RACING APPEALS TRIBUNAL

NEW SOUTH WALES

TRIBUNAL: MR D. B. ARMATI

APPEAL OF NICHOLAS O'CONNELL V GRNSW

AGAINST REFUSAL OF GRNSW TO GRANT NSW BOOKMAKER'S LICENCE

Reserved Oral Decision

Friday 26 October 2018

DECISION:
1. Appeal upheld
2. Application for Bookmaker's Licence granted
3 Appeal deposit decision deferred

Background

1. The Appellant, Nicholas O'Connell, appeals against a decision of a steward of 18 October 2017 to refuse to grant to him an individual bookmaker's licence.

2. The matter came before the steward as a result of an application lodged on 25 January 2017. After the lodgement of various additional documents, including critically a national police check certificate, the steward interviewed the Appellant on 3 August 2017, and subsequently published the adverse finding. In addition to the refusal of the application, an order was made prohibiting further applications for a period of five years.

3. The appeal to the Tribunal is a hearing de novo. Grounds of appeal were lodged which are mandated by provisions in the regulation. In essence, the Tribunal and the parties dealt with the key issues rather than the formality of the grounds. Simply put, however, the grounds allege that the steward erred in refusing the application, and erred in finding the Appellant was not a fit and proper person. Various grounds said to found the submission of error were identified.

4. On 23 October 2017 the Appellant appealed to this Tribunal. There has been a delay, which need not be detailed, on availability to present the appeal; and it is indeed over a year, a regrettable delay.

The Tests

5. The law to be applied in respect of this matter is, as the Tribunal has said, that the Tribunal is to determine, on a de novo hearing, whether the application for the bookmaker's licence should be granted. There has been a change in the legislation in this State which, as a result of submissions, does not need to be examined. It is apparent that the Tribunal is vested with power, still, to determine whether or not the decision of the steward should be the decision of the Tribunal.

6. In essence, the test which the Appellant must meet is that he is a fit and proper person to be registered. Section 47 of the current legislation provides that that determination must have regard, in particular, to the need to protect the public interest as it relates to the greyhound racing industry.

7. The law to be applied in respect of addressing that test has been set out by the Tribunal in numerous decisions over recent years. Four decisions have been identified for consideration, three by this Tribunal. The first is a harness racing appeal of Zohn, 11 July 2013; the second is a harness racing appeal of Scott, 15 July 2015; the third is a greyhound racing appeal of Vanderburg, 13 November 2015. In addition, the parties have put before the Tribunal a decision of the Supreme Court of Victoria, Common Law Division, in Frugtniet v The Board of Examiners, case number 4691/2005, a decision of Justice Gillard of 24 August 2005.

8. As a result of those various past determinations on the test to be applied by the Tribunal, the Tribunal will not in this matter set out all of the reasoning that led it to determine, in each of its three cases, what is to be considered, but that will be paraphrased in the following terms as applicable to the facts of this case.

9. The test is, as was identified in Hughes and Vale Pty Ltd v New South Wales [No 2] (1955) 93 CLR 127, that the question of fit and proper person requires consideration of honesty, knowledge and ability.

10. As was summarised in Vanderburg, the Tribunal has to assess the Appellant as a fit and proper person on the evidence it has available to it at the time of making its decision, and to look to the future to decide whether it should give the Appellant its imprimatur as a person able to be held out to the community, and in particular the greyhound racing community, as a person who is fit and proper. In addition, some matters for consideration include the fact that entitlement to a licence is a privilege, and not a right.

11. Importantly, in assessing fitness and propriety, the type of licence applied for must be considered. As was said by Justice Davies in New Broadcasting Ltd v Australian Broadcasting Tribunal, Treasurer partly joined, (1987) 73 ALR 420:

> The question of fitness within section 86(11)(b) is not at large but is directed, for the purpose of the regulatory regime, at the holding of a broadcasting licence. Not every aspect of a person's fitness or propriety is relevant to his fitness and propriety to hold an operator licence.

12. Whilst His Honour was there dealing with an application for a broadcasting licence, as would be apparent from that title and the quotation, the principles nevertheless are apt in this matter.

13. Also, as a result of the Frugtniet case, it is appropriate to add certain additional matters, namely, that past improper conduct will not recur has to be established; there has to be proof that the Appellant has shed a past conduct; and that it may take years of demonstrated good conduct before that can be done. Importantly, in addition, regard must be had to his history to the present time, including any pattern of conduct in which he has engaged.

The Evidence

14. The evidence in this matter is reasonably extensive. It comprises the Appellant's statements of 15 February 2018 and 22 October 2018; character references of (ignoring titles et cetera) O'Connell, Canty, Dwyer and Stollery; various email exchanges between the Appellant and the steward; the notice of appeal; the steward's decision of 18 October 2017; the actual application for the bookmaker's licence, and its attachments; the decision of Sino Iron Pty Ltd & Anor v Worldwide Wagering Pty Ltd and Ors [2017] VSC 101, a decision of Justice Hargrave of the Supreme Court of Victoria of 30 March 2017, and this will be called Sino; the transcript of his interview of 3 August 2017 with the steward; various ASIC extracts; the statutory declaration of 11 September 2017 of the Appellant; correspondence from the regulator to the Appellant of 18 October 2017, essentially conveying the decision and rights of appeal; the grounds of appeal; a private ruling of the Australian Taxation Office in relation to the Appellant of 17 October 2017; and that the Appellant has given oral evidence and been cross-examined.

15. Relevant to the fitness and propriety, the honesty, knowledge and ability test, three areas have been identified in this case for consideration. They are the Sino decision, the statutory declaration of the Appellant of 11 September 2017, and his understanding of his reporting obligations and his knowledge of the licence sought in general.

16. The Appellant, in his statements, has described his personal situation. He describes his extensive experience in both bookmaking and greyhound racing, principally because his father was a bookmaker for 20 years, as was his grandfather. They were substantially important people in the bookmaking industry. He regularly attended greyhound meetings, from the time he was a child until about 2009 or 2010. It is noted in his interview with the steward that at the time of that interview he had not been to the races for five or six years. Importantly, whilst participating in the industry he handled dogs, he observed the betting regime, he engaged in wagering, he assisted professional punters' wagering, he was a bookmaker himself, and he was also a trainer and owner.

17. Critically, he has held licences. They were described as an owner-trainer's licence, from 1 April 1996 to 26 August 2002; a public trainer's licence, from 26 August 2002 to 31 March 2003; an owner-trainer's licence from 31 March 2003 to 30 September 2009; and a bookmaker's licence from 8 January 2004 to 30 September 2004. He describes how he exercised his licence at Dapto, Bulli and Wentworth Park. He describes the reason for not renewing it in 2004 was that it became uncommercial for him. He says in his evidence he has never been the subject of a stewards inquiry, and has never had any adverse licence findings made against him.

18. He describes also that from 1998 onwards he began helping totalisator customers build technology to assist their wagering practices. Various corporate entities were involved in that exercise, including some of those named in the Sino decision. He started various companies, he worked for various people, and he became an IT expert. Critically, his work involved the concept, construction and maintenance of various websites. He says that he was successful in that because of his knowledge of the bookmaking industry. He apparently is, and was, in substantial demand. It is to be noted that that has been taking place for some 20 years.

19. His proposal, if granted the licence, is essentially to leverage the relationships he has by writing technologies for punters as well as carrying out standard bookmaking. He wants to develop alternative online products. Interestingly—and it was subject to some consideration in his interview with the steward—because of his relationship in Sino with Mr Hill, he proposes to use Mr Hill as a source of market information from which he will publish prices by use of the database and odds material from Mr Hill. The Tribunal will return to Mr Hill.

20. In his statement of 15 February 2018 he described in considerable detail various corporate entities with which he has been engaged. It is not necessary to examine those, except to the extent that falls later.

21. In support of his application he has provided character references as described, and the Tribunal will return to analyse those in due course.

22. Importantly, the Appellant's statement sets out his financial capacity to operate as a bookmaker. He says in his interview with the steward that it will not be his main source of income, it will be something of a hobby; that he is otherwise financially secure and, importantly, able to meet the guarantee that he is required to give the bookmakers cooperative. He says that he could provide a guarantee of a far more substantial sum than the $30,000 required.

23. Having regard to his statement of 22 October 2018 and his description of his current financial year's betting returns—which figure, by agreement, is to be confidential—it is quite

apparent that his statement of ability to provide a substantial sum is correct. It also establishes that he has the financial means to operate the licence without a risk presently of a loss to those who choose to engage with him.

The Sino Decision

24. The Sino case forms a critical part of this matter. It is a decision of 111 pages and 465 paragraphs. It is complex. The headnote, for example, refers to unjust enrichment, trusts, real property, equity and gambling as some of the key headnote principles. The Appellant was the sixth defendant in that case. The decision of Justice Hargrave has not been re-litigated in this appeal. The decision stands. His Honour's findings, both adverse and favourable, remain. That does not prevent, in an appeal such as this, where different issues are being dealt with, the Appellant exercising the right available to him to provide an explanation of matters that were otherwise dealt with by His Honour.

25. Without seeking to be exhaustive or unnecessarily prescriptive, in summarising the case of Sino, as it is factually most complex, essentially the action was brought by the plaintiffs who alleged they were defrauded by a professional gambler, and the professional gambler provided money to various corporate entities of which Mr Hill was a director, and of which the Appellant was a general manager. Not all of the corporate entities have those two positions, but it is a broad description. They were conducting a wagering business. The Appellant was at pains to point out that he was an employee as a general manager.

26. When they received the funds into their wagering entity, they immediately suspected that the funds may have been fraudulently paid because they were aware of a similar fact in another matter. Accordingly, the Appellant reported the fraud to the police immediately. However, they continued to act with the funds that they had received. Those funds were stolen funds, and after they had actual knowledge of the fraud they engaged in conduct with some of that money. Indeed, Mr Hill and Mr O'Connell jointly used some of that money to purchase a property in Bondi Junction. That is a very, very broad description, and that is emphasised.

27. Relevantly to this Appellant, His Honour made a number of findings, including those in the following paragraphs:

> "455. Second, against Mr Hill and Mr O'Connell for $2,077,210 for knowingly assisting Worldwide to breach its Black v Freedman trust obligations.
>
> 458. Fifth, against Mr O'Connell for knowingly assisting Worldwide, The Odds Broker and Mr Hill to breach their respective Black v Freedman trusts by disposing of the traceable proceeds of the stolen funds comprised in the $800,000.
>
> 459. Sixth, against Mr Hill and Mr O'Connell for the traceable proceeds of the stolen funds comprised in the $345,000, for knowingly assisting Worldwide to breach its Black v Freedman trust obligations.
>
> 461. Eighth, against Mr Hill and Mr O'Connell for proprietary relief in the form of an equitable charge over the Bondi Junction property to secure the traceable proceeds of the stolen funds used to purchase that property."

28. In that decision His Honour made a series of adverse findings in respect of this Appellant. Some only of those matters are referred to and, for brevity purposes in this decision, not all of the factual matters that caused His Honour to come to those conclusions, which he summarised in extreme detail, are set out in this decision:

> "158. I do not accept the defendants' submissions. In my opinion, the admitted knowledge constituted circumstances which would have led an honest and reasonable person in their position to have made further inquiries before crediting Mr 29. X's account with the stolen funds. Had those inquiries been made, the fraud would have been revealed and Mr X's betting account would not have been credited."

The Tribunal notes the deletion of the name and the insertion of "X".

> "160. The making of the simple inquiry would have been easy…
>
> 168. In my opinion, Worldwide, Mr Hill and Mr O'Connell acted wilfully and recklessly in failing to make the simple inquiry.

And later in that paragraph:

> … they had a commercial motive to want to believe Mr X's claims. As a result, they accepted as true flimsy information from a man with, at best, a mixed reputation, who gambled large amounts, who was frequently involved in court proceedings, and who was apparently without access to ready funds to pay his legal fees.
>
> 184. First, Mr O'Connell and Mr Hill gave unsatisfactory evidence in many respects. At a general level, each of them was both argumentative and evasive in cross-examination.
>
> 185. It was contended on behalf of the plaintiffs that Mr O'Connell had a tendency to self-aggrandisement, hyperbole and exaggeration. Examples were given — 'I have done more in [the gambling] business to prevent fraud than any other person in the history of wagering'; 'I have got the best memory of anyone in this room'. I agree with this contention.
>
> 186. The plaintiffs also submitted that Mr O'Connell adapted his evidence to suit what he saw as being in his and the other defendants' interests as the case progressed. … I accept the plaintiffs' contentions in this regard.
>
> 239. For the following reasons, I find that Mr Hill's and Mr O'Connell's explanations for the shutting down of the Pinnaclebet computer systems and closing the Pinnaclebet business are implausible: …
>
> 252. Mr O'Connell gave the implausible evidence …
>
> 345. I find that Mr Hill and Mr O'Connell knowingly assisted Worldwide and The Odds Broker to breach their respective trust obligations by the following conduct. …

375. I will first consider Mr O'Connell's individual position. I am satisfied that Mr O'Connell's actions causing his registration as an equal proprietor of the Bondi Junction property were dishonest. First, he wilfully and recklessly failed to make such enquiries as an honest and reasonable person would make before instructing [Ms Y[1]] to credit the stolen funds to Mr X's betting account … [[1]name deleted]

376. Second, … The significance of Mr O'Connell's evidence in this regard is that he acknowledged the $800,000 was directly referrable to and formed part of the stolen funds. … That was a direct acknowledgement that the $800,000 transferred from The Odds Broker's bank account to Mr Hill's personal bank account represented, in Mr O'Connell's mind at least, traceable proceeds of the stolen funds.

378. Third, on 7 June 2016, before completion of the purchase, Mr O'Connell obtained actual knowledge of the fraud. He nevertheless proceeded to use the traceable proceeds of the $800,000 in Mr Hill's accounts to purchase the relevant bank cheque and complete the purchase. …

392. … I am satisfied on the evidence that Mr O'Connell's broad authority encompassed him acting fraudulently by using the stolen funds to complete the purchase if that was necessary."

29. In fairness, it must be pointed out that His Honour made some passingly favourable findings in respect of the Appellant:

"120. … Detective Howard thanked Mr O'Connell for his prompt advice that the stolen funds had been deposited …

148. … 'although X had satisfied us that he was the owner of the funds I still wanted a clearance from the investigator who was investigating the La Trobe fraud'.

187. On the other hand, Mr O'Connell gave much evidence which I accept as truthful and which was not challenged in cross-examination. I will not reject any of his evidence unless it is inconsistent with established facts or implausible.

253. … Mr O'Connell did provide a plausible (albeit uncorroborated and remarkable) explanation for the inability to obtain the business records of the Manilla bookmakers. …"

30. Those, as emphasised, are but some of the matters referred to in Sino.

31. As the tests to be applied require, it is necessary to assess the Appellant as of today, the date of decision, and based upon all of the evidence before this Tribunal.

32. The Tribunal turns again to the Appellant's statement of 15 February 2018. He says that he had not been provided with a copy of the judgement prior to the steward's interview; indeed, that up to the time of that statement he had never read it completely, and he finds it difficult to follow. He finds the legal concepts of the decision somewhat confusing as he is not a lawyer. He describes how he acted on legal advice throughout the proceedings. He says how he had been told by Mr Hill that he would indemnify him for any findings in the

matter. Consistent with that, the Appellant points out that he has not paid any money towards the judgement, but that that judgement against him and others has been paid in full.

33. He emphasises in his statement that the findings against Mr Hill and the Appellant were not criminal convictions, acknowledging that the court inferred he had knowledge of wrongdoing, and that the court inferred knowledge of the circumstances of the case. He describes those findings as being disappointing to him and upsetting to him. He says he still does not at the time of his statement understand the legal reasoning involved.

34. As has been said, the Appellant was interviewed by the steward. He explains in his statement how he tried to tell that investigator that the findings were not based on any lies by him but were based on the court's view of all the circumstances. He says at the time of his statement that the judgement did not paint him as a risk to the wagering community as the victims of the fraud had been paid in full. He somewhat boldly asserts that it was he and the other defendants who were effectively the victims of the fraud as the losses were sheeted home to him and the other defendants, although ultimately paid in full by Mr Hill. He acknowledges that the orders to pay back were as a result of the lack of prudence when accepting suspicious money without exercising enough diligence.

35. In relation to the Bondi Junction matter, he had this to say in his statement:

> “It was not, as might appear from the judgement, an opportunistic purchase using funds which suddenly became available from Mr X. They had been looking for properties for more than six months, and in fact had exchanged contracts well before the money was used. But there were in fact hundreds of thousands of dollars held in trusts and various accounts, indeed in excess of the $800,000, which were subsequently used.”

36. In fact, he and Mr Hill did not need to use the funds which came from Mr X in order to fund the purchase of the property. He says he was not seeking to dispose of ill-gotten gains, and that that is an unfair and unreasonable conclusion. He emphasises that on the basis that he did not try to make the purchase in another name, or hide the identity of the owner of the property, and that in any event the money was always going to be recoverable. There was a highly visible trail of money.

37. Again, it is important for this Tribunal to emphasise it is not retrying the Sino case but notes those additional explanations.

38. In oral evidence to the Tribunal he was at pains to point out he has now formed the opinion that he did not explain his case properly to the lawyers in that case; nor, importantly, did he explain it properly to the court. He says the judge did not understand the difference between corporate and individual bookmaking and the nature of the businesses of which he was general manager and otherwise involved. Somewhat boldly, he says in oral evidence he wants time with the judge to explain to him what the correct facts are. He seeks to exculpate himself by saying he was an employee-only as general manager and did as he was directed. Of course, the defence "I only did as I was ordered" has been the subject, certainly since 1945, of rare satisfactory use.

39. Even today—and the Tribunal is staggered by this—he has only read parts of the decision. In view of the uncertainty which he expressed in his interview to the steward, and more than 14 or 15 months since that interview, and throughout more than a year waiting

for his appeal to come on, he has not taken the time and trouble to read something which contains such damning findings against him. However, he said it has been explained to him.

40. It is noted that he still disputes the findings against him. It appears he remains unaware of the very serious findings that were made, for example, his expressions that there would have been no fraud if he had made simple inquiries, and the fact that his authority enabled him to act fraudulently. He still denies that he hid things to avoid a freezing order—factual matters which have not been set out in this decision.

41. The Appellant maintains his behaviour does not impugn his honesty. He justifies some of his failures identified in Sino on the basis that he had never experienced or seen anything of a fraudulent nature like that which occurred in Sino by Mr X.

42. Perhaps at long last, in re-examination, he makes the concessions that there were findings against him. He seeks to lessen the gravamen of those findings on the basis he was not independently represented as a defendant; that, even though he had not read it—and, it appears, did not know when interviewed what the orders against him were—he had contemplated an appeal, but was told he could not; and, in any event, he could not have afforded to appeal at that time. Interestingly, that was only about March 2017, and he apparently is now in a sound financial position. He re-emphasised in his oral evidence the fact that none of the plaintiffs in that case lost any money.

43. The Respondent in this appeal pointed out all of the adverse findings against the Appellant, and in particular those that went to his credit, such as that he was argumentative, evasive, prone to aggrandisement, exaggeration and hyperbole, willing to adopt his evidence to his self-interests, able to give implausible evidence, and all of those matters go to his credit. Not all go to his honesty, it was submitted. The Respondent emphasised that the findings were very serious, involving such matters as wilful and reckless conduct, fraudulent conduct, dishonest conduct, and failing to do things he could have done. The Respondent submitted that he had demonstrated a lack of remorse, as he thinks he was a victim of the fraud.

44. It is necessary to return to the interview with the steward. The delay from the lodging of his application to the conducting of the interview was the subject of concern to the Appellant. He has given evidence that he believed he was attending that interview to deal with the issues of delay, and to assist the stewards with matters they might require. He was not expecting it would be the equivalent of a show-cause hearing or interview. Certainly, it is apparent that he had not informed himself about the Sino decision, such that some of his answers were somewhat strange. However, in view of the fact that he has not yet to date even read that decision in full, and digested the adverse findings, it is hard to see how he would have been any better informed at that interview of 3 August 2017 than he was today.

45. Some matters in relation to Sino are to be gleaned from the interview:

> "Q. I'm asking you if you were aware of whether or not there was a judgement against you in respect of the outcome of that proceeding.
> A. I'm not sure, Mr Forster. I was an employee so I'm not sure. I just built the IT. Regardless there was a settlement done and that matter has been resolved and fully settled.
>
> Q. In terms of that settlement and your employment with the business, are you able to give me an indication of why you were required to give evidence at the hearing?

A. I built all the IT, and I helped manage a lot of the people when that was put together.

Later:

A. I had no financial interest. I was paid to build the website.

And later:

Q. But you accept that you were ordered to hand back——
A. I wasn't ordered.

And later:

A. Andrew, we can go through this for hours but I will make this really easy for you. There was a court case. …

And continued. And later:

A. I find that offensive, to tell you the truth.

Then later:

Q. What I have been asking you is whether you were part of the order to pay back the money.
A. I'm not sure. If I was— I could have been, but I don't know. I haven't paid any money and the money has been settled. I can't make it any clearer.

Later:

Q. I will give you an opportunity to speak in a moment, sir. What I'm indicating is that it's a matter that resulted in a judgement—
A. Let's not talk about this any more.

And later:

A. Offended by the adverse —when you said there was an adverse, I guess, finding against myself. I was offended by that.

Q. —improperly — fraudulently?
A. Sure.

Q. Whether the court held that that was the case?
A. There was an argument about it. At the end of the day it doesn't really matter because they got all their money. Mr Hill wrote them a cheque. We argued what the money was. At the end of the day they won the court case. They received their funds. That office is still ours. So there is no judgement against us.

And later:

A. But the judge found for them. I was disappointed in his finding but so be it. He made his decision. I can't change that. It's non-appealable. I would appeal if we could. We can't. You're not allowed to. They've been paid their funds."

46. It is important, in relation to the test to be applied, to consider all the evidence to the present time and look to the future. The future requires an assessment of what lessons, if any, this Appellant has learnt from past conduct. He set out a number in his statement, having introduced it as follows:

> "I had taken certain steps which I had honestly believed were consistent with what an honest and reasonable person would have done under the circumstances. I now know, and am firmly on notice from the terms of the court's decision, that those steps were not sufficient. That will obviously affect my behaviour in similar circumstances in the future, especially if I am granted a bookmaking licence. Having witnessed firsthand the consequences of those actions, I would consider myself uniquely qualified and now more sceptical than anyone else I know when it comes to potentially suspicious funds.

He also said:

> The court case illustrates strongly that the wagering operator takes all responsibility for the funds that are wagered through their business, and we'll have to repay those funds if stringent precautions are not taken. The fact that we paid the full brunt of this fraud, which was perpetrated by someone else, means that there is no way that we would do the same thing again. There is no benefit to the wagering operator in failing to take full precautions, only down side."

47. He also went on to say he is more acutely aware than most people in the community of the extent to which he might be held accountable for any suspicious transactions in any wagering business. And he finished his first statement by saying:

> "That experience will serve as a salutary lesson and ensure that if similar circumstances arise I will act with the utmost caution and make all reasonable inquiries. In fact, I will probably undertake far more stringent inquiries given my previous experiences."

48. In his oral evidence, he was asked questions which touched upon lessons learnt. In particular, in relation to the receipt of money from bank accounts and the future necessity for him to contact the owner or syndicate of any such account, he said he would not take the customers on face value as it were, but would carry out checks. He was cross-examined in respect of some of the Sino findings about inquiries he made being manifestly inadequate, and he said he had learnt his lesson.

49. There were certain questions about lessons learnt in relation to third party securities and banks, and he demonstrated an understanding of how banking checking takes place, as against the systems in wagering, and how he will have a more stringent system than even the banks.

50. The submissions for the appellant touched upon the fact that, armed with the benefit of hindsight, he now has knowledge to deal with any equivalent issues that might arise in the future. It was submitted that he had learnt a very public lesson.

51. The Respondent, on the other hand, says that the adverse findings are such that there should not be a finding that he has learnt those lessons, and that there has been insufficient time for him to demonstrate he can engage in blameless conduct.

52. Those, then, are the matters which flow from the Sino decision.

The Statutory Declaration

53. The second identified matter for consideration in these proceedings relates to the statutory declaration which he gave to the steward after his interview of 3 August 2017. In that regard, he had been asked a series of questions in that interview about what ongoing directorships or shareholdings he had. It is fair to say—and there can be some understanding with all the corporate entities with which he is engaged—that there was some degree of uncertainty in his mind. He was asked to go away and produce evidence. He was told how to contact ASIC.

54. At 12.02 on 11 September 2017 he obtained an ASIC extract. He then gave oral evidence of running to the police station to declare, in a statutory declaration, certain matters which must be assumed were either prepared before 12.02 on 11 September, or very quickly. That statutory declaration was signed at an unknown time on 11 September. Critically, it said this:

> "I … solemnly and sincerely declare that I am no longer a company director or shareholder in any Australian or overseas companies."

55. That statutory declaration and the ASIC extracts were sent to the steward at 1512 hours the same day.

56. The ASIC extract quite plainly contains, in relation to the company Pinnaclebet Pty Ltd, the fact that the Appellant was a director of that company. It is quite apparent, therefore, that his statutory declaration is incorrect. The steward found that to be, in his decision, an adverse matter: that he had made a false declaration.

57. The Appellant, in his statement, set out certain additional matters in relation to that statutory declaration. He denied it contained a false statement; that what it contained was an inadvertent error which was not known to be false or intended to deceive. He had not intended to mislead. He points out that he had provided them with the very extract which demonstrated that he was still a director. He says, therefore, he accepts that he failed to properly check the ASIC document to confirm the directorship had been cancelled. He gave evidence that some months prior to that series of events he had instructed the company accountant to deregister the company, and he gave oral evidence that he had signed all the necessary forms to do so. But it appears that one of the other officers of that corporation had not signed the form, and therefore it could not be lodged and registered with ASIC. It is, therefore, that the company had not been deregistered, and therefore his directorship was ongoing.

58. It appears the submissions for the Respondent at the close of the evidence do not press that issue as one establishing dishonesty, but it is pressed on the basis that he ought to have known what a document he was sending in said, and should have got it right. There is no doubt that that submission is correct.

59. Having regard to the explanation given and the evidence, the Tribunal forms no adverse finding on honesty, knowledge or ability in respect of that error. It is simply that he did not read a document which, as plainly as the light of day, said he held an office of director when he signed the statutory declaration and sent it, together with a very damning document, off to the regulator.

60. The unchallenged background facts established a belief in his mind that he did not have that office, that he was not a director, that his statutory declaration was correct, and therefore it is not an act of dishonesty; it was simply an act of not reading a document that he sent off. Yes, he should have got it right, but that statutory declaration issue will not be further analysed.

Reporting Obligations

61. The third issue raised is his understanding of his reporting obligations, in essence to the regulators but also to entities such as AUSTRAC; and the reason for that is his application form.

62. Under the heading "Integrity of Racing", it asks this question:

> “What measures would you use to detect suspect betting transactions or fraudulent activities?
>
> Answer by the Applicant/Appellant:
>
> I will do as I am required. If there are rules in relation to this, I am happy to follow them.
>
> Further question:
>
> Who do you plan to report suspect betting transactions or fraudulent activity to?
>
> Answer:
>
> Whoever I am directed to report to.”

63. Not surprisingly, the steward, in the interview, asked some questions about those somewhat unhelpful answers.

> “Question:
>
> You were asked to comment on what measures you would use to detect suspect betting transactions or fraudulent activities.
>
> Answer:
>
> Karen will answer all that. She is an expert on that.
>
> Question:

All right. But do you have an understanding of what you would do?

Answer:

Basic. I know there is AML, which is your Anti Money Laundering. There is Counter Terrorism. There is Responsible Gambling. There are a whole heap of documents, but I employ people to do that. I have never done it myself.

Question:

How would you get your head around that if you were issued an individual licence?

Answer:

I would employ people to do it.

Question:

Would you seek to have an understanding of it yourself?

Answer:

For sure. I think I have a reasonable understanding.

And later:

What about suspect betting transactions and fraudulent activity, given your extensive background in online betting? How do you monitor and detect—

Answer:

I would automate all that. That's pretty easy."

64. His statement of 15 February 2018 expanded upon those matters. In relation to his interview with the steward, the Appellant conceded his answers were brief, but he says the form did not allow him space to set out the other matters that he might have. He did not choose to tell the steward that. He now says he is aware of further details that are required, and he wishes to elaborate on his knowledge of his obligations. It is necessary, having regard to the challenge, to refer to his lengthy statement. He says this:

"If granted a Bookmaker's licence with GRNSW I will use the following measures to detect suspect betting transactions or fraudulent activity:

(a) I will use the best technology available, including use of the most modern and effective security protocols. This would include technology such as POLI gateway and 3D Secure;

(b) I will employ Ms Y and her IT team to assist me in this respect, and follow her recommendations;

(c) I will immediately report any suspicious deposits to Police, and also to Stewards;

(d) I will immediately freeze any such deposits and not permit wagering with those accounts;

(e) I will not take steps to undo such measures until the funds have been satisfactorily demonstrated as bona fide. I will have regard to the standards imposed by the Court in this regard, and will be far more conservative and cautious in making inquiries and satisfying myself about the source of the funds in future;

(f) I will ensure that the minimum requirements for provision of identification, including the 100 points ID requirements, complying with AUSTRAC and Anti Money-Laundering legislation are all built into the standard terms and conditions with clients, in the way that all corporate bookmakers have done;

(g) In addition, I will comply with any other reasonable direction or recommendation from Police, Stewards, GRNSW, any racing regulator, the Bookmakers Co-op, or other relevant entity which I might perceive from time to time."

65. In his second statement, of 22 October 2018, he reiterated his intention to employ someone to assist, to use the best technologies to ensure he has effective security protocols in place; and, in any event, whether he employs such a person, he says he is capable of managing his obligations and has an understanding of the seriousness and significance of these reporting obligation matters.

66. In submissions, it was said that he had now demonstrated, by the examples that he has given, that he would employ people to ensure compliance, and would ensure compliance himself.

Additional Facts

67. There are some additional facts.

68. In relation to Pinnaclebet Pty Ltd and its financial collapse, it became insolvent. He was a director and shareholder at the time. He said it was a marketing, not a wagering, company; and, by his efforts and those of others, he raised money from various investors who accepted his word about the investment. As said, it became insolvent. Insolvency in those circumstances of course, absent any corporations law wrongful conduct, would have meant that the investors lost their money. However, the Appellant gave evidence that he used his own funds to repay them, and he did so on the basis that he had given his word. He said at the time he could not afford to do it, but he did it.

69. A further factor raised in his favour relates to his financial year's betting income, the confidential figure to which reference has been made. As a sign of his honesty, it is said that he quite properly sought a private ruling from the Australian Taxation Office and did not seek to hide his betting activities from the taxation office.

70. Also, it was pointed out that in his application he voluntarily disclosed that more than ten years ago he had an assault case against him. He gave a brief explanation in his application that he had been defending his daughter, who had been assaulted. He gave further explanations to the stewards. He subsequently, as has been set out, obtained a national police check certificate, which showed no adverse outcomes. And, of course, that is because of the spent conviction law.

71. It is submitted that that is, first, a demonstration of his preparedness to co-operate with the regulator and, secondly, as a demonstration of honesty. Of course, the question asked of him was before he had the NPC showing a clear certificate, and he was obliged to disclose it in any event. But that matter is one which is not adverse to him on an honesty, knowledge and ability test. And, in any event, the only explanation available—there has been no alternative evidence advanced—is that, in essence, he was acting in self-defence of his daughter and he became involved in a fight with somebody. That remains a self-disclosed matter in respect of which some credit can be given.

Honesty, Knowledge and Ability

72. The Tribunal turns, then, to the test of honesty, knowledge and ability.

73. In detailed written submissions—and the Tribunal is grateful for the obvious time, trouble and effort taken by the Appellant's representatives to provide such comprehensive submissions—a number of matters are pointed out on each of honesty, knowledge and ability.

Honesty

74. In respect of honesty, the first point is character references.

75. The character references themselves, in the order in which they were referred to in evidence, comprised firstly a 26 July 2018 statement by the Appellant's father. As was pointed out in respect of all of the references, it would be expected he would only put up favourable ones. That has ever been the case. In addition, the reference of the father was acknowledged, on the Appellant's behalf, to be able to be read down because of that relationship.

76. Importantly, it was emphasised that the referees are licensed persons, and in those circumstances the weight to be given to their references, consistent with this Tribunal's findings over many years, is to be greater than it would be if they came from people who were not involved in the industry. In other words, if licensed people or former licensed people are prepared to assess him as suitable to the industry, and those who have ongoing licences would have him operate with them or stand with them, indeed in some cases as competitors, then that is a most telling factor on character.

77. Returning then to Mr Robert O'Connell's reference: he describes an understanding of the nature of the case; he describes the family bookmaking history, with both his father and he being involved for a long period of time, and being successful; he describes the difficult life of a bookmaker, with greyhounds racing all over the place, to paraphrase the statement, and that it is one in which the Appellant was very much involved, having accompanied his father to these meetings all over the place. He says the Appellant obtained a thorough understanding of the mechanics of bookmaking, and an understanding of percentages and the framing of markets, as well as the risks and need for cash flow that the industry requires. He acknowledges his son's success in writing technologies for bookmakers and that he has a thorough understanding of what this entails. He believes his son will contribute to the industry and improve its popularity. For example, he says his son has expressed a desire to bring back more orthodox methods of engaging with the market.

78. The next reference is by Mr Brad Canty, who is known to have given references in other matters with which the Tribunal has dealt. He describes himself as a licensed owner and

trainer in this industry for some 23 years, and that he has a clean record. He has known the Appellant for more than 30 years, through a common interest in greyhound racing and wagering. He has knowledge of these proceedings. He says the Appellant is a person of excellent character and integrity; that he has seen the Appellant working with his father, or being with his father, and that the family was always honest in their dealings and was highly regarded. He says the industry would benefit from the Appellant receiving a bookmaker's licence because he has a very good knowledge about the industry and wagering generally, and that he would, consistent with the father's assessment, bring back a more traditional approach to bookmaking, that he would be an excellent bookmaker, and he would not hesitate to bet with him. He understands his development of wagering technologies has been beneficial to the industry. He also refers to matters related to the Sino case. He does not understand how any association with Mr Hill could be interpreted negatively; that Mr Hill is a man of excellent character, ethics and honesty, is always polite and responsible, and is well regarded in the industry. He concludes by saying that the Appellant would be an excellent person to hold the particular licence; he has incredible knowledge about the industry, is of excellent character, has a fantastic skill set in developing technologies, and the industry would benefit greatly from his licensing. That reference is dated 26 July 2018. The Tribunal interposes to note that the Appellant gave evidence that he considers Mr Hill to be the most generous and honest person that the Appellant knows.

79. The next reference is by licensed bookmaker David Dwyer, of 7 August 2018. He has known the Appellant for some 25 years. He knew him as a figure in the wagering community, and knows about his technologies. He gives his reference acknowledging his own position as President of the NSW Bookmakers Cooperative, which he has been for some years. He also is, as has been said, an operating bookmaker. He describes the Appellant as well regarded by the bookmaking industry for his involvement in developing technologies, that he is an honest, knowledgeable and experienced industry figure, with a very high level of understanding of how the industry operates, and that he would be very successful and a welcome addition to the bookmaking ranks.

80. The last reference is by Mark Stollery, of 20 October 2018. He has been a bookmaker for some 30 years, and also licensed in the other racing codes. He has known the Appellant for 20 years. He says he has a very sound knowledge of the wagering industry, he has watched him learn much about bookmaking, and is aware of his developing of numerous software systems and technologies. He describes how his licensing would assist both punters and bookmakers alike. He describes the Appellant as intelligent, honest and trustworthy, and a person in whom the wagering community can be confident; that he is a person of good character, and would enrich the betting industry.

81. Each of those matters is called in aid in support of the Appellant's honesty.

82. In addition, it is pointed out in submissions that the Appellant held licences for some 14 years and was not the subject of any significant penalties, like fines, suspensions or disqualifications; and, importantly, those licences are within the very industry in which he now seeks a licence. It was also pointed out in submissions that the Appellant described himself as a victim of the fraud in the Sino matter. Importantly, it is pointed out in relation to any adverse findings made against him, that he has learned his lesson and would be hyper vigilant in the future. Submissions were also made about the statutory declaration, and those matters have been closed by the Tribunal.

83. In oral submissions, it was emphasised that the conduct for which he is criticised was not longstanding; it was a one-off; that he had demonstrated by his previous licence history,

with nothing prior, that he is an appropriate person; that he has had a life in the greyhound industry; that there has been no criminal conduct; that no money has been lost; that there were favourable findings available from the Sino matter, such as his immediate reporting of his suspicions to the police; and that at other times he was found to have given truthful evidence. To the extent that he did things incorrectly, he has learnt his lessons. Emphasis is placed upon the fact that by licensed people in the subject industry he has a good reputation. It was repeated that he had volunteered issues about the assault case, and that he is a person prepared to repay debts even though he does not have a legal obligation to do so.

84. For the Respondent, in oral submissions it was pointed out that the Appellant still denies and disputes the findings made in Sino against him; that his failures were very serious, and they went to his state of mind; that he is a person who is loose with the truth; that he is driven by self-aggrandisement, hyperbole and exaggeration, and will adapt his evidence to suit himself. It was submitted that he still does not accept he was dishonest, he still maintains the judge got it wrong, and he still demonstrates no remorse.

85. The conclusions the Tribunal draws.

86. It is re-emphasised that this Tribunal is not retrying the decision made in Sino, either adverse or favourable. It finds that the determinations by Justice Hargrave were serious and adverse. It is difficult to find comfort in the Appellant's case on his present attitude to that decision—a decision he has not bothered to read, or re-read, and inwardly digest. He maintains the suggestion that the judge got it wrong, and that is troubling. It is almost farcical that he maintains that if he were only able to talk to the judge he could have the decision, as it were, corrected somehow.

87. The findings of implausibility, dishonesty, fraudulency, wilful and reckless behaviour, preparedness to hide his actions, his evasiveness, his adoption of evidence, require recent and very strong evidence for this Appellant to overcome such matters, it being remembered that the Sino decision was only in March 2017.

88. There are, however, facts in his favour, and it is important to again re-emphasise that this decision is made today, not, for example, as of March 2017. There is comfort in that the victims were repaid. Importantly, he has been licensed in this very industry, and at the category of licence, bookmaker, which he now seeks, and nothing prior has been found against him. His referees speak to his good standing. Whilst he left this industry and did not renew a bookmaker's licence, he did so for a plausible and accepted reason. He is able to call in aid that he has demonstrated his good character and honesty in other ways, his self-reporting of the assault, and his paying out of investors, for example. As has been said also, he has a past good history. Critically, he has given evidence that he has learnt the lessons. Whilst those lessons may be qualified in his mind, there is nothing to indicate that he should not be accepted on the fact that, having learnt those lessons, and for the reasons that he has demonstrated and set out, those matters will not recur. That is a major and favourable factor in looking to the future.

89. There is the fact that the series of wrongdoings found in Sino were limited to one set of circumstances—to some extent, still disputed—and that those adverse findings and orders related to conduct over a very short period of time. There can be some acceptance of his understanding of his obligations, despite his qualifications in relation to the Sino case. In essence, the Tribunal is satisfied that his conduct will not be repeated.

90. In relation to his giving evidence to this Tribunal, that is itself a critical factor which enables the Tribunal to assess him. The ability to assess an applicant in person is of much weight. The Tribunal is comforted that he acquitted himself without raising current issues likely to demonstrate that he is to fall into future dishonesty. His conduct in this hearing does not have about it the attributes that there were in Sino, such as self-aggrandisement, hyperbole, exaggeration, and the like; or, in the interview with the steward, where it appears that he wanted to cut the steward off and suggest that the steward was engaging in offensive conduct against him, or making suggestions against him.

91. This is a very finely balanced decision. It is open to accept that he has a genuine belief, rightly or wrongly, that he did no wrong in his conduct in the Sino case, and his denials of wrongdoing must be assessed in that light. Importantly, as was said, he is entitled to use this forum and this appeal to advance his explanations as it is a different case to Sino. He has demonstrated some good traits since he gave evidence in Sino, and those are in his favour. To repeat them: his declaration of the assault, the repaying of the Pinnaclebet Pty Ltd bet, his not hiding his income from the Australian Taxation Office, and his understanding of his lessons learnt.

92. Absent the findings in Sino, there is no factor to smear his entitlement to be considered as an honest person. A key factor on honesty is looking to the future. Prior years of honesty of longstanding pre-Sino mean the recency of Sino does not lead to a conclusion that he has to wait for years to overcome it. The Appellant, in this appeal, on his evidence, demonstrates that he has overcome the adverse matters in Sino.

93. He meets the honesty test.

Knowledge

94. The next matter is knowledge. Again, the referees and the matters summarised in the references are called in aid. Next, in relation to knowledge, his past experience in bookmaking and greyhound racing, and his 20 years in the technology of wagering in the industry are called in aid. As to his awareness of his strict obligations as a bookmaker, and willingness and ability to comply, it is submitted that he is now more acutely aware than most people in the community as to why he might be held accountable for any suspicious transactions or conduct.

95. It is submitted further that he is now cognisant of his responsibilities and the nature of the privilege and position of trust that would be conferred by licensing, and therefore he is unlikely to present any risk to the integrity of the industry. So far as AUSTRAC and reporting is concerned, he now has in place, and has demonstrated more adequately, how he will comply. So far as the reporting matters which were of concern to the steward, the Tribunal is satisfied he has the requisite knowledge.

96. The Appellant satisfies the Tribunal that he has the knowledge required of a person seeking licensing as a bookmaker in the greyhound industry.

Ability

97. The next issue is his ability.

98. Again, in submissions, the references are called in aid, particularly regarding his capacity to meet his financial obligations, and his ability demonstrated by his personal success in the

technology side of wagering and his prior success as a bookmaker. The fact that he will make a unique contribution to the integrity and popularity of the industry is relied upon. Whilst that may be driven by some suggestion of speculation, there is no reason to reject it.

99. The Appellant satisfies the Tribunal that he has the ability to exercise the functions of a licensed bookmaker in the greyhound industry.

CONCLUSION

100. An issue was raised in the proceedings as to whether or not a condition or conditions should be imposed upon his licence. None are advanced by the Respondent. None were suggested in interview or in the decision of the steward as ones which he could not demonstrate capacity to comply with in the past. He was not previously conditioned. In those circumstances, the Tribunal sees no matters upon which a condition need be further considered.

101. The onus is on the Appellant to satisfy the Tribunal that he is a fit and proper person having regard to the integrity and welfare of the industry. He does so.

102. The appeal is upheld.

103. The application of 8 February 2017 for a bookmaker's licence is granted.

Appeal Deposit

104. The only other matter is the appeal deposit.

105. There is no representative of the Respondent present. There is no issue with that; they were excused. Consistent with recent decisions of the Tribunal, the Tribunal notes in relation to the appeal deposit the following.

106. Having regard to the success of the appeal, ordinarily it would be expected that the deposit would be refunded. However, procedural fairness requires the Respondent, if it wishes, to be heard on that issue. The Tribunal allows seven days from the service of this written decision for the Respondent to lodge any submission opposing a refund of the deposit, failing which, without further order, the Tribunal will order the appeal deposit refunded.

107. Those series of orders are made without prejudging the issue of a refund of the deposit because evidence and submissions are entitled to be put before a final determination is made.