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THE ROLE AND TRAINING OF STEWARDS AND INTEGRITY ISSUES IN THE RACING INDUSTRY FROM A STEWARDS PERSPECTIVE

By John Schreck

“Damned if they do” and “damned if they don’t.” That might be the best way to sum up the situation some Australian Racing Stewards might find themselves in at the moment.

In the first instance, Stewards are under pressure from the media and the public to investigate what might appear to be a breach of the Rules even if the evidence is so flimsy as to be best described as circumstantial. In many cases, that is all the panels have to go on - circumstantial evidence. An interpretation of what they believe might have happened.

However, Society as a whole must perceive that the administration of justice is fair, and the same is true with Racing. Be it thoroughbred, harness or greyhound racing.

Ladies and gentleman, I believe that our system of race day policing is energetic, I believe it is thorough. Like everybody else of course we’ve made some dreadful mistakes, but our decisions are always made on public interest and with the well being of the industry and its participants uppermost in our minds.

We must all remember ***“Justice should not only be done but should manifestly and undoubtedly be seen to be done”***.

Over recent years, all sections of the Community have become more aware of their civil rights and the need to observe the Rules of natural justice. Some domestic tribunals in the past might have been suspected of basing some of their decisions on privilege or prejudices, the Rules of evidence appear to have become more defined and are certainly being more defended.

Of course, considerable aspects of Racing control have been omitted today, but it is hoped that which has been covered and the matters mentioned will give rise to debate and discussion amongst the people who assist to control the destinies of not only many people but also a great industry and public entertainment. The main thing we all have to remember, I believe, is to exercise common sense and adhere at all times to the principles of fair play.

All Racing Stewards should develop a strong urge to help licensed persons and I believe this can be achieved by tolerance and a constant effort to guide people away from offences. Prevention is better than cure and certainly more satisfying. We must always ensure that if action is to be taken, we are working within the framework of the Rules and can always quote the Rule under which we acted.

I truly hope justice and common sense guide all our actions.

The cardinal rule written or unwritten for all officials is that they have no interest in a race. While the contestants in a horse race have every excuse to be partisan and to further their own cause it is vital in the interest of the industry, the public and the official himself that he

has no partisan feelings towards any contest that he is assisting to conduct and supervise. I believe this principle applies particularly to Racing Stewards.

I believe a Racing Steward should have:-

1. The ability to supervise and control a race meeting and to provide leadership and supervision of all officials at such meetings.
2. Loyalty to the Club conducting the meeting, the industry and its participants, and, last but not least, the public.
3. An intimate knowledge of the standardbred horse, its condition, pace and temperament.
4. A thorough knowledge of the Rules.
5. The ability to lead a panel and to conduct inquiries.
6. The ability to take into account the idiosyncrasies of licensed people.
7. The ability to read a race and to give evidence of his observations.
8. A knowledge of human nature, the courage of one's convictions and a judicial mind.
9. A thorough knowledge of betting.
10. The ability to read betting moves and to deduce their possible implications.

Of course the selection of the right people in the first instance is most important. Care should be taken that the applicants for positions as cadets are subjected to searching interviews so that their intelligence, integrity, suitability and aptitude can be gauged.

Special care must be taken to ensure that merit and not influence of any sort is the guiding factor. Although some degree of horse knowledge is desirable the selectors of cadets are always on guard to avoid the person whose only attribute is a knowledge of horses and Racing. A common remark made about some Stewards is **'how would he know he has never driven in a race'**. But as Mark Twain once said **"he may have never laid an egg but he's a better judge of an omelette than any chook he knew"**.

Therefore, the most common misconception about Racing Stewards is that all they need is a good knowledge of horses. I believe that it is better to have a man with 95% commonsense and 5% horse sense than to have a man who has 95% horse sense and 5% common sense. I have seen a man become a good Steward although he had started with insufficient horse knowledge but I have never, never seen a man without common sense develop enough of that quality to make him a good steward. You must also look for recruits who have a compassionate attitude to people and to horses, and to animals generally, for in his Racing career we will be looking to him to protect the licensed persons from unjustified attack and we will be looking to him to frequently protect horses from inhumane treatment.

I believe that if the Racing Steward, by his skill and ability, can encourage the participants in the industry to conduct themselves in accordance with the Rules he will have assured not only a fair go for the contestants but also public support. Without clean Racing there would be no joy for the contestants, without public support there would be no prizemoney, no matter how good the horses and no matter how skilful the drivers or trainers. For these reasons the Racing Steward carries a very serious responsibility to the contestants and to the public. If he concentrates conscientiously on applying the rule, he will discharge his responsibility to both.

The Racing Stewards should be unaffected by public demonstration and by pressure from the press, because inevitably if they are influenced by these it will lead to injustice to the contestants. Indeed, the Racing Steward should be first to protect and to defend the licensed persons under his charge if he believes that they are conducting themselves

within the Rules. He should guide and assist them to act within the Rules and should register disappointment and not ill will when the Rules are contravened.

Racing Stewards have considerable powers to assist in the control of Racing. It follows, of course, that they must ensure that the Rules are observed and enforced. Obviously both these functions are most important but some Racing Stewards who do an excellent job of Racing control are apt to disregard the procedure necessary for proper and fair rule enforcement.

All Racing Stewards might not be expert when it comes to technicalities; some might unwittingly, or through inability, make mistakes. While in many instances excuses can be found for a man's shortcomings, there is no excuse for any Racing Steward who does not observe the cardinal principle that should be observed by all persons who act in a supervisory capacity – that is, ensuring that every person gets a fair go and an opportunity to defend himself in a calm and unprejudiced atmosphere. Any person, who armed with wide powers, resorts to overbearing behaviour either has no appreciation of his responsibilities and is using bluff as an unworthy substitute for his shortcomings, or he is unfit to be in a position when he has the control of other men and women, and the power to affect their livelihood.

Although emphasis is quite often placed on the disciplinary powers of the Racing Stewards, one must not lose sight of the fact that they are the catalyst who take control of a race meeting that has been organised by a club and ensure that the meeting is conducted in accordance with the Rules, to the satisfaction of the public, the club and the participants. Therefore, a Racing Steward needs a high degree of organising ability, a sound knowledge of human nature and a complete knowledge of all the officials he has to supervise. Only in this way can he ensure that the conduct of a race meeting can be successful. In addition, he has to be the referee of the actual Racing contest and must ensure that **safety and fair play prevail**.

If, by his supervision, a Racing Steward achieves these aims, there should be no need for him to then assume his further role of investigator, prosecutor and adjudicator in respect of any matters when a breach of the Rules may have occurred. However, the contestants in Racing – as in all other sports, often play the game very close to the Rules and it is inevitable that the Racing Steward, in his referee's role, must exercise his judicial and disciplinary powers in order to maintain the strict line between acceptable and unacceptable racing and behaviour.

PROCEDURE AT INQUIRIES

The first requirement of all inquiries is for the Racing Stewards in charge to ensure that the proceedings are conducted in an atmosphere of complete courtesy. All persons coming before the Racing Stewards must be addressed appropriately and no person appearing before the Racing Stewards should be permitted to adopt a disrespectful attitude towards either the Racing Stewards or other persons attending the inquiry. Under our system of control there can be a tendency on a racecourse for persons who view an incident to make an immediate decision on what and who caused it. If Racing Stewards could overcome this urge and keep an open mind until they have heard all the facts they would be more than half way towards being a good adjudicator and incidentally, would not have to suffer the indignity of having to back down when one of their snap judgements is proved to be wrong.

THE ROLE OF THE RACING STEWARD

The procedure governing Racing Stewards' inquiries in Australia is rather unusual so far as judicial proceedings are concerned. When a man is suspected of having committed a civil offence the police conduct investigations, interview witnesses and question the suspected person. If the police believe that there is sufficient evidence to support a conviction the person is charged and brought before the Court. You would understand the Court proceedings in that the police call their witnesses and the accused person is permitted to cross examine them on what they have said. After all prosecution witnesses have given their evidence the accused person is permitted to call in rebuttal whatever witnesses he likes. Of course, the Court then adjudicates and declares whether the man is guilty as charged.

Our procedure for Racing Stewards' inquiries is different because the Racing Stewards start off being the evidence gatherers and then lay complaints then they assume the role of adjudicator. At a later point they change their function and the evidence that has been adduced becomes the evidence in the case on which they are to adjudicate. The proper conduct of inquiries is absolutely necessary for only in this way is it possible for a man to be given fair treatment. Racing Stewards are not trained legal men and we do not expect the same degree of competence from them as would be expected from a trained lawyer; but if simple principles based on common sense and fair play are adhered to there is no reason why justice will not be done at Racing Stewards' inquiries.

SEQUENCE OF EVENTS AT INQUIRIES

There are many types of inquiries. Some deal with very minor matters and others, of course, with very serious matters. The procedure about to be described would apply to a more serious matter such as an inquiry involving a suspected Rule breach that could lead to a person being fined, suspended or disqualified, or significant action being taken against a horse.

Inquiries could be divided into eight main stages:-

1. Introduction.
2. Taking Evidence including film evidence.
3. Deciding on the evidence whether a charge should be laid.
4. Laying charge and accepting evidence and submissions in reply to the charge.
5. Deciding whether charges are sustained.
6. If charges are sustained, the accepting of submissions on penalties.
7. Assessing penalties.
8. Announcing decision.

I will now deal briefly with the stages individually.

INTRODUCTION TO INQUIRIES

After calling all persons considered to be connected with the matter arising, the Chairman should state the reason for the inquiry such as the name of the race and the nature of the incident. After identifying the parties and the incident the Chairman is expected to make sure that each person present is fully aware of the matter to be discussed.

TAKING EVIDENCE

After giving a brief outline of the nature of the inquiry the Chairman should make a decision on the sequence in which witnesses will give evidence. It may be that he will decide to give evidence himself or take evidence from his supporting Racing Stewards. On the other hand, he may decide initially to take evidence from the parties appearing before

the panel. When the oral evidence has been taken the Racing Stewards will then introduce any film evidence that is available. I believe that while the film is being shown the Racing Stewards should identify the horses or other matters appearing on the film but it is advisable that no formal evidence be taken during this period. All parties should be given an opportunity to comment on the films they have seen.

Let us pretend for a minute you take action against a licensed person after gathering little evidence. Will the courts interfere if it is thought you had insufficient evidence to proceed as you did? I am afraid it is difficult to find a clear answer. In the well known Australian case Calvin vs. Carr, Rath J in fact analysed the argument that there was not sufficient evidence upon which it could be found that Mr Calvin was a party to a jockey preventing his horse running on its merits. At the end of his Honour's lengthy judgement he expressed the view that even if he had found that there was insufficient evidence to justify the finding this was not a legal ground upon which a court could interfere with a decision of Racing Stewards or a Committee. Rath J conceded that in general a decision based upon no evidence or insufficient evidence is erroneous in law. But he expressed the view that ***"it is well settled that insufficiency of evidence is a ground for interference by a superior court only where that insufficiency shows that the tribunal did not act in good faith."***

THE RACING STEWARD GIVES EVIDENCE

One of the pitfalls at an inquiry is for the Racing Steward to be drawn into a discussion while he is giving his evidence. This will almost certainly happen if the Racing Steward addresses his evidence to the parties appearing before him. If he says to a Driver – ***"I saw you jerk the offside rein and drive your horse away from the rails"***, more often than not the driver will seek to interrupt and deny the statement. It is preferable for the Racing Steward to completely disregard the presence of the parties when giving his evidence. He might choose to address his remarks to the Chairman. He should make sure that he carefully names the horses and the persons concerned as he proceeds. He should endeavour to complete his statement without interruption.

The Racing Steward should train himself to give evidence according to a pattern, for in this way he will ensure that he has not omitted significant material and that he has given the parties a clear account of what they might be called upon to answer. The parties are entitled to a clear account of what the Racing Steward believes he saw and they should not be confused in any way. The Racing Steward should also be on the alert to make sure that his evidence is stated in such a form that it will be understandable by any person who might later be required to read a transcript of the proceedings. The people present at an inquiry might well understand what he means when he says – ***"I was that far away from him"*** – but the reader of the transcript is denied the demonstration given by the witness who places his hands two feet apart. Also references by a witness as to Bill, Dick and so on, does not convey anything to the reader. Insistence on formal statements will lead to a better atmosphere at any inquiry and the removal of ambiguity from the record.

THE PITFALLS OF OBSERVATION

"An eyewitness does not necessarily reproduce sights and sounds accurately. Part of what we see comes from the object before us. Another part and it may be the larger part, always comes from our minds. We fill in gaps in our observation. We interpolate with unconscious imagination, things we did not observe. We fill in what is but a bare outline so as to meet what our past experience leads us to expect. We are frequently governed by our wishes, we see what we want to see, we are apt to see what we expect or wish or fear to see and overlook what we are inclined to disbelieve. Seeing is a complex affair, it is mingled with inferences, judgements and

interpretations. All observation involves some unconscious inferences. Consequently there is a mixture of observation, inferences and imagination."

Those are the words of the prominent American trial lawyer, J W Ehrlich. Most people will applaud Mr Ehrlich for his insight and knowledge of human nature but few will admit that they themselves are subject to the failings that he has so aptly described. It is necessary that Racing Stewards should be fully aware of the human failings associated with observation and therefore guard against them. However, they must exercise constant vigilance to ensure that they keep an open mind while they test and check their observations against the other evidence that is brought forward at inquiries.

A Racing Steward should not be dogmatic about his observations and would do well to preface his evidence by expressions such as: ***"It appeared to me that ..."*** and so on.

CONSIDERATION OF EVIDENCE

After the Racing Stewards are satisfied that everyone has put their version of the matter the parties will be asked to retire while the Racing Stewards make an assessment as to the future course of the inquiry. In important matters we take the view that only the Voting Stewards should remain in the room and therefore it cannot be suggested that their decision was in any way influenced by any outside person. If Racing Stewards can fairly say that the evidence suggests that an offence has been committed a decision should be made to charge the person concerned.

LAYING OF CHARGE

If it is decided to charge a person, when the inquiry resumes and the charge is to be preferred the Racing Stewards will have assumed a completely different role having changed from being witness prosecutors to being adjudicators. The next step would then be to inform the charged person in what regard it is alleged he breached the rule. That is to say at this time particulars of the charge would be given to him. We then expect Racing Stewards to ascertain from the person charged whether he fully understands the charge laid against him. If so, he must be given every opportunity to properly defend himself. He may make submissions, he could call further witnesses or other film evidence that he believes might assist him in some way. He must be given every opportunity to exhaust every avenue he wishes to pursue. After the charged person has had every reasonable opportunity to defend himself the Racing Stewards would adjourn to consider whether the charge has been sustained.

DECIDING ON WHEN THE CHARGE IS SUSTAINED

To suggest that every man who is charged is guilty would be suggesting that the procedure of asking him to defend himself is a sham. The Racing Stewards should weigh up all the evidence that has been given and they must not take into account any other evidence.

SUBMISSION ON PENALTY

Having decided the person is guilty or not guilty as charged the Racing Stewards would reconvene the inquiry and inform the person of their finding. If it is a finding of guilt the person should then be given a full opportunity to make submissions on penalty.

ASSESSING PENALTY

Having accepted submissions on penalty the inquiry would again be adjourned whilst the Racing Stewards deliberate in private on what penalty is to be imposed. In deciding penalties many matters are taken into account including, for example, the seriousness of the offence, the degree of culpability, the experience of the person concerned, whether a man's livelihood would be affected by the punishment, the history of the person in relation to similar offences, the previous conduct of the person in the Racing Industry and the need for the penalty to include a deterrent component in relation to future offences. It can be said that penalties are imposed for two reasons. The predominant one is to punish a person for committing an offence; the second is to deter that person and others from committing a similar offence. Generally speaking, for a careless driving offence drivers should have their licence to drive in races suspended for a period which covers a number of weeks. For more serious offences, such as not allowing a horse to run on its merits, drivers and others should be disqualified from Racing for periods ranging from six months to a year or more. Racing Stewards endeavour to standardise on penalties but many factors must be taken into account.

ANNOUNCING DECISION

After reaching their decision on penalty the Racing Stewards would reconvene the inquiry and announce their findings to the person concerned.

He should then be immediately informed of his rights under the Rules of appeal and other matters associated with appeals.

ONUS OF PROOF

When a person is charged under the Rules the onus of proving such a charge lies with the Racing Stewards, who are the prosecutors.

STANDARD OF PROOF AND EVALUATION OF EVIDENCE

It has been settled in the courts over the years that there are varying degrees of proof. For instance, in criminal proceedings, in which a person may be deprived of his liberty, there is a very high standard of proof; that is, proof beyond reasonable doubt. We must never forget the onus of proof lies upon the prosecution at all times during the hearing. It never, never shifts.

On the other hand, in civil proceedings – such as proceedings before Racing Stewards – when a person pleads not guilty to a charge the standard of proof requires a consideration of the probabilities. However, the Rule is that the more serious the allegation, the greater the degree of proof required.

Accordingly, for a minor offence a comparatively smaller degree of satisfaction on the probabilities is required. For a more serious offence, such as one involving fraud or serious malpractice, a high degree of satisfaction on the probability is required.

Perhaps the opinion of Lord Denning, a prominent Justice in the United Kingdom, would be of assistance in this matter. When speaking of the degree of cogency which the evidence on a criminal charge must reach before the accused can be convicted, he said, ***“That degree is well settled. It need not reach a certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is***

strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sense 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice".

When speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden on the normal issue in a civil case, his Lordship said, "***That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case.*** If the evidence is that the tribunal can say, '***We think it more probable than not', the burden is discharged, but if the probabilities are equal it is not***".

Many Racing Stewards are frightened of the word 'collusion' as being something which is very difficult to prove. However, there is no mystique about it. It merely means an agreement to do something which is corrupt or dishonest or fraudulent or to do something which may well be proper by corrupt, dishonest or fraudulent methods. The essence of the charge is twofold. Firstly, there must be an agreement and this means there must be two or more persons involved. Secondly, there must be dishonesty involved in the agreement.

The agreement may occur before the race or it can take place during the race itself. For example, two drivers racing side by side may, by words or gestures or actions, indicate that one is giving assistance to another which is of no advantage to himself, such as letting a horse on the rails out of a tight pocket when there was no apparent reasons for him to do this. Such an action, of course, could be consistent with honesty. The horse on the rails could be pulling or even choking down the outside driver would be expected to help, or the assistance could be inevitable as when the outside driver's horse is tiring and falling back. There is nothing corrupt about such agreements. The Rule would strike at an agreement of this kind made during the race when there is no reason other than a dishonest reason for the move.

There is popular belief that circumstantial evidence is weak evidence and nobody can be convicted as a result of it. This is utterly wrong. Circumstantial evidence can be the strongest evidence. The usual example quoted to juries is that of Robinson Crusoe finding footprints in the sand. This circumstantial evidence is irrefutable proof that another person is on the island with him. Care should be exercised with circumstantial evidence, however, if an honest alternative to what appears to be shown by the circumstantial evidence still exists then it should shake the belief that the circumstantial evidence proves what it appears to. Thus, it must be borne in mind that only in the rarest instance would there be any direct evidence of two drivers conspiring together to bring about a dishonest result in a race. They do not commit their agreement to writing and there is rarely anybody to overhear them who would be prepared to talk about it. The agreement must be spelled out from their actions in the race and from other circumstances. If these lead to a belief that they have acted in collusion then they are guilty. If that belief is shaken by the real possibility of what has occurred happening without agreement between them, then they are entitled to be acquitted of collusion.

Similar considerations apply; of course, to cases where what is suspected is an agreement between drivers to let an innocent driver win. In such a case, the Racing Stewards have to investigate intensively the motives and the actions of all drivers and horses who appear to have been connected with the plan. This is very complex.

EMERGING CHALLENGES

We must remind ourselves if corruption is evident at any level of Racing, it has the following impact:

1. loss of public trust
2. loss of respect
3. loss of co-operation
4. loss of revenue
5. loss of jobs

In addition to the losses identified, corrupt or unethical practices will also result in negative media coverage, increased public complaints, litigation, investigations, and increased involvement by external agencies.

The rise of betting exchanges now poses for the industry, the potential “**knock out**” punch to the sport. These exchanges offer the punter anonymity and the opportunity to place a bet on a horse he knows is going to be beaten. Before the exchanges, we operated in an environment of people trying to win, but now it may be more profitable to bet a horse to lose. If we know the horse is ill, injured, undernourished or not properly exercised to win, it offers a chance to make some easy money if the information is only known to a few.

The temptation to cheat is great for some, and some Governments have even authorised the structure and system for this activity to flourish. One leading on-line exchange matches more than 500,000 bets a day, \$US90 million per week, with registered punters from more than 80 countries. The recent described controversies have brought about calls for Government review; the establishment of independent Gambling Commissions; but worst of all, an increasing loss of public confidence to a sport and business already in revenue and attendance decline world-wide.

EVALUATE OUR CURRENT DEFENCES

The activities that I have described have brought about serious harm to business operations and reputations. I would suggest that the current model we use within Racing to maintain integrity, protect our business image and interests is inadequate. Our current practices, however well intended are not effective in our current environment. We need to look internally at the structure and systems in place to address malpractice and be prepared to make changes, if warranted. We need to examine how we communicate as an industry, to ensure we speak with one voice and are armed with the facts and supporting documents to advocate our position. We cannot afford to be **reactive** and must develop strategies to address the current cancers negatively impacting the industry. Harness Racing needs to assess both the effectiveness of the current level of policing, and secondly examine our current lobbying efforts to influence public opinion, lawmakers and strengthen the cohesiveness within the Racing community.

If we examine the current model aimed to protect integrity within harness Racing, one would conclude that our primary focus is enforcement of the Rules. Enforcement authorities are derived from the Rules and granted to Racing Stewards. The powers authorise the Racing Stewards, empower them to investigate, prosecute and issue penalties for violation of the Rules. This system has been in place for a long time, and the model is similar in most regions of the world. The system to police Racing is arguably quite successful to enforce breaches of the Rules occurring on the racecourse. Interference, bumping, careless driving, equipment violations and resolving objections are all examples of matters very capably and routinely dealt with by Racing Stewards around the world. Because of their unique experience and training, Racing Stewards serve as referees or officials charged with maintaining safety for the drivers and monitoring their drives to ensure adherence with the Rules of the sport.

However, there are other matters, such as internet operations, betting exchanges, and misconduct by racing personalities that likely occur away from the track, and these matters are not quite as straightforward in terms of handling. The current model used within racing to combat these external threats is not effective nor developed to properly address the current threats.

Selling information, punting for licensed people, ownership irregularities, association with undesirables are difficult matters to detect and enforce. This is because the fact gathering and evidence required is not easily accessible to Racing Stewards and investigators. Unlike the normal Racing incident where video tape footage is readily available, and drivers are questioned on the spot, the same is not true of off-course malpractice. The behaviour is intentionally concealed, conversations are held in private and an evidence trail is not easy to trace. In all due respect, these types of integrity issues cannot be prepared or presented in a similar manner to the normal raceday activities.

To build a case and acquire evidence of wrongful association by a licensed person with an illegal bookmaker, drug trafficker or organised crime figure, it will require significant time and resources. We must remember that we do not have police powers and generally are not well prepared or suited to deal with this type of situation. We cannot merely invite the parties involved to come to an inquiry room and have them respond to questions and expect any real success. We must recognise that intelligence gathered to be useful must be channelled into a plan of action leading to a clear set of facts and the gathering of evidence to support a charge and a finding of guilt.

The preparation for this type of inquiry must be done in advance, step by step, and may require physical surveillance, debriefing of potential witnesses or securing and analysing documents in advance of a hearing.

At the current time, information sharing, joint planning to address serious concerns is not abundant in the industry, and turf disputes often interfere with progress. We must be prepared to try new approaches, prioritising our problems, and jointly developing strategies, including anticipation of legal and administrative obstacles that must be overcome. We need to clearly identify our goals, if it is merely to disrupt an ongoing malpractice, build a formal case, or merely prevent an undesirable person from having contact with a licensed person. We need to have flexibility to solve problems more than one way. This requires effective communication, information sharing, a strategic assessment leading to a plan with the steps to be taken clearly outlined.

To effectively address off course integrity matters, we may have to employ a different model than the one currently used to investigate allegations of malpractice. Racing executives need to assess if serious allegations of **“off course”** malpractice by a licensed person should be handled differently because effective results are not likely under the current process used. The investigation of an external malpractice matter cannot occur in the hearing room.

The pursuit of facts and collection of evidence must occur before the hearing. The witnesses should be identified and debriefed before a hearing; the evidence carefully reviewed to be sure they will support the charge and factual circumstances presented. **Racing officials need to examine the need for a separation of duties in these cases, namely the separation of fact gatherer and prosecutor in putting together and presenting these cases.** In any matter where a person may be deprived of his livelihood or referred to an outside tribunal, then it is incumbent for racing to review the process and

procedures in place and question the adequacy of the structure to accomplish the necessary results.

Lacking more emphasis to more proactive investigators involving **“off course”** activities and increased prevention initiatives, Racing organisations will be confronted with continued negative perceptions, whether deserved or not.

THE WAY FORWARD

To succeed in protecting the reputation of the sport, we must be willing to change. A work culture or attitude that **“we have always done it this way”**, serves as a barrier to effectively address areas needing improvement.

Successful risk management will require racing organisations to develop and maintain an effective intelligence programme. Intelligence must be discussed, shared and then directions given by senior managers to prioritise the threats posed, and assign responsibility to those who must resolve. Success will not be achieved if one team and one process to handle information is not put in place. Combating off course threats must have the full support of senior management, stipendiary Stewards, security, or it will be remained fragmented, and ineffective.

Those charged in serious malpractice matters are likely the subject of prior allegations. We tend to look at singular incidents rather than patterns of poor behaviour by individuals. We need to develop proactive efforts against those we regularly receive adverse information and better monitor those who cause the problems. It will require better liaison with police and other Racing jurisdictions, it will require formal documentation prepared with accuracy concerning individuals of questionable reputation and character within the Racing industry. We need to move away from gossip, rumour and innuendo, and better prepare information based upon facts and evidence.

In addition to more effective enforcement, we need to increase our prevention initiatives. This may include better screening for any position in racing to ensure the wrong people do not get involved in the business. In addition to the Rules, we need to require a clear standard of conduct and ethics within our organisations. Many Racing jurisdictions may not possess a Code of Conduct for their employees or licensed personnel.

A Code of Conduct provides guiding principles for the organisation, and it should create a duty to fully comply with Club Rules and the law. Racing must minimise risks by being more proactive in developing a warning system for participants in racing, including racing officials, licensed persons and owners who breach the standards established. We must also develop better internal systems to follow up on complaints or allegations of wrongdoing. We must bring together Racing Stewards, investigators and senior racing administrators to discuss and develop strategic papers and position papers concerning threats to racing. We need to better develop a shared information process within Racing to better present our views to both the media and government bodies. We need to share resources for research and preparation of these documents. This cannot be accomplished in an ad hoc fashion. We fundamentally need to strengthen and develop increased capability and professionalism within Racing control and our handling of all integrity issues.

Racing Investigators must never be frightened of the legal system. The law is there to provide protection for all of us who live in a free and open society. However, in the eyes of many today, the relationship between the sport and the law is unclear. If we work within the confines of the law, we will never have any problems. Why should we worry about an increase in willingness of the judiciary to review the decisions of domestic tribunals such

as ours? To date there has been little consequence of these reviews. But Delegates, we should prepare for the worst. If we fail to do our jobs well and with fairness, legal review of our actions will become more common. To all of us who work in Racing of any kind and enjoy the sport, there could be nothing less attractive than the possibility the sport could lose all power to regulate itself. However, there is a general feeling in the community to discourage unnecessary litigation and it is always in the public interest that disciplinary questions within private organisations be resolved, if possible, without resort to the public law courts. Therefore, fortunately, organisations like ours are still usually left to themselves.

I do not wish to create the impression that everybody involved in Racing is dishonest, and not every good thing beaten is dead – although there are many who would disagree with that, and some of them are in official positions. Delegates, it is only natural that not everyone involved is going to be best friends, that not everyone is going to agree with everything you say. But differences that arise between us can be sorted out, and understood. Compromises can be made – and indeed, if this forum is to continue, they **have** to be made!

Recently, a friend of mine was called for jury duty. He was being interviewed or whatever it is called as a prospective juror for a murder trial. A fairly important issue. He was not selected. However, the circumstances hammered home to him and to me the basis of the Australian legal system. The trial Judge pointed to the defendant and informed the room full of prospective jurors that the defendant was innocent and would remain innocent until he was proved to be guilty beyond reasonable doubt. The Judge said if a verdict was rendered at that moment, the defendant would have to be found innocent by the jury because there was no evidence of his guilt and the burden of proof was on the prosecution. This is something I think we should all never forget: the burden to prove somebody is guilty of an offence under our Rules lies with the Racing Stewards and never, never shifts from them. Delegates, if innocent until proven guilty is good enough for murderers, it should be good enough for people who are licensed to participate in our sport.

For the moment, cast aside all thought of legal terms, courts and complicated legal procedures, and acknowledge immediately that all persons, irrespective of their calling, station in life, sex and age, have certain inalienable rights that are taken for granted by the community. No person, court, employer, Racing authority or domestic disciplinary tribunal can take away those basic rights, either by direct action or by prescribing domestic Rules. No matter what else you might think or do, one thing remains unbreakable: the Rules of natural justice are paramount, and if not complied with strictly, can reduce to zero the activities of any Racing Stewards' inquiry.

In some Countries or States, the rights, entitlements and protections are set out in a bill of rights. As I understand it, that is why in New Zealand, Stipendiary Stewards cannot act as they do in Australia. That is why the Victorians are to be congratulated for looking at integrity issues as they do in that State. The recommendations they have come up with will cause no problems at all for Racing Stewards, and indeed might very well enhance their reputation in society generally.

Industries and organisations such as clubs, especially those that license or grant membership, can make Rules to govern the actions of people coming within their authority. A person who does not like those Rules does not have to be bound by them because, having read the Rules and believing that they are repugnant to him, he can simply abstain from joining or taking part in the activities of the organisation or industry. However, those domestic Rules can never take away from any person his basic rights in the community.

Also, they are overruled or superseded by any statute passed by State Parliament that bears directly on any specific matter sought to be dealt with by the Rules. Again the New Zealand situation can be looked at.

We should always keep in mind that the changing law will not worry us if our organisation and its people who concern with expulsion, punishment or disciplinary matters abide by two simple Rules – firstly, no person should be judged in his own cause, and secondly, no person should be condemned unheard. Not being a judge in our own cause is difficult and I intend to say a little more about that shortly. For courts have often said that any person who joins an organisation governed by Rules under which he may be expelled, has no right to redress if he is expelled according to the Rules – however unfair and unjust the Rules or the actions of the expelling tribunal may be. The courts will however look at procedural matters. The Rules under which we work are not improved by the courts, never have been, and hopefully never will be. However, we must always be conscious of the fact that the courts are there in the background. All of our work should be carried out with the fundamental principles of fair play firmly in mind. Because it has been said many, many times that it does not matter if our functions are described as judicial or quasi-judicial or administrative or whatever you like, we still must act fairly. We must have a proper case, we must give parties every chance of being heard, and we must not take into account rumour and innuendo. People such as ourselves and those whom we work control the destinies of thousands. We can make or mar a man by our decisions. Some people say that the way our Rules are framed, at times gives us little discretion. However, we then go on and claim that the courts have no right to interfere. We sometimes go too far and we sometimes claim too much. The courts will interfere if they think it is necessary – so they should.

People who come before us must always be heard by an unbiased tribunal – a tribunal that has not had its minds poisoned by outside influences. The people who come before us have an absolute right of knowing what charges they have to face and the full and precise particulars. Of course it is an elementary right of people before us to be heard in answer to any charges we lay.

I said a moment ago that most people are easily convinced a man ought not to be a judge in his own cause. Yet we operate in such a way everyday. An accuser should not be a judge, many law people say. How then in Australia can we operate as we currently do?

On one occasion in an Australian Racing case, one of the Committeemen who heard an appeal was a solicitor and his firm acted for the Club who preferred the charge, though he had not done so personally. The court found this was sufficient to void the matter. The court said the question is not whether the judge will be biased but whether he is in such a position that he will be reasonably suspected of being biased. The important word is “**reasonably**”, and it must be likely, not merely a possibility, that a reasonable suspicion of bias would be there. Courts will not act on suspicion, neither should Racing Stewards. It is a question of degree. In every case, that test is of course an objective one. Would a reasonable man, knowing the facts, draw the influence that a Chief Stipendiary Steward would likely be biased one way or the other?

Speaking generally, it is important to bear in mind the very wide differences between principles which apply to courts of the land and those which apply to Racing tribunals. I am sure you all are aware of the situation, but it is important from time to time to be reminded. In the courts, the accused is entitled to be tried by a judge, all according to evidence legally put forward, and he has a right to be represented by a lawyer. All the procedures of trials in our courts, including the examination and cross-examination of witnesses and summing up, are based on such circumstances.

Our tribunals are in general composed of laymen – some of them, like me, with little formal education. Fortunately for our sport that situation is changing. We have no power to administer an oath. While we have power to compel people to come before us, it is something we have to be careful of. We are not bound by the Rules of evidence. Most of us are probably ignorant of such Rules. We sometimes act on mere hearsay, and in all cases we are both witnesses and judges. People before us have no right to be legally represented and it is said there is no effective means for testing by cross-examination the truth of the statements that may be made. During the course of an inquiry, we may have been discussing the case for weeks with persons not present at the inquiry – and I for one have never warned the group of people with whom I worked to be aware of the danger of acting on preconceived views. It is something I am ashamed of. We can act upon our own knowledge and the opinions we have. Indeed, throughout our Rules, the words **“in the opinion of the Stewards”** appear time and time again. This expression has been in racing Rules for many years. It can be strongly contended that the framers of our Rules had the foresight to acknowledge that the opinion of a Racing Steward is not the opinion of the ordinary man in the street, that it is an opinion held by a person with an intimate knowledge of racing and the practice and habits of the people taking part in the sport. Also, they must have acknowledged that a racing offence may be of greater seriousness in the racing industry, but might not be quite so offensive in society outside the industry. In short, the framers of the Rules obviously must have believed that an expert and different type of standard or opinion has to be brought to bear when an assessment is made of an alleged racing offence. Therefore, it is believed by many, including the courts, that the expression **“in the opinion of the Stewards”** when used in the racing Rules has a special meaning, the implication being that it is the opinion of a specialist in the field. Because such weight is placed on the opinion of people such as Racing Stewards, they must always ensure they exercise their powers with calmness, impartiality, fairness and dignity.

Times are changing, and tribunals such as ours are dealing with more important issues all the time and, as I said before, people before them have no right to be legally represented. However, there does seem to be arguments coming forward that this no longer stands up, even if the Rules expressly deny such a right. Some time ago, a greyhound called “Dogstown Star” was doped. It looked like the owner was going to be warned off. The Greyhound Racing Club had an inquiry and gave notice to the owner to appear before them and answer the charges against him. But when he appeared with his barrister, the Committee refused to allow him to be represented. The owner then successfully applied for an injunction to restrain the Club from proceeding with the inquiry unless he was allowed to be legally represented. The Club appealed, but the Court of Appeal rejected the appeal and decided the owner was entitled to be represented by his lawyer at the inquiry. The court felt in that case that not every man has the ability to defend himself on his own. He cannot bring out points in his own favour or weaknesses in the other side. He may be confused, nervous or not terribly bright. He may not be able to examine or cross-examine witnesses. During inquiries, I have seen it happen hundreds of times that when somebody is told they may question a witness if they wish, the person instead immediately goes into a longwinded speech. Courts are beginning to say that if justice is to be done, the person in trouble ought to have the help of someone to speak for him, and they are asking who is better to do that than a lawyer trained for the task.

Lord Denning once said, **“I should have thought therefore that when a man’s reputation or livelihood is at stake, he not only has a right to speak by his own mouth, he also has a right to speak by a counsel or solicitor.”** However, others have said differently and one day you might like to read a judgement from the Court of Appeal in New South Wales “Rafter vs. Schreck”.

Many people around the world believe that Racing under the control of Stipendiary Stewards is dangerous. They are of the belief that people such as I can get too close to the game and be tempted either to like or dislike someone. They say that no matter how fair Racing Stipendiary Stewards are, they would not be human if personal likes and dislikes did not arise. It is indeed a thin line we tread in the unusual way we run inquiries. Most of us are not trained legal men, and the courts do not expect and will never expect us to exhibit a full knowledge of the intricacies of the law. However, there is no reason why a Racing Steward cannot be an expert in the role he plays during an inquiry. He must appreciate that he is in the novel position of being, at different stages of the inquiry, the investigator, the witness, the examiner, and the adjudicator.

The role then of Stewards in Stewards' inquiries was considered by a Justice Adam during the Renzella case some years ago.

It was stated at page 382

“The difficulty arising here arises because of the combination of the two roles in the Stewards as witnesses at the enquiry held by themselves and entitled to hold strong views as a result of their own personal observations and their role as judges bound to adjudicate according to the whole of the evidence before them including their own. The more convinced they are from their own personal observations the more difficulty they would necessarily experience in disbelieving what they were led to believe from their own eyes and ears in deference to contrary evidence adduced by others. But it is the Rules which bring this embarrassing state of affairs about, this in itself afford no ground of complaint.”

One of the most important principles for a Racing Steward to observe while he is playing the part of the examiner is to ensure that his words and demeanour in no way suggest he has already reached any decision on the matter before him. His duty is to ask questions and to receive answers. I promise you, gentlemen, that if this is not done, then in the future, inquisitorial matters as we know them today will not happen. During the examiner stage, a Racing Steward may temporarily vacate his role as an examiner and, in effect, enter the witness box to give direct evidence within his knowledge. During this stage, Racing Stewards must maintain their equilibrium and must be scrupulously fair – and must be seen to be fair. People before Racing Stewards often have reasons for becoming emotional, but in my mind there is never an excuse for a Racing Steward to contribute to an emotional scene.

Many would say that the adjudicator role of the Racing Stewards overlies the whole of the proceedings from beginning to end, but it should not be apparent until all the evidence has been adduced and it is necessary for consideration to be given to whether a charge should be preferred. The other time at which the adjudicator role is exercised by the Racing Stewards is when they deliberate on whether a charge has been proved and, if so, the penalty they should impose. In effect, they say, while acting as the examiner, I hear all the evidence. Then I assume my role as the adjudicator. I take into account all the evidence that has been given, and I also give due weight to my own observations and what I saw on the official film. After giving full consideration to all these matters, I make my decision. It is a most unique situation for any person to find themselves in. Many people around the world believe the Racing control system as it operates in Australia is draconian and needs review. From all this, it is obvious that the opportunities for the courts to interfere in our business are great. While the future impact of the legal system on the functions of Racing Investigators is not clear, there is always a chance something will happen.

Cliff Pannam Victorian Barrister once said, ***“The only justification for the intervention of the courts to control the conduct of Racing Stewards, committees and other***

disciplinary bodies in relation to the imposition of penalties for breaches of the Rules is to correct some legal error in the proceedings. The courts do not sit as appellate bodies to review the reasonableness of decisions in particular matters and still less to rehear them on their merits.” We all know that any person who is aggrieved with an administrative decision which directly threatens their rights and livelihood or imposes liabilities upon them, might base their opinion on whether justice has been done by the palatability of the final outcome. We all talk through our pockets. And what of the future? The future for our sport generally is murky. Our sport has suffered its greatest blows from competition, as other forms of gambling have expanded into most areas of our country. Our sport is still standing, though in some places on three legs rather than four. The last thing we need is for the courts to start saying that people before us are not being or have not been treated fairly. I therefore implore all of you to simply give everyone as fair a go as you would like to get yourself. And do not be afraid of changes to procedures if they come along. Often, Delegates, things get better by change, rather than by chance.

Racing people around the world must do all they can to lessen suspicion; Racing can do without it, especially today in an atmosphere of increasing competition for the gambling dollar.

There will always be terrible things happening on race tracks just as there is in society. Any endeavour which attracts free flowing cash as does Racing will lure an element of the unsavoury. It is harness Racing’s task to make it as difficult as possible for that element to gain entry into our sport.

Harness Racing people must do all they can to lessen suspicion; harness Racing can do without it, especially in an atmosphere of increasing competition for the gambling dollar.

However, harness Racing has much to be proud of. I wonder how many other businesses and pursuits in our society would stand up as well as harness Racing if they were subjected to the same sort of scrutiny day after day.

Fair criticism is something to be welcomed and it is something we must all accept but there are followers of harness Racing who are only happy when they are throwing doubts upon the integrity of harness Racing and unfortunately upon the integrity of all those associated with our sport.

It is all very well for irresponsible people to berate us but the sport is not too bad; we must all do what we can to let people know exactly that.

To those of you who want to, you have to ask “how do we fight back?” How do we make Harness Racing into a product which can compete on the world’s stage? Before any of you think about doing that you have to agree and accept that there is a need to fight back. I have to say, unfortunately, I’m not convinced in any way that enough key players in harness Racing today accept the seriousness of the situation.

Thank you.