SUPREME COURT OF QUEENSLAND

CITATION:	*Endresz v Queensland Racing Integrity Commission & Ors* [2022] QSC 262
PARTIES:	**ALLAN PAUL ENDRESZ** (first applicant) **EZYBONDS (PACIFIC)** (second applicant) **JEFFREY SIMPSON** (third applicant) **ROBYN SIMPSON** (fourth applicant) **v** **QUEENSLAND RACING INTEGRITY COMMISSION** (first respondent) **RACING QUEENSLAND BOARD** (second respondent)
FILE NO/S:	BS 6122 of 2021
DIVISION:	Trial Division
PROCEEDING:	Amended Originating Application filed on 8 July 2021
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	23 December 2022
DELIVERED AT:	Brisbane
HEARING DATE:	26 August 2021; applicants' further submissions dated 13 September 2021
JUDGE:	Burns J
ORDER:	**THE ORDER OF THE COURT IS THAT:** **1. It is declared that the disqualification by the first respondent on 23 July 2020 of the horse, Alligator Blood, from his first placing in Race 6 of the Gold Coast Magic Millions meeting held on 11 January 2020 is void and of no effect;** **2. The respondents pay the applicants' costs of the application to be assessed on the standard basis.**
CATCHWORDS:	ASSOCIATIONS AND CLUBS – PROCEDURE IN ACTIONS BY AND AGAINST – RACING CLUBS AND ASSOCIATIONS – DISQUALIFICATIONS – OF HORSE – where the applicants were a registered syndicate of owners of a racehorse – where the racehorse placed first at a race

conducted by the respondents – where the horse was subsequently disqualified after it had been found at a hearing of stewards that he had been brought onto the racecourse with a prohibited substance in his system – where the applicants were not given notice of the hearing of the stewards or an opportunity to be heard at the hearing – whether the owners should have been afforded natural justice by the provision of a notice of hearing and an opportunity to be heard – whether the disqualification of the horse was void and of no effect because the owners were not provided with notice of the hearing of stewards or an opportunity to be heard at that hearing

Legislative Standards Act 1992 (Qld), s 4(3);
Racing Act 2002 (Qld), ss 7, 101, 111, 112, 113, 113A;
Racing Integrity Act 2016 (Qld), ss 10, 57, 58, 240, 241, 243, 246.

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564, cited
Beale v South Australian Trotting League (Incorporated) [1963] SASR 209, cited
Byrne v Australian Airlines Ltd (1995) 185 CLR 410, cited
Calvin v Carr [1979] 1 NSWLR 1, cited
Commissioner of Taxation v Racing Queensland Board (2019) 374 ALR 241, cited
Commonwealth Bank of Australia v Barker (2014) 253 CLR 169, cited
Criminal Justice Commission v Queensland Police Credit Union Ltd [2000] 1 Qd R 626, cited
Currie v Queensland Racing Integrity Commission (Supreme Court of Queensland, 22 February 2019, unreported), cited
Dickason v Edwards (1910) 10 CLR 243, cited
Hogno & Lee v Racing Queensland Ltd & Ors [2012] QSC 303, cited
McHugh v Australian Jockey Club Ltd & Ors (No 13) (2012) 299 ALR 363, cited
R v Brewer; Ex parte Renzella [1973] VR 375, cited
Trivett v Nivison and Others [1976] 1 NSWLR 312, cited
Wanless v Queensland Trotting Board (Supreme Court of Queensland, 22 May 1981, unreported), cited

COUNSEL: P Dunning KC and K A McGree for the applicants
S McLeod KC for the first respondent
R J Anderson KC for the second respondent

SOLICITORS: Gadens Lawyers for the applicants
Queensland Racing Integrity Commission (Legal) for the first respondent
Clayton Utz for the second respondent

[1] There was a thoroughbred race meeting at the Gold Coast on 11 January 2020. A

gelding by the name of Alligator Blood was entered in Race 6. He finished in first place and was declared the winner. The prize money payable to a syndicate comprised of his owners was considerable – almost $1 million – although nothing was paid pending analysis of a urine sample collected from the horse following the race.

[2] That seems to have taken some time but within a couple of months it was publicly announced that a prohibited substance had been detected in the post-race sample. In due course, the trainer was charged with a contravention of the governing rules for bringing a horse with a prohibited substance to a racecourse for the purpose of participating in a race.

[3] A stewards' inquiry into that charge was "finalised" after a hearing on 23 July 2020. The trainer was found guilty, fined $20,000 and, by force of the governing rules, the horse was disqualified from the race. In the result, the placings for the race were "amended" and the prize money that would otherwise have been payable to the owners was lost.

[4] The owners were not given any formal notice of the stewards' inquiry or the hearing of the charge against the trainer, let alone afforded an opportunity to be heard by the stewards, and complain that they should not have been kept out of these processes given the potential impact on them if their horse was disqualified. They maintain that they have been denied natural justice and ask the court to declare that the disqualification is void and of no effect for that reason.

[5] On the other hand, the respondents, each of whom was concerned in one way or the other with the management and administration of the race in question, argue that the governing rules sufficiently afforded natural justice to persons who might be affected by the stewards' inquiry. They contend that this required the stewards to deal in the first instance with the trainer in his personal capacity and as representative of the owners and, thereafter, the interests of the owners were protected by the existence of a full right of appeal against the disqualification.

[6] The central question for determination therefore is whether the stewards ought to have afforded natural justice to the owners, that is to say, by providing the owners with notice of the hearing and an opportunity to be heard. That question arises in the context of the following regulatory environment.

The governing bodies and rules

[7] The first respondent, the Queensland Racing Integrity Commission, is established by s 7 of the *Racing Integrity Act* 2016 (Qld). The Commission has several functions,[1] including: licensing animals and participants;[2] conducting investigations into breaches of the Act as well as the *Racing Act* 2002 (Qld);[3] overseeing the integrity of race meetings, including matters preliminary to race meetings;[4] managing the testing of things, including developing or adopting procedures about the way things for analysis are to be taken and dealt with;[5] and making decisions about disciplinary

1 *Racing Integrity Act* 2016 (Qld), s 10.
2 *Racing Integrity Act* 2016 (Qld), s 10(1)(a).
3 *Racing Integrity Act* 2016 (Qld), s 10(1)(e).
4 *Racing Integrity Act* 2016 (Qld), s 10(1)(f).
5 *Racing Integrity Act* 2016 (Qld), s 10(1)(g).

matters.[6] The statute contemplates that the Commission will generally perform these functions by making Standards for each code of racing, particularly about the licensing scheme for controlling activities relating to animals and participants and about the way in which races are to be conducted.[7]

[8] The second respondent, the Racing Queensland Board, is established by the *Racing Act* as the control body for, relevantly, thoroughbred racing in Queensland.[8] By reason of that statutory authority, the Board is recognised by Racing Australia Limited, a company limited by guarantee, as the principal racing authority for Queensland and, like its controlling counterparts in the other States and Territories of Australia, the Board agreed to abide by (and enforce) a national regulatory scheme, that is to say, the Australian Rules of Racing.[9]

[9] The ARR were made (and are administered) by Racing Australia to promote and manage thoroughbred racing throughout the country. By ARR 3, any person who "takes part in any matter or race meeting coming within" the ARR agrees with Racing Australia and each principal racing authority to be bound by, and comply with, those rules. There is accordingly a "standing offer to persons intending to participate in the industry to the effect that, if they choose to participate, then they are agreeing to be bound to comply with the prescribed rules".[10] The ARR therefore create contractual rights and obligations and apply to all races held under the management or control of the Board.[11]

[10] In addition to the ARR, the Board is required to have "rules of racing for the good management of each of its codes of racing".[12] They were required to be developed in consultation with the chief executive of the Board and the Commission[13] and are known as the Local Rules. They are statutory instruments within the meaning of the *Statutory Instruments Act* 1992 (Qld).[14] They also apply to races held under the management or control of the Board but, if there is any conflict or inconsistency between the ARR and a Local Rule, the ARR prevail to the extent of that conflict or inconsistency.[15] Further, by s 113(1) of the *Racing Act*, when developing the Local Rules, the Board was required to have regard to whether sufficient attention was paid to the rights and liberties of individuals within the meaning of s 4(3) of the *Legislative Standards Act* 1992 (Qld),[16] although a failure to do so does not affect the validity of the rules.[17] In the case of any inconsistency between the Local Rules on the one hand and a provision of the *Racing Act*, the *Racing Integrity Act* or a Standard made by the Commission on the other hand, the latter will prevail to the extent of the

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6 *Racing Integrity Act* 2016 (Qld), s 10(1)(j).
7 *Racing Integrity Act* 2016 (Qld), s 57.
8 *Racing Act* 2002 (Qld), s 7(a).
9 The parties agree that this application should be determined by reference to the version of the ARR in force on 1 April 2020.
10 *Commissioner of Taxation v Racing Queensland Board* (2019) 374 ALR 241, 262 [92].
11 AR 4(1).
12 *Racing Act* 2002 (Qld), s 111(1).
13 *Racing Act* 2002 (Qld), ss 111(2) and 112.
14 *Racing Act* 2002 (Qld), s 101.
15 ARR 1(1) and 4(1). See *McHugh v Australian Jockey Club Ltd & Ors (No 13)* (2012) 299 ALR 363, 588 [1396].
16 Section 4(3) of the *Legislative Standards Act* 1992 (Qld) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it is consistent with principles of natural justice: s 4(3)(b).
17 *Racing Act* 2002 (Qld), s 113(2).

inconsistency.[18]

[11] Acting pursuant to the power conferred on it by the *Racing Integrity Act* to do so,[19] on 1 July 2017 the Commission made a Standard to clarify the responsibilities of the respondents under the rules of racing.[20] Pursuant to that Standard and s 113A of the *Racing Act*, the Commission exercises powers under the rules of racing in accordance with its functions, that is to say, the functions summarised above (at [7]). In this regard, it is worth noting that it is the function of the Commission and not the Board to appoint stewards and to penalise participants.[21]

[12] Lastly, the ARR include in Schedule 2 a number of rules which govern the relationship between trainers and owners. They are known as the TOR Rules. Also, in Schedule 3, there are rules which apply to owner syndicates, and these are known as the Syndicate Rules. Amongst other things, they require syndicates to appoint a natural person as the syndicate manager to act for and on behalf of the syndicate[22] and require registration of the syndicate as well as the syndicate agreement through the principal racing authority.[23] In that regard, a Racing Co-owner Agreement, or COA, is published by Racing Australia and is incorporated by reference in the TOR Rules.[24]

[13] In the result, or at least so far as this case is concerned, thoroughbred racing in Queensland is governed by a mix of statutes, rules made pursuant to the *Racing Act*, a standard made pursuant to the *Racing Integrity Act*, national rules established by a consensus reached among the controlling bodies for racing throughout the country and contracts made with and between participants.

The owners

[14] The applicants are members of a registered syndicate of owners.[25] The first applicant, Mr Endresz, is the manager of the syndicate for the purposes of the Syndicate Rules.[26] The contractual relationship between the members of the syndicate is regulated by a syndicate agreement in terms of the COA.

[15] Alligator Blood is wholly owned by the syndicate. He was purchased at a yearling sale on 10 January 2018 and subsequently registered by the syndicate with Racing Australia.

The race

[16] After payment of a nomination fee, the horse was accepted on 8 January 2020 and

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18 *Racing Act* 2002 (Qld), s 113(3).
19 *Racing Integrity Act* 2016 (Qld), s 58(1)(b).
20 That is to say, the rules of racing as in force from time to time, including the ARR and the Local Rules.
21 Standard, 6.2; *Racing Act* 2002 (Qld), s 113A(1).
22 SR 2.
23 SRR 3, 10-11.
24 The COA has been amended by Racing Australia from time to time. COA Version 2 was in effect from 1 August 2018 until 31 March 2020 before it was replaced with COA Version 3 on 1 April 2020. The parties are agreed that there is no material difference between these versions and both are in evidence before the court.
25 The syndicate – "Ezybonds No 1" – was first registered on 3 January 2007 with Racing Victoria.
26 Mr Endresz's ownership interest is held on trust for another person. The second applicant, Ezybonds (Pacific), is a limited partnership registered under the *Partnership Act* 1892 (NSW).

three days later he was brought to the Gold Coast Turf Club to participate in the race. The official race nomination and acceptance forms required by Racing Australia to allow the horse to run in the race were submitted by the horse's trainer, David Vandyke.

[17] The race was run on 11 January 2020 and the horse finished in first place. The syndicate thereby became entitled to prize money of $978,945.56. Additional prize money was also awarded to Mr Vandyke ($115,170.07) as well as the jockey ($57,585.03), although payment of all prize money was withheld "until a SWAB test has been cleared".

The disqualification

[18] As already mentioned, stewards are employed by the Commission under the *Racing Integrity Act*.[27] Their role and powers of stewards contained in Part 3 of the ARR as well as the Local Rules.[28] Relevantly, stewards are empowered:

(a) to regulate and control, investigate, inquire into, hear and determine any matters relating to the conduct of officials, licensed persons or registered persons connected with a horse, persons attending a racecourse, and any other person connected with racing;[29]

(b) to take (or cause the taking of) a sample from a horse and to make (or cause to be made) any testing or analysis to determine whether any prohibited substance is present in the system of the horse;[30] and

(c) to investigate and/or inquire into any matter in connection with racing, to hear and determine any matter in connection with a race meeting, to take any action deemed necessary in respect of any horse involved in any investigation or inquiry and to arrange or facilitate any test to determine whether any prohibited substance or banned substances in a sample.[31]

[19] On 18 March 2020, the Commission released a public statement to the effect that the trainer had been informed that, after preliminary analysis, the post-race sample taken from the gelding had "shown an irregularity to the prohibited substance altrenogest", that the sample had been sent to an interstate laboratory "for confirming testing" and that the stewards had informed the trainer of these developments.

[20] On and from 14 April 2020, the solicitor for the syndicate made several requests of the stewards and the Chief Stipendiary Steward (Thoroughbreds), Peter Chadwick, for a copy of the results of analysis of the sample taken from Alligator Blood, but nothing was forthcoming other than correspondence from Mr Chadwick on 21 April 2020 and again on 15 July 2020 in which it was asserted that the stewards are "not required to notify the owners of the results of the analysis of samples taken from their horses". In the first of those letters, Mr Chadwick confirmed that Mr Vandyke "has been notified of the results of the analysis of the subject sample in accordance with" the ARR and, in the second, he confirmed that Mr Vandyke "has been provided with a copy of the Certificate of Analysis".

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27 *Racing Integrity Act* 2016 (Qld), s 7(4). And see LR 21A(1).
28 LR 22.
29 AR 20(a).
30 AR 20(c) and 22(1)(g).
31 AR 22.

[21] On 16 July 2020, a request was made of the Commission and Mr Chadwick for a copy of the "relevant QRIC testing policies/protocols for thoroughbred racing in Queensland" but, again, nothing was forthcoming other than Mr Chadwick advising by letter on 20 July 2020 that the "Commission's internal procedures are intended for internal use only and are not to be distributed externally or reproduced for external distribution in any form without the Commission's express permission". Instead, Mr Chadwick advised, a Right to Information request could be made. Although such a request was made by the syndicate's solicitors two days later, they were not granted access to the testing policies or protocols until 2 October that year. When they were, a copy of quite detailed procedures for the collection and testing of samples[32] was amongst the furnished material.

[22] In the meantime, a panel of five stewards including Mr Chadwick "finalised" their inquiry after the hearing of a charge against Mr Vandyke. That happened on 23 July 2020, just three days after Mr Chadwick advised the syndicate's solicitor to pursue the Right to Information process. From a report published by the stewards that day, it emerged that Mr Vandyke had been charged with a contravention of AR 240(2). AR 240 is relevantly in these terms:

> "**AR 240 Prohibited substance in sample taken from horse at race meeting**
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> (1) Subject to subrule (3), if a horse is brought to a racecourse and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the horse must be disqualified from any race in which it started on that day.
>
> (2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.
>
> …"

[23] Specifically, Mr Vandyke was charged that, as licensed trainer of the horse, he brought him to the Gold Coast Turf Club for the purpose of competing in the race and a post-race urine sample collected from the horse was found to contain the prohibited substance, Altrenogest,[33] in contravention of AR 240(2). Mr Vandyke was legally represented at the hearing and entered a plea of not guilty. According to the stewards' report, submissions were made in defence of the charge and, after "considering all the evidence and submissions, the stewards were comfortably satisfied that sufficient evidence existed to substantiate the charge and Mr Vandyke was formally found guilty of the charge". The report recorded that, when considering the circumstances of the breach, Mr Vandyke "could not provide any explanation as to how the prohibited substance came to be present in the horse… and the stewards had no evidence that Mr Vandyke, his staff or any other person administered Altrenogest" to the horse. The stewards considered a range of other matters including Mr Vandyke's "personal circumstances" before determining that the "appropriate penalty for this

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32 These procedures were contained in a Commission document entitled, "Standard Operating Procedure (SOP) Collection of Samples and Things".

33 Altrenogest appears on Prohibited List B in Schedule 1, Part 2, Division 1 of the ARR.

offence was a fine in the amount of $20,000". The report concluded with this:

> "Mr Vandyke was advised of his rights to apply for an internal review of the decision pursuant to Chapter 6 of the *Racing Integrity Act* 2016 (Qld).
>
> Further, in accordance with Australian Rule of Racing 240(1) the horse Alligator Blood was disqualified from its 1st placing in the … race and the placings amended …".

[24] Mr Endresz first learned of the disqualification after the stewards' report was uploaded to the Commission's website on 23 July 2020. Neither he nor any of the other syndicate members was given notice of the hearing conducted earlier that day by the stewards, nor afforded any opportunity to be heard. Indeed, they were not even provided with any formal notice that a prohibited substance had been detected in the sample taken from their horse or given a copy of the results of the subsequent analysis of that sample. They were denied a copy of the procedures governing the collection and testing of samples. The prize money to which the syndicate would otherwise have been entitled was not released. Instead, months later, the syndicate was invoiced $9,900 for the acceptance fee for the race, and this was paid on 5 January 2021.

[25] In addition to the loss of the prize money, the affidavit evidence read in support of the application was to the effect that the "swab results" and subsequent disqualification attracted widespread publicity and that, in Mr Endresz's belief, this caused "reputational damage" to the horse and his owners as well as affecting the horse's potential prize-earning capacity and resale value. This evidence was not contested, but that does not mean I must accept all of what Mr Endresz has sworn that he believes, or consider it is necessary to do so. It is sufficient instead to observe that the owners' interest in the outcome of the hearing before the stewards was obvious; if the stewards found that a prohibited substance was detected in the sample taken from the horse following the race, the disqualification that would automatically flow from such a finding would directly affect the interests of the owners through the loss of what was unquestionably a significant sum of money and carry with it the real potential to affect the owners in other ways.

Were the owners denied natural justice?

[26] I return to the central question earlier identified (at [6]). In that regard, because a substantial part of the respondents' arguments turns on whether the governing rules provide a right of appeal from the disqualification that is exercisable by the owners, it is useful to commence there.

[27] Divisions 3 and 4 of Part 13 of the ARR deals with stewards' hearings, appeal rights and penalties. Those Divisions are relevantly as follows:

> "**<u>Division 3 – Stewards' hearings and appeal rights</u>**
>
> **AR 280 Appeals to a PRA**
>
> (1) Subject to subrule (2) and the Rules, a person to whom a decision relates may appeal to a PRA in respect of:
>
> (a) a penalty imposed by a PRA or the Stewards; or
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> (b) a restriction imposed by a PRA or the Stewards in relation to a

horse in which the person has an interest.

(2) There is no right of appeal against a decision of the Stewards in relation to:

(a) a protest against placed horses arising out of an incident or incidents occurring during the running of a race;

(b) a restriction imposed on a horse which provides that the horse is required to pass a specified trial, test or examination;

(c) the eligibility of any horse to run in any race;

(d) a declaration under AR 204(1).

AR 281 Legal representation at Stewards' inquiries or hearings

(1) A person attending or required to attend an inquiry or hearing conducted by the Stewards is not entitled to be represented by any other person, whether a member of the legal profession or otherwise.

(2) Notwithstanding subrule (1), an apprentice jockey may be represented at an inquiry or hearing conducted by the Stewards by the apprentice jockey's master or other trainer acting for his or her master.

AR 282 Consequences of findings can be suspended pending an appeal

When an appeal has been instituted against a disqualification or suspension imposed under these Australian Rules, the PRA concerned and any persons holding powers delegated by a PRA under AR 15(d) may, on terms they think fit, suspend or stay the operation in whole or in part of any restrictions upon disqualified or suspended persons and disqualified horses until the determination of the appeal.

Division 4 – Penalties

AR 283 Penalties

(1) Subject to subrule (3), a person or body authorised by the Rules to penalise any person may, unless the contrary is provided, impose:

(a) a disqualification;

(b) a suspension;

(c) a reprimand; or

(d) a fine not exceeding $100,000.

(2) Further to subrule (1), a disqualification or suspension may be supplemented by a fine.

(3) In respect of a breach of AR 132, the Stewards may, in addition to the penalties identified in subrules (1) and (2), order the forfeiture of the rider's riding fee and/or forfeiture of all or part of the rider's percentage of prize money, notwithstanding that the amount exceeds $100,000.

(4) Unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension imposed under subrules (1) to (3) is to be served cumulatively to any other suspension or disqualification.

… [Emphasis in original]"

[28] Both the Commission and the Board submitted that the owners had a full right of appeal under AR 280(1) and that the existence of this right was sufficient to put to rest any disquiet on the part of the owners about having not been afforded an opportunity to be heard by the stewards but, for the following reasons, those submissions cannot be accepted.

[29] *First*, although the right conferred by AR 280(1) for "a person" to appeal is defined under the ARR to include "any syndicate"[34] and the term, "penalty", is defined to include a "disqualification",[35] the right is limited. It may only be exercised by a person to whom a decision relates in respect of a penalty where the penalty is *imposed* by a principal racing authority or the stewards. In no sense can it be said that the disqualification about which the owners complain was imposed by the stewards. Rather, it came about through operation of the rules.[36] Put another way, the moment the stewards found that a prohibited substance was detected in the sample taken from the horse following the race, the disqualification was automatically effected by AR 240. Of course, it will be noticed that different language is used in AR 280(1) – "imposed by a PRA or the Stewards" – to that which is used in AR 282 – "imposed under these Australian Rules" but AR 282 is a facilitative provision and plainly subordinate to AR 280(1). To the point, before AR 282 can operate to confer power to suspend or stay a disqualification, there must be an appeal of the kind contemplated by AR 280(1), and that will only be where the disqualification about which the appeal is concerned was imposed by a principal racing authority or the stewards.

[30] *Second*, AR 240(1) is to be found in Part 11 of the ARR. That Part commences with AR 239 which makes it clear that, if a person breaches any rule in the Part, the "person may be penalised" by a principal racing authority or the stewards. Thus, the power to penalise under that Part is limited to penalties that can be imposed on persons and, although that power would extend to a syndicate of owners, it does not extend to horses. Instead, the stewards' power under AR 240(1) is limited to making findings about whether a horse was brought to a racecourse for the purpose of participating in a race and whether a prohibited substance was detected in a sample taken from that horse. If those findings are both made, then a disqualification will result through operation of the rule. To use the terms of AR 280(1), nothing will have been imposed by the stewards.

[31] *Third*, it will be recalled that Mr Vandyke was advised by the panel of stewards of his right to apply for an internal review of the decision pursuant to Chapter 6 of the *Racing Integrity Act*. Under that Chapter, in the case of an "original decision",[37] an "interested person"[38] may apply to the Commission for an "internal review"[39] of the decision and, furthermore, may apply to the Queensland Civil and Administrative Tribunal for a review of the internal review decision.[40] But the provisions which set up those rights do not include the owner of a horse disqualified by operation of AR 240(1). It cannot be that AR 280(1) confers a right of appeal for such an owner when the same person has no standing to seek a review under the *Racing Integrity Act*. At

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34 AR 2.
35 AR 2.
36 *Currie v Queensland Racing Integrity Commission* (Supreme Court of Queensland, Flanagan J, 22 February 2019).
37 *Racing Integrity Act*, s 240.
38 *Racing Integrity Act*, s 241.
39 *Racing Integrity Act*, s 243.
40 *Racing Integrity Act*, s 246.

the very least, and as earlier noted (at [10]), that would give rise to an inconsistency in relation to which the statutory provision would prevail.[41]

[32] Accordingly, the owners have no right of appeal under the governing rules and, given their clear interest in the findings made by the stewards, that would without more present a strong case for the implication of terms to the effect that the stewards were obliged to observe the principles of natural justice by providing notice of their hearing to the owners and an opportunity to be heard before any finding was made as to the presence of a prohibited substance in the horse's sample. Indeed, because the principles of natural justice are neither sought to be excluded expressly, or by necessary implication, under the governing rules it has already been held in this court that they would apply to such a hearing,[42] as well as to stewards' inquiries under different regulatory regimes elsewhere.[43]

[33] The respondents, however, further argued that the owners had failed to establish how they would have made use of an opportunity to be heard by the stewards. In the same vein, it was submitted that declaratory relief should be refused because it was directed to an "abstract or hypothetical question".[44] Although that cannot be regarded as a prerequisite to declaratory relief,[45] the attempts made to access a copy of the testing policies and procedures supply the answer. Had the owners been afforded an opportunity to be heard, they could have exercised that right to ascertain whether the policies and procedures for the collection and analysis of the sample taken from the horse had been complied with[46] and, also, endeavoured to ascertain whether any analysis was affected by, for example, contamination of the sample.

[34] It was also argued by the respondents that no terms should be implied because their interests were only "indirectly" concerned and, to the extent those interests might be affected by the findings made by the stewards, they were "represented in the consideration of the matter by the trainer". It was submitted that the ARR taken as a whole allowed the trainer to contest the charge under AR 240 and that this "sufficiently affords natural justice to the persons affected by the inquiry". This, it was argued, meant that, in the first instance at least, the stewards deal with the trainer as the "owners' responsible representative" and that, "if the trainer excludes or otherwise does not involve the owners in the process, then that is a matter is between them". These arguments must be rejected. The owners had a direct interest in the findings made by the stewards because the automatic consequence of an adverse finding concerning the presence of a prohibited substance was disqualification of their horse and, with that, the loss of almost $1 million in prize money. Furthermore, on no view can it be said that the interests of the owners and the interests of the trainer are co-extensive but even if that could be said, that is no warrant for denying to the owners a right to be heard about the same interest. There is otherwise no basis in the ARR to conclude that the trainer is to be regarded as the owners' representative for the purpose contended.

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41 *Racing Act*, s 113(3).

42 *Hogno & Lee v Racing Queensland Ltd & Ors* [2012] QSC 303, [53]. And see *Wanless v Queensland Trotting Board* (Supreme Court of Queensland, Douglas J, 22 May 1981).

43 *Trivett v Nivison and Others* [1976] 1 NSWLR 312, 317-322; *Beale v South Australian Trotting League (Incorporated)* [1963] SASR 209, 218.

44 Citing *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 582.

45 *Criminal Justice Commission v Queensland Police Credit Union Ltd* [2000] 1 Qd R 626, 634-635.

46 See AR 259 and the document entitled, "Standard Operating Procedure (SOP) Collection of Samples and Things".

[35] Those further arguments having been dealt with, all that remains is to decide whether terms to the effect contended by the owners should be implied in the governing rules, bearing in mind that, if such terms are implied, they will be implied in all contracts falling within that class.[47]

[36] Under the ARR the stewards are given jurisdiction to proceed in a quasi-judicial way and, when interpreting the rules conferring that jurisdiction, there is always to be read into them the underlying condition that any such proceedings be conducted in accordance with fundamental principles of natural justice.[48] In this respect, the ARR provide for a process of investigation and inquiry after which, and only after which, findings can be made.[49] Furthermore, it was for the Commission and the Board to demonstrate that the governing rules expressly or by necessary implication negatived the implication of such terms but they have not done so or, at least, not done so to my satisfaction.

[37] However, before any such terms may be implied, I must be satisfied that, absent the implication, "the enjoyment of the rights conferred by the contract would or could be rendered nugatory, worthless, or, perhaps, be seriously undermined"[50] or, put another way, "deprived of its substance, seriously undermined or drastically devalued".[51] In circumstances where the owners have neither a contractual right of appeal from the making of findings by the stewards under AR 240(1) nor a statutory right to review those findings,[52] and such a clear and significant interest in the making of those findings, I am satisfied that the rights conferred on the owners by the contract (relevantly, to the payment of prize money) would or could be seriously undermined without the implication sought on their behalf.

[38] It follows that it was an implied term of the contract that the stewards were obliged to observe the principles of natural justice by providing notice of their hearing to the owners and an opportunity to them to be heard before any findings were made. That did not occur and, as such, the hearing was procedurally flawed.

[39] I add for clarity, the opportunity for the owners to be heard must be meaningful before it can be properly exercised. For that reason, not only should the owners have been provided with notice of the hearing, they should have also been provided with a copy of the results of the analysis of the sample taken from their horse following the race along with a copy of the procedures governing the collection and analysis of the sample[53] as well as the records generated in connection with the actual collection, sampling and analysis in this case.

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47 *Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169, 199 [56].

48 *Dickason v Edwards* (1910) 10 CLR 243, 255; *R v Brewer; Ex parte Renzella* [1973] VR 375, 379.

49 Even the certificates of analysis of the sample are not conclusive under the ARR; they only constitute *prima facie* evidence: AR 259(6).

50 *Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169, 189 [29], citing *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410, 450.

51 *Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169, 189 [29].

52 For completeness, it should be recorded that there may be a right to review the findings under the *Judicial Review Act* 1991 (Qld), but that is doubtful because the findings would not appear to be decisions of an administrative character. However, even if there is such an avenue of review, its scope would be limited (to the grounds provided for under that statute).

53 Including the document entitled, "Standard Operating Procedure (SOP) Collection of Samples and Things".

Relief

[40] Because of this procedural breach, the disqualification which resulted from the findings made by the stewards is void and no effect.[54] A declaration will be made accordingly.

[41] Costs should follow the event. In that regard, there was debate between the parties about whether Mr Endresz as syndicate manager was the proper moving party for the declaration sought by the owners and, for that reason, on 30 June 2021 the Registrar ordered, by consent, that the second, third and fourth applicants be added as parties to the proceeding to enable that question to be determined at the final hearing. Having considered the provisions of the ARR (including the Syndicate Rules), the TOR Rules and the COA to which I was referred in the written submissions of the parties, I am satisfied that Mr Endresz had all of the required authority to move the court for the relief sought in this proceeding but, even if that conclusion is wrong, it was nevertheless reasonable for the other applicants to be joined given the unresolved debate. Either way, the costs associated with the application to add the second, third and fourth applicants should also be paid by the respondents.

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54 *Calvin v Carr* [1979] 1 NSWLR 1, 14-15.