RACING APPEALS TRIBUNAL

GLENN POLLETT
Appellant

RACING NEW SOUTH WALES
Respondent

DETERMINATION

16 March 2021

Background Facts

1. The Appellant, Mr. Glenn Pollett (**Mr. Pollett**) is, together with Mr. Marc Lambourne and Mr. Gordon Sutherland, presenters of a thoroughbred racing program, "Racing Rant", which Mr. Lambourne also produces. It is distributed on YouTube to approximately 700 paying subscribers who access the program via an encrypted link.

2. Mr. Lambourne and Mr. Pollett are also both registered owners with Racing NSW and are thus bound by the Australian Rules of Racing (**AR**) which comprise part of the Rules of Racing NSW.

3. On 30 April 2020, the Stewards commenced an inquiry into a segment of Racing Rant which aired on 20 April 2020.

4. On 11 May 2020, the Stewards charged Mr. Pollett with an alleged breach of AR228(a) (**Charge**). The full text of the charge is reproduced and annexed to these reasons (**Annexure**).

5. On 11 August 2020, the Charge to which Mr. Pollett pleaded not guilty was heard by the Stewards. The Stewards found Mr. Pollett guilty of the Charge and fined him $5,000.

6. Mr. Pollett appealed both his conviction and the severity of sanction to the Racing New South Wales Appeal Panel pursuant to section 42 of the *Thoroughbred Racing Act*, 1996 (**Appeal Panel**).

7. On 6 October 2020, the Appeal Panel, by majority, dismissed the appeal against conviction, upheld the appeal against severity and ordered that, in lieu of the penalty imposed by the Stewards, Mr. Pollett be fined $2,000.

8. On 8 October 2020, Mr. Pollett lodged a notice of appeal with the Tribunal limited to conviction (**Notice of Appeal**). Neither party in these proceedings challenged the severity or adequacy, as the case may be, of the sanction.

9. An appeal to the Tribunal is by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be relied upon (*Racing Appeals Tribunal Act*, 1983 (NSW), s 16). Neither party has sought to rely upon any evidence additional to or in substitution for the evidence before the Appeal Panel.

The hearing of the Appeal

10. On 12 March 2021, the Tribunal heard the Appeal. The Appellant was represented by Mr. Andrew Capelin, solicitor, who was granted leave to appear (pursuant to clause 17(2) of the *Racing Appeals Tribunal Regulation,* 2015 [**Regulation**]) without objection. The Respondent was represented by Mr. Van Gestel, General Manager – Integrity, Chairman of Stewards who was granted leave to appear (pursuant to clause 17(2) of the Regulation) without objection. Each party also relied upon written outlines of submissions and supplemented those submissions orally.

Evidence on the Appeal

11. The evidence relied upon by each of the parties on the appeal comprised the following:

    (a) transcript of the inquiry before the Stewards on 30 April 2020 (Ex. A);

    (b) transcript of the inquiry before the Stewards on 7 May 2020 (Ex B);

    (c) documents marked as "Exhibits 1-14" in the inquiry before the Stewards on 7 May 2020, comprising emails from viewers of the Racing Rant program (Ex C);

    (d) document marked as "Exhibit 16" in the inquiry before the Stewards of 7 May 2020 comprising a video file of the "Racing Rent" segment on 20 April 2020, the subject of the inquiry before the Stewards on 7 May 2020 (Ex D);

    (e) Stewards' Report, dated 28 August 2020 (Ex E);

    (f) Stewards' Decision in respect of penalty, dated 3 September 2020 (Ex F);

    (g) transcript of hearing before the Appeal Panel on 1 October 2020 (Ex G); and

    (h) reasons for determination of the Racing New South Wales Appeal Panel, dated 6 October 2020 (Ex H).

12. Mr. Pollett additionally relied upon a document styled, "Racing Rant Security Report", dated 28 August 2020 (Ex 1).

Onus and Standard of Proof

13. The onus of proof lies at all times on Racing NSW. As the Charge involves an alleged breach of the ARs, Racing NSW must discharge its onus in accordance with the standard set

out in *Briginshaw v Briginshaw* (1938) 60 CLR 336. As Dixon J observed in *Briginshaw* (at 361-362):

> when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence...It cannot be found as a result of a mere mechanical comparison of probabilities." The standard is of 'reasonable satisfaction'…but reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer.... In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

14. The so-called *Briginshaw* principle is thus understood as requiring care in cases where serious allegations have been made or a finding is likely to produce grave consequences. Importantly, and despite some confusion on this point, *Briginshaw* does not alter the standard of proof, that is, on the balance of probabilities, as the High Court of Australia emphasised in its authoritative re-statement of the *Briginshaw* principle in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66; (1992) 110 ALR 449 at 449–50. In that case, the High Court held (at 170-171) that, *"…the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove."* Thus, in a particular factual context, the more serious the misconduct alleged, the more cogent must be the evidence required to meet the civil standard of proof and thus to discharge the onus of proof.

15. The Tribunal has held on previous occasions that in determining issues relating to the breach of the rules of racing, and in the application of the so-called *Briginshaw* principle, it must be "comfortably satisfied" that the facts support the claims or issues in question (see, for example, *Eberand v Greyhound Racing NSW* (5.9.19); *Aiken & Roche v Harness Racing NSW* (19.3.19); *Gallagher v Harness Racing NSW* (14.9.19) and *Schembri v Racing NSW* (13.12.19)). This approach is also consistent with the standard that is most commonly applied in international sports disciplinary tribunals and in the Court of Arbitration for Sport (see Sports Law, Second Edition, 2012., Beloff & Ors, Hart Publishing at p 215).

16. It is thus incumbent upon Racing NSW to discharge its onus of proof to the comfortable satisfaction standard.

AR 228(a)

17. AR 228(a) is in the following terms:

> **AR 228 Conduct detrimental to the interests of racing**
>
> A person must not engage in:
>
> (a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere.

The Charge

18. For the sake of brevity, the Charge has been reproduced in full in the Annexure.

Issues on the appeal

19. Mr. Pollett accepts that he made the comments set out at paragraph 4 of the Annexure. So much is apparent from the video file of the "Racing Rant" segment on 20 April 2020 (Ex. D) (**Conduct**). Mr. Pollett, however, disputes that in doing so he breached AR228(a).

20. It is for Racing NSW to establish that the Conduct satisfies each element of the Charge to the requisite standard.

Elements of the Charge

21. In *Waterhouse v Racing Appeals Tribunal* [2002] NSWSC 1143 (**Waterhouse**), Young CJ in Eq, when considering AR174A, which provision contained wording similar though not identical to AR228(a), endorsed the finding of the Tribunal in that case at [58] that:

> …before a charge relating to prejudice to the image of racing can be sustained, there has to be an element of public knowledge; and, secondly, that there is in fact a tendency to prejudice the sport as distinct from the individual involved; and lastly that the conduct in question can be labelled as blameworthy.

22. Following Waterhouse, the NSW Racing Appeals Panel made a similar observation in *Racing NSW v Zerafa* (6 November 2015) at [22] when considering AR175A (the predecessor to AR228(a)):

> For conduct to be prejudicial to the "image, or integrity or welfare of racing", the Panel accepts that the conduct must be publicly known. It must also be conduct which is prejudicial to racing itself, and not merely to an individual, such as the Appellant.

23. Accordingly, Racing NSW bears the onus of establishing to the requisite standard each of the following elements:

    (a) public knowledge of the Conduct;

    (b) that the Conduct had a tendency to prejudice the sport of racing rather than the individual involved; and

    (c) that the Conduct can be labelled as blameworthy.

24. What follows is a summary of the parties' submissions in relation to each element of the Charge proceeded by the Tribunal's consideration of those submissions and the evidence. The summary does not necessarily encompass every contention made by the parties. To the extent that it omits any contentions, the Tribunal notes that it has carefully considered all of the evidence and arguments advanced by the parties, even if there is no specific reference made to them.

Element 1: Was there an element of public knowledge of the conduct?

Summary of the Stewards' Submissions

25. The Stewards submitted, in summary, that:

    (a) the publication of the Racing Rant program on 20 April 2020 through a link distributed to its 700 subscribers is sufficient, without more, to satisfy the requirement of public knowledge of the Conduct;

(b) once the Racing Rant program was published on 20 April 2020, Mr. Pollett and the other publishers lost control over to whom the comments were ultimately distributed and the program may, in fact, have been viewed by persons other than paying subscribers; and

(c) the fact that Mr. McDonald, his manager, Mr. Guest and the Stewards were each provided with the program of 20 April 2020 proves that persons other than subscribers had access to it and provides further support that the Conduct had the requisite element of public knowledge.

Summary of Mr. Pollett's Submissions

26. Mr. Pollett contends that the Conduct lacks the necessary element of public knowledge and that the evidence given at the Stewards' Inquiry on 7 May 2020 supports such a finding.

27. He submitted, in summary, that the Racing Rant program:

(a) is produced for and is limited to a small group of some 660 paying subscribers;

(b) is only accessible by means of an encrypted link;

(c) whilst distributed on YouTube, access is password protected and encrypted; and

(d) is subject to copyright;

and is thus a private video recording lacking the necessary element of public knowledge.

Consideration

28. The Racing Rant program is distributed on YouTube by means of an encrypted link to between 660 and 700 paying subscribers. The first issue for the Tribunal is to determine whether publication of the program on 20 April 2020 in these circumstances comprises "an element of public knowledge" of the Conduct (emphasis added).

29. Publication for the purposes of a breach of AR228(a) does not, having regard to the pronouncement in *Waterhouse* at [58], require that the publication be to the public at large. It only requires that there be "an element" of public knowledge. That this must be so is also a reflection of the fact that conduct which could fall foul of AR228(a) is, in the majority of cases, likely to be of interest to or affect only those members of the public who have an interest in racing rather than a wider segment of the public or the public at large.

30. Further, publication, in its most basic form, comprises a bilateral act by which a person communicates information to another in a form which is comprehensible to that person. The Racing Rant program which included the Conduct was produced for and distributed to a group of between 660 and 700 paying subscribers. That is sufficient to comprise publication in its most basic form. Further, any member of the public could gain access to the program by paying the subscription fee. It is accordingly not, as Mr. Pollett contends, a "private video recording" lacking an element of public knowledge.

31. The Tribunal is therefore comfortably satisfied that the distribution of the program which included the Conduct, to a limited group of persons via an encrypted link, is sufficient to

clothe the Conduct with an element of public knowledge. Further, Mr. Pollett accepted during the course of argument, that whilst the program is only accessible by an encrypted link, a subscriber could copy that link and provide it to a non-subscriber who could then access the program. Thus, the program is potentially available to and accessible by persons other than paid subscribers. That this is so, is evidenced at least by a copy of the program of 20 April 2020 being made available to the Stewards, Mr. McDonald and Mr. Guest.

32. The fact that the Racing Rant program may be subject to copyright bears no relevance to the question as to whether the Conduct had the requisite element of public knowledge. Copyright is simply a means by which the producers of the program seek to protect what they consider to be valuable commercial interests. The fact that the program is subject to copyright does not, without more, denude the Conduct of an element of public knowledge for the purposes of the Charge. To the contrary, the fact that it is subject to copyright carries with it an available inference that the publishers of the program were alive to the possibility that the program could be distributed to members of the public other than paying subscribers. A truly "private video recording" would not require the protection that copyright affords.

Element 2: Did the Conduct have a tendency to prejudice the sport as distinct from the individual involved"?

Summary of the Stewards' Submissions

33. The Stewards submitted that the Conduct:

(a) had a tendency to prejudice the sport of horseracing rather than Mr. McDonald, as an individual;

(b) was prejudicial to the image of racing in that it would give rise to a particular suspicion in the mind of a reasonable person that Mr. McDonald, one of the leading jockeys in Sydney, having just won the 2019/20 Sydney Jockey's Premiership, was betting on thoroughbred racing in breach of the ARs and that this could affect the public's confidence in the integrity of racing; and

(c) would not be understood by a reasonable person with knowledge of thoroughbred racing as comprising satire or a joke. They point, in particular, to the following words which they contended were not accompanied by laughter nor spoken with mirth in the voice and that to the extent that there was laughter it was not linked to these comments (c.f. Ex.H [65]):

- "*if you love a bet, you don't stop betting"*

- *"But J Mac, I'm telling you, he's consistently trying and I'm telling you he's consistently having a little wager. Good on him*."

34. The Stewards also contended that emails received from 11 subscribers to the Racing Rant program (part Ex. C) which comment on the Conduct as being in the nature of satire and comedic relief should be afforded little or no weight because they are only a small sample of the 660-700 subscribers, were clearly prepared in response to a request from the producers of the program and are irrelevant in circumstances where the test as to whether conduct has a tendency to cause prejudice is objective.

Summary of Mr. Pollett's Submissions

35. Mr. Pollett submitted that:

    (a) Racing Rant is an alternative media program on Sydney racing which has a large comedic or satirical element;

    (b) the laughter, irreverent tone and attempt at humour is an indicator that what was said about *"J Mac"* placing bets was not intended to be taken seriously (cf. Ex. H [37]);

    (c) the Conduct, viewed objectively, was satirical, a joke, intended in jest and would not have been seriously understood as conveying an assertion that Mr. McDonald placed bets on horses.

36. Mr Pollett contended that emails received from 11 subscribers to the Racing Rant program (part Ex. C) which comment on the Conduct as being in the nature of satire and comedic relief, though not determinative of the issue, provides some support for the fact that the Conduct did not have a tendency to prejudice the sport of thoroughbred racing.

37. Accordingly, Mr. Pollett contended that the Conduct did not have a tendency to prejudice the sport of racing.

Consideration

38. In *Waterhouse*, the Court found that the conduct in question must have a "tendency to prejudice" the sport rather than the individual. "Prejudice" is not defined in the ARs. The Macquarie Dictionary, Second Edition, defines "prejudice" to include "*an unfavourable opinion or feeling formed beforehand or without knowledge, thought or reason"* and *"any preconceived opinion or feeling, favourable or unfavourable*."

39. Hence, to comprise a breach of AR228(a), the Conduct must have a tendency, that is, a natural or prevailing disposition, to cause an unfavourable opinion or feeling in the public or a segment of the public made aware of the Conduct. That opinion or feeling may also, though not necessarily, have been formed without knowledge, thought or reason.

40. The nearest, though not perfect, analogy as to whether conduct has a tendency to cause prejudice of the character contemplated by AR228(a) is to be found in the law of defamation. In defamation law, damage to reputation is presumed to be caused or flow from the defamatory publication (*Ratcliffe v Evans* [1892] 2 QBE 524 at 528; *Readers Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 507). It is the tendency or effect of the defamatory publication that proves that damage was caused or was likely to be caused to a plaintiff and for which a plaintiff is entitled to be compensated. Thus, in the case of AR228(a), if the conduct in question has a tendency to cause prejudice, then it is presumed that damage has either been caused or will likely to have been caused to the image of racing.

41. Having regard to the terms of AR228(a) and the manner in which it has been construed by the Court in *Waterhouse*, the Stewards are not required to prove that the Conduct has, as a matter of fact, prejudiced the sport of racing. It is sufficient for the Stewards to establish to the requisite standard that the Conduct had a tendency to cause prejudice to the sport of racing, that is, to produce an unfavourable opinion or feeling in the public or a segment of the public made aware of the Conduct.

42. The Conduct will have a tendency to prejudice the sport of racing if it gives rise to a particular suspicion in the mind of a reasonable person made aware of the Conduct that Mr. McDonald was betting on thoroughbred racing.

43. If, however, the Conduct was not to be taken seriously, that is, if it was satirical, made in jest or was a joke, then it would not have a tendency to prejudice the sport of racing.

44. The relevant principles again, derived from the law of defamation which, in the opinion of the Tribunal and for the reasons articulated earlier in these reasons, apply by analogy presently, were summarised by Levine J, in *Coleman v John Fairfax Publications Pty Ltd* [2003] NSWSC 564:

> 22. However, I have come to the view, which I will state now, that this matter complained of is incapable of defaming either plaintiff in the way pleaded… My reason for so stating is that this could not, in my view, be a clearer case where the ordinary reasonable reader would understand from reading the whole of the material that none of its contents was to be taken seriously. If a reader took the whole of this material, or any part of it, as a joke but nonetheless felt there was something 'beyond a joke', in my view, the reader would be neither ordinary nor reasonable. In the course of submissions, I was referred to standard authorities in the areas of 'jesting' and 'at one's peril', that line of authority commencing with *Donoghue v Hayes*...
>
> 23. Of course, each case is determined on its merits in accordance with principle. I have come to the view that this article itself, and the more so by reference to the surrounding material, is self-evidently absurd. The ordinary reasonable reader would understand that what was being published was to be understood only as an absurd joke…

45. The Tribunal has had regard to the text of the words the subject of the Conduct and to the video of the segment in which those words were spoken (Ex. D). The video is particularly instructive as to tone, manner of delivery and demeanour. The Tribunal has also had regard to the context in which the Conduct occurred.

46. Relevantly, in terms of context, persons familiar with the racing industry, including subscribers to the Racing Rant program, are likely to have known that a jockey wagering on a race is a serious breach of the ARs and that Mr. McDonald had in 2016 been disqualified by the Stewards for a lengthy period for placing a bet in breach of those rules. Hence, those persons would appreciate that such claims, if seriously contended, and especially given Mr. McDonald's prior breach, would not be made lightly or without just cause.

47. As the video makes plain, the program commences with a discussion by the presenters including Mr. Pollett of racing form, betting tips and a review of the previous day's racing including the horse "Kinane" which Mr. Sutherland had correctly tipped to win on a previous program and of which Mr. McDonald was jockey. There then follows a discussion concerning "J Mac", a reference to Mr. McDonald, in which the words the subject of the Charge were spoken by Mr. Pollett. The program concludes with a discussion of upcoming races.

48. The Stewards point, in particular, to the following words which they contended were not accompanied by laughter nor spoken with mirth in the voice and that to the extent that there was laughter it was not linked to these comments:

- "*if you love a bet, you don't stop betting"*
- *"But J Mac, I'm telling you, he's consistently trying and I'm telling you he's consistently having a little wager. Good on him*."

49. The Tribunal does not accept that these words and the manner of their delivery were not accompanied by laughter or spoken with mirth in the voice as submitted. It is plain from the video that they were.

50. In any event, it is somewhat artificial to dissect the program into component parts for the purposes of determining whether AR228(a) has been breached. It is necessary to view the Conduct in its totality with a view to assessing whether it objectively gives rise to a particular suspicion in the mind of a reasonable person made aware of the Conduct that Mr. McDonald was betting on thoroughbred racing. This is especially so given the terms of the Charge which allege that the words spoken by Mr. Pollett in their totality comprise the breach.

51. The Conduct taken as a whole and in the context referred to, whilst regrettable and ill-advised, do not, in the view of the Tribunal, lead the ordinary reasonable viewer to believe that it was seriously contended that Mr. McDonald was betting on races again. This is evident from not only the words spoken but, in particular, the manner and demeanour in which they were delivered by Mr. Pollett which included the occasional profanity, irreverent tone and laughter.

52. Mr. Pollett relies on a series of 11 emails from subscribers of the Racing Rant program to the Respondent, dated between 19 and 29 May 2020 (part Ex. C) which he submits whilst not determinative of the issue as to whether the ordinary reasonable viewer would understand that the words used were not to be taken seriously, nevertheless carries some weight.

53. Each of those subscribers make specific reference to the episode which aired on 20 April 2020 and was then the subject of the Stewards Inquiry. In summary, each subscriber variously refers to the comments made on the episode as being “humourous”, “banter”, as a “joke”, “not malicious”, “not fact”, as “pure theatre”, as “tongue in cheek and not to be taken seriously.”

54. As the relevant test is objective, the Tribunal has treated each of these emails and the comments expressed in them not as primary evidence of the fact in issue but as an expression of opinion or state of mind only of the authors of the respective emails. As such, the emails are of little probative value.

55. The Tribunal accordingly finds that the Conduct does not give rise to a particular suspicion in the mind of a reasonable person made aware of the Conduct that Mr. McDonald was betting on thoroughbred racing in breach of the ARs.

56. The Tribunal is therefore not comfortably satisfied that the Stewards have discharged their onus of establishing that the Conduct had a tendency to prejudice the sport of racing in breach of AR228(a).

Element 3: was the Conduct blameworthy?

57. The parties accepted that if the Conduct, properly construed, gives rise to a suspicion in the mind of a reasonable person that Mr. McDonald was betting on thoroughbred racing in breach of the ARs, it is relevantly blameworthy for the purposes of establishing the Charge. For the reasons discussed in relation to Element 2, the Tribunal is not comfortably satisfied

that the Stewards have discharged their onus of establishing that the Conduct was blameworthy.

Orders

58. The Tribunal orders as follows:

(1) The appeal by Mr. Pollett against his conviction for breach of AR228(a) is allowed.

(2) The decision of the Appeal Panel and of the Stewards in relation to the charge against Mr. Pollett for breach of AR228(a) is set aside.

(3) The charge against Mr. Pollett for breach of AR228(a) is dismissed.

(4) The Appeal Deposit is returned.

A.P. Lo Surdo SC
Acting Racing Appeals Tribunal

ANNEXURE – CHARGE ISSUED TO GLENN POLLETT

Mr Glenn Pollett you are hereby charged with a breach of AR228(a)

AR 228 Conduct detrimental to the interests of racing

A person must not engage in:

(a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;

The details of the charge being that you, Mr Glenn Pollett engaged in conduct prejudicial to the image of racing, as set out below:

1. As at 20 April 2020, were a part owner of the racehorse Mornay and had agreed to be bound by the Rules of Racing.

2. As at 20 April 2020, you were a person known to attend NSW racecourses, place bets on NSW thoroughbred racing and act as a presenter on the thoroughbred racing program Racing Rant and by that conduct, both separately and collectively, had bound yourself to comply with the Rules of Racing.

3. You were one of three presenters on the thoroughbred racing program Racing Rant, that you knew was available to the public through subscription including through the YouTube platform on 20 April 2020.

4. On 20 April 2020, you made the following comments (as underlined) on Racing Rant in respect to licensed jockey James McDonald:

GLEN POLLETT*: J Mac has got to be careful when he talks after the race. I'll tell you he's got to be a bit more careful. He talks about their chances, what he thought prior to the race and, as he's talking, you can see he's had 1,500 each way or something, the way he - it's unbelievable. He goes, "Oh I rode this during the week and it's just like I knew if I just sat there and steered it would just - it would lengthen out and have them covered" and it was just like, "What a beauty" and you just go, "Man, you have backed this" and you just go, "Oh."*

GORDON SUTHERLAND*: What about how - the raps he was giving this horse. He said what was the best feel of the carnival.*

GLEN POLLETT*: And then he wasn't giving a rap to* ***Colette*** *the week before, so maybe he was punting there too.*

GORDON SUTHERLAND*: Yeah, yeah.*

GLEN POLLETT*: I think J Mac is back on the punt.*

GORDON SUTHERLAND*: He's fucking (inaudible) something like that.*

GLEN POLLETT*: I love J Mac. He's just so fucking sick. He loves it. If you love a bet, you don't stop betting. Be fair dinkum. It's like going, "Oh I enjoyed fucking all those sheilas last month. I might give up fucking." It's not going to happen. If he hasn't backed it, I'm so proud of him. Little bastard he is, but on the flip side, the thing that I like about him is I feel like when he doesn't back them he tries just as hard, which is not like jockeys in the past. I feel like when we've had top jockeys that bet, when they haven't bet they haven't - "Oh fucking, who gives a fuck?"*

GORDON SUTHERLAND*: I think when you've been rubbed out for a couple of years—*

GLEN POLLETT*: You need to bet bigger?*

GORDON SUTHERLAND*: Yeah. Like Nash getting done in, you know, Hong Kong, I think you can pretty safely say you're consistently doing the right thing.*

GLEN POLLETT*: Consistently tries. There's no doubt. T Clark consistently tries now. I find he's always putting his horses in good spots, but J Mac he's consistently trying and I'm telling you he's consistently having a little wager. Good on him.*

MARC LAMBOURNE*: Just on J Mac there, he got fined 1,500 bucks last Monday at Warwick Farm—*

GLEN POLLETT*: Yes.*

MARC LAMBOURNE*: --on* ***Adana****, which he has ridden into 7th place in a 10 horse field, beaten 8 lengths and he's whacked it about 10 times in the last 100 metres when it's like 7 lengths away. I wonder if he had any interest in that horse. He seemed very unhappy with it and he was reminding the horse that he was very unhappy—*

GLEN POLLETT*: Well, it's funny. He did speak to the Stewards afterwards about the 1,500, could he get it out of his TAB account.*

MARC LAMBOURNE*: What? Which had been frozen because he had taken a quaddie payout.*

GLEN POLLETT*: He took an early quaddie payout, exactly. They're up to it again, the TAB. I want to talk about the TAB thing later on in part 2.*

5. Such comments as detailed in paragraph 4 being prejudicial to the image of racing in that they would give rise to a particular suspicion in the mind of a reasonable person that jockey James McDonald was betting on thoroughbred racing in breach of the Australian Rules of Racing, when you have no such evidence to support those allegations.