Shayne Cramp, a period of 12 years' disqualification was clearly too severe. He further submitted that given Mr Cramp's age (32 years) and the success that he had had in his brief career, he ought to be given the chance to rehabilitate himself and then return to the Harness Racing Industry and make a worthy contribution to it.
24. Mr Greg Cramp made a similar submission to that of Mr Cockburn.
25. Mr Andy Rogers on behalf of the Controlling Body stated that these offences were very severe offences as regard the Harness Racing Industry, upon which numerous persons rely entirely or in part for their livelihood. These offences were an attack on the integrity of the industry and could have culminated in significant loss of income to the same, due to lack of public confidence.
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- General Deterrence was a matter which loomed significantly

DECISION OF THE RAD BOARD

26. The RAD Board has given due consideration to all of the evidence adduced at the hearing (both written and oral) and the respective Submissions of each of the parties.
27. The RAD Board is satisfied on the balance of probabilities that the appropriate penalty that should be imposed upon each Appellant for the abovementioned criminal offences pursuant to Rule 267(1) of the Rules is a period of disqualification of 12 years backdated to 2 February 2015.
28. In coming to this decision the RAD Board is acutely aware of the consequences such period of disqualification will have upon each Appellant (as summarised in this decision).
29. It is difficult to understand why each of these Appellants would engage in conduct, when at the very least each ought to have realised such conduct had the potential to inflict catastrophic damage upon the Harness Racing Industry, which industry had given much to each Appellant by way of success, financial reward, publicity etc. The fact that each Appellant states that they have a love of such industry only compounds this matter.
30. The RAD Board finds that “race fixing” or engaging in conduct to achieve a corrupt result of this nature is extremely difficult to detect in the Harness Racing Industry.
31. The RAD Board finds that although the bet placed on the successful trifecta in Race 5 at Mildura on 12 November 2014, resulting in a profit of \$820.00, the conduct bringing about this result clearly had the potential to significantly affect the financial viability of the Harness Racing Industry as a whole, and all of the many people who depend on such industry entirely or in part for their livelihood.

32. The RAD Board endorses the statements of His Honour Magistrate Lethbridge at Transcript p25 of the hearing held on 3 April 2015, namely:

“... a hundred dollar bet (isn't really) here nor there, it's the effect it has on the whole industry... it threatens the whole industry if the public believed it is corrupt, the public won't support it, that threatens the whole industry that hundreds if not thousands of people rely on for their likelihood”.

33. The RAD Board also endorses the statements of His Honour Magistrate John Doherty on the last page of the Considerations of the Sub-Committee in reaching their decision as regards the recommendation to be made by them to the Controlling Body (last page of such Consideration):

“I guess from Harness Racing's perspective, certainly in Victoria, the spotlight has never been more focussed on integrity...”

... Their (HRV Stewards etc.) job is to police the industry (as regards) people that are prepared to bend and break the rules and to that extent when these rules are broken that causes untold damage in the industry. This industry is driven by off course turnover and if people think that it is not clean... it's not a clean setup well then they won't bet on it, (and) if they don't bet... everybody suffers from breeders, people who want to have foals, the people at yearling sales, the people who pre-agist, the people that break in, if the horses are not there and the horse population is dropping, everybody suffers. People walk away from it... but it's true to say that harness racing now lags third behind the terms of turnover. If you haven't got turnover, you haven't got a business. And that's the sum total of it”.

34. In summary, the RAD Board finds that the criminal conduct each of these Appellants engaged in, is conduct which had the significant potential to adversely affect the financial viability of the Harness Racing Industry in general, and therefore, that of all the countless people who are engaged in that industry in some way or another and who in part or wholly depend upon for their livelihoods. Consequently, there is an obvious and compelling necessity to deter all persons from engaging in such conduct or similar. An appropriate way in which to achieve this objective is the imposition of penalties which have been imposed in this instance.

35. The formal decision of the RAD Board is that the Appeal of each Appellant that the decision of the Controlling Body made on or about 4 November 2015 that each of them be disqualified under the Rules for a period of 12 years backdated to 2 February 2015, was too severe is dismissed.

B.W. COLLIS Q.C.
Chairman

RODNEY OSBORNE
Panel Member

JOHN DENAHY
Panel Member

29 February 2016
