



**RACING APPEALS  
AND  
DISCIPLINARY BOARD**

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**APPEAL DECISION**

**BROOKE SWEENEY**  
*and*  
**RACING VICTORIA STEWARDS**

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**Date of Hearing:** 29 June 2016

**Panel:** Judge Bowman (Chair).

**Appearances:** Mr Robert Cram appeared on behalf of the stewards.  
Mr Des O'Keeffe appeared on behalf of Ms Sweeney.

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At Flemington on Saturday 25 June 2016, apprentice jockey Brooke Sweeney was found guilty of a charge under AR 175A(5)(a)(ii) for using her whip 7 times prior to the 100m mark. The charge relating to her ride on *Leveraction* in Race 7 the *David Bourke Provincial Plate* (1600m).

Ms Sweeney had her permit to ride in races suspended for a period to commence at midnight on Monday, 27 June 2016 and to expire at midnight on Saturday, 2 July 2016 – a total of 5 race meetings (2 metro, 3 provincial).

In assessing penalty Stewards took into account her recent bad whip record.

A Notice of Appeal against the **severity of the penalty** was lodged on Monday, 27 June 2016.

A stay of proceedings was not required.

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**DECISION:** **Appeal allowed.**  
**Penalty varied to a fine of \$1,000.**

**TRANSCRIPT OF  
PROCEEDINGS**

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**RACING APPEALS AND DISCIPLINARY BOARD**

**HIS HONOUR JUDGE J. BOWMAN, Chairman**

**EXTRACT OF PROCEEDINGS**

**DECISION**

**IN THE MATTER OF THE DAVID BOURKE PROVINCIAL  
PLATE OVER 1600 METRES AT FLEMINGTON ON 24/5/16**

**BROOKE SWEENEY**

**and**

**RACING VICTORIA STEWARDS**

**MELBOURNE**

**WEDNESDAY, 29 JUNE 2016**

MR D. O'KEEFFE appeared on behalf of the Appellant

MR R. CRAM appeared on behalf of the RVL Stewards

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CHAIRMAN: Ms Brooke Sweeney has pleaded guilty to a charge of excessive whip use pursuant to AR 175A(5)(a)(ii), in that in race 7 at Flemington on 25 June last, when riding Leveraction which ran second, used the whip seven times prior to the 100-metre mark. The Stewards imposed upon her the penalty of a suspension of five meetings. Ms Sweeney is appealing against the severity of that penalty.

During the submissions on penalty advanced by Mr O'Keeffe on behalf of Ms Sweeney, there was considerable reference to possible changes to the whip rule arising from the report of the National Chairmen of Stewards Committee to the Racing Australia board to be considered at the next meeting of that board on 14 September next.

I appreciate fully that the role of the Stewards is to implement and apply the rules as they are, not on the basis of what they may become. However, I would make the following general observations and hope that they may be of some use.

The issue of the whip rule is a vexed question but the rule does represent the present applicable requirements. In relation to the rule as it is presently operating as to its efficacy, I might stick my bib in and have my thoughts, for what they are worth, which is probably very little.

To me, and from my experience here in recent times, the present rule certainly does not seem to be ideal. There are certain anomalies with it. As pointed out

recently by a senior Sydney jockey, in a race, a jockey can be in breach of the rule, but in fact be using the whip on fewer occasions than a jockey not breaching the rule. The horse may be difficult to ride and failing to get into a race early on in an event. Jockey A may use the whip to control it or get it interested early in the event and, say, hit it six times before the 100-metre mark. That is breaching the rule. By the 100-metre mark, it may have the race in its keeping, so that Jockey A puts the whip away and does not use it in the last 100 metres. In the same race, Jockey B may use the whip five times at the 100-metre mark and then as many strikes as possible in the last 100 metres, up to a possible, if unlikely, 14. Jockey A has breached the present rule, Jockey B has not, albeit the horse has been struck with the whip many more times. Bearing in mind both policy and public perception, this seems to me to be a strange and unfortunate result.

Next, there is a problem to which I have alluded in previous judgments which I note arose in the post-race interview by the Stewards with Ms Sweeney in the present case. Jockeys cannot always see with precision where the 100-metre mark is. The jockey may have his or her head down. I have previously suggested that on each course, or at least on each frequently used course, there be a clearly identifiable pole at the 100-metre mark. I appreciate that experienced jockeys probably have a pretty good idea of where the 100-metre mark is in broad terms. However, a change in colour of the inside running rail may not represent a clear enough indication of where the 100-metre mark is. In a bustling crowded finish, a jockey riding several horses off the rail in the midst of a pack may not be able to see where the change in colour occurs, even

assuming such jockey can or wanted to look for it. The task may be even more difficult for an apprentice. I note from the material provided to me in the present case that 10 of the top 11 offenders in relation to this rule are apprentices. Also, during the running of a race, jockeys may be concentrating on matters other than counting whip strokes. Further, the unexpected may occur.

Counting to one point in the race and then there being a free-for-all from that point on seems to me to not be an ideal solution. I also appreciate that whip use is an issue which requires the balancing of a number of factors. The welfare of the horses and the public perception of their welfare are very important. So is the safety of jockeys and their need to keep horses under control in running, and in as straight a line as possible in the circumstances, particularly when under pressure. There is also the question of the public perception that each jockey on each horse is making the maximum endeavour within the rules to win the race.

Those wiser than me will doubtless be considering these and other matters. However, for the moment, we are stuck with the existing rule and it must be applied, but hopefully, one way or the other, some improvements can be achieved.

I return to the present case. Consistency in sentencing and the use of comparable penalties are well-known concepts. Ms Sweeney has had 12 previous offences; this one makes her 13th. She was two strokes over the

limit, with seven before the 100-metre mark. I also appreciate that at least a couple of these hits may have been in an endeavour to straighten her horse just after the 300-metre mark.

In any event, in relation to comparable penalties, I note that apprentice Regan Bayliss, also in relation to a ride at Flemington, and being five hits over at 10 on his 13th penalty, was fined \$1000. There were various other penalties that were brought before me; for example, senior jockey Ben Melham was not suspended until his 19th offence.

In the circumstances, it seems to me that Ms Sweeney's appeal should be allowed and the penalty varied. This seems to me to be consistent with the penalties imposed on others. Accordingly, Ms Sweeney is fined \$1000.

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