

BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 19/07

BETWEEN **NOEL CURR**

Appellant

A N D **MOTORCYCLING NEW ZEALAND (“MNZ”)**

Respondent

TRIBUNAL Nicholas Davidson QC (Deputy Chairperson)
Tim Castle
Ron Cheatley

Counsel: Mr Noel Curr (for himself)
Ms Kirsty McDonald QC (counsel for MNZ)

Registrar: Brent Ellis

**FURTHER DECISION AND OBSERVATIONS OF TRIBUNAL
REGARDING ISSUES OF STEWARDSHIP
AND
RELATIONSHIP WITH MEMBERSHIP**

Dated: 26th November 2008

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A. CHRONOLOGY OF THIS APPEAL

1. The appellant in this case, Noel Curr, when a member of Motorcycling New Zealand Inc (“MNZ”) had his membership suspended for three years from 13 May 2007 by a decision of the Board of MNZ dated 18 September 2007.
2. The suspension from membership followed an MNZ disciplinary hearing on 17 August 2007. He was also fined \$500 **and his position as an MNZ Steward was terminated from 18 September 2007.**
3. He appealed to this Tribunal and an Interim Decision of the Tribunal dated 5 March 2008 reduced the period of suspension to run from 13 September 2007 to 5 March 2008. The Tribunal confirmed these outcomes by its Final Decision (except as to stewardship) dated 11 April 2008. The fine was set aside.
4. A full narrative of events leading up to the Final Decision of 11 April 2008 is contained in that decision, which is publicly available from the website of the Tribunal at <http://www.sportstribunal.org.nz/decisions-08html>.

B. STEWARDSHIP

5. In the decision of 11 April 2008, the Tribunal recorded (at para.103/4) that Mr Curr’s position as MNZ Steward would be reviewed by the Tribunal **if that was required by either party**; the Tribunal reserved its jurisdiction. It was not argued whether it was part of the “*penalty*” or whether it was a decision of the Board independent of that, but associated on the facts. For that reason the Tribunal held the point over.
 6. On 13 May 2008, Mr Curr asserted that his **membership** of MNZ, which had been as a Steward, had been withheld by MNZ contrary to the decision of this Tribunal of 11 April 2008, as his suspension had come to an end on 5 March 2008.
 7. The Tribunal issued a Minute dated 14 May 2008 so that the Tribunal could consider the position asserted by Mr Curr. A teleconference then took place.
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C. THE DECISION OF THE TRIBUNAL REGARDING STEWARDSHIP: 28 JULY 2008

8. In this decision, the Tribunal addressed the stewardship issue. Mr Curr contended then as his “stewardship” was the only basis for his “membership” of MNZ, and once his suspension **as a member** came to an end, he was automatically reinstated as a Steward. This was despite the fact his stewardship had been expressly terminated, in addition to his suspension as a member.
 9. This issue had come into focus when Mr Curr sought to be Clerk of the Course at a Marlborough Motorcycle Club meeting on 10-11 May 2008 by which time his suspension had come to an end. The MNZ stance was that the Tribunal’s decision (of 11 April 2008), had not reinstated Mr Curr as a Steward, indeed it had expressly reserved the issue.
 10. At this stage the implications of Rule 7-3-6(b) had not been addressed, which has given rise to this further consideration by the Tribunal. As of 8 May 2008 MNZ said the Tribunal could or should not reinstate him as he was the subject of new disciplinary proceedings which might have an impact on stewardship. MNZ argued that while Mr Curr’s suspension **as a member** may have “*run its course*”, Mr Curr did not automatically become a Steward once more, his position having been expressly terminated.
 11. Mr Curr contended that the refusal by MNZ to approve his position as Clerk of the Course or as a Steward was a “withholding” of membership privileges contrary to the decision of the Tribunal which he said automatically reinstated him as a member.
 12. The MNZ position was (and remains) that status **as a Steward** under the governing rules of MNZ is the product of appointment and was separately addressed by the Board to the issue of **membership** of MNZ, in whatever other category. MNZ pointed to Rule 3-2 of the 2007 MNZ Manual of Motorsport, which reads “*The Board shall appoint representatives (hereinafter called stewards) who shall have supreme control over the conduct of any competition motorcycling meeting and shall have the duty of*
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enforcing the rules, bylaws and regulations of MNZ that apply at the meeting. The Stewards also enforce any international rules that apply. They may, postpone a competition, impose fines, suspend or exclude an entrant or official, and do or direct all those things considered necessary for the conduct of the meeting in accordance with the Manual of Motorcycle Sport. Stewards progress through the MNZ structure from level 1 through to level 5. No steward can progress more than 2 levels in any one calendar year. The Stewards Commission shall train and examine Stewards to level 4. Level 5 Stewards are the equivalent of the FIM sporting Steward and as such are required to take the FIM training and examination course. The level 5 requires the express approval of the Board prior to application for an FIM course.”

13. Mr Curr had referred the Tribunal to Rule 2-43 which reads:

*“**Stewards:** Appointed by clubs through the area coordinator for training in stewarding motorcycle sporting events under the rules of MNZ. Stewards are graded according to their qualifications.”*

14. The arguments advanced by Mr Curr and by MNZ on the issue of stewardship were fully considered and canvassed in the written decision of the Tribunal regarding stewardship dated 28 July 2008. In that decision, this Tribunal ruled:

- (a) The decision by MNZ to terminate Mr Curr’s stewardship stood;
 - (b) When his suspension concluded, Mr Curr was entitled to seek membership under any category of membership he considered appropriate;
 - (c) The Board of MNZ must consider any such application for appointment as a steward fairly and dispassionately in light of all the circumstances held relevant.
 - (d) The Final Decision of the Tribunal except as to stewardship of 11 April 2008 had recorded that Mr Curr’s stewardship had been terminated, but if necessary *“will be reviewed by the Tribunal if that is required by*
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either party". The decision addressed the question of suspension, but not the disciplinary process to the extent that involved stewardship, or otherwise was a Board decision about the status of stewardship.

The request that Mr Curr be Clerk of the Course on 10/11 May 2008

15. When the President of the Marlborough Motorcycle Club proposed that Mr Curr be Clerk of the Course for a meeting on 10/11 May 2008, Mr Pavletich as CEO responded.
 16. In his letter of 8 May 2008 he said (for MNZ) "*The Tribunal did not reinstate Mr Curr as a MNZ Steward, but instead requested MNZ to review its position. It reserved leave for the parties to apply to the Tribunal to have the matter determined if necessary*".
 17. That is not a strictly accurate statement of position. If the parties could resolve matters regarding stewardship, then the Tribunal was content with that. But the question of whether stewardship could be considered by the Tribunal, and on what terms, was left open.
 18. A further comment in Mr Pavletich's letter of 8 May 2008 is relevant. "*To date, MNZ has been unable to review Mr Curr's stewardship as he is again the subject of disciplinary proceedings arising out of his conduct at the last round of the NZ Motocross Championships held at New Plymouth. The Board considers that the outcome of that matter may well have an impact on any decision whether or not to reinstate Mr Curr's stewardship*".
 19. The Board seemed to take the view that stewardship had been terminated, and reinstatement was a matter to be considered on the merits. From one perspective, that was correct, as a further suspension would mean that any restoration of stewardship was pointless. But that still left open the question of whether the status of stewardship as such may be affected by Board disciplinary decisions under the Rules and Constitution applicable at the time. The Board had effectively mixed the disciplinary process with a decision as to status of stewardship in its original decision without specifying the reasoning associated with stewardship.
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20. Mr Curr's position, expressed in his e-mail of 13 May 2008, was that MNZ had put forward "*no submissions ... requesting expulsion from the position ...*" and therefore stewardship was a matter for the Marlborough Motorcycling Club, and the final decision rested with it. The immediate MNZ response was that Mr Curr's contention that Rule 2-43 leaves matters in the hands of the Marlborough Motorcycling Club was incorrect, because that Rule provides that stewards are "*appointed by clubs through the area coordinator for training in stewarding ... under the rules of MNZ*". So clubs nominate for training but do not appoint stewards, who are representatives of the Board under Rule 3-2.

The further disciplinary decision of MNZ Board dated 16 May 2008

21. A further decision of the MNZ Board on an unrelated matter dated 16 May 2008 saw Mr Curr suspended from holding or applying for membership of MNZ for 18 months from 16 May 2008 (until 16 November 2009). Mr Curr has appealed that decision to this Tribunal, which has struck out the appeal as out of time, see *Noel Curr v Motorcycling New Zealand* (ST 09/08, decision dated 30 October 2008). The breaches upheld in the MNZ Board decision arose out of events on 18 November 2007 and subsequent communications. This MNZ Board decision expressly held that it did not consider Mr Curr should hold the office of steward and would not reinstate him as a steward unless ordered to do so.

The 28 July 2008 Decision of the Sports Tribunal

22. The decision of 28 July 2008 **of this panel** essentially held that whilst Mr Curr's right to membership was not **precluded** from the date suspension came to an end, he still had to gain MNZ approval as a Steward, as resumption of that status was affected by the termination decision.
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D. MR CURR'S REQUEST THAT THIS TRIBUNAL FURTHER CONSIDER THE QUESTION OF HIS STATUS AS A MEMBER THROUGH STEWARDSHIP

23. Mr Curr then wrote to the Tribunal seeking a re-hearing of the "stewardship" issue. The Tribunal issued a Minute dated 14 August 2008, which traversed the chronology of events and processes followed; and specifically addressed the request by Mr Curr to have the Tribunal "*re-hear*" this matter, based on his asserted breaches of fair process and natural justice.
24. The Minute made observations mainly on issues of process, and to provide a setting against which both parties could be heard by the Tribunal as to whether the Tribunal could or should reopen, or re-hear, any issue regarding stewardship which arose out of Mr Curr's assertions.
25. In the Minute of 14 August 2008, the Tribunal observed (para. 9.1) that:

*"The Tribunal may revisit a matter for the purpose of correcting an error, as will a Court, or to complete a hearing where something was left out. It cannot of its own volition, or request of one party, simply 're-hear'. It gave a decision with the understanding that argument was concluded, and that the hearing process was not challenged. It cannot identify a Rule or principle which allows it to **start again** because of an alleged defect of process but it refers to an outcome which might be achieved if the parties agree".*

26. The Tribunal also said, in relation to the stewardship issue (para. 9.2):

*"The Tribunal discerns that Mr Curr considers (correctly) that there has been no consideration of whether he should have been reinstated [as a Steward] on the merits if it was not automatic. That could have been assessed when his suspension was lifted had the 'decoupled' membership and stewardship been recognised. The later suspension which is under appeal would complicate any decision now. This Tribunal cannot second guess the latest Appeal so any Decision on the merits of stewardship would in reality be affected by the outcome of that appeal. The parties may agree however that the Tribunal consider **in this appeal** whether Mr Curr should have been reinstated as a Steward **when his suspension ended**. Evidence would be needed relevant at that time."*

27. And at para. 9.3 the Tribunal said:

*“The question of whether Mr Curr became a Steward **automatically** after any suspension may well arise again. It could by agreement be addressed by a fresh panel, perhaps as an extension to the hearing on the new appeal if the suspension remains in place. This would in effect constitute a new hearing on the point. It could by agreement be addressed under the previous paragraph.*

28. The Tribunal scheduled a teleconference to address the issues for 7.30am 9 October 2008. The parties exchanged submissions up until the day before as timetabled. Late in the afternoon of 8 October 2008, Mr Curr made application for an adjournment of the hearing because he considered that he had not had enough time to consider the submissions filed on 8 October 2008 by counsel for MNZ. The application for an adjournment was held over until 7.30am on the morning of 9 October at which point it was renewed by Mr Curr. He wished to confer with his legal counsel in Blenheim. Counsel for MNZ, Ms McDonald, consented to the adjournment on the basis that it was expressly requested by Mr Curr so that he could secure independent legal advice; and that he should be given that opportunity. The adjournment was granted and the hearing proceeded at 3.30pm Saturday, 11 October 2008. This time, with an anticipated one hour hearing time, was arranged to meet the commitments of the parties and Tribunal members. The Tribunal re-convened by teleconference at 3.30pm on 11 October 2008.

E. SUBMISSIONS OF THE PARTIES 11 OCTOBER 2008

Mr Curr’s case

29. Although he had not previously relied on the Rule, and it was not the focus of the earlier process, Mr Curr relied on MNZ Rule 7-3-6(b) which reads:

“Consequences of suspension

(a) ... [not relied on or relevant];

(b) *Upon expiry of the period of suspension the member will again be entitled to exercise the rights and privileges of membership of that class in which he or she was entered prior to the suspension and the certificate of membership must be returned to the member.”*

30. Mr Curr argued that under the (then) applicable MNZ Constitution, membership of MNZ was divided into five classes, one of which was a class or category for “**each holder of a current Steward’s warrant**”. Mr Curr noted that MNZ Rule 2-43 provided that Stewards would be appointed by **clubs** through the Area Coordinator for training in stewarding motorcycle sporting events under the rules of MNZ; and that under MNZ Rule 2-38 **Senior Stewards** were officials appointed by the **Board of MNZ** to assist, advise or supervise Regional Coordinators and Stewards in the carrying out of their duties. To this we add the provisions of Rule 3-2 (referred to above).
31. Mr Curr submitted that **the only basis** of his membership of MNZ was by reason of his stewardship and he contended that, **based on Rule 7-3-6(b)**, both MNZ and the Tribunal were in error as when his suspension came to an end at 5 March 2008, he was automatically reinstated to his former position of a Steward as that was the only category of membership applying to him. Mr Curr argued that the Tribunal was wrong in its decision of 28 July 2008 - and also wrong to consider that the Tribunal might in principle reinstate him as a Steward if it heard full evidence and argument because, under Rule 7-3-6(b), he was **automatically** reinstated to the rights and privileges of membership of what he described as his “stewardship class”.

MNZ submissions

32. MNZ took the stance that the Tribunal had no jurisdiction to consider the issue of stewardship further, as it had determined this by the Decision of 28 July 2008, and it could not simply “re-hear” the issue.
33. MNZ did not agree to any hearing **on the merits** of whether Mr Curr should have been reinstated as a Steward; it submitted that the decision of MNZ of 16 May 2008 as to whether Mr Curr **should hold** the position of Steward was not a decision of the Board exercising its disciplinary powers, and thus was not amenable to the jurisdiction of the Sports Tribunal but was a separate
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decision subsequent to the suspension coming to an end. Article 8.24 of the current (2008) Constitution of MNZ provides that the Board has the power:

“To refer any matter to the Sports Disputes Tribunal [sic] for determination subject to the procedures set out in this Constitution, regarding rules, regulations, or policies of MNZ and including (but not limited to) any dispute which may be of national significance or relate to a document interpretation or in which the GB believes special circumstances are involved.”

34. That submission must stand alongside against the fact that the original decision of 18 September imposing suspension also terminated Mr Curr’s stewardship.
35. MNZ thus argued that the Tribunal had no jurisdiction to reconsider its decision or to consider the reinstatement of Mr Curr as a Steward.
36. It was necessary for the Tribunal to clearly understand the precise decision MNZ relied upon as being the further and independent decision of MNZ, not related to the decision of suspension against which Mr Curr lodged his original appeal. Counsel for MNZ advised that the decision relied upon by MNZ as to Mr Curr’s suitability to be a Steward, was a decision **“... made by the Board on 21 January 2008 at the conclusion of a second disciplinary hearing held by MNZ in respect of Mr Curr”**.
37. That decision was made available to the Tribunal and Mr Curr. Although described as a “decision” which was “made by the Board on 21 January 2008”, it is more accurate, based on the written record of the decision to describe what took place as consideration by the MNZ Board of a complaint by a Steward against Mr Curr arising out of events at a motorcycle competition meeting. Following a telephone conference on 21 January 2008; a decision of the MNZ Board was released on 16 May 2008, after Mr Curr’s earlier suspension had come to an end.
38. In the Board’s decision of **16 May 2008**, it said, at para. [39]:

“Under the MNZ constitution Noel held his membership by virtue of him being a steward. Accordingly his membership and stewardship are one and the same thing. The net result of the Sports Tribunal’s decision appears to be (and the Board agrees with Noel’s

submissions on this point) that Noel was not reinstated as a Steward so is therefore not reinstated as a member. His suspension has now been completed so there is no impediment to him applying to MNZ to become a member under a different category of membership (i.e. not the stewards category). However, to date, he has not done so.”

39. The Board also said at para. [40]:

*“The Board wishes to make it clear that given Noel’s history of misconduct it does not consider him a fit and proper person to hold the office of steward or any other position which exercises executive functions. Accordingly it will not be **reinstating Noel’s stewardship unless ordered to do so by the Sports Tribunal.**” (Our emphasis).*

40. Finally, the Board said at para. [41]:

“As regards the suspension now imposed Noel is suspended from holding, or applying for membership, of MNZ for a period of one year and six months from the date of this decision. In other words, the two suspension terms are cumulative and not concurrent. This is because the two allegations are different in kind to one another. We also do not consider that the totality of the two suspensions to be wholly out of proportion to the gravity of the overall offending.”

41. Mr Curr was ordered to pay costs of \$1,500 under Rule 7-2-12 of the 2007 Manual of Motorcycle Sport.
42. So the position of MNZ at the hearing on 11 October 2008 was that, by reason of a separate and independent decision of the Board of MNZ dated 16 May 2008 Mr Curr was held to be unsuitable as a Steward, he was suspended, and it was not within the Sports Tribunal’s jurisdiction to re-open and/or consider further the issue of stewardship in **this** appeal.
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F. THE TRIBUNAL'S CONCLUSIONS

43. The issue of Noel Curr's stewardship within MNZ was a matter specifically left open by the Tribunal in its decision of 11 April 2008.
 44. The arguments traversed at the October hearing(s) by Mr Curr and MNZ on the issue of stewardship were not presented to the Tribunal for the purposes of its decision of 11 April 2008 (nor for its interim decision of 4 March 2008), nor for the purposes of the decision dated 28 July 2008.
 45. For MNZ, reliance is in part placed on the disciplinary proceedings which were the subject of the MNZ Board decision on 16 May 2008. At the October hearing of the Sports Tribunal MNZ asserted that it was entitled to rely upon its MNZ Board decision of 16 May 2008 (incorrectly described in written material as 21 January 2008), as providing the foundation for an MNZ contention that it had made a **separate** decision that Mr Curr was not suitable to be a Steward, independent of the suspension of membership. Otherwise MNZ says this Tribunal cannot address stewardship further in this appeal.
 46. Mr Curr had not previously before the October proceedings, relied on Rule 7-3-6(b), as set out in the MNZ Rules, as providing for his automatic reinstatement of stewardship upon cessation of his suspension. He had however previously submitted that as he was a member only by virtue of his Stewardship, he must be restored to that status, notwithstanding express termination of stewardship in the original decision of the Board.
 47. One possible manner in which the issue of stewardship could, so far as the Tribunal was concerned, come back before it is in the manner set out in the Tribunal's Minute of 14 August 2008 after Mr Curr suggested there was some defect in the process by which the decision of 28 July 2008 was reached and delivered by the Tribunal. The Tribunal rejected those contentions. MNZ does not agree that the stewardship issue is one which can be heard further within the confines of this appeal. This would ordinarily be an end to the matter.
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48. However, in the interests of natural justice and so the parties to these contentious issues understand the Tribunal's perspective, it has considered whether the new grounds put forward by Mr Curr, and the response to those grounds by MNZ, should cause the Tribunal to reach a different conclusion from that which it has made on the issue of stewardship in its decision of 28 July 2008. This is completely independent of the impact of the recent suspension of Mr Curr and goes to the specific question of whether reinstatement as a steward member is or was automatic.
49. The Tribunal has considered the entirety of Chapter 7 of the MNZ Rules within which is to be found Rule 7-3-6(b) upon which Mr Curr relies. The issue in part turns on the construction of MNZ Rules – Chapter 7 and in particular Rule 7-3-6(b), and whether Chapter 7 refers specifically and only to **competition** within the sport, **or** they cover this disciplinary situation as Mr Curr contends.
50. Chapter 7 includes Rules which are premised on what may or may not happen at a meeting. There are protests which can be made in respect of a meeting; all officials and marshals are to remain available until the deadline for lodging of a protest as determined by a Steward of the meeting has passed (see Rule 7-1-2). A protest committee is required to be established to consider protests which occur at a meeting. There are rules governing the behaviour and conduct of competitors at such a meeting; disciplinary hearings can be convened. Disciplinary powers of, and penalties that may be imposed by, the stewards, the Appeal Committee and the MNZ Board are set out.
51. It would seem, on the face of it, that the decision now relied upon by MNZ of 16 May 2008 recording the Board's view as to Mr Curr's unsuitability to be a Steward is an action by the Board pursuant to MNZ Rules Chapter 7. The decision of 16 May 2008, so far as it relates to Mr Curr, appears to be in respect of his behaviour at a meeting, as Chapter 7 of the MNZ Rules contemplates, but also subsequent communications.
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52. The MNZ position is that the Rules in Chapter 7 will not apply to situations out of competition, and Mr Curr's breach under appeal here was out of competition.
53. However, throughout this case, MNZ have referred to Rules in Chapter 7 that they have argued would apply, even though Mr Curr's conduct was not related to an incident at a race meeting or in competition. For example, during the course of argument in the original hearing, Ms McDonald argued that penalties imposed on Mr Curr were valid under various Rules in Chapter 7, paragraph 42 of the 11 April 2008 decision, records that MNZ contended their decision to suspend and fine Mr Curr was valid under **Rule 7.3.2.** even though the conduct was not competition related. MNZ argued that its actions were valid pursuant to other clauses in the Constitution but otherwise under the MNZ rules. Paragraph 92 of the 11 April decision, states that "*Ms McDonald refers to the disciplinary procedure for hearings before the Board at Rule 7-2-7 of the 2007 MNZ Manual of Motorcycle Sport*".
54. If Mr Curr had been disciplined under Rule 7, as MNZ seemed to argue they could have done, even though his conduct was non-competition related - then that suggests the procedures set out in Rule 7 would also apply. The Tribunal took the view that Mr Curr's conduct fell within the ambit of clause 18 of the 2006 Constitution (in force at the time of the breaches) – see paragraph 91, but the point remains.
55. Another consideration is that of a member who is disciplined and suspended for misconduct **not related to a meeting**. Article 10.2 of the **present** MNZ constitution (2008) provides that the Governance Board can terminate membership for serious misconduct or impose lesser penalties such as suspension for less serious misconduct. If the member wishes to appeal, Article 8.6 of the Constitution allows for reference to the Sports Tribunal. If there is a dispute whether the appeal is filed in time the present Constitution contains nothing setting out time limits. (The 2006 Constitution did so). Rule 7-4-3 of the MNZ Rules sets out the time limits to appeal to the Tribunal, and would *prima facie* apply *even* if the dispute was not related to a conduct at a meeting.
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56. Article 8.7 of the **present** Constitution deals with the power of MNZ Board to expel or suspend for the infringement of any rule, regulation or by-law of MNZ or for any conduct which in the opinion of MNZ Board is prejudicial to the interests of MNZ, its members or the sport. This Clause concludes “*In general, this is subject to compliance with the procedures as set out in the Manual of Motorcycle Sport*”. (ie procedures for exercising disciplinary powers for potentially non-competition conduct are to be compliant with procedures set out in the MNZ Manual).
57. The Rules in Chapter 7 provide clear differences between the penalties that the Stewards and the Board can impose. The Board can impose suspension or expulsion (see Rule 7-3-2), which the stewards cannot (suspension and expulsion are not listed in the penalties that the stewards may impose under Rule 7-3-1). Suspension and expulsion do not seem to be limited to penalties in respect of a meeting.
58. Where the disciplinary powers of stewards under Rule 7.2.1 clearly relate to competitions/race meetings only – e.g.: (a) contravening any competition rule, supplementary regulation or any instruction of the steward at any meeting or (b) conduct on and off the track or course during the course of a meeting that in the steward’s opinion brings discredit or disrepute to MNZ, there is nothing in the disciplinary powers of the Board, as set out in Rule 7-2-2, explicitly referring to competitions or explicitly limiting those powers to events occurring in competition or a meeting. Rule 7-2-2 states:

“Disciplinary Powers of Board

7-2-2 The disciplinary powers of the Board are exercisable in the case of any Member or person for whom the Member is responsible for:

- a. Contravening any rule, regulation, bylaw or law of MNZ or acting in contravention of its objects;*
 - b. Failing to observe or perform any provisions of MNZ’s Code of Ethics or policies;*
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c. *Bringing discredit or disrepute to MNZ;*

d. *Being guilty of conduct unbecoming a Member of MNZ.”*

59. Under Rule 7-4 appeals from decisions of stewards or protest committees are to be to the “Appeal Committee” (not the Board). Appeals **against** decisions of the Board are to the Sports Tribunal (as of course are appeals from the Appeal Committee). This suggests that the Board may be involved in hearing matters not necessarily related to a race meeting/competition.
60. By this reasoning rules and procedures in relation to disputes not concerning competitions or meetings may be set out in the Rules in Chapter 7, which suggests Rule 7-3-6(b) should apply outside of competition.
61. We return to the Constitution.
62. Under the Constitution which applied from 1 January 2008, the expression “*steward*” has the same meaning “*as from time to time appears in the MNZ Manual of Motorcycle Sport*”. It sets out categories of membership under Article 4, and under “*full membership*” there are five categories, being Club, Rider, Associate, Officials, Honorary and Life Members. The “*Officials*” under Article 4.1.4 are those who are members of an affiliated club, and either appointed by the governance board or elected at a general meeting as a steward, commission member, or governance board member. “*Such person shall hold membership rights as a Full Member for the period of their appointment without payment of current subscriptions or levies. Such membership may be revoked by the governance board for serious misconduct;*”
63. Disciplinary action may be taken under Article 10, whereby the governance board may terminate the membership of any members for serious misconduct, and may impose lesser penalties “*for less serious misconduct including (but not limited to) the termination of any official position held, suspension of membership or any membership privileges, ... and/or any other penalty the governance board may consider appropriate in the circumstances ...*”.
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64. Therefore, under the Constitution, “*officials*” may be sanctioned by termination of membership but also termination of official positions held, or indeed any other penalty considered appropriate.
 65. There was no Article 10 equivalent in the 2006 Constitution in force prior to 1 January 2008.
 66. The Tribunal gave its decision of 28 July 2008 without the benefit of argument which has recently been advanced. The Tribunal recognises that there is an issue as to whether its jurisdiction is concluded. If it were to take the view that it is *functus* (has no further jurisdiction), even when there was a crucial element of the decision-making process omitted, then it binds the parties to a further appeal process (if available), or allows a potentially erroneous decision to stand.
 67. Usually the decision of a Tribunal stands as delivered. However, it makes no sense for an unarguable error to stand and a decision should be recalled to correct that. It is more difficult when there is an alleged error capable of further argument. That would not allow a re-opening of the decision. In this case a significant point of argument was not addressed. It should have been. The Tribunal has now addressed that and while not altering its decision in a formal way, it has reached its conclusion as set out in this decision.
 68. In these circumstances, The Tribunal has no hesitation in saying that based on the argument now presented, on the completion of a suspension, **rights of membership**, however previously held, were reinstated unless there was a separate and valid decision affecting stewardship, not as a sanction, but reflecting on suitability as a steward. Rule 7-3-6(b) is express. This brings into focus the way stewards are appointed, or may lose that status, and whether loss of status is part of the disciplinary process or separate.
 69. The Tribunal has referred to provisions in Rule 2-43 for appointment of Stewards by Clubs **for training** in stewarding, and grading according to qualifications and Rule 3-2 applies to Board appointment of Stewards. Chapter 3 of the Rules refers to different levels of stewardship and the “*Steward of the Meeting*”. Chapter 6 deals with the conduct of competitions,
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and stewards must be of a “*required level*”, where an MNZ permit has been issued, to ensure supervision and safety.

70. Chapter 3 refers to “*Officials*”, who in competition have “*supervisory or executive*” duties, and the stewards are by Rule 3-2 **representatives of the Board** with supreme control over the conduct of competition motor cycle meetings, and are obliged to enforce the rules, by-laws and regulations of MNZ that apply at the meeting. They also enforce international rules that apply. Their powers are considerable. Stewards progress through the MNZ structure from Level 1 to Level 5, and the Stewards Commission trains and examines Stewards to Level 4. At Level 5 Stewards are the equivalent of the FIM Sporting Steward and required to take the FIM training and examination course.
71. Clearly there must be an element of suitability of Stewards, both as to qualification and the appropriate ability to exercise powers, in the appointment of Stewards as Board representatives. They have a critical function in the sport. While the question of such suitability is a separate issue, on the matter before us, as a matter of principle, the Tribunal concludes that Rule 7-3-6(b) *prima facie* applied, **under the Constitution applicable prior to 1 January 2008**, and that a person whose membership was **as a Steward**, is restored to that position after suspension. However, the entitlement to retain the position of Steward was not infinite. Suspension may end, and membership be resumed. The Board could not use the disciplinary process as an element of **penalty** regarding the status of steward under the Constitution and Rules applicable prior to 1 January 2008. It could be that the conduct in question is judged a disqualification from status as a steward. It could be that the level of competence is not retained or exhibited. A separate, **non-disciplinary** decision may have been made regarding status as a steward. The new Constitution goes further and allows for disciplinary decisions to terminate “*official*” status.
72. It follows that under the Constitution and Rules applicable prior to 1 January 2008:
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- i. Upon completion of a suspension **membership** was resumed in the class held at the date of suspension.
- ii. Stewardship is an office for which suitability, and qualifications, were required. The Board had the right to review the status of steward, but not as an element of sanction.
- iii. In this case, the Tribunal by its decision of 28 July 2008 did not isolate the issue of stewardship as analysed above. *Prima facie*, at the conclusion of suspension, Mr Curr again became a Steward member, unless by a properly reached and separate decision stewardship was withdrawn, not in the nature of a sanction.
- iv. Mr Curr's stewardship was terminated without separate reasons for that and to the decision to suspend, and thus he was technically entitled to resume his stewardship membership. Rule 7-3-6(b) applied. This conclusion is the product of the new arguments first raised in the October hearing.

A process under the new Constitution

- v. Under Article 10.2 there is the clear power to terminate stewardship. It may be part of a disciplinary process – Rule 7-3-6(b) arguably would run counter to the Constitution in this circumstance and the latter would prevail to preclude automatic resumption of stewardship.
 - vi. If the 2008 Constitution applies to any of the conduct which is the subject of the MNZ 16 May 2008 decision, which this Tribunal is unable to make any comment on, then it would seem clear that the Board has the power to both terminate an Official position and to suspend as a Member, thus identifying two distinct steps. However, the Tribunal has not explored the elements of that 16 May decision in making these comments. The Tribunal has no jurisdiction to consider the 16 May decision in any authoritative way but makes these observations having paid full regard to the submissions made most recently to us.
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Comment in relation to proposed rule change

73. The Tribunal notes that MNZ has recently posted on its website a notice of a proposed possible rule change to Rule 7-3-6(b) which potentially relates to matters considered here. The Tribunal must confine its consideration to the Rules as they currently stand. However, the Tribunal considers that this further decision and observations of the Tribunal regarding stewardship and its relationship with membership may assist in the resolution of that proposal.

Mr Curr

74. When his suspension ended, Mr Curr resumed his status as a steward member. He lost that by his later suspension. Under the 16 May decision, his suitability as a steward seems to have been determined by the Board as a separate issue, and Article 10.2 of the new Constitution, if applicable, allows this as part of the disciplinary process by express consideration. The Tribunal makes this last comment as an observation only as it does not have jurisdiction in this appeal to determine that issue.

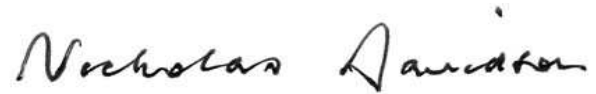
General observations

75. If anyone loses status as an official, including as a steward, that may come as part of a disciplinary decision, or possibly as a matter of suitability and not disciplinary. Should an application be made to be restored to official status, then that must be fairly considered.
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G. COSTS

76. Costs are reserved. Should costs be sought, the Tribunal will reflect on the evolution of the argument by both parties.

DATED at Wellington this 26th day of November 2008.



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Nicholas Davidson QC
Deputy Chairperson (for the Tribunal)

Tim Castle

Ron Cheatley
