THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRMAN)

APPELLANT:	PAUL KALTSIS
APPLICATION NO:	A30/08/342
DATE OF HEARING:	5 February 1997
DATE OF DETERMINATION	25 February 1997

IN THE MATTER of an appeal by Paul Kaltsis against the determination of the Western Australian Greyhound Racing Association Stewards on the 7 January 1997 imposing a nine month disqualification under Rule 234(7).

Mr T Percy and Miss Johnson, instructed by DG Price & Co, represented the appellant.

Mr B Goetze represented the Western Australian Greyhound Racing Association Stewards.

BACKGROUND

On 11 December 1996 the Stewards of the Western Australian Greyhound Racing Association conducted a lengthy inquiry into a report received from Chemistry Centre (WA) confirming the presence of Caffeine, Theophylline and Theobromine which were detected in a urine sample taken from the greyhound RANDOM ACCESS after winning Race 4 at Cannington Greyhounds on 7 November 1996. Mr Kaltsis, the trainer of the greyhound, was in attendance during the hearing. Subsequent to the inquiry, Stipendiary Steward M Kemp wrote a letter dated 27 December 1996 to Mr Kaltsis stating:

"... The stewards, after carefully considering all the evidence have decided to lay a charge against you under Rule 234.7 which reads;

Breaches of the Rules

234 A person may be found to be guilty of the breach of any provision of these Rules not specified in this rule, but without prejudice to the generality of that liability a person who;

[7] had at any relevant time the charge or control of a greyhound brought to compete in a race or a qualifying trial which is found by the Stewards to have had any apparatus used upon it, or any drug, stimulant or deleterious substance administered to it, for any improper purpose;

commits a breach of these Rules.

The specifics of the charge are that you Mr P. Kaltsis as the trainer had control of the greyhound Random Access when it was brought to compete in Race 4 run over 530 metres at Cannington Greyhounds on the 7 November 1996 which was found by the stewards upon analysis to contain the stimulant Caffeine, Theophylline and theobromine, administered to it for an improper purpose.

The inquiry resumes at Cannington Greyhounds on the 7 January 1997, at 10.30am, which you are requested to attend. You are advised that you may bring any witnesses that you feel may help your cause. Should you not attend, the stewards may proceed in your absence in accordance with Rule 216. ..."

Mr Kaltsis duly attended the continuation of the inquiry. At the resumed hearing the Stewards obtained some more information from him and he put various propositions to the Stewards. After deliberating on the evidence the Stewards made the following statement:

"Mr Kaltsis, you have put forward to us a number of possibilities as to how the caffeine, theophylline and theobromine have appeared in the urine sample. We have considered all these possibilities very carefully and we find that there is no evidence to confirm that caffeine, theophylline and theobromine was in fact introduced by any of these possibilities and they are no more than a series of conjectures. In relation to your submission of denial of natural justice because there was no referee sample to conduct a second analysis, there is no provision or requirement in the Rules that governs greyhound racing in Western Australia to in fact carry out this procedure. We do however find that there is ample evidence that supports

all the components of Rule 234(7) and therefore the Stewards find you guilty as charged.

We shall now proceed to the question of penalty as a result of the guilty finding made by us. This is your opportunity to make submissions to us on the question of penalty ... what we need to know basically is ... you've told us that you have 30 greyhounds in work ... that greyhound racing is your ... livelihood ... you don't have any other income besides greyhound racing?"

Mr Kaltsis responded to the Stewards that greyhound racing was his sole source of income. After considering the submissions which Mr Kaltsis put to them in relation to penalty, the Stewards then stated that they:

"..... have taken into consideration all the relevant factors in determining an appropriate penalty. We have taken into account your unblemished record whilst involved in the greyhound industry and the fact that greyhound racing is your sole source of income. We have also taken into account the extent of your involvement in greyhound racing. However, the detection of a stimulant in a racing greyhound is viewed as a serious matter and one which brings the greyhound industry into disrepute. We therefore feel that the appropriate penalty is a disqualification of nine (9) months.

Acting under Rule 235(1)(c) the greyhound RANDOM ACCESS has been disqualified from winning Race 4 being Heat 2 of the Schweppes All Stars Sprint which was run at Cannington Greyhounds on 7th November, 1996. The amended placings are as follows:

1ST AWESOME OTIS
2ND BARELEN SAINT
3RD ALLGARI"

Mr Kaltsis appeals against the determination both as to the conviction and the severity of the penalty. The amended grounds of appeal are:

"A. CONVICTION

1. *The Stewards erred in convicting the Appellant in that they failed to correctly interpret and apply the provisions of Rule 234(7).*

2. *The Stewards erred in convicting the Appellant in that they determined that he was bound by the findings of the analyst.*

3. *The Stewards erred in their hearing of the charge in effectively reversing the onus of proof.*

4. *The Stewards denied the Appellant natural justice on the hearing of the Appeal by:*

   (i) denying him access to the sample of the urine or by providing him with a second or referee sample;

   (ii) failing to make adequate findings of fact;

   (iii) failing to give adequate reasons for their decision to convict the Appellant.

5. *The finding of the Stewards was against the evidence and the weight of the evidence.*

B. SENTENCE

1. *The penalty imposed by the Stewards was excessive in all the circumstances of the case, in particular -*

   (a) The non performance enhancing effect of the drug at the time of the race;

   (b) The Appellant's prior good record.

2. *The penalty imposed by the Stewards was excessive having regard to penalties imposed for similar offences Australia-wide."*

I shall now deal in turn with each of the grounds of appeal with the exception of ground 5 which was not argued and has no merit.

GROUND 1 - FAILURE TO CORRECTLY INTERPRET AND APPLY RULE 234(7)

Mr Percy, Counsel for the appellant, submitted that Rule 234(7) of the *Rules Governing Greyhound Racing in Western Australia* contains four relevant elements, namely:

1. the appellant had at the relevant time the charge or control of a greyhound,

2. the greyhound had been brought to compete in a race or a qualifying trial,

3. the greyhound was found by the Stewards to have had a drug administered to it, and

4. The administration had been for an improper purpose.

As it is conceded that there was some evidence of the first three elements it leaves the aspect of the improper purpose as the only question in dispute in relation to this ground. It is submitted for the appellant that improper in essence means wrongful, and inevitable accident is excluded therefore improper purpose means something done contrary to truth, proper procedure and righteousness. It is argued for the appellant that there was no evidence found at the hearing that the appellant had administered the drug for any improper purpose. Rather it is claimed the evidence was strongly to the contrary from the viewpoint of the timing and quantity in that the administration occurred well before the race *"when the effects of the primary product, caffeine would not be affecting the performance of the greyhound"*. The dog would inevitably be swabbed as the race was a feature event and the dog was the favourite. The suggested 'improper purpose' of intentionally making the greyhound run faster has no evidentiary basis, directly, indirectly or inferentially.

In addition to those submissions Mr Percy relies heavily on the fact that, during the course of the inquiry when the Stewards asked the appellant whether he *"understood the nature of the charge"* he responded *"Yeah, your saying that I've used something on the dog for an improper purpose"* to which the Steward chairing the inquiry answered *"No, we aren't saying that at all"*. In relation to this aspect the following submissions were made:

- *"If the Stewards were not alleging that Mr Kaltsis used the drug on the dog for an improper purpose, then no charge under Rule 234(7) could succeed"*.

- *"Any charge under that rule requires the Stewards to be satisfied of an administration for an improper purpose. Any consideration of the charge on any other basis was erroneous."*

- *"Any representation to the Appellant that improper purpose was not being alleged constituted a serious error".*

- *"In that the Stewards wrongly interpreted, applied or explained Rule 234(7) they erred in law".*

A careful reading of the transcript reveals that the Chairman of the inquiry quite properly responded to Mr Kaltsis in denying that the Stewards were relying on Mr Kaltsis having "*used something on the dog*". Rule 234 states:

> *"A person may be found to be guilty of the breach of any provision of these Rules not specified in this rule, but without prejudice to the generality of that liability a person who -*
>
> > *.. (7) had at any relevant time the charge or control of a greyhound brought to compete in a race or a qualifying trial which is found by the Stewards to have had any apparatus used upon it, or any drug, stimulant or deleterious substance administered to it, for any improper purpose;"*

The phrase in Rule 234(7) which relates to usage obviously only refers to an apparatus being involved. The Stewards were not alleging the apparatus breach was the relevant one. Rather they were concerned with the breach of the final part of the Rule which refers to something having been administered.

Western Australian Greyhound Racing Association Inc v Williams & Williams (F.CT S.Ct App No 64/87, unreported, Lib No 6930) involved a close examination of the meaning of Rule 234(7). That case was concerned with the discovery in a swab of benzyol ecgonine, which is one of the major metabolites of cocaine. The 5 year disqualification imposed in that matter was confirmed by the Committee of the Association on appeal. In Supreme Court proceedings against the Association a declaration that the disqualification was invalid and void was sought as well as a declaration that the finding and purported disqualification was in breach of the rules of natural justice. The facts pleaded

in the writ were mainly directed to the sufficiency of the evidence before the Stewards to sustain their finding and the so called misplacing by them of the onus of proof. The action initially came on before Franklyn J who ordered and declared that the purported disqualification was invalid and void in relation to the Stewards' proceeding. The proceeding proved to be misdirected in that it was not appreciated that in essence the disqualification had been by order of the Committee of the Association on an appeal by way of a rehearing of the matter rather than the disqualification depending on the decision of the Stewards.

In the appeal to the Full Court which followed, one of the grounds alleged:

> *"The learned Judge, having concluded that the finding that the drug was administered for an improper purpose could only be made as a matter of inference, erred,*
>
> *i) in concluding that the inference could not properly been drawn by the Stewards as a specialist tribunal in the absence of any evidence as to whether the drug was or might have been administered for any reasonable legitimate or proper purpose, ..."*

Wallace J at page 9 stated:

> *"The drug found in the urine of Umina Girl was Benzyol Ecgonine. It is one of the major metabolites of cocaine. Before the learned Judge was the full transcript of the Stewards' inquiry. His reasons reveal a careful perusal of that transcript to in the end being of the view that:*
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> > *"the evidence relating to the taking of the urine sample, its transmission to the chemist and its analysis is sufficient in my view to satisfy reasonable men to the required standard of proof that at a relevant time within the meaning of the Rule the male plaintiff had the charge or control of the dog, that it had been brought to compete in a race and that it has been found by the Stewards to have had a drug administered to it. However, a problem arises when one considers the requirement under the Rule that the Stewards must also find that the drug was administered for an improper purpose. Such a finding, in the absence of an admission or other direct evidence, can only be made, if made at all, as a matter of inference. Having regard to the evidence of the chemist as to the effect of cocaine on a dog, and to the fact that the Stewards on inquiry had implicitly found that the evidence as insufficient*

> *to make out a prima facie case that the male plaintiff had himself administered the drug, their consideration of an improper purpose must necessarily be directed to the improper purpose of a third person in administering the same. The evidence and the course of the proceedings suggest that the Stewards in fact gave the question of the existence of such an improper purpose no consideration whatsoever and made no such finding. The need for such a finding was not referred to by the Chief Steward in his explanation of the meaning of Rule 234(7) to the male plaintiff, and in the absence of any reasons for decision pointing to such a finding there can in such case be no assumption that it was made. ...."*

After referring to the evidence of one Stenhouse, a chemist in the employ of the Government Laboratory to the effect that cocaine "certainly numbs the pain associated with sore muscles and vigorous exercise", the learned Judge commented:

> *"That passage demonstrates quite clearly that the Stewards considered that the mere fact that cocaine had been administered and was not available on prescription was sufficient for them to conclude that it had been administered for a purpose which they recognised but did not identify, and that they were not interested in ascertaining as a fact what was the purpose of the person administering it or whether it may have been administered for any purpose other than an improper purpose."*

... As to the onus and degree of proof his Honour was of the opinion that the onus lay upon the Stewards to establish a breach of the Rules. He was not of the opinion, as contended in the respondents' statement of claim, that they had reversed the onus of proof."

As Burt C J stated (at 6 and 7):

> *"His Honour made the orders which he did because he held that the transcript of the proceedings before the Stewards suggested that they had given no consideration to the question whether the cocaine had been administered to the greyhound for an "improper purpose" and that upon that question the Stewards had made no finding. The trial Judge expressed his conclusion in these words:*
>
> > *"The full reading of the transcript reveals no concern whatsoever on their part as to the purpose behind the administration of the drug. Consequently I find that there was insufficient evidence to establish that the*

male plaintiff was guilty of the breach charged in that the evidence failed to establish one of the elements necessary to make out the breach alleged, i.e. that the Stewards found the drug to have been administered for an improper purpose. Consequently there was no breach made out and the penalty imposed should not have been imposed. I find that, in disqualifying the male plaintiff without considering and making a finding as to whether or not the drug was administered for an improper purpose and in consequently disqualifying the dog, the Stewards and the defendant failed to act in accordance with the Rules and to accord the male plaintiff and the female plaintiff natural justice in that they were acting without power, no breach of the Rules to authorise such disqualifications having been shown to exist.""

His Honour continued (at 8 and 9):

"The trial Judge's finding "that there was insufficient evidence to establish that the male plaintiff was guilty of the breach charged in that the evidence failed to establish one of the elements necessary to make out the breach alleged, i.e. that the Stewards found the drug to have been administered for an improper purpose" is not a finding which has anything to do with natural justice. And in any event I would not with respect agree with it. The expert evidence was that the drug cocaine when administered to a greyhound has no "legitimacy" and that its effect is to numb the pain associated with sore muscles and vigorous exercise. I would agree with the position taken up by the respondents' counsel at trial that being that upon it being found, as it was, that cocaine had been administered to the greyhound then the only inference which was reasonably open was that it had been administered for an improper purpose.

... I do not think that it can be said that the Stewards gave no thought to and that they did not consider the "improper purpose". The trial Judge seems to have reached the conclusion which he did from a reading of the transcript of the proceedings before the Stewards, which he reproduces in his reasons, in which the male respondent was questioning Mr Stenhouse who had analysed the swab upon the availability of Benzyol Ecgonine and Mr Stenhouse was doing his best to explain that no one suggested that Benzyol Ecgonine, which was the product of a metabolic change, had been administered to the greyhound and the Chairman of Stewards was pointing out that "no one would have been able to obtain Benzyol Ecgonine in any way on prescription" and hence "I think pursuing Benzyol Ecgonine is not going to serve any purpose". It was cocaine which had been administered and the Stewards

by their finding found that it had been administered for an improper purpose and it cannot, I think, now be held that they made that finding without considering the question of purpose."

Smith J agreed with the reasons of the Chief Justice. Wallace J came to the same conclusion as the Chief Justice in these terms (at 11):

"The only issue which was before the Stewards and the Committee was as to whether the dog, conceded to be in the control of the male respondent at the relevant time, was found to have a drug for an improper purpose. The relevant rule speaks in terms of strict liability. Furthermore the evidence provided the effect of cocaine and there was no explanation to the contrary. The clear inference to be drawn from those portions of the evidence set out in his Honour's reasons was that the drug was administered for an improper purpose. The Stewards were certainly not obliged to ascertain as a separate fact the purpose of the person who administered the drug or whether it may have been administered for any purpose other than an improper purpose. As I read r. 234(7) what the Stewards were required to have under consideration was that at the relevant time a greyhound which had been brought to compete in a race and was in the control of the male respondent had had administered to it the drug of cocaine and that that was for an improper purpose. They properly answered that question in the affirmative."

It was submitted by Counsel for Mr Kaltsis that the Williams case turns on its own facts and the inadequacy of the pleading involved. It was suggested that McBride (App 53/92) and subsequent cases I Scerri (153/93), Lindsay (262/95) and I Scerri (284/96) may have been wrongly decided. Further it was argued that the oft-cited passage from Wallace J in Williams is obiter, and does not form part of the majority judgment and that the analysis of Franklyn J at first instance is the preferable approach in the present case. Williams is not authority for the proposition that the rule attracts 'strict liability' in the absence of proof of improper purpose.

Having studied the reasons in Williams and considered the argument for Mr Kaltsis I am not persuaded by these submissions. The Stewards did not prove the purpose for which the administration occurred. As with most drug offences where there is no confession as to administration it is a virtually impossible for the Stewards to ascertain and prove as a separate fact the

purpose of the person who administered the drug or whether it may have been administered for any purpose other than an improper one.

The drug and its metabolite were found in the greyhound which Mr Kaltsis had brought to compete in a race. Taking into account all of the circumstances of the matter I am satisfied that there was an administration for an improper purpose and in the context of the relevant Rule, that is the only reasonable inference which is open. The Stewards were not in error in the way in which they interpreted and applied the Rule. This ground of appeal therefore fails.

GROUND 2 - THE STEWARDS CONSIDERED THE APPELLANT BOUND BY THE ANALYST'S FINDINGS

In support of this ground counsel for the appellant argued the sample was seriously in dispute throughout the proceedings, both as to the method of its being taken and the analysis of its contents. It is claimed that the Stewards erred in convicting the appellant in that they determined that he was bound by the findings of the analyst. Whilst at the initial hearing of the evidence prior to the laying of the charges the Stewards seemed to accept that the appellant was free to challenge the laboratory findings, it was argued that the view changed after the charge was laid. At the subsequent hearing, in questioning the Stewards as to how he could challenge the findings the following was said:

"MR MARTINS:	*Well, basically you've...ah... you've got to accept it from the Analyst you that they've found those....*
MR KALTSIS:	*Yeah hang on...I just said how can I challenge those findings?*
MR MARTINS:	*Well I don't think that's what you're here for to try and challenge them."*

Consequently it is argued that the failure of the Stewards to allow the appellant the opportunity to challenge the findings of the analyst constituted procedural unfairness and a denial of natural justice. To the extent that the Stewards considered the evidence of the analyst was beyond challenge or misled the appellant in that regard it is said they erred in law.

There was a long break between the first part of the inquiry, after which Mr Kaltsis was given a copy of the transcript, and its continuation. The transcript of the second part of the inquiry reveals that Mr Kaltsis clearly had the benefit of mature reflection of all aspects of the matter including the precise nature of the charge involved.

Prior to the original hearing the Stewards wrote to Mr Kaltsis advising of the hearing and attaching copies of the swab card and report of the Chemistry Centre. Mr Kaltsis had witnessed "*the veterinary surgeon taking the sample of urine and the placing of the sample in a container and the sealing of the container*". Mr Kaltsis signed the swab card as a trainer but did not complete the section on the card which afforded him the opportunity of requesting his own nominated approved analyst being "*notified of the place and time of laboratory analysis and be allowed to attend...*".

Rule 196 states:

"***Certificate of Findings***

> *In any proceedings under these Rules when it is necessary to prove the findings of any analysis made or autopsy performed, a certificate which purports to have been issued by an analyst approved by the Board or a veterinary surgeon shall, without proof of the signature, be prima facie evidence of the matters to which it relates.*"

The certificate in question not only gave the results of the examination of the sample but also verified that "*The samples were received in good order with the seals intact...*".

The Stewards did not simply rely on the analyst's certificate as the analyst actually attended and gave evidence at the inquiry. Further, relatively early in the inquiry Mr Kaltsis told the Stewards that he attended the taking of the urine sample. In relation to it he was asked "*and were you satisfied in the manner in which the sample was taken*" to which he answered "*I am satisfied in the manner in which it was taken yes*".

Mr Kaltsis put forward a variety of possibilities as to how the drug came to be in the greyhound. Mr Kaltsis questioned the analyst at the hearing about the possibility of the greyhound having eaten something such as chocolate through no fault of Mr Kaltsis. I am satisfied from reading the evidence in relation to this matter before the Stewards, where Mr Kaltsis asked the analyst a range of questions on this aspect, that none of those possibilities were demonstrated to have occurred and could amount to an exoneration or defence in all of the circumstances.

Having considered this and the other evidence I am satisfied there is no merit in this ground. I am satisfied there was no error on the part of the Stewards and that a conviction based on the evidence of the analysis was appropriate. There was nothing untoward about the procedure associated with the taking of the sample and its analysis. Mr Kaltsis was afforded all of the proper procedures in relation to these matters and his rights were not compromised. At the hearing he was present when the analyst gave his evidence, he was afforded the opportunity of questioning him and he availed himself fairly extensively of that opportunity. For these reasons ground 2 fails.

GROUND 3 - THE ONUS OF PROOF

It is argued that the Stewards erred in their hearing of the charge in effectively reversing the onus of proof. In support of that proposition it is submitted that at no stage of the hearing did the Stewards acknowledge that the burden of proof rested on them and nor does it emerge from their conduct of the matter or their reasons. Further it was argued that the Stewards failed to correctly deal with the matter in that they appeared to require the appellant to prove certain aspects of the case. The following passage was referred to by way of example:

> *"Now is there, before we deliberate, is there anything further you wish to say to us that may convince us that you're not guilty of the charge?"*

Mr Percy claimed there is no reverse onus of proof provided for in the offence charged. The appellant was not required to make out a defence according to Counsel. In that the Stewards required the appellant to discharge any onus of proof and prove his innocence, they erred.

It appears that Mr Kaltsis had no idea how the drug came to be in the dog. Despite that fact the reality is that the Rules are couched in language which outlaws anyone in the relevant relationship to a greyhound who brings that animal to compete with a drug inside of it. Unlike the Rules of Racing and of Trotting the Rules Governing Greyhound Racing do not provide a defence in the case of a person who can demonstrate that he had taken the appropriate precautions to prevent the administration of the drug. *Harper v Racing Penalty Appeal Tribunal of Western Australia* (1995) 12 WAR 337 is authority for the fact that the Rules of Racing do not imply the necessity on the part of Stewards to negate an honest and reasonable mistaken belief on the part of a licensee. The public policy which was referred to in the context of racing in order to justify that conclusion applies with equal force to the Rules of Greyhound Racing.

GROUND 4 - DENIAL OF NATURAL JUSTICE

This ground alleges 3 separate components. The first is the Stewards denied Mr Kaltsis access to the sample of urine or did not provide him with a second or referee sample, notwithstanding his repeated requests. It is conceded that there is no specific provision in the Rules which requires the Stewards to provide an accused person with access to a second or referee sample. It is argued for Mr Kaltsis that greyhound racing in this State is out of step with other sports as reasons of fairness dictate that where a sample is in dispute such access to a second or referee sample is imperative. Although the Stewards' inquiry is not strictly bound by the Rules of other jurisdictions, it should in the exercise of its discretion consider itself bound as a matter of fairness. Accordingly, it is claimed that the failure of the Stewards to allow access to the sample when it was requested in this regard vitiated the proceedings.

I am told the Rules Governing Greyhound Racing in Western Australia do not contemplate the provision of a second or referee sample for the reason that the sample taken from a greyhound, compared with that taken from a horse, is not usually of sufficient quantity to be divided up.

I am satisfied that the Stewards did comply with the requirements under the Rules in the manner in which they conducted the inquiry and received the evidence as to the results of the swab and the evidence of the analyst. In the circumstances when the Rules do not contemplate "*access to the sample*" or for the provision of "*a second or referee sample*", it cannot be said that this in any way inhibited or compromised Mr Kaltsis' rights. It was Mr Kaltsis who elected not to exercise fully his rights by having his own nominated analyst present at the time the sample was analysed.

The procedure adopted in other sports and in other jurisdictions is irrelevant. Whilst the Greyhound Rules in this State are relatively quite old and may not thereby be said to be consistent with some modern practices, participants of the sport of greyhound racing in this State are bound by the local Rules and must comply with them until those responsible see fit to change them.

The remaining allegations in relation to this ground, namely the alleged failure to make adequate findings of fact and the inadequacy of the reasons are in effect limited to the question of the improper purpose. In this regard the appellant relies on Lloyd v Faraone (1989) WAR 154 per Malcolm CJ at pp163-164 and claims that the appellant is unable to properly exercise his right of appeal in the absence of knowing what facts were found against him. It is claimed that "*the failure of the Stewards to make adequate findings*" as to the essential evidentiary matters constituted procedural unfairness and a denial of natural justice.

The Stewards did state that "*We do however find that there is ample evidence that supports all components of Rule 234(7)*". The first three components in effect have been conceded. Bearing in mind what I have already said in regard to this issue I am satisfied that the Stewards were entitled to proceed with the matter in the manner in which they did, based upon the authority of the *Williams'* decision.

Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247 at 269-271 and 281 is authority for the proposition that there is no obligation to refer to all of the evidence.

The reasons which the Stewards did provide are sufficient to enable the appeal to be dealt with and do not in my opinion justify a claim of denial of natural justice. Mr Kaltsis knew the full nature of the inquiry and was given every opportunity to answer the allegations against him (*Gibbs v RPAT* unreported S.CT of WA in Chambers Library No 97002, 14.1.1997).

CONCLUSION AS TO CONVICTION

For these reasons I consider that Mr Kaltsis was properly convicted of the charge.

SENTENCE

In the outline of submissions presented on behalf of Mr Kaltsis in relation to the sentence it is alleged that:

> "1. *The penalty imposed by the Stewards was manifestly excessive in all the circumstances of the case, in particular:-*
>
> *(i) The quantity of the drug was small and had a non performance enhancing effect at the time of the race.*
>
> *(ii) The Appellant has a excellent prior record. He has been a greyhound trainer for approximately 25 years and to date he has had no prior convictions.*
>
> *(iii) The greyhound was not supported. It had excellent form when it returned drug free swabs, running faster times than it did in the race in question.*
>
> *(v) The Appellant's limited financial circumstances.*
>
> 2. *The penalty imposed by the Stewards was excessive having regard to penalties imposed for similar offences Australia-wide. For example:*
>
> *(i) On the 25.11.95 Mr J. Zahlan was suspended three months for the detection of caffeine in "Sea Rhapsody" at Frankston;*
>
> *(ii) On the 24.2.96 Mr T. Moore, trainer, was disqualified three months for the detection of caffeine in "Diesel Injector" at Oakleigh;*

(iii) *On the 20.3.96 Mr C. Kampman was suspended three months for the detection of caffeine in "Fully Charged" at Hexham;*

(iv) *On the 21.5.96 Mr G. Caffyn was disqualified for three months as was the greyhound "Forever Eagle" for the detection of caffeine at Mooroolbark.*

(v) *On the 15.6.96 Mr R. Stagg was suspended for three months as was the greyhound "Ingleburn" for the detection of caffeine at Inglewood.*

(vi) *In Western Australia the Tribunal has upheld the following penalties:*

(a)	*Scerri (153/93)*	*9 months (2nd offence)*
(b)	*Lindsay (262/95)*	*3 months*
(c)	*Scerri (284/96)*	*Range is 3-12 months*
(d)	*Moyle (304/96)*	*2 months*
(e)	*Polczynski*	*3 months.*

3. *The above authorities establish that a penalty of nine months disqualification for the detection of caffeine in the present case was manifestly excessive and totally out of proportion to other penalties given for similar offences in other Australian States. The failure of the Stewards to consider the full range of penalties constituted a serious error: see McPherson v RPAT (1995) 79 A Crim Rep 256.*

4. *Accordingly, the penalty imposed by the Stewards should be varied in line with the above authorities."*

At the hearing the Stewards provided a schedule of penalties imposed on first offenders in relation to caffeine administration. As there was some dispute between the parties in relation to the Schedule the Stewards undertook to supply a revised schedule of the penalties imposed on first offenders in relation to detection of caffeine in greyhounds. The revised schedule contained the following information:

Name	Rule	Date	Penalty	Appeal Result	Appeal Body
Watkins C	234(8)ii	6/3/76	Two Years 6 Month Disq of G/Hound	Appeal Dismissed Reduced to 6 Months (G/Hound Disq not Disturbed)	WAGRA
Langston G	231(1)(d)	22/7/77	Three Years 12 Month Disq of G/Hound	Reduced to 12 months (G/Hound Disq not Disturbed)	WAGRA
Blakeney T	234(8)	20/5/78	Two years	Appeal Dismissed	WAGRA
York L (Mrs)	234(7)	5/1/79	18 Months	Reduced to 6 months	WAGRA
Gray A	234(6)	3/2/79	3 Months	No Appeal Lodged	_____
Edwards James	234(6)&(7)	18/12/81	One Year	Appeal Dismissed	WAGRA
Edwards John	234(6)	18/12/81	One Year	Appeal Dismissed	WAGRA
Franklin E	234(7)	1/1/82	One Year	Appeal Dismissed	WAGRA
Scerri I	234(7)	12/4/84	One Year	Appeal Dismissed	WAGRA
Nelson G	234(7)	13/5/89	One Year	No Appeal	_____
Thompson J	234(7)	12/6/90	9 Months	Appeal Dismissed	F Robins
Martin R	231(1)(d)	21/11/90	One Year	Appeal Dismissed	F Robins
Mcbride R	234(7)	18/12/91	One Year	Appeal Dismissed	Appeals Tribunal
Jeffries D	234(7)	4/8/94	6 Months	No Appeal Lodged	_____
Collard C	234(7)	25/4/96	9 Months	No Appeal Lodged	_____
Ferguson C	234(7)	20/12/96	9 Months	No Appeal Lodged	_____
Kaltsis P	234(7)	7/1/97	9 Months	Pending	

The solicitors for Mr Kaltsis sought additional information regarding the schedule as to the number and nature of previous offences, the quantities of caffeine and length of time each person named in the schedule held licences at the date of conviction or appeal. The Stewards supplied such further information as they could in relation to these questions. I have considered all of that material which was supplied after the completion of the appeal hearing. Included in that material is the proposition on behalf of the Stewards that the quantities of caffeine are of little relevance in relation to Rule 234(7) offences as it depends on the dosage, the time and the means of administration. Prior to McBride in December 1991 no levels were stated. In Ferguson only caffeine

was detected where the level was 4 micrograms per mil. In the case of Thompson the analyst's evidence was that "*the level wasn't a very high level*". Both Thompson and Ferguson received 9 months disqualification.

I have considered the aspects of the quantity involved, the appellant's good record of many years and the other issues raised in this ground of appeal. I am satisfied that the penalty of a 9 month disqualification which was imposed on Mr Kaltsis in all of the circumstances of this case is reasonably consistent with penalties which have been handed down in recent times in this State and is within the range of penalties which have been handed down over the years in Western Australia. I am not too much influenced by the examples of the penalties which were imposed in other states as I am not told anything regarding the uniformity of the penalties in the other jurisdictions compared to Western Australia and the consistency of penalties imposed in other states. I do not know how representative or typical these examples are as to what is normally imposed elsewhere.

Whilst I may not have imposed a 9 months disqualification on Mr Kaltsis if I were deciding the matter in view of his fine record of many years standing, I am not convinced that any error on the part of the Stewards has been demonstrated.

For these reasons I would dismiss the appeal as to penalty as well.

MR D MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL 342

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT:	**PAUL KALTSIS**
APPLICATION NO:	**A30/08/342**
DATE OF HEARING:	**5 February 1997**
DATE OF DETERMINATION:	**25 February 1997**

IN THE MATTER OF an appeal by Paul Kaltsis against the determination of the Western Australian Greyhound Racing Association Stewards on the 7 January 1997 imposing a nine month disqualification under Rule 234(7).

Mr T Percy and Miss Johnson, instructed by DG Price & Co, represented the appellant.

Mr B Goetze represented the Western Australian Greyhound Racing Association Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and the conclusion and I have nothing to add.

John Prior

Seal of the Racing Penalties Appeal Tribunal of WA

JOHN PRIOR, MEMBER

APPEAL 342

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J SYME (MEMBER)

APPELLANT:	**PAUL KALTSIS**
APPLICATION NO:	**A30/08/342**
DATE OF HEARING:	**5 February 1997**
DATE OF DETERMINATION:	**25 February 1997**

IN THE MATTER OF an appeal by Paul Kaltsis against the determination of the Western Australian Greyhound Racing Association Stewards on the 7 January 1997 imposing a nine month disqualification under Rule 234(7).

Mr T Percy and Miss Johnson, instructed by DG Price & Co, represented the appellant.

Mr B Goetze represented the Western Australian Greyhound Racing Association Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and the conclusion and I have nothing to add.

JOHN SYME, MEMBER

APPEAL 342

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**PAUL KALTSIS**	
APPLICATION NO:	**A30/08/342**	
PANEL:	**MR D MOSSENSON**	**(CHAIRPERSON)**
	MR J PRIOR	**(MEMBER)**
	MR J SYME	**(MEMBER)**
DATE OF HEARING:	**5 FEBRUARY 1997**	
DATE OF DETERMINATION:	**25 FEBRUARY 1997**	

IN THE MATTER OF an appeal by Mr P Kaltsis against the determination made by Western Australian Greyhound Racing Association Stewards on 7 January 1997 imposing a nine month disqualification under Rule 234(7) of the Rules Governing Greyhound Racing in Western Australia.

Mr D Price, instructed by D G Price & Co, represented the appellant.

Mr B Goetze, instructed by Minter Ellison, represented the Western Australian Greyhound Racing Association Stewards.

The appeal as to both conviction and penalty is dismissed.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of WA