APPEAL NO. 809

RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**JODIE LAKIN**
APPLICATION NO:	**A30/08/809**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)**
DATE OF HEARING:	**14 FEBRUARY 2018**
DATE OF DETERMINATION:	**27 FEBRUARY 2018**

IN THE MATTER OF an appeal by JODIE LAKIN against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing (RWWA Stewards) on 4 January 2018, imposing a three month disqualification for breach of Local Rule of Greyhound Racing 105A.

Mr T F Percy QC with Ms J Byrne of Equitas Lawyers represented Ms Lakin.

Mr RJ Davies QC represented the RWWA Stewards of Greyhound Racing.

THE STEWARDS' DECISION

1. The reasons given by the RWWA Stewards in imposing a three month disqualification on the owner and trainer Ms Jodie Lakin for having used a barking muzzle on the greyhound TOPPER HOLMS at her property were as follows:

> *"Ms Lakin on the question of penalty, the Stewards have carefully taken in account all of the relevant matters into consideration. This includes your cooperation throughout this matter, your guilty plea at the earliest opportunity, the circumstances surrounding the commission of the*

offence, your good record with no convictions, your personal circumstances that you find yourself in, the fact that greyhound racing is a hobby and the likely impact any of the modes of penalty available to the Stewards would have upon you, given your own specific circumstances.

We do however take a dim view of the fact that despite you being fully aware of the prohibitions that apply to the use of barking muzzles, that you simply ignored the law and decided to take matters into your own hands and in doing so, you have used a prohibited barking muzzle on TOPPER HOLMS. The rule was introduced in January 2017 for valid reasons. It followed several recommendations that emanated from the NSW McHugh report where the banning of barking muzzles was recommended. That Authority saw fit to follow the recommendation and implement the ban accordingly. Unfortunately your conscious decision to deliberately allow TOPPER HOLMS to wear a barking muzzle, knowingly (sic) that it was prohibited practise, is of no assistance to you and is regarded by Stewards as an aggravating factor.

The Industry is under extreme pressure to survive following the live baiting scandal in February 2015. Clearly the Industry is under careful watch by the public and welfare groups in order to ensure that the Industry and its participants meet social and public expectations. Failure to do so will no doubt place the wellbeing and future of the Industry at risk. It is absolutely imperative that high standards are maintained and the attraction of negative publicity is avoided at all costs. It follows then that registered persons must vigorously adhere to all rules and policies as they agreed when they first joined the Industry. It's unfortunate for you that you had a complete disregard for the rules. Given the position that the Industry finds itself in, we are alarmed that you willingly and knowingly went against the rules that are designed to protect the wellbeing and welfare of all greyhounds.

The detection of this practice can be very difficult. There is a possibility that persons could use barking muzzles behind closed doors or within the confines of their residence without being detected. In arriving at an appropriate penalty, Stewards must be mindful of the deterrent value, both specific and general. A clear message must be sent out to the Industry and indeed the public at large, that the use of prohibited barking muzzles will incur substantial hardship, if convicted. The rules must be respected and anyone wishing to take the risk and being caught, will face significant punishment. Deliberate rule breakers must be treated accordingly.

As the Chairman of the Racing Penalties Appeals Tribunal Mr Dan Mossenson stated, in the matter of Peter John Hepple, Appeal No. 792, on paragraph 9, on page 9, paragraph 13, "Greyhound racing continues to be under the spotlight and its very existence is being questioned in various

quarters. This fact should reinforce the need for all greyhound Industry participants to rigorously comply with the rules". We are of the opinion that the comments expressed by the Tribunal are extremely appropriate in dealing with the circumstances of this case. We whole heartedly agree with the comments made by the Chairman of the Tribunal.

We have carefully considered the various penalty options. This was a deliberate action by you, it is an offence directly connected with the welfare and wellbeing of greyhounds. In her evidence Dr Medd stated that the wearing of a muzzle has the potential to limit a dog's panting thereby limiting releasing heat causing a dog to overheat. She went on to say that it restricts the natural behaviour and barking is part of that normal behaviour. It has the potential to cause stress to the animal. She further stated that if left on greyhounds for minimal periods, it has minimal welfare implications. You have stated that the barking muzzle had been on for approximately 10 minutes. The Stewards have no way to verify this, the fact remains that a barking muzzle was on the greyhound when Stewards conducted an unannounced kennel inspection. Dr Medd further stated that if the dog was to vomit it could aspirate that vomit and could potentially choke.

In the circumstances we are of the opinion that a disqualification is the appropriate mode. Your suggestion of a fine is in our opinion inadequate and fails to reflect your deliberate actions and the gravaman of the offence.

Despite warnings and communication to the Industry, you are the first person to be convicted of this offence here in WA. We are not aware of any other similar cases Australia wide. There are no precedents to offer any suggestions or guidelines so as to enable the Stewards to impose punishment within the range. Where there are no previous similar cases, it is left with Stewards to set a new standard, provided of course that it is reasonable in the circumstances.

It is our opinion that the gravity of this offence should not be lessened in any way because it is the first such offence in WA and perhaps in Australia. You were fully aware that barking muzzles had been prohibited. Therefore it is our opinion that the benefit of a new offence, in this instance, should not afford you any mitigating relief.

Taking into account all of the circumstances, the Stewards are of the view that this type of offence is worth a disqualification of 6 months. However you have been forthright and cooperative during this entire investigation and inquiry, you have acknowledged your wrongdoing at the earliest opportunity, you have an unblemished record during your 9 years involvement in the Industry and the fact that the condition of your greyhound was found to be in good order as observed by the

attending Stewards. Your obvious remorse is acknowledged by the Stewards. It is our view that these factors are deserving of some significant mitigation.

Therefore taking into account all of the mitigating factors, we are of the opinion that some discount should be allowed in this matter. In this instance a 3 month discount shall apply, meaning that a disqualification of 3 months is the penalty imposed with immediate effect and expiring on 3rd April 2018."

2. The simplest way to deal with the wide range of arguments which were raised in the appeal on behalf of the appellant against the three month disqualification penalty imposed by the Stewards is to quote in full the appellant's written submissions. Those submissions are divided into Parts A through to H. Part A provides a summary of the background to the matter. Parts B – G sets out the arguments in respect of each of the appeal grounds 1 to 6 respectively. Part H is a brief conclusion.

3. After quoting verbatim below each part of the appellant's submissions, I set out my comments, findings and conclusions.

"A. BACKGROUND

1 Following a search of the Appellant's training premises at Herron on 13 December 2017, a greyhound TOPPER HOLMS, was found to be wearing a barking muzzle.

2 An inquiry into the event was convened by the Stewards on 4 January 2018, following which the Appellant was disqualified from training for a period of three months.

3 The penalty was imposed pursuant to Local Rule 105A, which rule has no equivalent in any other Australian jurisdiction and has only been in force since 1 January 2017.

4 There appear to have been no other convictions under this rule in Western Australia during the time it has been in force.

5 At the time in question the greyhound appeared to be in good condition, good spirits and showed no signs of stress.

6 The Appellant pleaded guilty and by way of mitigation asserted that the barking muzzle was only ever used at feeding time to prevent the dog barking, chewing her bedding and biting the wire on her cage door.

7 *The Appellant had held a licence for around nine years and had not previously been convicted of any offence."*

4. As this is an appropriate factual summary and helpful introduction to the matter, I have no need to supplement the quoted facts other than to state the rule in question. Local Rule 105 reads *"The use of Barking Muzzles, at any time, on any greyhound is prohibited".*

"B. GROUND 1 – REVERSING THE ONUS OF PROOF

8 *The Stewards erred by dealing with the question of penalty:*

(i) *on the basis that the use of the barking muzzle had been more extensive than the limited basis admitted by the Appellant; and*

(ii) *by reversing the onus of proof in respect of that factor.*

9 *The Stewards (p. 20) in considering the period of time over which the barking muzzle had been used, dismissed the Appellant's contention that the barking muzzle had only been in use for a very short period of time. The Stewards in this regard observed that "The Stewards have no way to verify this", which, it is submitted, was a reversal of the onus of proof and an error in the sentencing process: see Law v The State of Western Australia [2009] WASCA 193.*

10 *It appears that the Stewards had on other recent occasions conducted unannounced random kennel inspections at the Appellant's premises and found nothing untoward, which tended to fortify the Appellant's contention.*

11 *In the absence of any cogent evidence to the contrary, the Stewards ought to have proceeded on the basis that the version of events given by the Appellant in this regard was correct: R v Olbrich [1999] HCA 54. Any other approach was erroneous."*

5. I am not persuaded that the observation which the Stewards made in relation to having been unable to verify the approximate period during which the appellant claimed that the muzzle was worn, reflects an error on the part of the Stewards. The Rule is breached once a barking muzzle is used on a greyhound, irrespective of how long it was used for. The appellant admitted the offence by her guilty plea. In the overall context of the matter, I regard the observation by the Stewards in relation to the period of time as being rather innocuous. I find there was no error in the Stewards' approach.

6. I dismiss this ground of appeal.

"C. GROUND 2 – REQUIREMENT FOR A DETERRENT PENALTY

12 *The Stewards erred by dealing with the matter on the basis that it required a generally deterrent penalty at both a local and national level.*

13 *There being no uniformity in relation to barking muzzles Australia wide, the present case was not one where it was necessary to send a message to the Industry at a national level. The observations of the Stewards at p. 21 to this effect were erroneous.*

14 *The analogy to the detrimental publicity that flowed from the "live baiting" scandal nationally some years ago was not an appropriate sentencing touchstone in the present case.*

15 *The local rule in relation to barking muzzles appears to have come from a recommendation in the McHugh Commission report which was adopted in Western Australia but not in other jurisdictions. The level of heinousness with which the practice of using barking muzzles is regarded is reflected in the fact that no other jurisdiction has any general prohibition on their use.*

16 *The Stewards' observations that the offence required the imposition of "substantial hardship" and "significant punishment" (p. 21) was misconceived.*

17 *The Stewards' observations at p. 23 that the recency and novelty of the offence should not attract any mitigation whatever is contrary to the principle in Isaac [RAT 4/16] in South Australia in which it was observed of a 50% penalty discount:*

> *"...the recency of the implementation of the rule and the fact that this was the first offence under the new rule, committed within days of its implementation, I think the Stewards could have and should have deducted more."*

18 *This approach was also followed in Worthington [Appeal No. 795] by the Chairman at para 10:*

> *"In the circumstances of this case and partly because of it being a novel offence, a reduction of the severity of the penalty is appropriate."*

19 *The Stewards' approach in the present case at p. 23:*

'Therefore it is our opinion that the benefit of a new offence, in this instance, should not afford you any mitigating relief'."

7. The Rule under consideration is a Western Australian Local Rule which is not applicable in any other Australian jurisdiction. Although Western Australia has not experienced the cruel behaviour exhibited by some greyhound racing participants in some other states, Western Australia clearly is not immune from the challenges which greyhound racing faces in those other states. The RWWA Stewards do have to be ever vigilant and always very mindful of the implications of any rule breaches which occur in this State in view of the overall national greyhound racing scene. The local Stewards would be derelict in their duty if they were to only treat this parochial rule on a parochial basis and closed their minds to the implications on a broader basis.

8. It is submitted, the reference to sending a clear message out "...to the Industry and indeed the public at large..." was, clearly wrong. This clear message comment follows the reference to the detection problems which Stewards face. There is only limited opportunity for them to scrutinize behaviour which may be occurring at locations other than at a racecourse and in places where there is no surveillance and ability to observe what is taking place on a regular basis. The Stewards therefore are required to undertake periodic unannounced visits and inspections. The role of policing the conduct of licensees clearly is not an easy task. Due to chance and coincidence of timing, Stewards may stumble onto offending conduct being committed by a licensed person. Sometimes, as may have occurred in this case, the misconduct not only is a clear breach of the privilege to own and train greyhounds but does go further by potentially jeopardising the prospect of the industry operating without incurring criticism from animal welfare groups and other sections of the community. Such misconduct has the potential to put at risk the continued existence of the industry. The greyhound racing industry provides employment directly and indirectly for a large number of people, businesses and organisations, pleasure for members of the public and contributes significantly to the economy. Consequently, the Stewards do need to be very conscious of the importance of showing not only to an offender, but also to the general community and to all other participants in the sport, the absolute necessity of complying with the Rules by means of the sentences which they impose on offenders.

9. Whilst live baiting is clearly a more serious and controversial example of misconduct involving cruelty to animals, the reference to it in the context of describing the condition which the industry currently is in does have some relevance in this case. It is a legitimate factor to at least be considered and referred to in the way in which the Stewards have done.

10. The fact that only this State, unlike other jurisdictions, has reacted positively and adopted the McHugh recommendations does not diminish or lessen the seriousness of the conduct so as to reflect any error on the part of the Stewards. The Rule has important animal welfare considerations as its justification. The offender knew of the existence of the Rule. Ms Lakin could have quite easily taken alternative action rather than use the outlawed muzzle, including using a lawful device or preparing the food out of sight of the greyhound. Greyhound racing's continued existence is under siege. The level of punishment referred to in paragraph 16 of the submissions was justified. In any event, as the Rule expressly and unequivocally prohibits the use of this type of muzzle, the Rule must be strictly obeyed.

11. The obligation of the Stewards, equipped with their undoubted experience and depth of Industry knowledge, is to determine what is a reasonable or appropriate penalty after considering all of the relevant facts and circumstances. Nothing which was submitted in writing or orally in relation to this and the other grounds of appeal in my assessment demonstrates that the imposition of a penalty of disqualification was unreasonable. I am satisfied that this misconduct in the context of the current climate involving this particular racing code warranted nothing less than a considerable period of exclusion of an offender from the sport. In my opinion, the starting point of a six month disqualification has not been shown to be inappropriate.

12. Whilst this is the first such offence in Western Australia, there can be no uncertainty or ambiguity as to what the Rule means, or how it should be applied. The Rule was in existence for nearly the whole of last year prior to the offence having taken place. I was told that the introduction of the Rule was well publicized throughout the Industry. The "recency" and "novelty" arguments in the circumstances are not persuasive.

13. I am satisfied that the Stewards' conclusion as quoted in paragraph 19 of the submissions reflects no error on the part of the Stewards. I am not persuaded that the statement that "a

clear message must be sent out to the Industry and indeed the public at large ..." is inappropriate. Even if it were to be interpreted to mean, as alleged, extending to "national level", I find nothing so wrong with it as to amount to an error which on its own justifies interfering with the exercise of the sentencing discretion by the Stewards.

14. For these reasons I dismiss Ground 2.

"D. GROUND 3 – THE CIRCUMSTANCES OF THE OFFENCE

20 The Stewards erred by imposing a penalty which did not adequately reflect the complete absence of any evidence of actual adverse effects on the health or welfare of the dog in question as proven on the facts before them.

21 There was nothing to indicate that the dog had in any way been or was likely to be adversely affected by the use of the barking muzzle: see the Investigating Stewards Report at p. 5.

22 Further, the evidence of the veterinary surgeon was that the short term use of a barking muzzle had "Very minimal health and health and welfare implications".

23 This factor, as well as those set out in paras 20 and 21, does not appear to have been adequately reflected in the Stewards' assessment of penalty, if at all. Nor, it is submitted, was the Appellant's prior unblemished record and plea of guilty despite the Stewards having articulated it as a factor that they took into account.

24 Having regard to the matters set out in Grounds 2 and 3, it is submitted that it could not reasonably be said that a period of disqualification was the only appropriate penalty."

15. It is true there was no "evidence of actual adverse effects on the health or welfare of the dog". The evidence from Ms Lakin was that the muzzle was only on for a short period of time and was only motivated to help facilitate the feeding process which was being undertaken. Further, the veterinary evidence verified there were minimal adverse implications. Despite the criticism as to how little if at all, these aspects influenced the ultimate outcome, I am not persuaded as to the veracity of the arguments in the particulars to this ground.

16. I reiterate the Rule in question is relatively new and unique to Western Australia. This means there is no basis of comparison to assist in reaching a conclusion as to the type and extent of a penalty for such misconduct based on previous decisions and determinations, as this is the first such offence. There are no precedents to follow or guidance to be gained from other cases. The Stewards were obliged to evaluate the situation by taking into account and weighing up all of the circumstances that have relevance. I am satisfied that the Stewards did identify relevant issues which they properly evaluated in undertaking their process of reasoning. Such factors include the state of the greyhound racing industry from the viewpoint of the public, the clarity of the wording of the Rule which leaves no room for misunderstandings, the fact that the offence occurred nearly one year following the introduction of the Rule coupled with the acknowledged awareness of its existence by the appellant. They all needed to be considered and were considered together with the other relevant factors which were identified.

17. The Stewards are clearly in the best position to appreciate the importance of the implications of all of the factors that combine to be evaluated in a case like this. Those factors include animal welfare considerations in order to ensure the greyhound racing industry is able to continue, the motivation behind the introduction of the Rule as well as the obligations, duties and responsibilities imposed on a licensee pursuant to the Rules. The Stewards properly considered the impact of the punishment being contemplated on the offender, the necessity to maintain control over activities which occur outside of the race course and the need to ensure there is no tolerating of conscious rule breaking by both not only the party whose matter they were considering but also all others involved in the Industry.

18. Whilst I confess at the outset and before hearing argument, I had formed the tentative impression that a six month disqualification for this offence before considering the mitigatory factors seemed harsh, on reflection and with the benefit of the propositions advanced by Mr Davies QC, I am satisfied such a period was open to the Stewards and that it was not unreasonable. It is not appropriate to speculate had this matter come before the Tribunal in the first instance, what period of disqualification I may or may not have arrived at. The Stewards are far better placed and the appropriate people to make the

adjudication. After their initial decision is made, it is the role of the Tribunal, should the matter be appealed, to be satisfied that the exercise of the discretion in the first instance has not miscarried. It is not my role to substitute my assessment for that of the Stewards unless an error on the part of the Stewards has been demonstrated. Nor should I tinker with the length of a penalty.

19. The fact that the dog had not been adversely affected and was not likely to have been harmed in the short time involved, of itself does not justify the conclusions, firstly, that it was unreasonable to impose a disqualification, and secondly, that six months as the starting point was excessive. Nor does that fact remove the need to consider deterrence. Had the dog been shown to have in any way suffered any hurt, or, worse still, had choked due to the use of the muzzle, then the Stewards may well have been entitled to impose a longer period of cancellation of Ms Lakin's licence.

20. For these reasons, I dismiss Ground 3.

"E. GROUND 4 – WAS DISQUALIFICATION REQUIRED?

25 *The Stewards erred by finding that only a period of disqualification was appropriate in all the circumstances of the case and by failing to give any or sufficient reasons why a reprimand, fine or suspension might not have been appropriate.*

26 *The Stewards at p. 22 rejected the Appellant's submission that a fine might be appropriate on the simple basis that the offence was deliberate and because of its "gravaman" (sic).*

27 *It is respectfully submitted that the Stewards in the circumstances of the present case ought to have considered and given reasons why other penalties such as a reprimand, a suspension, or a fine would be entirely inadequate. By failing to give any such reasons, it is submitted, that the Stewards were in error.*

28 *To the extent that the Stewards' reasoning that only disqualification was appropriate was based on the erroneous matters referred to in Ground 2 and Ground 5 (infra) the conclusion reached by the Stewards was reached in error.*

29 *Sometimes the overwhelming enormity of an offence may entitle the sentencing authority to say "this is simply too serious for any other disposition". In the present case*

(in which, it is submitted, that disqualification was at best a marginal proposition) that type of approach was unfounded and erroneous: see generally Kerber v Towler [2014] WASC 419.

30 *The error of the Stewards is similar to that observed in Biggs (Appeal No. 804) where the Chairman (at para 28) made the following observation:*

> *"They have not specified what starting point was considered to be the appropriate amount of a fine to be imposed for this misconduct. They have not articulated whether or not they have in fact determined whether any adjustment or reductions were necessary due to the personal and other relevant circumstances. This sudden conclusion to the process of reasoning with the bare pronouncement that the matter attracts a $3,000 fine means there is no way of knowing what credit, if any, has been given for the diverse range of compelling mitigating circumstances which are special to this case",*

and further at (para 30):

> *'Whilst the reasons do in fact refer to various personal and mitigating circumstances in paragraph 8 (namely the guilty plea, cooperation, remorse, unblemished long record, good character and reputation, isolated out of character offence, unlikely to reoffend), there is no way of knowing to what extent, if at all, these factors influenced the ultimate outcome. I am satisfied the Stewards have erred in this respect as transparency is lacking. The reasons fail to adequately inform and do not enable the parties to comprehend the process of reasoning and evaluation.'"*

21. As to Ground 4, it should now be abundantly clear I am satisfied that imposing a disqualification was appropriate rather than a reprimand, fine or suspension.

22. I am also satisfied one is able to sufficiently follow and adequately appreciate the Stewards' process of reasoning employed in arriving at their sentence. The basis upon which the Stewards reached their conclusion is logically and clearly enunciated in their reasons. This case can be distinguished from Biggs Appeal. A close reading at the end of the transcript where the Stewards were addressing penalty, coupled with the fairly extensive reasons, make it sufficiently clear why these lesser forms of penalty were not considered to be

appropriate. The Stewards were obviously mindful of the other possible penalties open to them. The reasons given are sufficiently transparent and do adequately inform as to why disqualification was required.

23. I therefore dismiss Ground 4.

"F. GROUND 5 – WAS THE INTENTIONAL OFFENCE AN AGGRAVATING FACTOR?

31 *The Stewards erred in finding that the deliberate nature of the offence as an aggravating feature of the case, it being an element of the offence itself. The Stewards at p. 20 found that the "conscious decision to deliberately allow (the greyhound) to wear a barking muzzle … (was) an aggravating factor".*

32 *Any offence under Local Rule 105A would by necessity be committed deliberately. It could not, for example, be committed recklessly, or inadvertently. The deliberate use of a barking muzzle is integral to the commission of the offence and not an aggravating feature.*

33 *To proceed on the basis that the offence was committed with deliberation and in the knowledge that it was wrong, and that this was, in itself, an aggravating factor, was an error.*

34 *Whilst the Appellant appears to have known of the prohibition on barking muzzles, that fact alone would not make the offence any more serious for the purpose of penalty.*

35 *An offence might, in some circumstances, be mitigated by the fact that an offender was completely ignorant of the prohibition that had been transgressed, but the breaching of a rule of which the offender was aware is essentially a neutral factor rather than an aggravating factor as seen by the Stewards."*

24. As to this ground, it does not alleviate the appellant's position that the muzzling with the outlawed device was done consciously or deliberately. It would have been a less serious situation had it been the case that the device had been used in some way entirely innocently or obviously through a mix up caused by someone's genuine oversight or mistake.

25. In Ms Lakin's case the muzzle clearly was not unconsciously or innocently placed on TOPPER HOLMS. I reject the propositions contained in this part of the submissions.

26. I dismiss Ground 5.

"G. GROUND 6 – APPLYING THE MITIGATING FACTORS

36 *The Stewards erred by addressing the mitigating factors in the case as going only to the length of the penalty rather than the type of penalty to be imposed.*

37 *Where there are a multitude of mitigating factors such as existed in the present case, the Stewards ought to have made an assessment as to whether or not those factors operated to reduce the penalty from one of disqualification to a lesser penalty such as a suspension, fine or reprimand. Using the mitigating factors only to reduce the length of the disqualification was an error."*

27. In the circumstances where the greyhound racing industry is under siege, its very survival depends on avoiding adverse publicity and hostile reactions or comment from its detractors. Such a scenario requires strict compliance with the Rules by all participants in the sport. In the case of any failure in that regard the strict enforcement of the Rules is necessary. This is particularly so in the case of breaches of rules which have animal welfare implications. In the present climate it is essential all licensed participants both strictly honour their obligations and responsibilities and receive appropriate punishments, bearing in mind the serious consequences of their failures to comply.

28. I am not persuaded despite the numerous and significant mitigating factors which are present in this matter, that they are sufficiently persuasive collectively to remove punishment in the form of a disqualification from being appropriate and necessary.

29. I am also satisfied that the way the Stewards dealt with the mitigation factors by reducing the length of disqualification does not in any way reflect an error. Clearly, the Stewards appropriately considered and were strongly influenced by all of the factors favourable to the appellant which they correctly identified. The Stewards were more than simply conscious of these factors and gave much more than mere lip service to them. The Stewards reduced the length of the penalty by half because of them. This significant reduction reflects the substantial extent to which the appellant was given the ample benefit of mitigation.

30. I dismiss Ground 6.

"CONCLUSION

38 *It is submitted that in all circumstances of the present case, the imposition of any penalty greater than a reprimand, or at worst, a modest fine was not appropriate.*

39 *It is respectfully submitted that the penalty imposed by the Stewards be set aside and that a penalty appropriate to all the circumstances of the case be imposed by this Tribunal."*

31. As to the conclusion, it is clear from my reasoning above I have not been persuaded that a reprimand or a fine was appropriate because of the serious nature of the behaviour, the clear flaunting of the Rule and the potentially adverse implications for the industry.

32. The appeal is dismissed.

33. The order I made suspending the operation of the penalty shall now cease to operate.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON