

## DECISION

*Racing Integrity Act 2016, sections 252AH, 252BM*

<b>Review Application number</b>	RAP-82	
<b>Name</b>	Michael Geaney	
<b>Panel</b>	Mr. K J O'Brien AM (Chairperson) Ms. J Maiden (Panel Member) Mr. D Guppy (Panel Member)	
<b>Code</b>	Thoroughbreds	
<b>Rule</b>	Australian Rules of Racing 228(a) <i>A person must not engage in conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere</i>	
<b>Penalty Notice number</b>	PN-009578	
<b>Appearances &amp; Representation</b>	Applicant	Gabe Hutchinson Clutch Legal
	Respondent	Queensland Racing Integrity Commission Wayne Kelly
<b>Hearing Date</b>	1 March 2024	
<b>Decision Date</b>	1 March 2024	
<b>Decision</b> <i>(delivered ex tempore)</i>	Pursuant to 252AH (1)(c) the Racing decision is set aside and a decision of not guilty substituted	
<b>Case References</b>	<i>Briginshaw v Briginshaw &amp; Anor</i> 1938 60 CLR 336 <i>Vale v Queensland Racing Integrity Commission</i> [2021] QCAT 438 <i>Bode v Queensland, All Codes Racing Integrity Board</i> [2016] QCAT 529 <i>Waterhouse v Racing Appeals Tribunal</i> [2002] NSWSC 1143 <i>Loy v Racing NSW Racing Appeals Tribunal NSW</i> (21 March 2022)	

## Reasons for Decision

- [1] On 20 January 2024, following the running of race eight at the Cluden Park Racecourse, a physical altercation took place in the Townsville Turf Club grandstand. The present Applicant, who is a licenced trainer of Thoroughbreds, had some involvement in that altercation.
- [2] On 15 February 2024, Stewards conducted an Inquiry into the incident. As a result of that Inquiry, the Applicant was charged with an offence against Australian Rule of Racing 228(a). AR228(a) prohibits a person engaging in conduct prejudicial to the image, interest, integrity, or welfare of racing whether on a racecourse or elsewhere.
- [3] The Applicant had pleaded not guilty to the charge but was found guilty by the Stewards and by way of penalty, received a fine of \$1,000. The operation of that penalty was suspended for a period of 2 years pursuant to AR283(5).
- [4] Pursuant to section 252AB of the *Racing Integrity Act* 2016 the Applicant now applies to this Panel seeking a review of those findings as they relate both to the determination of guilt and to the penalty imposed.
- [5] The particulars of the charge levelled against the Applicant were in the following terms:  
Immediately following the running of Race 8 at Townsville on 20 January 2024, you did engage in a physical altercation in the Townsville Turf Club Grandstand with a stable hand and physically did strike him on one occasion. Stewards are of the opinion that such conduct was prejudicial to the image and interests of racing.
- [6] The Stewards summary of reasons are set out in the Penalty Information Notice as follows:
1. CCTV footage indicated that Mr Geaney had initially tried to break up the disturbance.
  2. Evidence that the Stablehand had provoked Mr Geaney.
  3. Witness statements outlining the lead up to the incident.
  4. The public area such incident occurred.
  5. The negative impact such incidents have on the image of racing.
  6. The need for a penalty to serve as an appropriate deterrent to others in matters of misconduct.
  7. Action already taken by the Townsville Turf Club against all participants in relation to the matter.
- [7] In his Application for this review, the Applicant contends that he did not breach for the rule of racing and that the penalty imposed is, in any event excessive.
- [8] These matters are expanded upon in an Annexure (Attachment A) to his Application, but essentially, he argues that he had been acting in self-defence or in some other lawful manner or in response to provocation such that his conduct should not be seen as a breach of Rule 228. Even if it could be so regarded, those factors of mitigation warranted no more by way of penalty than a reprimand.
- [9] At the Stewards Inquiry on the afternoon of the 15th February 2024, although a number of statements were tended by the Applicant, the only witness who was called to give evidence was the Applicant himself.
- [10] From the outset, he raised issues of self-defence and of provocation. He agreed that he had thrown a single punch but had done so only in response to the threatening behaviour of the recipient of that

punch, stablehand Leyton Dickson. The Applicant believed that a further assault by Dickson was imminent.

[11] The Applicant's evidence before the Stewards Inquiry included the following:

*"...when the horses were going near the barriers, there was glass being broken by Mr. Dickson and his- I thought it was three, but I've been led to believe that there was four of them up there. The race has run. One of my horses, Disoney, has run third, and we were obviously very happy for that. Pretty much as they went over the line, there was another broken glass. I was talking to Brett Locke. He's one of my owners, and he was sitting beside me. These blokes, they were finishing their beer, and then a little party thick, I guess you could say, was to just drop the glass and smash it. So I sat in the grandstand next to Brett Locke. Brett Locke had one of his mates there with a three-year-old son that was sitting on the of the aisleway corresponding to where the glass was getting broken. There was a three-year-old kid barefoot right there. After that was broken, Mr Brandon Kliese mentioned to them about breaking glasses, and basically pull their heads in, where Mr Dickson took offence to that, and they started a verbal. As I was in the row between Mr Dixon and Mr Kliese, I stood up and said, you are [unclear] go your different ways, because Mr Dixon was walking towards, say, the stewards' room exit. Mr. Kliese was walking down the stairs to exit via the front gate, so to speak, of the main member's grandstand. Because I stood in between them, Mr Dixon has then tried to punch me. He hit me here where he just tried to grab my shirt, and then he's come up and grabbed me by the throat."*<sup>1</sup>

[12] The Applicant continued:

*"He went back to his verbal with Mr Kliese, who was already making his exit towards the stairwell leading into the grandstand. He pursued after Mr Kliese, where they had another verbal. Mr Kliese's then gone to walk down the stairs. Mr Dixon's grabbed him, and basically pulled him back on the shirt. Obviously by grabbing him and pulling him up in his shirt, Mr Kliese's trying to throw punches, and they got into a bit of a physical between the two of them. It was at that point Mr Dixon then looked up at me and said, do you want to go, as I was obviously trying to get down the stairs to get to Disoney, who had run third in that race 8 that day."*<sup>2</sup>

.....

*"I was under the impression he was on drugs. After he grabbed me by the throat, I could see him very closely. He was heavily intoxicated. I basically summed things up in my head pretty quickly that he wasn't going to be able to [contain/restrain] himself. I did punch him, and then escorted Mr Kliese down the stairs and away."*<sup>3</sup>

[13] The Applicant was asked if he had been retaliating for the punch he had received a short time previously from Dickson. He said;

*"No. It was just a reaction due to – he'd already got me once in the grandstand, like I said, and grabbed me by the throat. He's having a physical altercation with another patron. I didn't believe Mr – I believe he was going to physically assault me if I didn't do what I did and get out of there. When he was having the altercation with Mr Dixon, I was yelling at the other parties involved with his mates to grab him and take him away. They basically urged him on to continue the fight with Mr Kliese. It wasn't*

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<sup>1</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 89-112

<sup>2</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 117-132

<sup>3</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 128-132

*until, like I said, he looked up to me and said, do you want to go, that I summed up the situation. I didn't believe – I believed he was just going to hit me.”<sup>4</sup>*

[14] He was asked if he believed that Dickson and his group were affected by drugs and the Applicant replied:

*“A hundred per cent, yeah. Basically, when he's grabbing me by the throat, I could look him pretty much in the eye. I'm quite tall. He's rather small. But being in the row of seats above me, I could see those pupils were dilated. I believe he couldn't make a conscious decision.”<sup>5</sup>*

[15] Further on in his evidence the Applicant was asked by the Senior Steward, if he'd gone to break up the incident between Mr Kliese and Mr Dickson, the Applicant said:

*“Yeah. Then when they're out there, I'm breaking them up. So now he's engaging in another physical altercation. That's when he looks over and says to me, do you want to go? So, when he's gone with them, and because I was in there breaking them up, that's when he said to me, do you want to go?”<sup>6</sup>*

....

*“That's where I felt threatened that he was – I thought he'd just grab me by the shirt, which I've always said. But obviously he's pushed me. I'd say he's gone to strike me, but now he's obviously grabbed me by the throat. So, he has assaulted me prior. I didn't do anything.”<sup>7</sup>*

.....

*“Then the second time when he said do you want a go, I've got four boys, and this bloke who can't make a conscious decision, who I believe was just going to keep punching on with whoever he could at that stage [unclear].”<sup>8</sup>*

[16] When asked whether he should have “walked away”, the Applicant was insistent that he was walking from the Grandstand to the weigh-in area at the relevant time. He did not approach the Kliese-Dickson with an intention of becoming involved. Throughout his evidence, the Applicant repeated his claim that he had been protecting himself in throwing the single punch that he threw.

[17] The Applicant's evidence was supported by his written statement which included the following:

*“After the second glass being shattered and everyone about to leave the grandstand Brandon Kliese who was sitting in the rowe (sic) of seats in front of me with his family said something to the 3 men about the glass. One of the men who I now (sic) I have been told his name was Leyton Dickson started to have a verbal argument with Mr Kliese. After a short time, Mr Dickson started to approach Mr Kliese while still verbally insulting him. I was in the row of seats in between the two. I walked into the middle of both parties and said, 'Righto boys, you have had your say now, let's leave it alone. Brandon you go down the stairs, and I said to Mr Dickson to walk the other way.' It was at this stage Mr Dickson grabbed me by my shirt and then grabbed me by my throat. At this point I was facing Mr Dickson and I noticed that his pupils were dilated, and it was at this stage I realised Mr Dickson may have been under the influence of drugs. Mr Dickson then let go of myself to proceed with the argument with Mr Kliese. Mr Kliese was trying to walk away from the situation and made his way to the stairs to exit the grandstand. I was following Mr Kliese as I had a horse run 3rd in the last race and I was making my*

<sup>4</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 136-145

<sup>5</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 152-156

<sup>6</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 276 - 280

<sup>7</sup> Transcript of Stewards Inquiry, 15 February 2024, lines 282-285

<sup>8</sup> Transcript of Stewards Inquiry, 15 February 2024 lines 286-289

*way to that horse, weighing in. Mr Dickson then chased Mr Kliese to proceed once again with the argument. I looked at the other two men who were with Mr Dickson asking them to take care of their mate and remove him. Mr Dickson then grabbed the back of Mr Kliese shirt and pulling (sic) him back to now engage in a physical altercation. Mr Kliese pushed Mr Dickson away then Mr Dickson started to through (sic) multiple punches to Mr Kliese who was doing his best to avoid the punches. Mr Dickson then looked at me and said to me, "Do you want a go?" being in a position where I was threatened and knowing Mr Dickson had been drinking all afternoon, and in my opinion, I believe he was under the influence of drugs. I feared for my life as I was unsure if Mr Dickson was able to control himself. I then threw a punch that hit Mr Dickson and sat him back into a seat. I then got Mr Kliese down the stairs and away from the situation. I then proceeded to my horses in the mounting yard."<sup>9</sup>*

- [18] Statements were produced before the Stewards Inquiry from a number of bystanders, Miss Belinda Kliese, Mr Darby Amos, Mr Brett Locke and Mr Troy Clive.
- [19] These statements in general are supportive of the Applicant's account and speak of Dickson's generally threatening behaviour. They clearly portray Dickson as the true aggressor, and some are critical of the absence of any involvement of security staff to restrain or remove Dickson in a timely way.
- [20] At the Inquiry, the Stewards referred to a report from "security", which indicated that the Dickson Group was heavily intoxicated and that their misconduct had continued after the incident.
- [21] This Panel has before it all of that material, including, the CCTV footage, which was before the Stewards hearing,
- [22] We must form our own view of the incident and make our own determination of whether the Applicants guilt of the offence charged is made out on the material.
- [23] The responsibility of proof it is accepted lies with the Respondent as the prosecuting authority, and the standard of proof is according to the balance of probabilities as explained by the High Court in *Briginshaw v Briginshaw*<sup>10</sup>.

### **Applicant's Case**

- [24] It is contended for the Applicant that to establish a charge under AR228(a), the Applicant must be shown to have engaged in conduct which can be properly described as blameworthy. It is argued that the Applicant had available to him defences of self-defence, provocation, prevention of repetition of insult and aiding in self-defence under the provisions of the Queensland Criminal Code.
- [25] His conduct in the circumstances was justifiable or excused by any or all of those provisions and was not such as to attract the description of blameworthy.

### **Respondents Case**

- [26] The Respondent argues that the Applicant was not acting in self-defence, nor was he entitled to any of the other legal defences such as would excuse his conduct.
- [27] His conduct, it is argued, was blameworthy in that he involved himself in a dispute where he had no authority or valid reason to intervene.

### **Discussion**

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<sup>9</sup>Applicant Statement

<sup>10</sup>*Briginshaw v Briginshaw & Anor* 1938 60 CLR 336

- [28] The Applicant has clearly raised issues at least of provocation and of self-defence.
- [29] It is accepted that the provisions of the Queensland Criminal Code as they relate to such matters, can have application to misconduct proceedings under the rules of Racing.<sup>11</sup>
- [30] Under the Law of Queensland, an assault is unlawful unless it is in some way authorised, justified or excused by law. Provocation or self-defence provide examples of situations in which an assault such as the application of force to another without another's consent, may be justified or excused and therefore not be categorised as unlawful.
- [31] The term provocation is defined as any wrongful act or insult of such a nature as to be likely when done to an ordinary person, to deprive the person of the power of self-control and to induce the person to assault the person by whom the act or insult is done or offered. When such an act or insult is done or offered by one person to another, the former is said to give the latter provocation for the assault.
- [32] Leaving to one side for the moment considerations of proof, it is difficult to see how provocation could have afforded the Applicant a defence on the material that is available in the present case. Although it may be relevant to mitigation of penalty, as indeed the Stewards seemed to have recognised, there is no relevant wrongful act on the part of Dickson such as to invoke the application of the provision. Moreover, there is no suggestion that the Applicant was in some way deprived by any such act of the power of self-control upon which he suddenly acted. Rather, his evidence is of a deliberate response to Dickson's aggression.
- [33] The issue of self-defence, however, involves different considerations. Relevantly for present purposes, the law provides that when a person is unlawfully assaulted and has not provoked that assault, it is lawful for that person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault provide that the force used is not intended or likely to cause death or grievous bodily harm.
- [34] A related provision in Section 273 of the Criminal Code, 'Aiding in Self-defence' provides:
- "In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person."*<sup>12</sup>
- [35] It is not the responsibility of the Applicant to prove his entitlement to the benefit of either of these provisions. It is for the Respondent to prove that the provision does not apply.
- [36] The self-defence provision must be read in conjunction with another provision of the Criminal Law which provides that a person who does an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for that act to any greater extent than if the real state of things had been such as he or she believed to exist.<sup>13</sup>
- [37] A mere mistaken belief is not enough. It must be both honest, that is, genuinely held by the Applicant, and reasonable, that is, held by him in the particular circumstances on reasonable grounds. Again,

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<sup>11</sup> *Vale v Queensland Racing Integrity Commission* [2021] QCAT 438,  
*Bode v Queensland, All Codes Racing Integrity Board* [2016] QCAT 529

<sup>12</sup> *Queensland Criminal Code* 1899, s273-Aiding in Self-defence

<sup>13</sup> *Queensland Criminal Code* 1899, s24-Mistake of Fact

there is no burden on the Applicant to prove that he acted under such a mistake of fact. It is for the prosecuting authority the Respondent to establish that he did not.

- [38] The effect of these provisions, so far as self-defence is concerned, is that if the Applicant was assaulted by Dickson, or if he honestly and reasonably, though mistakenly, believe that he was about to be assaulted by Dickson, and if he had done nothing to provoke such an assault by Dickson, then he was entitled to use such force as was reasonably necessary in the circumstances he believed to exist to make effectual defence against that assault.
- [39] Although I have stated that proposition in the affirmative, there is no obligation of proof imposed on the Applicant to establish those matters. The responsibility to disprove the Applicants entitlement to the benefit of the self-defence provisions remains with the Respondent.
- [40] There is no suggestion here that the Applicant had in any way provoked an assault from Dickson, nor can there be any suggestion that the force he used, a single blow of only moderate force, was excessive in the circumstances or that it was such as was intended or likely to cause death or grievous bodily harm.
- [41] In circumstances where Dickson had so recently physically assaulted the Applicant by punching him and taken hold of his throat and was now involved in an assault on Mr Kliese as he turned to ask the Applicant whether "he wanted a go", it is arguable that Dickson was committing a further assault within the extended meaning of that term through a threatened application of force to the Applicant.<sup>14</sup>
- [42] In any event, however, even if Dickson's conduct did not in fact amount to an assault as defined, the Applicant maintained throughout that he believed that he was about to be assaulted by Dixon, whose aggressive conduct and demeanour were obvious to him.
- [43] Given the whole of the surrounding circumstances, there is no reason to doubt the honesty and the reasonableness of that belief, even if it was in fact mistaken.
- [44] The Law does not punish a person for reasonably defending himself or herself.
- [45] The law also requires that a person defending him or herself cannot be expected to weigh precisely the degree of defensive action, which may be necessary. These events occurred over a very short period of time. Instinctive reactions and quick judgments may be essential, and the actions of the Applicant should not be judged too readily with the wisdom of hindsight or as if he had the benefit of safety and leisurely consideration.
- [46] In the judgement of this Panel the Applicant's entitlement to the benefit afforded by the law of self-defence has not been disproved. Alternatively, the argument is compelling based on the CCTV footage of the incident between Kliese and Dickson that the Applicant is entitled to the benefit of Section 273 of the Criminal Code, a provision which makes lawful the use of appropriate force when aiding in self-defence.
- [47] There is no doubt that AR228(a) has an important role to play in advancing the integrity of persons involved in racing and public confidence in the race racing industry generally.
- [48] Physical altercations engaged in on a racecourse would ordinarily be seen as prejudicial to the image and to the integrity of the industry. Each case, however, must be judged according to its own circumstances.

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<sup>14</sup> *Queensland Criminal Code* 1899, s245-Definition of Assault

[49] In the *Waterhouse v Racing Appeals Tribunal*,<sup>15</sup> the New South Wales Supreme Court, Equity Division considered AR 174A, a Rule equivalent to AR 228(a). Young CJ there endorsed the findings of the Tribunal of first instance which stated:

*"...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 individuals involved; and lastly that the conduct in question can be labelled as blameworthy".*

[50] AR228(a) was summarised in the NSW Racing Appeals Tribunal decision of *Loy v Racing NSW*<sup>16</sup> as involving 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.

[51] It is this requirement of blameworthiness that lies at the heart of the present matter.

[52] In *Bode v Queensland All Codes Racing Industry Board*<sup>17</sup>, the Queensland Civil and Administrative Tribunal rejected the argument that a position of strict liability should be adopted for misconduct offences under the Rules of Racing.

[53] If such an approach were to apply, it would have the effect of offences under the Rules of Racing, abrogating the statutory right of an individual to defend himself or herself against unprovoked conduct.

[54] The Tribunal said:

*"The conduct of lawful self-defence cannot in itself be a wrongdoing. If it is not a wrongdoing, then it cannot be misconduct, improper misconduct or unseemly behaviour."*<sup>18</sup>

### **Decision**

[55] The stewards in this case would seem to have erroneously taken the view that AR228(a) is a provision of strict liability. At the very least, they have not properly considered the critical issue of blameworthiness in applying the self-defence provisions and in assessing the Applicants conduct. This Panel must of course form its own view of the matter. It follows from the reasoning above that the conclusion of the Panel is that the Application should be allowed.

[56] Pursuant section 252AH(1)(c) of the *Racing Integrity Act* 2016. The decision of this Panel is to set aside the racing decision and to substitute a determination of not guilty.

[racingappealspanel.qld.gov.au](http://racingappealspanel.qld.gov.au)

<sup>15</sup> *Waterhouse v Racing Appeals Tribunal* [2002] NSWSC 1143

<sup>16</sup> *Loy v Racing NSW Racing Appeals Tribunal* NSW (21 March 2022)

<sup>17</sup> *Bode v Queensland All Code Racing Industry Board* [2016] QCAT.

<sup>18</sup> *Bode v Queensland All Code Racing Industry Board* [2016] QCAT, Paragraph 69