

IN THE DISCIPLINARY TRIBUNAL

ESTABLISHED BY THE BOARD OF EQUESTRIAN SOUTH AUSTRALIA

IN THE MATTER OF CHARGES UNDER RULE 9 OF THE CONSTITUTION:

PETER OBORN - Respondent

REASONS FOR PENALTY

24 October 2016

Independent Panel acting as Board of Equestrian South Australia Inc appointed pursuant to Rule 15.

John Daenke (Chair)

Barry Couzner OAM

Jemma Krasowski

REASONS FOR DECISION ON PENALTY

1. The panel sitting as the Board of EQUESTRIAN SA found in a decision delivered on 19 October 2016 that the Respondent, Peter Oborn, a member of EQUESTRIAN SA, had by a series of Facebook posts between 24 September and 30 November 2015 and a statement in a newspaper article published on 16 October 2015, brought the Association into disrepute.
2. The charges against the Respondent as framed stated that the charge of bringing the Association into disrepute was the most serious of a descending order of offences arising from the publications and the statement. The panel indicated that, if necessary, it would also have found the Respondent guilty of the lesser charges of bringing the Board Members into disrepute, acting in a manner which was unbecoming a member and acting in a manner prejudicial to the interests of the Association and other members who were members of the Board.
3. The panel considers that these offences are very serious breaches of the Constitution. In many sports, a sports person, by his or her public conduct is found to have brought the sport into disrepute. Similarly, a member of an Association, by making statements with a public exposure, or the possibility of a wide public exposure due to dissemination by recipients, such as Facebook posts or newspaper articles, can bring an organisation into disrepute. These statements lower the standing of the Association in the thinking of others.
4. There is no doubt that the Respondent intended that his Facebook posts be further disseminated. In fact, in his statement to the panel, he said that the number of his Facebook followers had substantially increased over the course of the posts.
5. The statement to a reporter from The Advertiser was clearly intended for public dissemination.
6. The panel found that the content of the material published was often erroneous or misleading. For example, the Respondent claimed that, first the Returning Officer for the 2015 elections (which is the Executive Officer of the Association), and then the Board had refused to include Notices of Motion sent by him to the Association in an Agenda for the forthcoming AGM. Not only did he have, or seek any information as to why those Notices of Motion were not included, but he implied that the exclusion was itself in breach of the Constitution. The panel found that he had misinterpreted the Constitution and that the Notices of Motion were filed too late for inclusion in the 2015 AGM. The Respondent assumed a righteousness which was entirely misplaced.
7. There were other examples of his erroneous or misleading statements in the Reasons of Decision. Because of time constraints and the need to publish those Reasons, the panel did not list in its Reasons all of the erroneous or misleading statements in his Facebook posts.
8. At the hearing on 26 September the Respondent told the panel of his financial skills. The panel has noted that he was attacking the Board for financial failures. In particular

the panel notes his Facebook posts (in Appendix 1) of 8 October headed "ERRONEOUS FINANCIAL ACTIVITY" and "FINANCIAL DISCREPANCY", his post of 11 October and, after receiving the 2015 Financial Statements, his post of 1 November 2015 headed "EQUESTRIAN SA FINANCIALS – SUBSTANTIAL LOSS RECORDED IN 2015". There is in Note 5 to the Financial Statements of 2015 an explanation of the error in recording in the 2014 statements and an explanation that the surplus is reduced from \$97,160.62 to \$48,202. The error is said to be a double counting in member income.

9. In the 2015 financial statements there is in fact an Operating Loss of \$654.46, which is an insignificant amount when the Income is \$565,156.13, but the error from a prior year is then shown to show the Operating Loss overall as \$49,613.06. However in his post of 1 November the Respondent asserted in capitalised letters that there was a decrease from a profit of \$97,000 in 2014 to a loss of \$50,000 in 2015. He also produced a graph to this effect. His statement and graph are clearly misleading because he is not comparing like with like. If he has the financial skills as he asserts, it should be clear that whilst there was a reduction it was from around a surplus of \$49,000 to a loss of \$654.46. The position was not as dire as he wanted people to believe.
10. The Respondent perceived, in his own mind, incompetence and maladministration by the Board. He stated that what he was doing was part of a "political campaign" in the course of an election for Board Members. The panel rejected this argument. It was not a justification for publishing the material in the form or content which he did.
11. The Respondent's Counsel at the hearing spoke of persons in the organisation who were resistant to change and that the Respondent had used appropriate channels and got nowhere. That does not excuse his use of the comments which he made publicly and, in particular, the style and content of the posts which the panel has found were, in many instances, erroneous or misleading.
12. The Respondent spoke of a change in the Constitution in 2012 to have a "skilled based Board". That does not appear in the Constitution. Board members are elected by members of the organisation and no skills criteria is set out. Neither is there any provision of the appointment of additional directors to cover perceived skill deficiencies in the Board.
13. It is one thing for a person to be forthright and outspoken. It is quite another for a person to make such an attacking and aggressive comments about the organisation and particular individuals within the organisation, especially where his comments are wrong or misleading or made without foundation. No volunteer organisation should have to suffer continual harassment by a person making such statements.
14. The Respondent was conducting an all out attack on the Board with verbal aggression. He had no concept of trying to achieve change through gentle persuasion.
15. He claimed merely to be "asking questions" whereas in truth he was not seeking information for himself or other members but was attacking the Board by framing motions, which may have involved questions, in a way which contained propositions

with allegations of wrong doing by the Board. His "motions" and other Facebook posts were designed to denigrate the Board and, through it, the Association.

16. The Respondent did not do this once but repeatedly.
17. Through his repeated public attacks and statements suggestive of wrong doing, he has brought the Association into disrepute. It is not possible to measure the extent of damage or harm which he may have caused. The Association is reliant upon Government Grants and sponsorship as well as member support.
18. The Respondent's statements undermine confidence in the Association itself and its Board and staff. Those statements may have an adverse effect on membership, grants and fundraising, which cannot be measured. But because the perception and standing of the organisation is lowered in the minds of many people those income streams can be affected to the detriment of the organisation without it knowing why they have been reduced.
19. It was not the role of the panel to examine whether there may, and it emphasises the word "may", have been errors or issues with the administration or governance of the Association. The fact is that there was a qualification in the 2014 audit report. The 2015 audit report was not available when these posts started but it also had a qualification. The auditor reported certain issues to the Office of Consumer & Business Services. There appear to have been some issues with the election process in 2015 which led to the threat of legal proceedings.
20. The Respondent, by his comments, expanded these issues out of all proportion and created an aura about them which was erroneous and misleading. These issues could have been worked through without these stinging attacks in the glare of publicity raised by the Respondent. The panel understands that they were resolved. The panel indicated in its Reasons for Decision on the substantive issue that the Respondent was conducting a vendetta against the Board.
21. As indicated, the panel considers these matters as breaches at the most serious end of the scale. The panel has noted that in the decisions of *Whittle v. The Australian Miniature Pony Society Incorporated* [1995] FCA 1267 and *Hewett v. Royal Coastal Volunteer Patrol* [2001] NSWSC 1140 the members or the Council of the relevant organisations expelled members for publications denigrating the Committee (in *Hewett's* case only one publication). In *Dickson v Esperance Bay Turf Club* [2002] WASC 110, the member conducted a campaign over a period of time which effectively led to his expulsion. Each of the expelled members had made contributions to their respective organisations.
22. In this case, there have been multiple publications by the Respondent.
23. The panel has given serious consideration to expelling the Respondent for his repeated breaches.

24. Since being charged with breaches of the Constitution, he has not taken the opportunity to reflect upon his conduct or the information in the posts. He has shown no contrition or remorse.
25. The Respondent has contested the charges raising a number of both technical and substantive issues, all of which have been found against him. By his continuing contest, the Respondent has caused the Association to expend a very substantial sum of money in legal costs. There is no specific provision in the Constitution, as in ordinary civil proceedings, for an order to be made for the Respondent as the losing party to pay the whole or part of the Association's legal expenses. This can be done by the imposition of a condition for payment as part of the penalty which payment may partly offset the legal expenses incurred.
26. In his submission on penalty, the Respondent states that a fine should not be imposed because he himself has incurred substantial legal costs in defending himself. That has been his choice. But by his conduct of the defence of the charges, he has caused EQUESTRIAN SA to incur those legal costs.
27. After delivery of the first decision, the panel was provided with certain further recent posts by the Respondent and a document headed "Equestrian Fair Go". Technically the panel cannot take such matters into account on consideration on the charges themselves. However, the Respondent's continuing conduct, which the panel assumes from the content and timing was prior to delivery of the decision, is relevant to penalty, particularly in showing whether the Respondent has had any insight into his conduct.
28. There is a dispute on whether Mr Oborn is responsible for what is published on the brochure "Equestrian Fair Go". The panel does not have to resolve that issue (and could not do so on the basis of the information before it) but insofar as the brochure states that EQUESTRIAN SA has spent "OUR MONEY" (referring to members' funds), on pursuing the Respondent, the panel can say that through his own conduct the Respondent has brought this matter upon himself and it is he, through his conduct, which has caused the significant expenditure.
29. The panel received a number of witness statements which has references of good character in support of the Respondent detailing the Respondent's significant contribution to the sport of equestrian as a volunteer and a high level committee member.
30. Against those statements, there are the facts raised by EQUESTRIAN SA of the Respondent's conduct causing the resignation from the Eventing Committee of 2 very long serving Committee Members, who also happen to be on the Board, causing complaints from other members and causing substantial stress to the Board Members and the staff of EQUESTRIAN SA. To deal with these both matters of conduct and the charges leading to the panel hearing causes a serious distraction from the core work and day to day business of the Association.
31. The panel has also been provided with a copy of a letter dated 2 November 2015 from the then auditor where the auditor states that due to the stress of continuing contact he

will not continue. It is no doubt the position, from other material provided, that part at least of that continuing contact from members was from the Respondent.

32. A question which arises is to what extent the panel, sitting as the Board of EQUESTRIAN SA can take into account matters which arise beyond the scope of the actual posts which were the subject of the charges. In an organisation such as this where a Board is not bound by strict rules of evidence and can inform itself of relevant matters, the Board itself would be well be aware of matters outside the actual words in the posts raised in the charges and could use that conduct as relevant to penalty.
33. The panel thinks that it but it can have some regard on the question of penalty to wider issues where it indicates both harm caused within the organisation or to its staff and officers and continuing conduct by the Respondent which fails to show any contrition or remorse. The Respondent has shown no insight into the fact that his posts could have, and did, bring the Association and its Board into disrepute. He has had no appreciation that his conduct has been unbecoming of a member. He has sought to justify that conduct on grounds rejected by the panel.
34. The panel noted that the character references indicated that the Respondent had made a substantial contribution to various aspects of the sport of equestrian and that his honesty and integrity were without question. He was said to have widespread respect and support in the equestrian sport. However there are also clearly those who are disenchanted with the conduct of the Respondent.
35. Ultimately, the panel felt that it should give weight to those character references in his favour and not expel the Respondent but it should suspend him from membership for a substantial period of time.
36. It is not clear from the Constitution whether the penalties set out in Rule 9.1 are alternates or accumulative. The word "or" appears after (i) and (ii) but not after (iii). Does this mean that if a penalty is imposed under either (i) or (ii) then a penalty cannot be imposed under (iii)? Does the omission of the word "or" after (iii) mean that a penalty in (iv) can be imposed in addition to a penalty under (i) or (ii) or (iii)?
37. The panel is of the view that it can at least combine a penalty of suspension under (ii) with other actions under (iv) and can make the suspension conditional. If it was not able to do so then the Respondent would have had to serve the full period of the suspension.
38. The panel is of the view that there should be a substantial period of suspension but conditionally part of that period may well be itself suspended subject to the Respondent providing the Apology as set forth in the order, paying an amount towards legal costs of Equestrian SA and not offending again within the period specified. The panel equates the contemplated order to a form of good behaviour bond in the expectation that the Respondent will modify his behaviour.
39. In saying that, the panel is strongly of the view that the Respondent should reflect on his own conduct and its effect on others, not only with the Facebook posts but in his conduct and approach to the Association generally and its Board and staff. A very substantial modification in his behaviour is required.

40. That suspension comes with conditions which, if fulfilled, will allow an earlier return to the sport than the total period of suspension would allow and, hopefully, he can make a meaningful contribution to the sport.
41. The panel feels that the Respondent needs to publicly acknowledge that he has erred. He had not reflected on his conduct despite the charges and has continued to agitate perceived problems in a public way and in the same manner he did in 2015. To this end, the panel is of the view that the Respondent should make an Apology to the Association, to the Board and to the staff. So that there is no issue about the form of Apology, the panel has drafted an Apology which is appended to these reasons. That Apology should be signed by the Respondent and the original delivered to the office of Equestrian SA (and electronically to the Chair of the panel) within the time specified. Equestrian SA is to be at liberty to publish the Apology as it sees fit. The Respondent can choose whether he also publishes it on his Facebook page but if he does so it should be without comment by him. There should be no qualification or retraction of the Apology.
42. The panel was asked by EQUESTRIAN SA to suspend the Respondent for a period of 5 years with certain conditions, including a condition that he be prohibited from attending Equestrian Australia and Equestrian SA, sanctioned or affiliated events, meetings, competitions, trainings and clinics as well as the EQUESTRIAN SA Office, in any capacity whatsoever, for the period of his suspension. The panel was of the view that a ban from attending such events, which may be in places open to the public, presented numerous difficulties in enforcement and would require some further form of enforcement action if it was broken. This was unlike a situation with a closed race course or stadium where persons who are "warned off" cannot attend and can be stopped at an entrance from entering the private area. But if he does attend such events, the panel is hopeful that his self-reflection will lead him to appreciate that he should not say or do things ("agitate" in his terms) which are likely to cause offence.
43. It is noted that the Respondent is a candidate for election in the 2016 elections. Whilst voting has been closed, the panel is of the view that it should release its determination and any penalty decision prior to the holding of the AGM. It will be for Equestrian SA and not for this panel to determine the effect of a suspension of the Respondent in relation to the outcome of that election and, if he has sufficient votes to otherwise be elected, his apparent position on the Board. But the Respondent has acknowledged that he will lose his ability to sit on the Board.
44. In submissions as to penalty on behalf of the Respondent, it was stated that "any period of suspension will mean that the Respondent will not be able to fulfil his role as Chair of Eventing, he will lose his ability to sit on the Board, he will lose his ability to participate in an Association in which has established considerable friendships and a freedom of association in activity that he loves...". The panel draws specific reference to this submission, which was in writing, because of a concern over the interpretation of Rules 16 and 17. It does appear under Rule 17 that if there is a penalty short of expulsion, a Board member is then subject to a decision of the Board as to whether he or she remains on the Board. (See Rule 17.1 (e).) The panel is of the view that if the Respondent is elected as a result of the election in 2016, the results of which will be

announced on the day of this decision, the Respondent should not remain on the Board. If he were to be elected, and he did not resign in the light of the findings against him. The panel expresses the view that the circumstances are such that it would justify the removal of the Respondent. The timing of the AGM and election and the finalisation of the charges is unfortunate. If these matters had been able to be concluded before nominations for election were called then the Respondent, being suspended would not have been eligible for nomination.

45. The panel further notes from the submissions from EQUESTRIAN SA that it is said that the continuing publications had an adverse effect on the EQUESTRIAN SA Board, its staff and members. There are said to be concerns over the welfare of the staff due to the stress of these proceedings and that office staff have felt targeted by the Respondent's requests for information.
46. Whilst nothing is said in the conditions about the Respondent not physically attending at the EQUESTRIAN SA Office, and the panel makes no condition about that, as part of his reflection upon his conduct it may be wise for the Respondent to not attend at the EQUESTRIAN SA Office during the period of suspension.
47. The panel points out that any suspension of his membership of Equestrian SA could not impact on his membership of other associations, unless another association had as a requirement of membership that he also be a member of Equestrian SA. It would be beyond the power of Equestrian SA to ban or suspend the Respondent from membership of another organisation.
48. In addition to a suspension with conditions, the panel has considered a range of courses or educative issues such as "Play by the Rules" which it might direct the Respondent to attend. No course known to panel members appears really suitable to the issues which have arisen in this matter. In any event, the Respondent is not an unintelligent person and he ought to be capable of self-reflection on the matters which have been highlighted in these and the first set of reasons with a view to changing his behaviour. If he does not modify his behaviour then he may well be charged with further breaches of the Constitution or associated policies and, if found guilty, and not then expelled, he must serve the balance of the suspension which in itself has been conditionally suspended as well as suffer any further penalty for the new offence.
49. If, however, he fails to give the Apology, pay the amount specified or to modify his behaviour then he will be liable to serve the balance of the suspension period.
50. The panel felt that the period of 5 years suggested by EQUESTRIAN SA was too long and would not really give the Respondent the opportunity to return to the sport within a reasonable period after considering the modification to his behaviour and reflecting upon the matters dealt with in these charges.
51. The panel is of the view that the Respondent should be suspended for a period of three (3) years, but with conditions that after eighteen (18) months the balance period of eighteen (18) months would be itself suspended provided that he complied with the conditions imposed. Failure to do so would, either on the failure of delivery of the Apology, payment of the amount or upon being found guilty of a breach committed

within the time indicated of the Constitution or the Member Protection Policy, the Social Media Policy or a Code of Conduct automatically require him to serve a further period of eighteen (18) months suspension.

52. In conclusion, the panel urges the Respondent to reflect on the comments made in these and the previous Reasons and to take into account that, whilst sitting technically as the Board, the panel is comprised of independent persons with substantial experience in these matters and that the decision is made to assist him to modify his behaviour and to return to a sport where he obviously has a passion and has in the past made a substantial commitment.

Order

The independent panel sitting as the Board of Equestrian SA Inc. appointed pursuant to Rule 15.1(b) (iii) of the Constitution:

NOTING THAT in a decision published by the independent panel on 19 October 2016, Peter Oborn, a member of Equestrian Federation of Australia – South Australian Branch Incorporated (trading as Equestrian South Australia) was considered by the Board to have brought the Association into disrepute, and insofar as was necessary, was also considered by the Board to have brought other Members into disrepute, to have acted in a manner unbecoming of a Member and to have acted in a manner prejudicial to the purposes and interests of the Association and other members:

Resolves

That Peter Oborn be suspended from membership of the Association effective immediately for a period of three (3) years.

Provided that after the expiration of eighteen (18) months from this date, the operation of the balance period of eighteen (18) months of the period of suspension is itself suspended if Peter Oborn complies with the following conditions:

Conditions

- (a) That within 14 days of the date of this resolution, Peter Oborn signs and delivers or cause to be delivered to the office of Equestrian SA (and electronically to the Chair of the independent panel) an Apology in the form annexed to this decision which Apology may be published by Equestrian SA as it thinks fit;
- (b) That within the period of one (1) year, or such further period as the Board of Equestrian SA may then allow in the case of hardship, Peter Oborn pay the sum of \$10,000.00 to Equestrian SA as partial reimbursement of its legal costs;
- (c) That within the period of three (3) years of the date of this resolution, Peter Oborn not commit any breach of the Constitution of Equestrian SA, any Social Media Policy of Equestrian SA, any Member Protection Policy applicable to members of Equestrian SA or any Code of Conduct applicable to the members of Equestrian SA even if the hearing and finding of guilt is outside the three (3) year period.

Signed on behalf of the Panel



 John Daenke, Chair

APOLOGY

I, Peter Oborn acknowledge that publications which I placed on my Facebook page between 24 September 2015 and 30 November 2015 and a statement made by me and published in The Advertiser on 26 October 2015 have brought Equestrian SA, the Board members and the staff at that time into disrepute. Aspects of the content of those posts and statement have been found to be erroneous or misleading and potentially have caused harm to the organisation and those persons by an independent panel convened through Sports SA.

My actions in making the Facebook posts and statement have further been found by the independent panel to have been an action unbecoming a member and prejudicial to the purposes and interests of the Association and other members.

I acknowledge that the Facebook posts and the statement caused distress and embarrassment to both Equestrian SA, its Board members and the staff.

I unreservedly apologise to the Association, to the Board members and the staff at that time for the hurt and embarrassment suffered by them from my actions. I express my regret for the damage to their standing both within the equestrian community and with the wider public.

I acknowledge that Equestrian SA may publish this apology as it sees fit.

Dated: 2016

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Peter Oborn