



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0051-18
Applicant's Name:	Silde Canda
PART 2: Decision History	
Original Decision:	Breach of Rule 175(g) of the Australian Rules of Racing
Original Decision Makers:	A Carter, S Fletcher, E Barron
Date of Original Decision:	15 May 2018
Internal Review Decision:	Original decision on penalty confirmed - Three (3) month suspension
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	15 June 2018
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Silde Canda, is a licensed stablehand within the thoroughbred racing industry in Queensland. The Applicant was charged pursuant to Australian Rule of Racing 175(g) for presenting false and misleading evidence to stewards and the Applicant was subsequently found guilty of the charge at a stewards' inquiry conducted on 15 May 2018.</p> <p>Australian Rule of Racing 175 states: <i>"The Principle Racing Authority (or the Stewards exercising powers delegated to them) may penalise:</i></p> <p><i>"(g) Any person who gives at any interview, investigation, inquiry, hearing and/or appeal any evidence which is false or misleading in any particular."</i></p> <p>At the stewards' inquiry conducted on 15 May 2018, the Applicant was charged pursuant to Australian Rule of Racing 175(g) in that the Applicant, as a licensed stablehand, did present false and misleading evidence to stewards. The specifics of the charge being that on 9 May 2018, stewards attempted to locate the Applicant in order to conduct an interview and seize his mobile phone as the stewards reasonably suspected the Applicant's mobile phone contained evidence in relation to the ongoing investigation into the alleged race day treatment of horses at Currie Racing in the lead up to the Weetwood Carnival. The Applicant was counselled by another person to delete all information from his mobile phone prior to being interviewed by the stewards. On 10 May 2018, the stewards located and interviewed the Applicant who deliberately gave false and misleading evidence to the stewards by stating that his mobile phone had been damaged on 09 May 2018 and was not in his possession. The Applicant pleaded guilty to the charge.</p>	



When considering penalty, the stewards took into account the Applicant's guilty plea, his forthright evidence, his personal circumstances, his disciplinary history and Racing New South Wales' decision in the matter of Mr Brodie Loy of 5 April 2018. The stewards were also mindful that the Applicant did deliberately mislead the stewards whilst investigating other serious breaches of the Australian Rules of Racing

The stewards subsequently suspended the Applicant's licence for three (3) months effective immediately.

The Applicant sought a review of the original penalty and provided the following submissions in support of his Application:

"I maintain the actual penalty and the surrounding QRIC media release and media outlet coverage was excessive and unnecessary given the context and circumstances surrounding the rule breach and the ongoing investigation into Currie Racing. Three other staff members refused to hand their phones and this was considered appropriate. I do not believe that cultural competency principles (being of Filipino descent) were applied by QRIC staff at the time of requesting the phone. I have private information on my phone which relates to a family business, which I did not want viewed by third parties. I saw the request for my phone as an invasion of privacy. I also gave QRIC staff my phone and did not receive it back until the suspension was in place. A 3 month suspension equates to a loss of income approximating \$9000. I have an unblemished record with QRIC and have been licensed since 2012. During this time I have never been part of a QRIC inquiry and up until today had a good reputation within the racing industry. The media scrutiny has brought shame to my reputation and my family which is unwarranted given the nature of the offence.

I was unable to find a precedent for this rule breach on the QRIC website. However I refer to QRIC Inquiry September 2016 in the case of Marlene Jondard and Jonathan Lobel who refused to supply a urine sample after being directed by stewards and were given a 3 month suspension. This case also didn't warrant a QRIC press release or ongoing media scrutiny I also refer to Alistair Barnes' case on 7 March 2018 where his horse tested positive to both testosterone and arsenic and he was fined \$2000. In the case of Carl Abraham and Josh King involving a physical altercation at the Clifford Park Racetrack where the charges were a 2 month suspension and a \$2000 fine respectively.

As stated previously, I believe the penalty to be harsh and requires immediate review. This penalty will cause me ongoing financial hardship being without income for a 3 month period. With the QRIC media releases and consequent publicity surrounding this case, it will make employment difficult for me to gain in this geographic area. It may also result in me having to apply for income support payments from Centrelink which is a further unnecessary consequence and burden on both the welfare system and tax paying public"

PART 4: Reasons for Internal Review Decision

The stewards of the Queensland Racing Integrity Commission conducted an inquiry on 15 May 2018 into the Applicant allegedly providing false and misleading evidence during an interview conducted by the stewards on 10 May 2018. The interview was part of an ongoing investigation into alleged race day treatment of horses at Currie Racing on 7 April 2018. The stewards attempted to locate the Applicant on 9 May 2018 to conduct an interview and to seize the Applicant's mobile phone as the stewards alleged the Applicant's mobile phone contained evidence in relation to the aforementioned ongoing investigation.



The stewards further alleged the Applicant was counselled by another person to delete all information from his mobile phone prior to being interviewed by the stewards.

The Applicant was subsequently located on 10 May 2018 and formally interviewed by the stewards. The stewards allege the false and misleading evidence provided by the Applicant was that his mobile phone was damaged at World Gym Toowoomba on 9 May 2018 and was not in his possession.

During the interview conducted by the stewards on 10 May 2018, the Applicant was informed that several phones and computers had been seized and investigators were in receipt of information particular to the ongoing investigation into alleged activities on the morning of 7 April 2018 at the Hursley Road stables of licensed trainer Mr Benjamin Currie.

The Applicant was questioned *"At 9:15, Ben called - just before 9:15 you might have got a call from Ben asking him - asking you to call a guy called Ricky at the CCTV - like, the guy who installed the CCTV, and you've made a phone call to him at 9:15. He didn't answer"* to which the Applicant replied *"Yep."* The Applicant was further questioned *"So, tell us about when Ben called you or text you? I don't think he - don't think he called. And what - what made you call Ricky the CCTV bloke?"* to which the Applicant replied *"I honestly can't, like, 100% can't recall that, like, making that phone call at all, to be honest."* The Applicant was advised *"Ben's asked you to - to - to ring this bloke so, I mean, again - again, you don't know what we know. We know quite a bit"* to which the Applicant replied *"Yeah, yep."* The Applicant was then questioned *"What was Ben's instructions to you?"* to which the Applicant replied *"I honestly, like, I can't remember. It's literally just - I made nothing of it at the time, so it's just straight over the top of me head."*¹

The Applicant was questioned *"Do you have your phone on you?"* to which the Applicant replied *"No, I don't."* The Applicant was further questioned *"Where is it?"* to which the Applicant replied *"This is going to sound - I smashed it at the gym last night, I dropped a dumbbell on it. And I haven't been - obviously been able to go to Optus. And the old phone I've got is a 5 and it's, like, the older pins. Not pins, SIM cards."*² The Applicant was questioned *"So where's that now? Where's the smashed phone now?"* to which the Applicant replied *"It'd be at home. Like, I literally - yeah, well, I go to the gym every, like, every night."* The Applicant was further questioned *"So you've got no phone here today?"* to which the Applicant replied *"No. No phone here at all."* The Applicant was then questioned *"So are you prepared to follow us back to your house so we can take that phone?"* to which the Applicant replied *"Like, right now? If you want."*³ The Applicant stated *"I'm more than happy to put my SIM card in that old phone and bring it to youse in the morning if youse want the SIM card."* The Applicant was advised *"No, no. Because that - that doesn't work, mate, because you can delete things from it."*⁴

Subsequent to being advised the stewards would head to the Applicant's house to obtain the smashed phone or alternatively conduct a search of the Applicant's car, the Applicant confessed the phone was in his car.⁵ The phone was subsequently seized from the Applicant's car for analysis.

¹ Transcript of Interview dated 10 May 2018, page 3, 5 and 6

² Transcript of Interview dated 10 May 2018, page 9

³ Transcript of Interview dated 10 May 2018, page 9 and 10

⁴ Transcript of Interview dated 10 May 2018, page 20

⁵ Transcript of Interview dated 10 May 2018, page 22



During the stewards' inquiry conducted on 15 May 2018, the Applicant was questioned to explain his version of the evidence at the aforementioned interview and the reasons for providing the false and misleading evidence. The Applicant stated *"Basically we just didn't want - either way I thought it was an invasion of privacy. I was just sort of protecting my privacy I suppose. And, yeah, just decided to cover up the fact that my phone was at home just so you guys couldn't have it, basically."* The Applicant was questioned *"We had information that led us to believe - and I disclosed that to you on the day - that the phone had been committed in a breach - in an offence which would be considered a breach of the Rules of Racing"* to which the Applicant replied *"Yes. Basically I just didn't want youse to have my phone. It's pretty black and white."*⁶

The Applicant was then questioned *"Was there a reason - tell me your reasoning's as to why you didn't want us to have the phone? Was there a particular reason that you felt you didn't want to give it to us"* to which the Applicant replied *"Oh, just like a personal phone I suppose. I use it 20 hours of the day I suppose. I use it for everything. I couldn't even do my footy tips and that this week sort of thing."* The Applicant was further questioned *"Okay. So it's your personal phone. You have got things like footy tipping, banking?"* to which the Applicant replied *"Banking, a hundred percent."* The Applicant was then questioned *"You gave us a version which Kerry Lathopolous asked clarifying questions towards the end of our last meeting on the 10th, and you gave us a version that you had smashed it using a 35 kilo dumbbell on a bench"* to which he Applicant replied *"Yes."* The Applicant was questioned *"Just tell me how you came up with that story? What was the reasoning behind that?"* to which the Applicant replied *"I have actually done it before."*⁷

The inquiry heard the analysis of the Applicant's phone revealed twelve (12) text messages between the Applicant and Mr Benjamin Currie on 9 May 2018 and 10 May 2018, particular to Mr Carter and Ms Lathopolous attending the Applicant's place on 9 May 2018 to conduct an interview and to obtain the Applicant's mobile phone.

The text messages on 9 May 2018, in part, state:

Mr Benjamin Currie to the Applicant:

"Just call them and see what they want

Will be something to do with texts

Hopefully nothing there"

The Applicant to Mr Currie:

"Reckon wipe our conversation on iMessage or na?"

I backed my phone up last night"

Mr Currie to the Applicant:

"Yeah just wipe everything g

Everything"

⁶ Transcript of Stewards' Inquiry dated 15 May 2018, page 6 and 7

⁷ Transcript of Stewards' Inquiry dated 15 May 2018, page 8



The text message on 10 May 2018 relevant to this review, in part, states:

The Applicant to Mr Currie:

"Leaving my phone in my car turned off just in case"

The Applicant was questioned *"So can you tell me in relation to that conversation on the 9th and 10th - tell me about that? Where were you? What did you see and that sort of thing?"* to which the Applicant replied *"I was basically just at home working and doing a few things. And I saw you guys - noticed you guys turn up. Basically what you said in the message and stayed inside and didn't answer the door just in case I didn't want to - because I thought youse might have been after me - like chasing my phone or something like that."* The Applicant was further questioned *"What was on the phone that you are scared for us to see, or fearful for us to see?"* to which the Applicant replied *"Nothing. I just didn't want youse to literally have my phone."* The Applicant was then questioned *"And what made you think that we were going to take your phone?"* to which the Applicant replied *"Oh, well, I just thought - I thought it must be something serious if you guys were like coming up to the house sort of thing."*⁸

The Applicant was then questioned about the texts messages referring to 'wipe everything' to which the Applicant stated *"Obviously the conversation we just had referring to me being inside and - Yeah. Basically, I just didn't want youse to prove that I was inside."*⁹

The Applicant's submissions on penalty are outlined in Part 3 of this decision. The Applicant sought a review of the penalty imposed.

The Applicant submitted he believed the penalty and media coverage was excessive, and that the Queensland Racing Integrity Commission did not consider cultural competency principles when the phone was requested. The Applicant submitted *"I maintain the actual penalty, and the surrounding QRIC media release and media outlet coverage was excessive and unnecessary given the context and circumstances surrounding the rule breach and the ongoing investigation into Currie Racing. I do not believe cultural competency principles (being of Filipino descent) were applied by the QRIC staff at the time of requesting the phone. I have private information on my phone which relates to a family business, which I did not want viewed by third parties. I saw the request for my phone as an invasion of privacy."*

For reference Australian Rule of Racing 8 sub-section (b) states:

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 inquiry.

The Applicant signed a statutory declaration acknowledging and accepting the conditions as part of his stable-hand licence application, particular to the relevant standards and Rules of Racing. The Applicant provided QRIC with a sworn electronic copy of such declaration dated 14 August 2017. The declaration in part states:

⁸ Transcript of Stewards' Inquiry dated 15 May 2018, page 13

⁹ Transcript of Stewards' Inquiry dated 15 May 2018, page 15



1. I have read the Standards of the QRIC approved under the Racing Integrity Act 2016 (RIA), and published on the QRIC's website at www.qric.qld.gov.au and I agree to be bound by these Standards.

2. I am aware and will abide by the RIA, Racing Act 2002 (RA) and the Rules of Racing and any lawful direction issued by a steward or authorised officer of the QRIC.

3. I am aware that I am required to continually update myself in relation to recent rule changes to the Rules of Racing that are published on the Racing Queensland website www.racingqueensland.com.au.

4. I understand that disciplinary action may be taken against me, including revocation of my licence, if I do not abide by the RIA, RA, Standards of the QRIC, the Rules of Racing or a lawful direction issued by a steward or authorised officer of the QRIC.

5. I am not currently subject to any disciplinary action initiated by any other Control Body or Racing Jurisdiction. I will immediately inform the QRIC should any other Control Body initiate disciplinary action against me.

6. I consent to the QRIC disclosing my personal information to and obtaining information in relation to bets I place (in my own capacity or on behalf or on behalf of any other person) from any entity operating:

- Any totalisator operator in Australia or elsewhere;
- Any bookmaker licensed to operate in Australia or elsewhere, including corporate bookmakers; and/or
- Any betting exchange (licensed or unlicensed) operating in Australia or elsewhere.

7. I understand that any entity that provides information to the QRIC in compliance with a request made by QRIC does so with my consent and is not breaching the Information Privacy Act 2009 (Qld) or any other State or Commonwealth legislation concerning the protection of information concerning my personal affairs, in complying with the request by the QRIC.

8. I am aware that the QRIC collates personal information relating to me as part of the process of retaining records of all persons licensed by the QRIC. I consent to the QRIC disclosing and requesting personal information concerning my affairs as a licensee to/from:

- Authorised employees and agents of the QRIC;
- Other State and Federal Government departments and agencies;
- Principal Racing Authorities in other states and territories in Australia and elsewhere;
- Your public liability insurer and any agent acting on behalf of your insurer;
- An owner or licensee of a venue at which betting on standard bred races is conducted;
- WorkCover and providers of insurance in the racing industry, and
- I agree to advise the QRIC in writing if I do not consent to my name and contact details being published on the QRIC website.



9. I understand that the QRIC may investigate me for non-compliances under racing legislation. I acknowledge and agree that the QRIC may publish reports on its findings after any investigation on its website where the report, and a summary of it containing my name, will be available publicly. I consent to the disclosure of my personal information by the QRIC for this purpose and this consent continues after the expiry or termination of any licence held by me under racing legislation. I consent to my personal information being made available online and acknowledge that this means it may be accessed from outside Australia.

...

15. All information I have provided in this declaration is true and correct. I understand disciplinary action may be taken against me, including revocation of my licence, if I provide information to the QRIC that is incorrect in any particular.

16. I am aware and understand that it is an offence under section 214 of the RIA for me to knowingly make a false statement in an application for a licence. Subject to a maximum penalty of 200 penalty units or 2 years' imprisonment.¹⁰

The Applicant submitted "Three other staff members refused to hand their phones over and this was considered appropriate." The reviewer is unaware of any such evidence and the Applicant failed to provide any evidence in support of such statement.

The Applicant submitted "A 3 month suspension equates to a loss of income approximating \$9000. I have an unblemished record with QRIC and have been licensed since 2012. During this time, I have never been part of a QRIC enquiry and up until today had a good reputation within the racing industry. I was unable to find a precedent for this rule breach on the QRIC website However, I refer to the QRIC enquiry September 2016, in the case of Marlene Jondard and Jonathan Lobel who refused to supply a urine sample after being directed by the stewards and were given a 3 month suspension. I also refer to Alistair Barnes case on the 7th of March 2018 where his horse tested positive to both testosterone and arsenic and he was fined \$2000. In the case of Carl Abraham and Josh King involving physical altercation at the Clifford Park Racetrack the charges were a 2 month suspension and a \$2000 fine respectively. As stated previously, I believe the penalty to be harsh and requires immediate review. This penalty will cause me ongoing financial hardship without income for a 3 month period."

The reviewer acknowledges the aforementioned decisions and further accepts the importance that each case is treated on its merits and set of circumstances. The reviewer finds there are significant differences in the aforementioned matters and that of the subject review.

The reviewer rejects the Applicant's reasons for not providing his mobile phone, in particular stating "I do not believe cultural competency principles (being of Filipino descent) were applied by the QRIC staff at the time of requesting the phone. I have private information on my phone which relates to a family business, which I did not want viewed by third parties. I saw the request for my phone as an invasion of privacy." The Applicant is an experienced licensed stablehand having been licensed with Mr Benjamin Currie for the past six (6) years. The inquiry heard the Applicant attended school at St Mary's College in Toowoomba and is currently studying a Bachelor of Business and Marketing at USQ University.

¹⁰ Applicant's sworn electronic copy of the licensing declaration dated 14 August 2017



The Applicant failed to inform the stewards during the interview conducted on 10 May 2018 of any privacy concerns, particularly as to any family business that he did not want viewed by a third party. The Applicant, in evidence during the stewards' inquiry conducted on 15 May 2018, stated "*Basically we just didn't want - either way I thought it was an invasion of privacy. I was just sort of protecting my privacy I suppose. And, yeah, just decided to cover up the fact that my phone was at home just so you guys couldn't have it, basically.*" Subsequent to the Applicant being informed "*We had information that led us to believe - and I disclosed that to you on the day - that the phone had been committed in a breach - in an offence which would be considered a breach of the Rules of Racing*" to which the Applicant replied "*Yes. Basically I just didn't want youse to have my phone. It's pretty black and white.*"¹¹

The reviewer accepts that providing false or misleading evidence at any interview, investigation, inquiry and/or appeal is a very serious offence under the Australian Rules of Racing. The Applicant was provided with clear and concise advice on multiple occasions during the interview conducted on 10 May 2018 of the potential repercussions in providing false and misleading evidence. The reviewer finds that the stewards' direction for the Applicant to provide his mobile phone was communicated in a lawful and sincere manner and, despite such clear warnings of the aforementioned repercussions in providing such evidence, the Applicant continued to provide false and misleading evidence which is the subject of this review pursuant to Australian Rule of Racing 175(g).

In weighing up the evidence in totality, the reviewer finds such actions a conscious and deliberate attempt to hinder and mislead the ongoing stewards' investigation into Currie Racing. The reviewer finds a reasonable inference drawn for providing such false and misleading evidence was that the Applicant's mobile phone contained damning evidence particular to the ongoing stewards' investigation. The inquiry heard the Applicant is a close friend of Mr Benjamin Currie, stating "*Yeah. I grew up - I grew up - I got a great relationship with him.*"

The Applicant submitted the penalty should reflect the Applicant's previous unblemished disciplinary history with consideration to the financial hardship caused by the three (3) month suspension. The reviewer acknowledges that, as with any breach of the Australian Rules of Racing, any penalty imposed will attract some form of hardship which must be evenly weighed against the degree of the offence.

The Applicant's disciplinary history is clear of any offence pursuant to Australian Rule of Racing 175(g). The standard penalty for an offence pursuant to Australian Rule of Racing 175(g) ranges from a reprimand to a five (5) year disqualification. In determining penalty, consideration was provided to the severity of the false and misleading evidence, the hindrance such evidence impacted upon the ongoing investigation, the Applicant's guilty plea, disciplinary history and precedent penalties. The reviewer finds, considering the false and misleading evidence was part of a larger scale investigation into potential serious offences under the Australian Rules of Racing, finds the penalty imposed in all circumstances to be lenient. The reviewer therefore carefully considered the prospect of amending the penalty by way of increase. Subsequent to such careful consideration, and taking into account the Applicant's guilty plea, previous clean disciplinary history and relationship with Mr Benjamin Currie, is not completely satisfied an increase in penalty is warranted in all of the circumstances and accordingly confirms the original decision on penalty.

PART 5: Review Rights following Internal Review Decision

¹¹ Transcript of Stewards' Inquiry dated 15 May 2018, page 6 and 7



In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au