

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**REVIEW AND REGULATION LIST**

VCAT REFERENCE NO. Z202/2016


**CATCHWORDS**

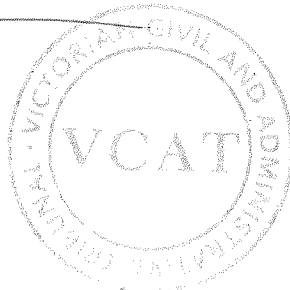
*Crimes Act 1958* s 195C – Australian Harness Racing Rule 267(1) - appropriate period of disqualification from harness racing of trainer/driver convicted of engaging in conduct to corrupt the betting outcome of a race

<b>APPLICANT</b>	Shayne Cramp
<b>RESPONDENT</b>	Harness Racing Victoria Racing Appeals and Disciplinary Board
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member I. Proctor
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	6 February 2017
<b>DATE OF ORDER</b>	7 April 2017
<b>DATE OF WRITTEN REASONS</b>	7 April 2017
<b>CITATION</b>	Shayne Cramp v HRV Racing Appeals and Disciplinary Board (Review and Regulation) [2017] VCAT 471

**ORDER**

The decision of the respondent is affirmed.

  
Ian Proctor  
Senior Member



**APPEARANCES:**

For Applicant:	Mr D. Sheales of Counsel
For Respondent:	Ms E. Brimer of Counsel

## REASONS

### What is this proceeding about?

- 1 On 3 September 2015, Mr Shayne Cramp (then aged 31) and his father, Mr Greg Cramp (then aged in his late 50s) at the Magistrates' Court of Victoria pled guilty to charges under s 195C of the *Crimes Act 1958* (Vic) to on or about 12 November 2014 at Mildura, each engaging in conduct to corrupt the betting outcome of a race.
- 2 Shayne Cramp was a leading trainer in Victoria. His father was also heavily involved in the industry.
- 3 In October 2014, the Victoria Police Sporting Integrity Intelligence Unit commenced monitoring telecommunications. They identified the involvement of both men in corrupting the betting outcome of the following race.
- 4 Shayne and Greg Cramp participated in an arrangement that three of the horses in Race 5 at Mildura on 12 November 2014 would finish 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>; to produce a winning trifecta bet on the race. Shayne Cramp was the trainer of two of the placegetters, which Shayne and Greg Cramp drove. Shayne Cramp's profit was \$820. There was no evidence Greg Cramp made any profit.
- 5 On 2 February 2015, the Harness Racing Victoria Stewards suspended the harness racing licences held by Shayne Cramp and Greg Cramp, pending an Inquiry with respect to the above race. Neither men appealed their suspension.
- 6 Returning to 3 September 2015, the Court convicted Shayne Cramp under a Community Correction Order and required him to perform 300 hours of unpaid community work. The Court convicted Greg Cramp and ordered him to perform 200 hours of unpaid community work.
- 7 In sentencing, Magistrate Lethbridge proceeded on the basis of an agreed summary concerning events on 12 November 2014 (see below) and the guilty pleas. He spoke of the serious nature of the offending, its potential to undermine harness racing's reputation, the public's confidence and the viability of the industry. While commenting that often such offending requires imprisonment, here the offending was isolated to one race, where both were involved, there was meagre financial advantage to Shayne Cramp, no financial advantage to Greg Cramp and, given the lack of sophistication of the arrangement, he regarded the offending as at the lower end of the scale.
- 8 Magistrate Lethbridge also noted their guilty pleas, that neither had a prior criminal history, their contributions to their local communities, their remorse and contrition, the probable loss of their careers, there being little need to deter them from future conduct and their excellent prospects for rehabilitation. He took the view that the requirements of punishment,

general deterrence, denunciation and protection of the community would be achieved by community corrections orders.<sup>1</sup>

- 9 On 23 October 2015, both men appeared before a Harness Racing Victoria Subcommittee (**the Sub-Committee**) concerning the above events. On about 30 October 2015, the Sub-Committee recommended to the Board that each man be disqualified for 12 years, backdated to 2 February 2015.
- 10 The Harness Racing Victoria Board (**the Board**) accepted the Sub-Committee's recommendations to apply Australian Harness Racing Rule (**AHR**) 267(1) with respect to the convictions:

Subject to sub-rule (2) the Stewards may for such period and on such conditions as they think fit, disqualify a person who is found guilty of a crime or an offence in any State or Territory of Australia or in any country.
- 11 By letter dated 4 November 2015, the Board advised Shayne Cramp that it disqualified him for 12 years, backdated to 2 February 2015, being the date the Stewards had suspended him. The Board commented that but for his co-operation, the Board would have suspended him for 16 years. This adopted the Stewards' recommended approach. The Board imposed the same disqualification on Greg Cramp.
- 12 Under s 50J of the *Racing Act 1958* (Vic) (**the Racing Act**), Shayne Cramp sought review, by the Harness Racing Victoria Racing Appeals and Disciplinary Board (**the RAD Board**), of his disqualification.
- 13 On 29 February 2016, the RAD Board dismissed Shayne Cramps' appeal, such that he remained subject to the 12 year disqualification.
- 14 Under s 83OH of the *Racing Act 1958*, Shayne Cramp sought review, by VCAT, of the RAD Board's decision concerning him. He did not contest his guilt or that AHR 267(1) applies. He submitted the penalty was too severe. His application became VCAT proceeding Z202/2016.
- 15 Over the same dates, the Board, then the RAD Board also disqualified Greg Cramp for 12 years, also saying that but for his co-operation it would have disqualified him for 16 years.
- 16 Greg Cramp also sought review by VCAT of the RAD Board's decision concerning him. He also only contested the penalty imposed on him. His application became VCAT proceeding Z231/2016.

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<sup>1</sup> In sentencing Shayne Cramp, the Court took into account that he had also participated in an arrangement that, at the Mildura race meeting on 29 October 2014, Fergus McCool would win Race 6. Shayne Cramp made a profit of \$750. A charge against him under s 195D of the *Crimes Act* with respect to this was, on 3 September 2015, withdrawn at the Magistrates' Court. However, with no conviction concerning those events, this is not relevant to this decision.

- 17 On 6 February 2016, both proceedings came to hearing before me. Mr Sheales of Counsel represented both men. Ms Brimer of Counsel represented the RAD Board in both proceedings. With the facts not in dispute, I viewed footage of the race, heard submissions on penalty and reserved my decision.
- 18 Given the importance of separately considering the appropriate penalty for each man, these orders and reasons concern Shayne Cramp.
- 19 Orders and reasons concerning Greg Cramp are made in VCAT proceeding Z231/2016, published as *Greg Cramp v HRV Racing Appeals and Disciplinary Board* (Review and Regulation) [2017] VCAT 472.

## **The evidence**

### Evidence concerning the races

- 20 Shayne Cramp does not dispute the events in question as summarised in the Magistrates' Court proceedings which I replicate with some editing. Dates in the Summary reflect when it was produced to the Court on 3 September 2015.
- 21 Shayne Cramp was a 31 year old harness trainer and had worked in the industry all his life. At the time of arrest he was training approximately 40 horses at his Merbein stables. He would generally only race his horses in and around Mildura and was the leading trainer in the area. He would often have two to four horses in each race. In 2014, he won the State Trainers' Award for winning the most races in the season. Before his arrest, he was again leading the trainers' award.
- 22 On 12 November 2014, a harness race meeting known as 'Ouyen' was held at Mildura. Leading up to Race 5 there were a number of telephone calls and messages to suggest the outcome of the race would be corrupted.
- 23 Shayne Cramp trained three horses in the race; Intransit driven by him, Tibytoa driven by Greg Cramp, and Macray Soiree driven by Reece Moore, an employee of Shayne Cramp. Macray Soiree did not place in the race. There is no evidence that Mr Moore had any involvement in any dishonest conduct.
- 24 At approximately 8:24 am on 12 November 2014, the morning of the race, Shayne Cramp called associate David Clohesy and organised for him to place a trifecta. This type of wager requires the bettor to predict 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>, in the correct order. Shayne Cramp requested Clohesy to back, for a \$100 stake, Intransit for 1<sup>st</sup>, Tibytoa for 2<sup>nd</sup> and Givsirabone for 3<sup>rd</sup>.
- 25 At 9:05 am that morning, Mr Clohesy contacted Guiseppe Alicastro (Intransit's owner) and arranged for him to place a bet on behalf of Shayne Cramp. The bet related to the abovementioned trifecta.

- 26 At approximately 4:52pm that afternoon, Shayne Cramp called Garry Hall Jnr, a harness racing associate based in Western Australia. During the call, the following statements were made:

Hall: "What about that other race Greg, Gregy's horse will lead and win won't it, Tibytoa?" Shayne Cramp: "Yeah that's what everyone thinks don't tell anyone he's gunna run along and let me out" Hall: (Laughing) Shayne Cramp: (Laughing) Hall: "Get alive How's he gunna" Shayne Cramp: That's what I reckon Hall: "How's he gunna do" Shayne Cramp: "What he's gunna do what he's gunna do cause that Tibytoa like it always sorta runs along a bit, but what, what I said to him I said don't, I said don't stack em up and then fuck off, I said just run quick like just run a little bit quicker than average lead time and then just run 30.8, 30.8 or 30.9, 30.9 and that way the ones in the running line will just start dropping off before the back straight if you know what I mean" Hall: Shayne Cramp: "And that way it won't look, because he doesn't want to win with it he just want's to give it a run. I didn't really agree with it but anyway. I'll tell ya Gaz, I'll tell ya, trifacta in that race if I get up and beat dad, Givsirabone will run third. It'll be three the fence and if dad runs along like he's saying they will, that's the order you know on the rail, all on the rails" Hall: Yeah yeah yep Shayne Cramp: That's what I am (inaudible) I am (inaudible)" Hall: How's he fucking, how's he gunna do that I don't know" (laughing) Shayne Cramp: "Nah I know serious it's fucking stupid. But all I said was, if he breaks em up early it doesn't look, you know, he'll just say well looking at it you would think ah I was always going to get out anyway but mine can't come real, mine can't come sharp on the bends because it fuckin hits its knee" Hall: Yeah" Shayne Cramp: But he will, I'll get him up the straight I'll zap him Hall Jnr: (laughing) (inaudible)

- 27 In the same call, Shayne Cramp had the following conversation with Hall Jnr,

Shayne Cramp: Yeah my best three would be um Intransit, Paint The Hammer and Welcome To Vegas" Shayne Cramp: "But I am telling ya the money race is that race with me and dad cause you, that will be the order if I get up and beat him that thing will run third you will get the lot (laughing) Hall: "What if Gregy doesn't run second because he over does it" Shayne Cramp: Nah he will cause I won't I won't be coming off too early. I'll just be waiting so the one behind me, won't get through till late" Hall: "Because they're all cats outside him hey" Shayne Cramp: "Yeah, nah dad's pretty strong, did you see him at Globe Derby that night when Fitzzy drove him" Hall: "Yeah yeah I reckon Shayne Cramp: "Yeah" Hall: "That's what I thought you fucking you wouldn't beat him anyway" Shayne Cramp: "Yeah I didn't think I would either but he he's come up with this brilliant plan" Hall: "What about Bellman will he definitely go to the fence the muppet" Shayne Cramp: "Yeah have to be off his head if he didn't, he'll have to, got to go to the fence".

28 At approximately 6:12 pm that evening, Mr Clohesy called Mr Alicastro and gave him instructions to place a straight Trifecta on behalf of Shayne Cramp in the order 7, 1, 9. This information represents the following order, Intransit to win, Tibytoa 2<sup>nd</sup> and Givsirabone 3<sup>rd</sup>.

29 The race proceeded to run as Shayne Cramp had described with the first three horses in the order that Shayne Cramp had predicted. The final result of the race was:

1 <sup>st</sup>	Intransit	Driver: S. Cramp	Trainer: S. Cramp
2 <sup>nd</sup>	Tibytoa	Driver: G. Cramp	Trainer: S. Cramp
3 <sup>rd</sup>	Givsirabone	Driver: M. Bellan	Trainer: J. McGinty

30 There is no suggestion that Mr Bellan, who drove Givsirabone, had any involvement in the scheme. He was driving what was thought to be the third strongest horse in the race.

31 The trifecta bet placed by Shayne Cramp returned a dividend \$9.20, for a profit of \$820.

32 The following is an extract from the Stewards' report in relation to this race:

On entering the home straight on the final occasion, while being driven out to the finish, Tibytoa (Greg Cramp) shifted out under pressure resulting in Intransit (Shayne Cramp), obtaining a clear run to its inside to ultimately win the race, Driver Greg Cramp advised that Tibytoa had a tendency to hang out throughout the race however agreed that he could have made a greater effort to maintain a straight course to the finish. Mr Greg Cramp pleaded guilty to a charge under Rule 162(1) (www) for failing to make sufficient effort to maintain a straight course which resulted in the stablemate, Intransit being advantaged when it obtained a clear run to his inside. Considering Intransit was a stablemate of Tibytoa and that Mr Cramp had been found guilty of a charge under this rule 15 months prior, Mr Greg Cramp's licence to drive in races was suspended for four weeks to commence midnight 12 November.

33 The following morning, at approximately 8:27am on 13 November 2014, Shayne Cramp called Mr Clohesy and during the conversation they discussed whether Mr Alicastro was successful in placing the bet on behalf of Shayne Cramp.

34 Later that day at approximately 11:29 am, Shayne Cramp spoke with Gary Hall Jnr. Within the call the following conversation was had:

Shayne Cramp: "nah I waited, I thought fuck I don't, you know it's only half a run I'm not going in there, and then when it opened up to three cart widths I thought I've gotta take this" Hall: "yeah you would've got done if you didn't take it" Shayne Cramp: "And then I was counting, I was making sure Givsirabone was running third for me tri"

35 Later in the call the following conversation was had:

Shayne Cramp: "so I said to Dad, I said all you had to do was give it a little tug on the left reign to make like you were doing it and you still you still would've given me a run anyway, but see he doesn't care he just makes completely makes sure of it" Hall: [laughs] "yeah there's no, there's no hiding from that"

36 At approximately 9:24am on 15 November 2014, Greg Cramp and Mr Larry Eastman have the following conversation:

Greg Cramp: "I'm a bit cashed up at the moment" [laughs] Eastman: "yeah, Jesus Christ" Greg Cramp: [laughs] "did you see that!" Eastman: "you're the only cunt in Australia that's cashed up out the trots" Greg Cramp: [laughs] "did you see race 5" Eastman: "yes I did" Greg Cramp: [laughs] "oh I was happy to get 4 weeks"

37 Later in the call Greg Cramp further states:

Greg Cramp: "hey how good is it when you back the winner and you run second on your own horse" Greg Cramp: "[both laugh] "fuck off, oh fucking hell. Oh fucking Shayne was going don't make it look too.... I said I don't give a fuck. I said and then he goes, later on he goes jeeze I nearly wasn't going to take the run I felt fuck we're in trouble here, he said you were fucking one off before we straightened up"

38 Shayne Cramp admitted the following during his recorded interview on 2 February 2015, in relation to race 5 at Mildura on the 12 November 2014:

- a) He sent a message to Mr Clohesy to have Mr Alicastro place a \$100 straight trifecta on Intransit to win, Tibytoia 2<sup>nd</sup> and Givsirabone 3<sup>rd</sup>;
- b) He used Mr Clohesy to contact Mr Alicastro as it is harder for the Stewards to follow the money trail; and
- c) That the day after the race he told Greg Cramp he should have just 'given it a tug' on the left rein to make an attempt to bring it down the track.

39 Shayne Cramp was co-operative with police and made full admissions to engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency on 12 November 2014.

**Shayne Cramp Reason 12/11/14:**

Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency on the 12/11/14: "yep", and describes his actions as "unforgivable."

40 Shayne Cramp and Greg Cramp had both been fully co-operative with police. They made admissions to police upon their arrest. They co-operated with police through their legal representatives to avoid a lengthy trial involving expert evidence, in relation to offences which are new at law. It was agreed that Shayne Cramp and Greg Cramp should be entitled to the maximum available discount for their pleas and conduct.

### Evidence concerning effect of disqualification on Shayne Cramp

- 41 According to HRV records, Shayne Cramp was licensed as a stable hand or driver since the 1999/2000 season, when he was a teenager. He had been licensed as a trainer since the 2006/07 season. He had great success both as a trainer and driver.
- 42 Mr Sheales accurately described the effect of conviction and disqualification on Shayne Cramp as earth shattering. Evidence before the Sub-committee, the RAD Board and now VCAT clearly demonstrates severe consequences as time has passed. He is excluded from the industry in which has been involved since being a teenager, which he says he loves. He has suffered and suffers severe financial hardship, has lost his home and the training facility which he had nearly completed. His marriage has ended. He will struggle to support his three small children, the next generation with whom he can no longer be involved in the sport. He has lost the respect of the community in which he lives.
- 43 That said, a variety of people have provided highly supportive references for Shayne Cramp describing his good character, achievements in the industry, his remorse, and the devastating effect following the discovery of his actions.<sup>2</sup>

### **Section 195C**

- 44 Concerning the offence of which Shayne Cramp was convicted and Parliament's intention in creating the offence, in 2013, Parliament introduced section 195C of the *Crimes Act* to create the offence of engaging in conduct to corrupt the betting outcome of a race.

#### **195C Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency**

A person must not engage in conduct that corrupts or would corrupt a betting outcome of an event or event contingency—

- (a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or the event contingency; and
- (b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

- 45 The second reading speech of the *Crimes Amendment (Integrity in Sports) Act 2013*, which introduced the amendment, said of the Act, not just s 195C:

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<sup>2</sup> Tribunal Book, pages 138 to 153.



This bill sends a very clear message that the fixing of sporting matches and other events will not be tolerated in Victoria. It is a key component to the government's commitment to a strong policy and legislative framework to protect the industry of sports in Victoria, integrity which is vital if the confidence and passion of Victorian sports lovers is to be secured for future generations.

## **Submissions**

- 46 With AHR 267(1) providing the decision-maker with an open discretion as to the period of disqualification, while every case is different and must be decided on its own facts, relevant previous decisions may provide a useful guide. Both parties cited previous decisions as discussed below.

### RAD Board's submissions

- 47 The RAD Board submitted VCAT should affirm its decision, disqualifying Shayne Cramp for 12 years, from 2 February 2015. It submitted Shayne Cramp was one of the two architects of the scheme to corrupt the race by arranging the sequence of the winners and a participant driver in the race in part carrying out his own scheme. He was also the beneficiary of his disguised successful bet.
- 48 The RAD Board cited the following previous decisions.

#### Lucas Sullivan

- 49 On 8 December 2009, Stewards in Queensland, concerning Race 4 at the Gold Coast on 10 September 2009, disqualified the owner Mr Lucas Sullivan for 13 years made up of:
- a) 10 years disqualification, having been found guilty of a charge under AHR 241 that he engaged in fraudulent conduct in connection with a part of the harness industry by manipulating the course of the race;
  - b) Three years disqualification after having been found guilty under AHR 243 in that he behaved in a way that was detrimental to the industry, by placing, or causing to be placed bet on a race when he had prior knowledge of the driving tactics to be adopted by the drivers of two horses which would advantage one other horse, Harkham, and disadvantage another horse and other runners in the race (to be served concurrently with the 10 year disqualification);
  - c) Two years disqualification on each of three separate charges under AHR 187(2) in that on three separate occasions he provided false and misleading evidence to the Stewards, to be served concurrently; and
  - d) A one year disqualification under AHR 187(2) for two separate charges of refusing to answer questions at the enquiry concerning the race, to be served concurrently.

50 With respect to the other participants in this race fixing scheme on 10 September 2009 (see below), the RAD Board submitted Mr Sullivan, a race caller, was the architect of the scheme and the drivers (Turner and Bellamy – see below), who received four year disqualifications, carried the scheme out.

#### Christopher Gleeson

51 In 1996, Christopher Gleeson, previously a trainer/driver in Sydney, was disqualified for life concerning his involvement with the cutting of the hobbles of the horse which he drove in a race, which caused the horse's retirement from the race. The horse had been the favourite and, with the horse's retirement during the race, a sophisticated betting arrangement guaranteed a substantial win. The New South Wales Harness Racing Appeals Tribunal concluded that Mr Gleeson had prior knowledge that the horse would not finish the race. Mr Gleeson's disqualification was lifted in August 2010, following his earlier unsuccessful attempt to have the disqualification lifted in 2006.<sup>3</sup> Mr Gleeson had effectively been disqualified for 14 years, having failed to have the disqualification lifted after 10 years.

#### Dean Atkinson

52 In January 2012, Dean Atkinson, a licensed harness racing trainer, was disqualified for 10 years for, on three occasions, bribing a racing steward to ensure that the horse in a particular race was not drug tested. This was part of what is known as the 'Green Light Scandal'. He pled guilty to three charges of corruption under AHR 241.

53 (In reply, Mr Sheales submitted the offending there was a much higher level of corruption than that of Shayne Cramp. He described Mr Atkinson as a licensed person on three occasions attempting to corrupt a Steward, akin to the criminal bribing a policeman.)

54 Returning to general submissions, the RAD Board submitted that a 12 year disqualification, reduced from 16 years to credit Shayne Cramp's co-operation once accused, is the correct and preferable decision given the unique characteristics of this case, two leading industry figures acting as the architects and implementers of a scheme to fix the outcome of a race to achieve a trifecta and Shayne Cramp then involving others to secretly bet on the trifecta.

55 The RAD Board also submitted, that VCAT should give considerable weight to the RAD Board's reasons for its decision, citing the decision of the Supreme Court of Victoria Court of Appeal in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* [2008] VSCA 45, which I discuss below.

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<sup>3</sup> See Australian Harness Racing Report dated 24 August 2010, paragraph 3, Tribunal page 78.

### Shayne Cramp's submissions

- 56 Mr Sheales submitted the RAD Board's decision to disqualify Shayne Cramp for 16 years, reduced to 12 years due to his co-operation, is beyond belief and incomprehensible. He submitted that the RAD Board provided no explanation (beyond recording the undisputed serious risk Shayne Cramp's conduct posed to the industry and the need to address that) as to why it essentially endorsed the Sub-committee's recommendation, followed by the Board's decision.
- 57 He submitted a six year disqualification was appropriate concerning Shayne Cramp, with a four year disqualification appropriate concerning Greg Cramp.
- 58 He described the general 'tariff' for such an offence as four years. He referred to the following previous decisions as demonstrating application of a four-year tariff, in the context of other decisions informative about the range of sentencing.

### Peter Grouis

- 59 In August 1998, Mr Grouis, a professional punter, approached a Mr McIntosh requesting that Race 7 at Kilmore be fixed to hopefully cause the horse Classic Wilkes to win. Mr McIntosh refused. Later in the day, Mr Grouis made the same request and again Mr McIntosh refused. The horse ran second. When McIntosh was leaving the course, Mr Grouis attacked and beat him and made threats of future retribution. Mr Grouis was disqualified for five years. Dismissing Mr Grouis's appeal against that sentence, in September 1998, the Racing Appeals Tribunal commented:

... the appeal was hopeless. The sort of corruption in which the appellant sought to involve McIntosh is, of course, in the long-term, fatal to the health and vitality of the industry, especially now, in the difficult climate in which it is operating. It is also insidious and, unless sternly checked when detected, spreads like cancer.

### Dave Turner & Jay Bellamy

- 60 Mr Dave Turner was also a trainer/driver in the same Race 4 at the Gold Coast on 10 September 2009, which resulted in Mr Sullivan's 13 year disqualification. The Stewards found Mr Turner guilty under:
- a) AHR 243 of behaving in a way that was detrimental to the industry by driving in the race in a manner which he had communicated to Mr Sullivan, which advantaged Harkham and disadvantaged all the other horses, and disqualified him for three years;
  - b) AHR 147 of failing to drive his horse on its merits, which advantaged Harkham and disadvantaged other horses, and disqualified him for 12 months;
  - c) AHR 149(2) of driving in an unacceptable manner, again advantaging Harkham, and disqualified him for six months.

- 61 With the Stewards deciding the sentences concerning AHR 147 and 149 were to be served concurrently, Mr Turner was effectively disqualified for four years. He did not appeal.
- 62 Mr Jay Bellamy drove in the same Race 4 at the Gold Coast on 10 September 2009. Similar to the decisions concerning Dave Turner, Mr Bellamy was disqualified for three years under AHR 243, 12 months under AHR 147 and six months under AHR 149, with the same approach to concurrency again leading to an effective four year disqualification. While the conviction of Mr Bellamy was set aside on appeal, Mr Sheales submitted the sentencing principle prior to the appeal is informative.
- 63 (In reply, the RAD Board submitted that, as was evident from the materials before me, Mr Bellamy and Mr Turner were disqualified for lesser times because they were involved in implementing Mr Sullivan's plan, they were not the architects.)

#### Michael Young

- 64 In September 2016, harness race driver Michael Young was found guilty<sup>4</sup> of:
- a) Under AHR 44 on 16 January 2016 in Race 9 at Albany Western Australia, changing race tactics by handing up the lead of the field in the early stages of an event contrary to the way the horse was driven at its last two race starts without notifying the Stewards before the event, and him having the intention of this change of tactic before the event, for which he was fined \$500;
  - b) Under AHR 208 on 16 January 2016 before that race telling the owner of the horse to which he handed up the lead that he most likely would do so, giving that owner a betting advantage, for which he was disqualified for three years; and
  - c) Under AHR 243, on 16 January 2016 in that race driving in a way to aid the owner of the other horse, an act which was detrimental to the industry, for which he was disqualified for four years to be served concurrently with the three year disqualification.
- 65 The WA stewards effectively disqualified Mr Young for four years. In a publication on a website, Racing and Wagering Western Australia described charges (b) and (c) in particular, as striking at the heart of integrity and having significant potential to tarnish the image of harness racing. The publication refers to the penalty being made, taking into account, among other things, previous penalties issued under similar rules.
- 66 (In reply, the RAD Board submitted that Mr Young was acting on his own. There was no suggestion with collusion with any other driver/trainer in the race.)

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<sup>4</sup> A fourth charge was not relevant and is not set out here.

#### Vincent Coster

- 67 In May 2015, the RAD Board convicted Mr Vincent Coster of three charges of administering cobalt to 3 horses on three different dates concerning three different races, two charges of stomach tubing to other horses in 2013 and 2014 and a charge relating to the failure to keep a logbook. Concerning the cobalt charges he was disqualified for 18 months and find concerning the other charges.
- 68 Mr Sheales submitted these lesser offences, compared to the other cited in part showed the usual gradient of penalties, here with respect to a person intentionally administering prohibited substance to horses. He also submitted if Shayne Cramp had been charged under the Rules of Racing, these were the types of penalties he would have been looking at, noting that after a period of disqualification had ended he would still face the hurdle of applying for and being re-registered.

#### Damien Oliver

- 69 Damien Oliver was disqualified from riding for eight months and additionally suspended from riding for a further two months for betting \$10,000 on a horse called Miss Octopussy, in Race 6 at Mooney Valley on 1 October 2010, in which Mr Oliver rode Europa Point and having and using his mobile phone in the Jockeys' Room at the racecourse before the race.
- 70 Mr Sheales submitted this was a case with great potential to undermine confidence in the racing industry. His rhetorical question was, 'What punter would bet on the horse Mr Oliver was riding, knowing Mr Oliver had bet on another horse?' He noted that the investigation by the Office of the Racing Integrity Commissioner dated 13 June 2013, while noting public perception that the sentence was light, found that the penalty did not appear disproportionate to other relevant sentences.

#### Cody Morgan

- 71 In July 2016 in New South Wales, Mr Cody Morgan was disqualified for 15 months following him pleading guilty on two charges of causing to be administered a stomach tube to a horse within 24 hours of the appointed starting times of two races.
- 72 Mr Shields submitted this is a form of race fixing; attempting to give a horse an advantage such that it wins, which drew a penalty at the lower end of the spectrum.

## Discussion – *Macedon Ranges v Romsey*

- 73 The parties made submissions concerning the Supreme Court of Appeal's decision in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* [2008] VSCA 45
- 74 The Board submitted the Court of Appeal's decision is authority for the proposition that considerable weight ought to be given to the reasons of the RAD Board.<sup>5</sup>
- 75 However, I agree with Mr Sheales' submission that *Macedon Ranges* is a precedent of limited effect. The Court of Appeal found VCAT made an error of law when, in reviewing a decision of the Victorian Commission for Gambling Regulation, VCAT did not consider a survey of the attitudes of residents of the town of Romsey concerning the introduction of gaming machines in their town.<sup>6</sup> The Commission had given this survey significant weight as it refused Romsey Hotel Pty Ltd permission to install gaming machines.
- 76 *Macedon Ranges* is authority that in review proceedings a decision-maker may defend its decision, as is appropriately the situation in this proceeding, and if VCAT fails to consider evidence that the decision-maker regarded as material, VCAT may make an error of law.
- 77 *Macedon Ranges* is not an authority whereby the Court of Appeal seeks to alter the fundamental position on review that the review body, in this case VCAT, decides the issues before it 'standing in the shoes' of the decision-maker, here the RAD board, and is to independently make the correct and preferable decision based on the evidence before it, which may include new evidence.<sup>7</sup> Concerning Shayne and Greg Cramp, when the RAD Board was reviewing the Board's decision, it took the same approach concerning its independence and that it stood in the shoes of the Board and decided the case de novo on the evidence and submissions before it.

## Decision

- 78 The purpose of imposing penalties under the Australian Harness Racing Rules is primarily protective, to preserve the integrity of harness racing by imposing penalties sufficient to deter a guilty party from repeating the conduct (specific deterrence), send a message to the industry concerning the fate of those who offend against the rules (general deterrence) and to uphold the reputation of the industry with the betting public and the general public.<sup>8</sup>
- 79 While achieving such outcomes may involve punishment; that is not the objective.

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<sup>5</sup> See paragraph 53 of the decision.

<sup>6</sup> See paragraph 40 of the decision.

<sup>7</sup> As the Court of Appeal recognised in the latter part of paragraph 53 of the decision.

<sup>8</sup> See *Corstens v Racing Victoria Limited* (Occupational and Business Regulation) [2010] VCAT 1106 at 19.

80 As the parties agree, and as the RAD Board noted in its decision, Magistrate Lethbridge rightly said during submissions from the parties:

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 of the public believed it is corrupt, the public won't support it, that threatens the whole industry the hundreds if not thousands of people rely on for their likelihood.

81 Magistrate Lethbridge went on to also rightly say in his sentencing remarks:

This is offending of a serious nature. This is because such offending has the potential to undermine the reputation of the industry, the confidence of the public in the industry and ultimately the viability of the very industry you claim to love.

82 On review the RAD Board endorsed, and I now endorse, the statement of his Honour Magistrate John Doherty, the Sub-committee's chairperson:

... from Harness Racing's perspective, certainly in Victoria, the spotlight has never been more focused 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 to the industry. This industry is driven by offcourse turnover and if people think that it is not clean ... it's not a clean set up 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 total sum of it.

83 In the reasons for its decision, the RAD Board rightly said:

... 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 do in part or wholly depend upon for their livelihoods.

84 There is no dispute as to the gravity of the potential impact of Shayne Cramp's offending which led to his conviction.

85 The question is what term of disqualification of Shayne Cramp is necessary to sufficiently deter others in the industry from corrupt behaviour and to send a message to the community that such behaviour will not be tolerated?

86 I have affirmed the RAD Board's decision that Shayne Cramp be disqualified for 12 years. This is required to provide sufficient general deterrence and to send the message to all involved in the harness racing industry that if anyone participates in corrupt behaviour they are likely to

effectively be permanently removed from the industry. If that is their livelihood, the results for them are likely to be catastrophic.

- 87 I regard a 12 year disqualification as broadly consistent with the disqualifications of Sullivan, Gleeson and Atkinson discussed above, bearing in mind the words of the Supreme Court of Victoria Court of Appeal in *Hudson v The Queen; DPP v Hudson* [2010 is] VSCA 332 [at 29]:
- ‘like’ cases can only, at best, provide a general guide or impression as to the appropriate range of sentences. In that context it has been said on many occasions that ‘comparable cases’ can only provide limited assistance to this court. They may however be used in search of unifying principles.
- 88 I reject Mr Sheales’ submissions that meaningful distinctions can be drawn concerning the gravity of the corruption Sullivan, Gleeson and Atkinson were found to be engaged in and the corruption here. Each of those cases involves serious corruption.
- 89 The serious corruption relevant to this case concerns Shayne Cramp. He was a leading driver in Victoria and a leading figure in the harness racing industry in and around Mildura.
- 90 The telephone intercepts capture the casual amused nature of his scheming with others. They would send a shiver of fear up the spine of the industry. If the community was to conclude this was ‘business of usual’ for trainers and drivers, no one would place a bet.
- 91 I take into account that corruption takes place in secret and is very hard to detect. When detected, strong action must be taken deter others from like conduct.
- 92 I have taken into account the devastating effect this disqualification will have on Shayne Cramp and that a variety of referees have been prepared to stand by him. However, the needs of general deterrence and the necessity of sending appropriate messages to the community, to support the integrity of racing, takes precedence.
- 93 I reject submissions on Shayne Cramp’s behalf that the other decisions put to me create a general tariff of four years’ disqualification for such corruption. None of those cases shows the combination of features in this case that place it at the serious end of the spectrum of corruption, all corruption being serious.
- 94 I have allowed for the fact that Shayne Cramp co-operated with the authorities. But for that co-operation I would have added some extra years disqualification.

  
Ian Proctor  
Senior Member

