7 July 2022

**RULING**

**GREYHOUND RACING VICTORIA**

**and**

**CRAIG WEBB**

**Date of hearing:** 24 June 2022

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Ms Sally Flynn QC instructed by Ms Sarah Manly appeared on behalf of the Stewards.

Mr Lynton Hogan represented Mr Craig Webb.

**Charges:**

**Charge No. 1 of 22 (Allegation 1)**

Greyhounds Australasia Rule **86 (f) (i)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - a Steward*

**Charge No. 2 of 22 (Allegation 1)**

Greyhounds Australasia Rule **86 (f) (iv)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - Any other person having official duties in relation to greyhound racing;*

**Charge No. 3 of 22 (Allegation 1)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 4 of 22 (Allegation 2)**

Greyhounds Australasia Rule **86 (f) (i)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - a Steward*

**Charge No. 5 of 22 (Allegation 2)**

Greyhounds Australasia Rule **86 (f) (iv)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - any other person having official duties in relation to greyhound racing;*

**Charge No. 6 of 22 (Allegation 2)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person- Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 7 of 22 (Allegation 5)**

Greyhounds Australasia Rule **86 (f) (i)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to – a Steward*

**Charge No. 8 of 22 (Allegation 5)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 9 of 22 (Allegation 10)**

Greyhounds Australasia Rule **86 (f) (iv)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - any other person having official duties in relation to greyhound racing;*

**Charge No. 10 of 22 (Allegation 10)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 11 of 22 (Allegation 11)**

Greyhounds Australasia Rule **86 (f) (iv)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - any other person having official duties in relation to greyhound racing;*

**Charge No. 12 of 22 (Allegation 11)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 13 of 22 (Allegation 20)**

Greyhounds Australasia Rules **86 (f) (iv)** which reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - any other person having official duties in relation to greyhound racing;*

**Charge No. 14 of 22 (Allegation 20)**

The Investigative Stewards charge you with a breach of Greyhounds Australasia Rules **86 (o)** which reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 15 of 22 (Allegation 13)**

Greyhounds Australasia Rule **86 (f) (i)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to - a Steward*

**Charge No. 16 of 22 (Allegation 13)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 17 of 22 (Allegation 8)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 18 of 22 (Allegation 15)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 19 of 22 (Allegation 17)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 20 of 22 (Allegation 18)**

Greyhounds Australasia Rule **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 21 of 22 (Allegation 6)**

Greyhounds Australasia Rules **86 (o)** reads as follows:

A person (including an official) shall be guilty of an offence if the person - *Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Charge No. 22 of 22 (Allegation 16)**

Greyhounds Australasia Rules **86 (o)** reads as follows:

*A person (including an official) shall be guilty of an offence if the person - Has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Pleas:** Reserved

**RULING**

Mr Craig Webb has been charged with a total of 22 breaches of the Greyhounds Australasia Rules (“GAR”). Essentially, these breaches all relate to GAR 86(o), 86(f)(i) and 86(f)(iv). There is a certain amount of overlapping of the charges, the bulk of which are pursuant to GAR 86(o). The alleged breaches all relate to conduct towards women at greyhound tracks. There is no necessity to go into details for the purpose of this Ruling.

Essentially, this Ruling concerns the discovery or provision of documents and similar preliminary matters. I had the benefit of detailed but concise submissions by Ms Sally Flynn QC on behalf of Greyhound Racing Victoria (“GRV”) and Mr Lynton Hogan of Counsel on behalf of Mr Webb. I thank them for their very helpful assistance.

The situation could be summarised as follows. Mr Webb is seeking access to nine documents or sets of documents in the possession of GRV. These documents could be loosely described as being related to the preparation or conduct of GRV’s case. The arguments of Mr Hogan are akin to those in a discovery application or preliminary discussion in a criminal trial.

I shall deal with the nine sets of documents in sequence. In the interests of brevity, I shall not set out the competing arguments in detail. Suffice to say that they were well prepared and well presented. I shall use the lettering employed in Mr Hogan’s written submissions.

(a) Documents relating to the appointment and authority of Mr Scott Elliott, Steward.

There is no objection to the provision of these documents and no specific Ruling is required by the parties.

(b) Copies of requests for information issued by GRV employees in 2021 or 2022 to employees or industry participants seeking information concerning Mr Webb’s conduct.

and

(c) All documents or communications produced to GRV in response to requests for the information in (b).

The objection of GRV to the production of the requests, documents and communications is essentially on the basis that (b) is oppressive and that there has already been compliance with (c) or it is anticipated that there will be such disclosure.

Providing that the additional wording proposed by GRV is read into or added to (b) – namely “in relation to, or that is relevant to, any allegation or complaint that is now the subject of any charge before this Tribunal” – this request does not seem to me to be oppressive. Presumably files, be they electronic or in paper form, are kept in relation to licensed persons.

On the basis of the limited information before me, (b) does not appear to be oppressive. It follows that the same applies to (c), with which there may already have been compliance. Of course, there may be further discussions concerning the level of compliance with (b) that is possible, but at this stage I am not prepared to uphold the objection to it or to (c).

(d) All instructions provided to Hall & Wilcox solicitors, for the purpose of preparation of an investigation report.

and

(e) a copy of the investigation report, including any draft.

The objection of GRV to these is based on legal professional privilege.

The background is as follows. Following receipt of some complaints, GRV appointed solicitors, Hall & Wilcox, to conduct an investigation and to provide a report. It is clear from the affidavit of 21 June 2022 of Ms Pamela Riley, General Manager, People and Culture at GRV, that those participating in the investigation were advised that “the investigation will be carried out under client legal privilege by an external independent investigator…” – see Exhibit PR 1 of the affidavit. The document itself also asserts that the investigation will be carried out under client legal privilege – see paragraph 11.

There are no “ifs or buts” or qualifying words in the affidavit or exhibit. It is boldly and plainly asserted that the investigation will be carried out “under client legal privilege”.

In Exhibit 1 there is no reference to S. 50W of the *Racing Act 1958* (“the Act”). There is only a passing reference to it in the affidavit itself, namely that the disclosure request of Mr Webb is pursuant to it – see paragraph 3.

Despite the forceful argument of Ms Flynn, I am far from convinced that client legal privilege operates so as to preclude discovery of this document. That is so even before S. 50W(2) of the Act is considered.

GRV engaged a firm of solicitors, Hall & Wilcox, to conduct an investigation and interview witnesses, and, as I understand it, particularly alleged victims of the charges ultimately laid against Mr Webb. Why and how does that make the material obtained subject to client legal privilege as so confidently asserted in the affidavit material?

In her submissions, Ms Flynn referred to the decision of the Full Court of the Supreme Court of South Australia in *Douglas v Morgan* [2019] SASCEC 76, but argued that it could be distinguished on the facts. She submitted that the relevant report in that case related to the circumstances of the occurrence of an accident in the context of liability and not for the purpose of obtaining legal advice.

However, on the available material, it seems to me that what was being investigated by Hall & Wilcox necessitated enquires as to the factual matters, and at least to some extent, the very serious factual matters that were to form the basis of the potential, and ultimately real, charges.

I would also agree with the submission of Mr Hogan that Exhibit 1 to the affidavit, being the document forwarded by GRV to each “complainant” concerning the Hall & Wilcox inquiry, contains no reference to the provision of or being in the context of legal advice. The document specifically states:

“The role of the investigation is to make findings of fact”.

Clearly those findings of fact have, at the very minimum, the capacity to overlap with the facts that became the subject of the charges. Indeed, as argued by Mr Hogan, references to and extracts from the Hall & Wilcox report are in the Stewards’ brief.

Whilst the hearing is not a criminal proceeding, the charges are of a disciplinary nature, carrying with them potentially substantial penalties. I accept the submission of Mr Hogan in this regard. That consideration reinforces the conclusion at which I have arrived, namely that the instructions provided to Hall & Wilcox and a copy of their report should be made available to Mr Webb.

That opinion is further reinforced by reference to S. 50W of the Act. It seems to me that the provision of the transcript of the interviews is necessary for the expeditious and fair hearing of the case and, were it necessary, I would be prepared to make a direction in accordance with S. 50W(2) accordingly.

In summary, I direct that GRV produce to Mr Webb the instructions provided to Hall & Wilcox in relation to the investigation report and a copy of that report, including any draft.

I agree that such documents should be those that are in the possession, power or custody of GRV.

(f) A list of people who have made statements and the like but whom GRV does not intend to call and a summary of their statements.

There is not a great deal of contention in relation to this request. An unsigned statement of a relevant witness will be disclosed. I accept that a letter of complaint was made by another person on the basis of anonymity and that GRV will place no reliance upon it. In those circumstances, I am not prepared to order its production. I accept that there are no other relevant statements or the like.

(g) Transcripts and the letter of interviews with persons referred to in (f).

I accept that no such documents exist.

(h) Copies of relevant documents in addition to those falling in the above categories.

Save that any other such documents will be provided by GRV, I accept that all relevant documents, save for those discussed above, are in the hand-up brief. Mr Hogan had nothing further to say in this regard.

(i) Copies of all available footage and audio of the incidents and a table of any edits or exclusions.

Essentially, GRV asserts that all relevant CCTV footage has been provided and that it has no knowledge of any edits or exclusions. Reference is made to the statement of then employee Mr Scott Elliott. He is no longer an employee of GRV. As I understand it, efforts will be made by GRV to contact him.

It seems to me that the appropriate course is to make no ruling in relation to this item pending further enquiries being made by GRV in relation to Mr Elliott.

The request on behalf of Mr Webb seems, prima facie, to be a reasonable one, but I will not make any final ruling at this stage. Hopefully the parties will be able to come to a concluded position. Otherwise, the present application can always be brought on again.

Finally, the estimated duration of the hearing of the matter is five days. A range of possible dates later in the year has been suggested following a discussion of the availability of Counsel. It would appear that the ultimate hearing will have to be after mid-October.

In the meantime, the parties can always bring the matter back on by way of a further directions hearing.

Mark Howard
Registrar, Victorian Racing Tribunal