

RACING VICTORIA LIMITED
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RACING APPEALS AND
DISCIPLINARY BOARD



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HEARING RESULT

Distribution: Chief Executive
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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 24 March 2010

SUBJECT: HEARING RESULT – NEVILLE CLEMENTS

Panel Mr Brian Forrest (Deputy Chair), Mr Stephen Curtain, Mr Jeremy Rosenthal

Appearances Dr Cliff Pannam QC appeared on behalf of the RVL Stewards.
Mr Tim McHenry appeared on behalf of Neville Clements.

Charge Resumed hearing of the Board regarding a breach of AR 175(p) –
[fail to comply with a direction of the Stewards].

The particulars of the charge being that Mr Clements failed to comply with a direction of the RVL Stewards made on 12 February 2010. That direction being to produce his telephone records to the Stewards for inspection.

The ruling of the Board on Friday, 5 March 2010 found that Mr Clements is subject to the Rules of Racing. Given the decision of the Board on the question of whether Mr Clements is subject to the Rules, the Board extended the time for Mr Clements' compliance with the direction of the Stewards for a further 7 days, commencing from Friday, 5 March 2010.

Plea Not Guilty

Decision Mr Clements warned off indefinitely.

The warning off to commence 7 days following the day on which the Board submits its written Reasons for Decision in this matter, expected to be within the next 7 days.

*Appeal to VCAT against decision and severity of penalty imposed: allowed.
The RAD Board's finding that Mr Clements was guilty of a breach of AR 175(p) and the penalty imposed set aside.*

Georgie Curtis
Registrar - Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

***Reasons for Decision
in the matter of Mr Neville Clements
as heard on Wednesday, 24 March 2010***

Mr B Forrest	Deputy Chair
Mr S Curtain	Member
Mr J Rosenthal	Member

Mr Neville Clements has pleaded not guilty to a charge of being in breach of AR 175(p).

AR 175(p) reads:

AR 175 - "The Committee of any Club or the Stewards may penalise:"

(p) - "Any person who fails or refuses to comply with any order, direction or requirement of the Stewards or any official."

The breach complained of was a failure to comply with a direction of Racing Victoria Limited (RVL) Stewards made pursuant to AR 8(b) on 12 February 2010 to produce his telephone records for the period 1 September 2009 to 31 January 2010 for inspection. The direction was made in relation to an enquiry by Stewards into Mr Clements betting activities.

AR 8(b) reads:

AR 8 - "To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Racing Authorities, with the following powers:"

(b) - "To require and obtain production and take possession of any mobile phones, computers, electronic devices, books, documents and records, including any telephone or financial records relating to any meeting or enquiry."

At the hearing on 5 March 2010 the Board made a ruling that Mr Clements was subject to the Rules of Racing of RVL. At the same time the Board extended the time for compliance with the direction from 16 February 2010, the date specified in the direction, until 12 March 2010.

Mr Clements had not complied with the direction when the matter came on for further hearing on 24 March 2010.

At the resumed hearing Mr McHenry for Mr Clements submitted that the request for telephone records was too broad, lacking in particulars, and an exercise of power beyond the scope of AR 8(b) and therefore invalid.

The Board does not accept this submission. On any reading of the material before the Board, including transcripts of interviews by Stewards with Mr Clements the subject matter of the enquiry was made known to Mr Clements and his legal advisor.

Telephone conversations between Mr Clements and other persons which were or may have been material to the enquiry were sufficient to establish a nexus between the telephone records and the enquiry. See also the discussion in the Reasons for Decision delivered 16 March 2010 in the Matter of Danny Nikolic.

The Board is satisfied that the direction to produce telephone records was related to an enquiry as the requisite link between the request for the telephone records and the enquiry has been established. The Board is also satisfied that the direction was not an improper use of power and was lawfully made. The charge of failing to comply with the direction is proven.

On the question of penalty Mr McHenry submitted that the power of the RAD Board was limited to a fine or a reprimand, it was not open to the Board to 'warn off', only RVL had that power, he said.

In response Dr Pannam QC for the Stewards said that to limit the powers, as submitted on behalf of Mr Clements, was a misinterpretation of the Rules.

The Board turns to a consideration of the relevant provisions in the Rules.

This matter came before the RAD Board for hearing and determination upon a referral by RVL pursuant to LR 6A(2)(e).

The powers of a 'Principal Racing Authority', in Victoria, RVL, include the power to penalise any person contravening the Rules or disobeying any proper direction of any official: AR 7(iii)(d)(i). "Official" is defined in the Rules to include a Steward.

Under AR 8(e) the Stewards have the power to penalise any person committing a breach of the Rules.

Under LR 6E(1) the RAD Board may:

"(b) penalise any person, and for that purpose a reference in the Rules to any penalty by the Directors, the Stewards or Committee of a Racing Club includes a penalty by the RAD Board"

AR 196 provides

“(1) Subject to subrule (2) of this Rule [not relevant for present purposes] any person or body authorised by the Rules to penalise any person may, unless the contrary is provided, do so by disqualification, suspension, reprimand, or fine not exceeding \$75,000. Provided that a disqualification or suspension may be supplemented by a fine.”

LR 71 provides:

“The power to disqualify any person includes the power to warn off such person.”

AR 183 provides:

“A person warned off by a Principal Racing Authority shall be subject to the same disabilities as a person disqualified.”

AR 182 details the disabilities of a disqualified person and AR 182A precludes a bookmaker from betting with a disqualified person.

The Board does not accept that on a proper reading of the Rules, the power of the Board under the penalty provisions is limited to the imposition of a fine or a reprimand.

Further, contrary to Mr McHenry’s submission, the Board does not accept that the *Charter of Human Rights and Responsibilities Act 2006* applies for present purposes.

Finally, Mr McHenry relied on the doctrine of estoppel. This was not relevant as apart from anything else, there was no evidence of any representations made by Stewards on which Mr Clements relied and acted to his detriment.

In deciding to disobey the direction Mr Clements is not simply failing to cooperate but has adopted a course of action in deliberate defiance of the Rules. The Board regards this conduct as a serious offence under the Rules and one likely to at least frustrate the progress of the enquiry. In so doing it is to be denounced.

It is acknowledged that in the initial stages of the enquiry Mr Clements did provide some information to Stewards, see Tab 5, letter from Mr McHenry to Minter Ellison dated 18 February 2010.

However, in so far as the failure to comply with the direction may be said to be a mitigating factor on the question of penalty, in that it was based primarily on legal advice given to Mr Clements as an unlicensed person, that factor has now evaporated.

After the Board held that Mr Clements was subject to the Rules of Racing and the extended period for compliance had expired, Mr Clements continuing refusal to comply occurred in circumstances where Mr Clements well understood the consequences of his action.

Mr Clements personal circumstances as submitted by Mr McHenry have been considered. Any hardship as a result of the penalty the Board has decided to impose on Mr Clements is counterbalanced by the fact, as stated above, that the position he now finds himself in is one of his own making.

Having regard to all the circumstances, the decision of the Board is to 'warn off' Mr Clements indefinitely, to take effect from the 6th day of April 2010, that is seven days from the date of delivery of these Reasons for Decision.

I certify that this and the preceding 3 pages are a true copy of the Reasons for Decision.

A handwritten signature in black ink, appearing to read 'G. Curtis', with a long horizontal line underneath it.

*Georgie Curtis – RAD Board Registrar
29 March 2010*