

Under the constitution of Table Tennis New Zealand

**BEFORE TABLE TENNIS NEW ZEALAND
AT AUCKLAND**

In the matter of: An Appeal against a decision of
 North Harbour Table Tennis
 Association

BETWEEN **ANDREW PALMER**

Appellant

AND **NORTH HARBOUR TABLE
TENNIS ASSOCIATION**

Respondent

THE APPELLANT'S SUBMISSIONS IN REPLY

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MAY IT PLEASE THE EXECUTIVE OF TABLE TENNIS NZ

INTRODUCTION

1. The appellant has read the submissions of the NHTTA (referred to as the respondent in these submissions) and notes that the respondent has not answered many of the allegations against it nor has it explained the lack of fair procedure and predetermination that was clearly evident in coming to the decisions that it did. While the appellant's submissions are in themselves sufficient to make a case against the NHTTA, demonstrating that the decision of the respondent to ban and impose a financial penalty against the appellant, Andrew Palmer, was unjust and unwarranted, it is however, necessary to answer some of the submissions and statements made by counsel on behalf of the NHTTA to finally put to rest, any weak justification or argument that the NHTTA has created in order to defend their arbitrary, poor and harsh decisions.

THE RESPONSE TO SUBMISSIONS FROM NHTTA

The Affidavits of Mr Terry Shorter and Mr Len Osbourne

2. In the section labeled C of the respondent's submissions, the respondent has referred to and provided an affidavit from Terry Shorter marked with the letter "A". This affidavit is supported allegedly by an affidavit purported to have been from Len Osbourne marked "B". However the statement from Len Osbourne is not a valid document as it would appear that Mr Osbourne thinks that he is someone else, presumably Terry Shorter. The affidavit states

"I first noticed that Andrew was standing with a bunch of papers in hand talking to one of the members (Len Osbourne). I moved to tell Len not to argue with Andrew".

An affidavit is meant to be a statement of fact from a person who can swear that they are that person making the statement, so it is hard to take the above statement seriously when the "witness" does not even know who he is himself.

3. Also the two statements in the respondent's bundle, one by Terry Shorter, ('A') and the other, one assumes is by Len Osbourne ('B') have two names printed at the bottom of the document in each case but with only one signature, making a nonsense of both statements as legal documents. However this matter aside, Terry Shorter states that Andrew is standing talking to Len Osbourne with a "bunch of papers" in his hand. Terry Shorter clearly does not know what these papers are but in the same statement states that he said to Andrew that "*we do not wish to sign your petition*". In truth, Mr Palmer did not have a petition to sign and Mr Shorter could not have known what Andrew had in his hands so any reference to "a petition" specifically makes a mockery of the accuracy of his signed and witnessed statement. Also it is only Mr Shorter who uses the word "confrontation" because there was no confrontation nor was there any petition as the evidence provided by Diana Levizon will show.

Refer appellant's new and third bundle, document 46, Affidavit of Diana Levizon

4. In the situation described in document 'A' Mr Shorter is quite clearly the one who is creating an uncomfortable scene by rushing into the situation aggressively to shout out that Andrew is "not a member of the NHTTA committee" as Mr Shorter admits in his statement. Why that (even if it were true) should cause Mr Shorter to rush up and butt in is anybody's guess as it should not affect Mr Palmer's right to talk to Mr Osbourne at the day club. The discussion between Len Osbourne and the appellant did not involve Mr Shorter so it had nothing to do with him but there he is, rushing in. It is submitted that in the heat of the moment and considering the actions of Mr Shorter whose unwanted interference was not necessary, it is highly likely that the **appellant's distinct recollection of events** including the departing, rude, hostile and slanderous comment "*That's the thief*" stated by Mr Shorter is more believable than the inconsistent, confused and inaccurate signed statement by Mr Shorter backed up by a nonsensical statement from Mr Osbourne, if that is his statement?

The Alleged Petition

5. The NHTTA leapt to an incorrect conclusion as evident in the content of the affidavit of Terry Shorter where he says that Andrew was holding a petition when he took the emails to Len Osbourne. While it is unclear how this is even relevant, the statement from Diana Levitzon does not support this conclusion nor does the evidence from the appellant. There was no petition and all that is stated in the affidavit is that Andrew was holding a bunch of papers. It is clear from the appellant's brief of evidence, that these papers were only printed emails from Craig Dye, addressed to Len Osbourne, that the Appellant was merely trying to hand to Len Osbourne. Dianna Levizon has provided an affidavit that states that there is no way the appellant was trying to collect signatures as he was never provided with any signature signup sheets. This is a further example of the NHTTA leaping to an incorrect conclusion from the evidence or lack of evidence presented before them. But it is possible that this type of summary of events including the use of the word "confrontation" by Terry Shorter might have been the sort of rhetoric that was drummed up to justify the trespass notice that was later served on the appellant.

Conflict of Interest

6. The NHTTA has formed a view that somehow this statement from Terry Shorter shows he did not have a conflict of interest in voting on a decision against the appellant in November. In actuality this affidavit only confirms the appellant's own evidence that there was an incident involving Terry Shorter in the day club in October. It's been already submitted as evidence that shortly after this incident the appellant emailed the NHTTA Chairman June Logan with formal defamation concerns. These concerns were not responded to or resolved by the NHTTA prior to the disciplinary meeting in November. In November, the NHTTA would have known that Terry Shorter was voting on decisions against the appellant because a formal complaint had already been laid against him. This complaint against Terry Shorter created a conflict of interest in terms of the fairness of him being given voting rights against the appellant.

Refer appellant's bundle document 31 –email to June Logan (14/10/2012)

The Failed Lights

7. Regarding the reference to the failed lights in section C of the respondent's submissions, the respondent says that the lights went out on each of the tables that the appellant was practicing on with others because of a "technicality". This explanation is not accepted. In fact it is an explanation of such blatant, off hand arrogance that it is contemptible. The accident was only as a technical as an intentionally flicked "off" switch over each table as the boys attempted to play. It is also as relevant, as is any other bullying incident including a trespass notice perpetrated by the NHTTA in order to harass, intimidate and humiliate the appellant.

The Minutes

8. In the section labeled "E" in their submissions, the NHTTA denies that the Minutes are inaccurate, but they contradict themselves with regards to the requirements for minute taking.
9. NHTTA state that "minutes should be an accurate record of the decisions made at the meeting". But the NHTTA minutes do not record all decisions made. As an example, but not limited to, a decision of the meeting was an agreement to record in the minutes of the meeting, a statement that there had never been allegations of theft against the appellant. This was important to the appellant and would have demonstrated good faith. Unfortunately it was not included in the minutes. This fact was submitted as evidence of inaccuracy as it was obvious once the transcript of the meeting is analyzed and compared to the NHTTA minutes. **Refer appellant's document 3, transcript page 1.**
10. However, the NHTTA agree that this was a decision of the meeting but the NHTTA did not include this decision in the minutes of the meeting. It is clear from NHTTA's own submissions, that this was not an oversight. This was a deliberate refusal to record a decision of the meeting. The minutes by NHTTA's own definition, are therefore incomplete and inaccurate. **Refer the appellant's bundle, document 3, transcript of the disciplinary meeting, page 1.**

11. There are also other inconsistencies and errors in the minutes. On several occasions the appellant is misquoted. The NHTTA executive has used these misquotes to form the basis of their decision. If the appellant had been allowed to view the draft minutes for accuracy, as was promised in the meeting by NHTTA, the appellant would have asked for these inaccuracies to have been corrected.

12. The NHTTA did not appoint an independent minute taker but instead asked the NHTTA Secretary who, evidence has shown, had a conflict of interest and was therefore, it is submitted, not the correct person to record the minutes. As noted in submissions, the appellant had previously raised formal complaints regarding the NHTTA Secretary's conduct as well as formal concerns regarding the accuracy of her minute taking. The appellant and Counsel are also both clear that a discussion was held just prior to the meeting regarding the process around minutes. The appellant was told he would receive a copy of the draft minutes that he could then check for accuracy. The appellant would not have agreed to partake in a disciplinary meeting without this assurance being given due to the fact that he had raised the accuracy of minute taking as an issue previously.
Refer the appellant's bundle, document 25, Email to June Logan (30th August 2012) – 13th July Finance meeting minutes

13. The NHTTA summoned the appellant to a meeting where he was the sole person presenting evidence. It was therefore incumbent on the NHTTA to ensure that the appellant was quoted correctly and that the appellant's evidence presented was recorded correctly. It was not expected that the minutes have to be absolutely verbatim but they must, regardless of who takes them, reflect accurately: the goings on in the meeting, the important statements being made with the right inferences and also not leave things out like agreements, important statements that were said or put different inferences or additions into the minutes to change what people have said after the fact. That is totally unacceptable and causes the minutes to be unreliable and quite worthless as a document and of course it is dishonest. In this case, the only accurate record of the meeting is contained in the transcribed version of the minutes.
Refer Submissions of NHTTA paragraph L (159, 232, 233 and 234)

Brian Barker and Wayne Gears' evidence.

14. Referring to the submissions of NHTTA at I where they make comment on Brian Barker's unsigned affidavit. The NHTTA is well aware that Brian Barker had to go to England for a few weeks due to his mother's funeral. Brian has provided an email confirming he is happy with the content of the affidavit and confirmed that he will sign it when possible. In the mean time, his email confirms the all important point that: **John Stapleton knew of Blake Lovie's involvement in the tournament long before the players had left for Christchurch** to go to the tournament. This negates the allegation that the appellant acted without authority and without the knowledge of management. Please refer: **email of Brian Barker** (who has had to travel for the TTNZ) **which is attached hereto and marked with the number 47.**

15. The respondent makes comment at paragraph K regarding the undated affidavit of Wayne Gear, thereby causing it to be invalid. While this is not strictly true, never the less, for the sake of accuracy, the affidavit from Wayne Gear, a police detective, has been re-signed and dated and witnessed by the CEO of Auckland Table Tennis. This affidavit makes it clear why the alleged resignation of the appellant was so important to the respondent, a resignation makes the appellant look guilty of something and gets him off the scene so as he cannot defend himself or put another spin on things to other executive members. It is clear based on what was said to Wayne Gear, i.e. that the Stapleton's were trying to implicate the appellant in a theft which may never have occurred without actually using his name. Such an action was and is harmful to the appellant and very insidious.

Refer Submissions of NHTTA paragraph I

Refer Submissions of NHTTA paragraph K (i)

Ben Jung

16. The NHTTA have provided a statement purportedly from Ben Jung referred to as document 'C' in their bundle. This was not signed in front of a Justice of the Peace but signed by Geraldine Stapleton and Robert Dunn. As NHTTA executives, neither of these individuals is an independent witness and as such

this statement is invalid. In the appellant's submissions, the appellant did include an email sent directly to the appellant from Ben Jung. This was an email addressed to the appellant and he is entitled to use this as evidence. Ben's original email states he agrees fully with the appellant's documented statement of events regarding the unprovoked attack on the appellant by John Stapleton.

17. The above aside, the new statement provided by NHTTA, purportedly from Ben Jung, is not in conflict with the content of the original email which was part of the appellant's bundle of evidence. The statement actually further confirms that Ben did witness an incident involving John Stapleton addressing Andrew Palmer (the appellant), and that this upset the appellant.
18. It is noted that in the original email, Ben Jung does not state that he does not want the email used. Ben states that he did not want the Stapleton's to know he had made a statement verifying events. The appellant now understands that Ben may have been worried that he would face retribution or harassment from the Stapleton's if they found out that he had provided a witness statement against their son.
19. It is further noted in collecting affidavits as part of this appeal, that Ben's concerns are not unique to him.
20. It has already been shown in evidence, that the Stapleton's have a clear conflict of interest in dealing with matters relating to the appellant. It is unclear why the NHTTA Executive decided it was appropriate to go against Ben's wishes in revealing his identity to Geraldine Stapleton who then took the subsequent statement. As Ben's subsequent statement was "witnessed" by Geraldine Stapleton herself and another executive rather than an independent authority, then this raises further and very serious concerns regarding the statement being produced under duress. One can only imagine the sort of pressure Ben would have been under to sign this handwritten statement. What is almost comical is that even under this presumed pressure, Ben does not resile from his position and still supports what the appellant had originally said in his evidence. The

new statement achieves nothing for the NHTTA except raising issues of desperation on their part and possible intimidation and duress on Ben.

Refer Submissions of NHTTA paragraph K (ii)

Financial Penalty

21. It would appear that the NHTTA have back tracked on requiring a financial penalty from the appellant. The appellant had submitted that this demand was unconstitutional and it would seem that he is right. The NHTTA would now have us believe that the strongly worded demand for \$1,144.00 in the NHTTA decision document was a kindly suggestion, not a financial penalty. However the wording of the decision letter to the appellant states that if the appellant does not make payment of the sums demanded, then the Executive Committee may increase the duration of the ban. This was not a “suggestion” as it contained a threat of a further penalty if not paid by the appellant, refer the Decision letter *“In the event that you do not agree to make payment of those sums, the Executive Committee may reconsider the duration of your suspension”* (already 2 years). We also understand that the NHTTA is only required to notify TTNZ of alleged misconduct against a player if there is a financial penalty attached to the decision. The fact that the NHTTA has stated in their decision document that they intended to notify the TTNZ, then this would further indicate that the NHTTA did mean for this to be a financial penalty that would be enforced.

Refer Submissions of NHTTA paragraphs L (1) and L (96)

The Trespass Notice

22. It is disingenuous for the NHTTA to state that they were not responsible for a trespass notice issued against the appellant as it is common ground that the Stapleton family controls the NHTT Charitable Trust. A phone call from an independent source to the NHTT Trust itself has confirmed the trespass order was issued at the request of the NHTTA Executive. The NHTTA Executive has acted unconstitutionally by attempting to deny the appellant his NHTTA constitutional rights on appeal by further restricting his movements and contact with other players who may have assisted the appellant in his appeal against the decision of the NHTTA. **Refer Submissions of NHTTA paragraph L (3, 202,**

206 and 208) ; Also refer transcript of phone call from Joanne Brown to Geraldine Stapleton

23. It is documented as evidence that the appellant went to the NHTTA Stadium only twice in 2013, in March and April 2013. On both occasions he was the subject of intimidation, firstly by John Stapleton abusing Andrew when he was invited to play and filled in for some players who were sick and secondly when the table lights were switched off intentionally by those in the control room including Jack Stapleton, causing injury to Andrew. On neither occasion was the appellant causing any trouble what so ever, just trying to play table-tennis. He was not causing trouble or creating “danger” as is implied in Geraldine Stapleton’s phone conversation with Joanne Brown. Statements such as these are in themselves “dangerous” as they are slanderous. Counsel for the appellant finds it ironic that the NHTTA through Geraldine Stapleton, would firstly lie and hide behind the Trust and not claim responsibility for the trespass notice when the Stapleton’s are on the Trust and would have pushed for it but then, to claim that the situation was “dangerous” warranting a trespass notice when the only people who created any issues at all were the Stapleton’s themselves. That is hard to swallow. If anybody should be banned it is these people. They are a menace to all those genuine sport-lovers who simply want to play table-tennis with their hi-jinks and possibly corrupt politicking. **Refer the appellant’s bundle, document 6, Brief of Evidence – The appellant - Paragraphs 119-127. Also refer, transcript of phone call from Joanne Brown to Geraldine Stapleton.**

Failure to deal with complaints

24. Evidence shows that multiple complaints’s were emailed to the NHTTA chairman from the appellant regarding Geraldine Stapleton. These emails were subsequently provided to the NHTTA executive in the November disciplinary meeting. The NHTTA deny in L at paragraph 8, that they have not failed to deal with the appellant’s complaint but their very statement in the previous paragraph (5 and 6) of their own submission document confirms that these complaints have not been tabled by the NHTTA executive. As they have not

been tabled they have therefore not been dealt with. It is a failure on the part of the NHTTA that they have not dealt with the appellant's complaints anyway.

25. However it is even more unsatisfactory for the respondent to claim that the complaints have not been acknowledged because they haven't been tabled. They have received them but not tabled them therefore "they do not exist" seems to be the approach. This is ridiculous to the point of being unconscionable. A complaint or any issue or concern that is raised and sent to the executive is therefore "received". It should then be tabled as a matter of right and it is remiss and undemocratic of the executive not to do so. The executive by acting like a selective screening process, deciding to deal with some complaints and not others and then simply saying that there was no complaint because they chose not to table it, is acting like a despotic body who wishes to be a law unto itself, unchecked and undemocratic and by definition therefore dishonest.

Refer Submissions of NHTTA paragraph L (5&6);

Refer appellant's bundle document 23 - email to June Logan (26th August 2012) – document conversation with Jack (24th August 2012);

Refer also appellant's bundle document 24 – email to June Logan (27th August) formal complaint re: Stapleton behaviour

Correct and Fair Procedure

26. The appellant did wish to present further evidence at the November disciplinary meeting but the NHTTA executive did not want to see this during the meeting. It was a failure on the part of the NHTTA executive to not accept this evidence as it would have corroborated the appellant's statements. It is the duty of any executive committee in an investigation, to firstly put all the allegations to the person and not withhold information nor should they surprise them with new allegations at a meeting. All allegations should be made clear prior to any person in a disciplinary meeting. If answers given in response require further investigation, then it is beholding on that investigative committee to go away and investigate further any issues that they have not sufficiently understood or those statements or evidence that has been presented in defense that may require further checking to establish its veracity.

27. For example, the appellant on the night of the alleged conversation with Geraldine Stapleton which was the subject of an allegation against the appellant, was playing a tournament away from the stadium. He said he never got there at the stadium until 8.30pm that night. The NHTTA said he got there at 6.30pm. The NHTTA refused to accept the appellant's word but chose not to check the truth of it. It would have been an easy thing to have checked the veracity of the claim by the appellant but the NHTTA chose not to do that as confirmation might have undermined their own preconceived notions which were important for them to hold onto, undisturbed. By keeping these preconceived views intact, unaffected and free of common sense, the facts or the truth, that was the only way the executive was going to find the appellant "guilty as charged" as this is what they were clearly aiming to do, regardless of what the appellant said or what evidence he provided in his defense. They were not listening or even interested in providing him with a fair investigation.
28. Similarly the NHTTA should have checked further with the selectors regarding Blake Lovie's inclusion in the tournament once they had heard Andrew's explanation regarding what happened. If they had, they would have found that it was not the appellant's decision to include him or take him. Blake expressed a desire to go and the permission was given for his late inclusion by Alan Moore and the selectors. They would also have found, if they had investigated further that Blake's inclusion was not done without authority and it was the selectors who gave the authority to include him and Alan Moore who wanted Blake to take part. John Stapleton was also fully aware of Blake's inclusion prior to the Tournament. John originally in April had asked Blake to go but Blake was unavailable then. Later once he became available, he asked to be included and Alan Moore accepted his late entry because he wanted him on board. The appellant never authorized any of this.
29. The NHTTA would also have found if they had done an unbiased investigation, that John Stapleton was not telling the truth when he said in the executive committee meeting that he was "invited" to, that he knew nothing of the inclusion of Blake until **weeks after** the tournament when in fact he knew of Blake's inclusion and even asked questions about his inclusion before the

tournament and then said that he was fine with it when he spoke to Brian Barker before the team went away to the tournament.

Refer appellant's bundle document 47 – Email confirmation from Brian Barker indicating acceptance of Affidavit.

Refer appellant's bundle, document 9, Affidavit – Brian Barker – Discussions re Blake going to Junior Nationals

30. It is incredulous that the NHTTA can ignore obvious evidence which is contrary to their own position, a position which has no basis in fact. The evidence that was presented to them in November made it clear that the appellant had done nothing wrong and if they were not sure, then they should have checked further saving all parties the stress of an appeal. A proper investigation is not a snapshot of one event as the respondent would have us believe in paragraph 9 of counsel's submissions (*it is not up to the executive committee to require further evidence*, page 5, para 9). An investigation is an ongoing process of checking and looking into things further to establish the truth. Fairness demands this. The NHTTA provided no evidence in November for their decision other than their own desire to find fault regardless and their counsel's submissions and related evidence now brings no further insight into how a group of people in a trusted positions could get things so wrong unless we go that step further and suggest that this was nothing more than an irresponsible, vindictive and intentional act of character assassination and the truth of things did not really matter, if anything, the truth got in the way. **Refer Submissions of NHTTA paragraph L (9)**

John Stapleton denies prior knowledge of Blake Lovie's attendance.

31. Regarding document 10 in the appellant's bundle, which the respondent says at paragraph L 19, is not a true copy of the email thread (document D in the respondent's bundle). The response from John Stapleton to Andrew Palmer is reflected in the only email sent from John to Andrew which is shown in document 10 in the appellant's submissions. Andrew Palmer sent an email to John Stapleton and the selectors and the only reply to Andrew after the general announcement is the one shown in document 10 in the appellant's bundle. While counsel might have drawn the conclusion that this was part of an email

trail when it was not, what is the most important point here is that on the 26th June 2012, Andrew Palmer sent out an email to John Stapleton and the selectors informing John and the others of Blake's involvement. However as is shown in document 45 in the appellant's new bundle attached to these submissions in reply, which includes all the emails in the trail, John Stapleton asks about Blake and Andrew replies to John. The very next day, without any disapproval or an objection, John Stapleton replies directly to Andrew and does not mention Blake again. But he does discuss Blake's involvement with Brian Barker before the tournament as is demonstrated by the email from Brian Barker and his unsigned affidavit (unsigned because he was out of the country).

Refer appellant's bundle document 47 – Email confirmation from Brian Barker indicating acceptance of Affidavit

Refer appellant's bundle document 9, Affidavit – Brian Barker – Discussions re Blake going to Junior Nationals

32. It is therefore inappropriate for the respondent to claim that Blake Lovie went without authority to the tournament or without the knowledge of the general manager, John Stapleton, which is one of the allegations made against the appellant which cannot be sustained by the respondent. The appellant informed John Stapleton prior to the event by email and so did the selectors during discussions directly with John Stapleton. That is what the email trail shows and it cannot be denied nor can the appellant be accused of acting without authority.

The Four Winds Foundation.

33. The Four Winds Foundation payment is not irrelevant to the appeal as claimed by the respondent at paragraph L 42 of their submissions. To the contrary it is a critical part of the decision to punish the appellant. In the Decision letter at page 3 and 4 it was claimed that the Foundation's grant would be **at risk** and the appellant had brought the NHTTA into disrepute with the Foundation and the motel. This is a complete fabrication by the executive disciplinary committee. When they were making that statement as a justification for finding wrong doing against the appellant, they already had the money from the Foundation and the Foundation had no issue at all with the NHTTA as confirmed by communications from Four Winds (refer document 34 in the appellant's bundle)

The NHTTA hadn't even contacted them regarding the numbers. It was just an excuse and a dishonest one at that, to find fault in the appellant. The Motel also had no issue with Blake Lovie staying at the Motel. Also the NHTTA had the beds and sleeping arrangement in the motel completely wrong but never bothered to follow this through and check this issue out when making their decision.

34. The NHTTA accounts submitted to the Companies Office clearly show that the NHTTA booked the grant from Four Winds Foundation in the 2012 accounts.
Refer appellant's bundle document 50 –NHTTA accounts

35. The NHTTA accounts submitted to the Companies Office also shows \$6,586.53 as Representative Team Expenses. The appellant would like TTNZ as the governing body, to check if the NHTTA have claimed the motel costs for the 2012 Junior Nationals as a NHTTA expense, despite this motel cost being paid for by NHTTA players and not an expense incurred by the NHTTA at all. The TTNZ is reminded that the players are yet to be reimbursed for their motel costs even though the Four Winds grant is already in the NHTTA account as of last year.

Refer appellant's bundle document 50 –NHTTA accounts

Blake Lovie's Payment

36. The NHTTA state that no evidence has been provided that Blake Lovie paid \$150. This is knowingly incorrect. Blake Lovie provided a statement to the NHTTA November disciplinary meeting that he paid \$150. It has been presented as evidence in a subsequent affidavit from Blake Lovie confirming he paid \$150. The continued denial by the NHTTA to accept evidence provided to it is damning on their credibility. **Refer Submissions of NHTTA paragraph L (86)**

The Budget

37. The NHTTA further state that the appellant overspent due to unbudgeted items such as car hireage and airport car parking. This is a deliberately misleading statement by the NHTTA as both of these items were budgeting for prior to the

nationals and approved by the NHTTA after the nationals. **Refer Submissions of NHTTA paragraph L (86)**

Blake's Ticket

38. The respondent says at L 88, that it was “*clear from the evidence that appellant had attempted to use an airline ticket which had been purchased for one person*”. Well this utter nonsense. The appellant never attempted to use the ticket at all and if the NHTTA believes that then it is even clearer that they had their heads in the sand and their hands over their ears when it came to considering the appellant's responses. The appellant has provided evidence in the affidavit of Blake Lovie that it was Blake Lovie's decision to use the airline ticket in the name of Brian Barker. This was a ticket purchased by Brian Barker who is a selector and who knowingly gave the ticket to Blake to use. It is true that all concerned wrongly assumed that Jet-Star would allow tickets purchased on domestic flights to be interchangeable but nothing about this wrong assumption is dishonest and it does not fall at the feet of the appellant.

39. The appellant was in Christchurch when the airline would not accept the ticket and he did not know anything about the refusal to allow Blake to use it nor the decision to purchase a new ticket by Mitchell who made that decision of his own accord. The appellant had nothing to do with the decision to purchase a new ticket nor was he consulted before the purchase was made and he was told of it only after the fact. The appellant then immediately rang John Stapleton but only after he was himself told by Mitchell, who rang the appellant after he had purchased the ticket. The appellant did the correct thing by informing John as soon as he was informed himself.

40. As shown in the appellant's submissions, the NHTTA asked players to organize their own flights. The NHTTA did not accept responsibility for players until they arrived in Christchurch airport. Evidence shows it was not the appellant's decision for Blake Lovie to use this flight ticket. The appellant did not attempt to use the ticket at the airport, Blake Lovie did with full awareness that it was in somebody else's name as did Blake's father. The continued denial by the

NHTTA to accept evidence provided to it displays its blindness in dealing with actual facts in a fair and open minded manner.

Refer Submissions of NHTTA paragraph L (88)

Evidence Lost By the NHTTA

41. The NHTTA deny that evidence presented to it has been lost or destroyed. But the NHTTA has not returned documents given to them as evidenced by witnesses having to repeat themselves and get new affidavits done, stating that this was their second statement. The NHTTA confirms in their submissions that documents presented as evidence in the November disciplinary meeting were taken away by the Secretary to be copied. The appellant has stated that he realized after the meeting that not all documents had been returned to him. The request to return these documents has been outstanding since February 2013. As NHTTA has confirmed that the NHTTA did in November, have these documents, but they have not been able to provide these documents as requested, then the only conclusion that can be drawn is that the NHTTA no longer has these documents because this evidence has either been lost or destroyed or they will simply not release them. It is certain that if these documents had supported the NHTTA's position then it is safe to say that they would not have been lost or whatever. However, continual denials that they have lost misplaced any documents only undermines the credibility of the NHTTA's case generally. **Refer Submissions of NHTTA paragraph L (106)**

Approval for Blake

42. The respondent says that the appropriate process was not followed and one assumes that this means that the NHTTA holds the appellant responsible for arranging for a young player to go to a tournament. However the appellant has provided evidence that in fact, **no approval is actually required from the NHTTA for Blake Lovie to play at the Individuals at the Junior Nationals.** However this aside, the appellant has provided an affidavit from Blake Lovie and an email from Alan Moore that clearly shows that the appellant merely passed on an invitation from a TTNZ official to Blake to play in the teams at the Junior Nationals. The evidence shows that Blake Lovie himself accepted this invitation. While the appellant was not required to notify the selectors, the

evidence shows that the appellant did notify all NHTTA selectors that he knew including John Stapleton and informed them all of this invitation to Blake and his acceptance and the reason behind this invitation. The continued denial by the NHTTA to accept evidence provided to it is reflective of their bias.

Refer Submissions of NHTTA paragraph L (118-120)

43. The NHTTA submit that Paragraph 126, regarding choices available to selectors on being told of Blake's interest in going to the nationals submitted in the appellant's submissions, is not relevant to this appeal. This is not true. This submission provides evidence that the NHTTA selectors were fully aware of this invitation to Blake and could have subsequently used Blake in a NHTTA team instead, if they so wished. **Refer Submissions of NHTTA paragraph L (126)**

Resignation

44. The NHTTA submission on resignation contradicts itself. In paragraph 143 the NHTTA states that no resignation has ever been presented to an Executive committee meeting. But in paragraph 150 they state the minutes of the 9th September Executive committee record a resignation of the appellant.

Refer Submissions of NHTTA paragraph L (143 and 150)

45. The appellant has provided evidence that he emailed the NHTTA Chairman shortly after the harassment from Jack Stapleton on the **26th August 2012 confirming with the Chairman that the appellant had not resigned.** This was before it was tabled on the 9th September. This was also provided as evidence in the November disciplinary meeting as well as in the appellant's submissions. It is clear from the NHTTA's response in September, a month later, that the rest of the NHTTA Executive were told that the appellant had resigned by the Stapleton's even though he had made it clear he had not. The fact that particular NHTTA Executive members did not want to read or table the appellant's email confirming that he did not resign is a failure on the NHTTA Executive's part and suggests bias or hidden agendas. The NHTTA executives were using the fact that the Secretary did not notify the appellant of meetings to keep him out of the loop and therefore he was unaware of this purported verbal

resignation. **Refer appellant's bundle document 23 –email to June Logan (26th August)**

Jai Sheppard

46. It is not for the NHTTA to determine if a witness can provide reliable evidence. Jai Sheppard has provided an affidavit as evidence which backs up the appellant's statement of events regarding Jack Stapleton telling the appellant that if he didn't resign he would be held to blame for the alleged money going missing. It is noted that Jack Stapleton confirmed in the November disciplinary meeting that a discussion did take place at the time that the appellant stated and that in this conversation, Jack did in fact ask the appellant to step down from the committee. **Refer Submissions of NHTTA paragraph L (177) and the transcript of the disciplinary meeting.**

Defamation against John Stapleton

47. The NHTTA has been provided with evidence that the appellant on multiple occasions formally raised serious issues of defamation regarding statements made by John Stapleton about the appellant about theft. This was raised with the Chairman verbally straight away and followed up by multiple emails from the appellant in August to October 2012. A letter from TTNZ to NHTTA in October 2012 also asked NHTTA to respond or detail these concerns. The issue of defamation was raised by the appellant in the November 2012 disciplinary meeting with NHTTA and evidence has been provided in submissions regarding this defamation in affidavits provided to the NHTTA. **Refer Submissions of NHTTA paragraph L (179); Refer appellant's bundle document 27 Affidavit – Hanson Ling – Defamation John Stapleton ; Refer appellant's bundle document 31 Email to June Logan (14th October 2012) notification to NHTTA re: defamatory statements made by John Stapleton.**

The AGM and the new Constitution

48. The NHTTA have stated that the letter from Chris Davis, dated 17 April 2013, was written after the former constitution of NHTTA was revoked but before there was an AGM to ratify it. This was the first the appellant had heard of the NHTTA's constitution being revoked. This is extremely concerning. A cynical

view of the ban imposed against the appellant could be that this ban was motivated to remove him from executive meetings to make it easier for certain persons on the Executive committee to revoke the constitution and to strengthen their hold over the Association. The appellant is aware that other 2012 management committee members, who would certainly have opposed this revocation, were not notified of the AGM date, or of any constitution changes. As the governing body the appellant demands TTNZ investigate the legality of this revocation of the constitution.

Refer Submissions of NHTTA paragraph L (199)

49. The appellant is now aware that the NHTTA Executive held a meeting purporting to be an “AGM” on the 26th April 2013. It is assumed this is when the constitution was purportedly “revoked”. It is extremely concerning that the Association lawyer when he wrote his letter on 17th April 2012 would be referring to the “new” constitution as being enacted more than a week before the “AGM” occurred on the 26th of April. This would indicate that it was felt that the AGM was a rubber stamp exercise and not a democratic process.

Refer Submissions of NHTTA paragraph L (199)

50. The constitution can only be changed at an AGM and any changes to the constitution can only be enacted after the next AGM. It is impossible for the NHTTA to have legally revoked the NHTTA constitution prior to this date or for these changes to now be enforceable. However Geraldine Stapleton notified the Companies office of changes to the NHTTA constitution on the 5th April 2013. These constitution changes were made weeks before the NHTTA AGM. As the governing body, the appellant strongly requests that TTNZ investigate the legality of this revocation of the constitution.

Refer Submissions of NHTTA paragraph L (199).

Refer appellant’s bundle document 51 –NHTTA Constitution updated 5th April 2013

51. The Constitution sent to the Companies office by Geraldine Stapleton 5th April 2013 makes (but is not limited to) the following changes to the NHTTA constitution:

- (Section 16) AGM notification changed from 28 days to 14 days
- (Section 13.1) Executive committee (renamed NHTTA board) changed to from 7 to 5 members
- (Section 27.1) Added financial penalties to misconduct charges.
- (Sections 10.5 and 27.3) Removed the existing right of appeal to TTNZ where a member is dissatisfied with a decision of the NHTTA board, “Decisions of the NHTTA board is final and binding and no further appeals shall apply”
- (Section 22) Voting rights at AGM changed from 1 vote per person. Existing officers of the association now get 2 votes. This makes it almost impossible for existing officers to be out voted.
- (Section 20) Quorum changed from 12 members to 12 votes. Due to the change in voting rights this effectively makes the quorum 6 officers of the association.
- (Sections 10.5 and 27.3) “Member termination” section added. The NHTTA board can now terminate a membership if it so wishes, with a right of appeal only to the NHTTA board.
- (Sections 14.1 and 18) Nominations for new Board Members closes 14 days prior to the AGM, on the same day the AGM will be notified to members. Its noted the section 14.1 contradicts section 18 in the new “constitution”
- (Section 33) Added indemnity for Board members. “No such officer or servant shall be responsible for any act, neglect or default of any other officer or servant or for any loss caused”

Refer appellant’s bundle document 51 –NHTTA Constitution updated 5th April 2013

Refer Submissions of NHTTA paragraph L (199).

52. The appellant is also aware that this “AGM” purportedly held on the 26th April was not advertised adequately. The NHTTA Constitution requires the Secretary to notify members at least 28 days before the AGM. The appellant is aware of complaints sent to the NHTTA executive by NHTTA management members prior to the AGM due to the date and time of this AGM, which were not

responded to. No notification of the AGM was put on the NHTTA website or the Face-book page. No notification was put in the local paper either as required. The appellant has received evidence from multiple players that a small sign was put up in the NHTTA stadium less than a week preceding the “AGM”. This is inadequate.

Refer Submissions of NHTTA paragraph L (199)

53. The appellant is also fully aware that 2012 management committee persons who have provided statements in support of the appellant were not notified of the “AGM” and have been removed from the NHTTA committee due to this. This would appear to be retribution for supporting the appellant.

Refer Submissions of NHTTA paragraph L (199)

54. The appellant did provide the NHTTA with evidence of how the NHTTA executive was formed unconstitutionally. This was emailed to June Logan 27th August 2012. The NHTTA constitution states clearly that the NHTTA Executive should have two independent members appointed. These were not appointed. The failure by the NHTTA to respond to evidence brought to its attention shows a lack of comprehension and recognition of the facts and reality generally which leads to a lack of judgment and common sense and provides no accountability.

Refer Submissions of NHTTA paragraph L (219).

Refer Submissions of Counsel, paragraph 218-220

Adhering to protocol and procedures regarding appeals.

55. Counsel and appellant are clear that the NHTTA provided an assurance in the disciplinary meeting that a decision would be provided within 3 working days. Subsequent emails sent to the NHTTA after the meeting attest to this agreement.
56. The evidence shows that the appellant submitted an appeal to TTNZ within the time frames imposed on the appellant by NHTTA. TTNZ can confirm that the appellant submitted an appeal to TTNZ within the timeframes required by the NHTTA constitution. The continued denial of the NHTTA to accept fact as reality, shows a total lack of logic by the NHTTA.

Refer Submissions of NHTTA paragraph L (223)

57. Evidence shows that the letter from Chris Davis (17th April 2013) to TTNZ submitted as evidence by the appellant (document 43) contradicts the NHTTA submitted statement that the appellant did not appeal until 16th July 2013. Chris Davis states in the 17th April 2013 letter:

“As he was entitled to do, Mr Palmer has appealed that decision”.

The continued denials in the face of facts shows a total lack of logic and the refusal to accept clear evidence means that one can only put this down to either a lack of comprehension or a blatant refusal to accept the facts in case they might have to alter their stubborn perspective .

Refer Submissions of NHTTA paragraph L (225)

Denials do not amount to satisfactory rebuttals

58. The appellant stated that Geraldine Stapleton had failed to pass on all documents to the national body once they were involved in an appeal. It is hard to see how the NHTTA can say that they deny this. Geraldine did not do what she was obligated to do. She sent nothing on to the national body therefore as the NHTTA has not provided a shred of evidence or even reasoning to back up these denials, then these denials it is submitted, have no substance or merit.

Refer Submissions of NHTTA paragraph L (226-229)

59. The NHTTA is incorrect in stating that paragraph 230 and 231 are not relevant. It is a procedural failure for Terry Shorter to sit and vote on a matter against the appellant when he has a conflict of interest due to an earlier complaint against him. **Refer Submissions of NHTTA paragraph L (230)**

60. The NHTTA has not actually responded to paragraph 5 where the appellant submits he can not defend himself against an allegation when he has no idea what he is being accused of in specific terms.

61. The NHTTA has not responded to paragraph 12 therefore it has to be accepted that the NHTTA accepts the submission that no evidence was provided by the

NHTTA executive to prove that the appellant acted at all inappropriately in this discussion.

62. The NHTTA has not responded to paragraph 13 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA Executive had no evidence to find the appellant was guilty of using “foul language” – both substantively and procedurally
63. The NHTTA has not responded to paragraph 14 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA Executive breached fair process by allowing Geraldine Stapleton to vote on a misconduct charge when she was the “witness” and the complainant at the same time as there was no way to avoid bias and a conflict of interest.
64. The NHTTA has not responded to paragraph 15 therefore it has to be accepted that the NHTTA accepts the submission that in allowing Geraldine Stapleton to vote, when there was a conflict of interest that this shows that the NHTTA has acted improperly and not in a fair manner and as such shows bias and the NHTTA Executive has therefore brought itself into disrepute.
65. The NHTTA has not responded to paragraph 28 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA executive had no grounds nor did it provide any evidence to show that the appellant was “dishonest”.
66. The NHTTA has not responded to paragraph 31 therefore it has to be accepted that the NHTTA accepts the submission that NHTTA selectors, if they so wished, had ample time to raise ANY issues they had with these arrangements, including asking Blake to instead play in a NHTTA team if they so wished.
67. The NHTTA has not responded to paragraph 33 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA executive ignored evidence provided to it in the disciplinary meeting and was therefore substantively wrong and procedurally unfair as it would have been clear to any

objective observer that there was no wrong doing and that the appellant was not dishonest or acting without authority.

68. The NHTTA has not responded to paragraph 37 therefore it has to be accepted that the NHTTA accepts the submission that this finding was not based on the evidence provided and does not take into account the facts as presented by the appellant.
69. The NHTTA has not responded to paragraph 50 therefore it has to be accepted that the NHTTA accepts the submission that the appellant provided evidence to the disciplinary committee in November 2012 that the appellant made a formal written complaint about the behaviour of John and Geraldine Stapleton in this meeting to June Logan (Chairman) – which was never responded to.
70. The NHTTA has not responded to paragraph 51 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA decision that the appellant “allowed” Blake to stay in the NHTTA motel for free was not based on the evidence provided. Blake in fact paid \$150 and the appellant informed and consulted others in authority that this is what was proposed. It was later sanctioned at the 13th July finance meeting without issue.
71. The NHTTA has not responded to paragraph 52 therefore it has to be accepted that the NHTTA accepts the submission that John Stapleton therefore misled the August Executive meeting when he stated he had no knowledge that Blake Lovie was attending the Junior Nationals until weeks after the tournament ended. It is further submitted that this was in fact a lie and cast unjust aspersions on the appellant suggesting that the appellant had acted without authority when in fact he had been transparent from the outset and had the blessing of the general manager to include Blake Lovie.
72. The NHTTA has not responded to paragraph 68 therefore it has to be accepted that the NHTTA accepts the submission that no evidence has ever been provided by NHTTA (despite requests) that shows what or when, information

was subsequently passed to Four Winds Foundation regarding an extra junior staying at the NHTTA motel.

73. The NHTTA has not responded to paragraph 79 therefore it has to be accepted that the NHTTA accepts the submission that the appellant did not bring NHTTA into disrepute with the Four Winds Foundation and that this allegation would appear to be a lie.
74. The NHTTA has not responded to paragraph 80 therefore it has to be accepted that the NHTTA accepts the submission that NHTTA was paid the grant by Four Winds Foundation but never passed this money back to the Juniors who were promised and entitled to this funding and that this is unacceptable on many levels.
75. The NHTTA has not responded to paragraph 82 therefore it has to be accepted that the NHTTA accepts the submission that Jack Stapleton has deliberately misled the NHTTA executive when he stated that NHTTA had gone back to the Four Winds foundation to tell them of an extra player.
76. The NHTTA has not responded to paragraph 83 therefore it has to be accepted that the NHTTA accepts the submission that Jack Stapleton has appeared to act deliberately, dishonestly and fraudulently when he misled the November disciplinary meeting that the grant from the Four Winds Foundation was at risk and made out that the executive had not yet received the money from Four Winds when in fact it would appear that the executive had been granted and paid the money in July 2012. It is therefore submitted that the NHTTA executive has acted in a deceptive, misleading manner in regards to this matter and therefore has demonstrated procedural unfairness, bias and bad faith by misrepresenting the truth at the meeting in an effort to suggest fault in the actions of the appellant, unjustifiably and unfairly.
77. The NHTTA has not responded to paragraph 98 therefore it has to be accepted that the NHTTA accepts the submission that it was factually incorrect for the NHTTA to state, in the NHTTA decision document, that Mitchell Barker

arrived (*24 minutes*) early at Auckland airport solely due to a plan to buy a new ticket for Blake Lovie.

78. The NHTTA has not responded to paragraph 102 therefore it has to be accepted that the NHTTA accepts the submission that on the night of the 3rd July 2012, the appellant on being told this by Mitchell said that he would give John Stapleton a ring to ask if NHTTA would be willing to reimburse Mitchell for the flight.
79. The matters raised in paragraphs 114-116 are entirely relevant to this appeal as the NHTTA has accused the appellant of not following correct procedure when it can be shown clearly that a precedent has been set in prior years by the NHTTA's own General Manager.
80. The matters raised in paragraph 126 are entirely relevant to the appeal as the NHTTA has accused the appellant of somehow denying the NHTTA selectors the ability to use Blake Lovie in a NHTTA team. But evidence shows these same NHTTA Selectors have provided evidence that they could have used Blake if they so wished. The accusation of the NHTTA Executive is totally without any basis in either logic or in fact.
81. The NHTTA has not responded to paragraph 128 therefore it has to be accepted that the NHTTA accepts the submission that it was Alan Moore's (TTC) decision, not the appellants, to ask Blake Lovie to compete in a composite team at the 2012 Junior nationals. The appellant has no case to answer in this matter and this was obvious to the disciplinary committee but they chose to ignore it.
82. The NHTTA has not responded to paragraph 129 therefore it has to be accepted that the NHTTA accepts the submission that if the NHTTA Selectors had so wished, they could have easily moved Blake Lovie into the NHTTA under 18 team, once they had been notified Blake Lovie was available.
83. The NHTTA has not responded to paragraph 130 therefore it has to be accepted that the NHTTA accepts the submission that it was not detrimental to NHTTA

for Blake Lovie to play at the 2012 Junior Nationals individuals and therefore the appellant has no case to answer nor does any other individual as there was no wrong doing here.

84. The NHTTA has not responded to paragraph 131 therefore it has to be accepted that the NHTTA accepts the submission that NHTTA was not in disrepute with TTNZ over Blake Lovie playing at the Junior nationals as it was TTNZ, through their official, who invited Blake Lovie to play.
85. The NHTTA has not responded to paragraph 132 therefore it has to be accepted that the NHTTA accepts the submission that the NHTTA executive knowingly made incorrect and misleading claims regarding it being in disrepute with TTNZ.
86. The NHTTA has not responded to paragraph 148 therefore it has to be accepted that the appellant was unaware that the committee had been told he had resigned therefore the appellant could not misrepresent himself on Facebook as he was not aware of any resignation being tabled or that the executive believed he had resigned when in fact the appellant himself genuinely believed he was still an executive member. Certainly there was no just reason why he should not be.
87. The NHTTA has not responded to paragraph 149 therefore it has to be accepted that the appellant did not resign and therefore there is no case to answer and further that any Facebook statements were made in good faith especially as the appellant believed he was an executive member.
88. The NHTTA has not responded to paragraph 163 regarding the decision to ban and penalize regardless of evidence to the contrary, therefore it has to be accepted that it appears that either the NHTTA knowingly made a decision which was unsupported by fact or they failed to apply logic and common sense ignoring obvious evidence to the contrary and went about an investigatory process in a very close-minded, haphazard and unsatisfactory manner. Either way they demonstrated unfairness due to a lack of a sensible, open mindedness in their investigation which was not free from predetermination. However there

also does appear to be intentional malice involved in their bias which is disturbing.

89. The NHTTA has not responded to paragraph 166 therefore it has to be accepted that the NHTTA executive did not provide the appellant with any appropriate guidelines regarding his duties or authority as Team manager to the 2012 Junior Nationals.
90. The NHTTA has not responded to paragraph 167 therefore it has to be accepted that no guidelines were provided to the appellant regarding his role as Team Manager therefore the appellant could not have knowingly breached any guidelines surrounding the events of the tournament in question as there were none to breach.
91. The NHTTA has not responded to paragraph 171 therefore it has to be accepted that the appellant did not act dishonestly or inappropriately and this allegation should be withdrawn.
92. The NHTTA has not responded to paragraph 172 therefore it has to be accepted that Geraldine Stapleton was the complainant in a disciplinary allegation laid against the appellant which involved a conversation between the two of them. It is a conflict of interest for Geraldine Stapleton to sit and vote as an executive member on charges against the appellant when she is also the complainant.
93. Paragraphs 173-177 in the appellant's submissions are entirely relevant to the appeal as they show the motivation behind the charges being laid against the appellant and provide evidence of a conflict of interest regarding Jack and Geraldine Stapleton when voting on allegations against the appellant.
94. The NHTTA has not responded to paragraph 180 therefore it has to be accepted that the NHTTA executive knew at the November disciplinary meeting that the appellant's formal complaint against Jack Stapleton was a live issue and had not been addressed. It is submitted that they did not intend to address the matter while Jack was on the executive.

95. The NHTTA has not responded to paragraph 181 therefore it has to be accepted that it was therefore a conflict of interest for Jack Stapleton to be voting on allegations against the appellant when the NHTTA executive was aware that the appellant had laid outstanding misconduct charges against Jack Stapleton.
96. The NHTTA has not responded to paragraph 190 therefore it has to be accepted that the NHTTA Executive had the opportunity to amicably resolve a serious defamation issue, at no cost to NHTTA, that was damaging the appellant's reputation but the NHTTA refused. This demonstrates a lack of logical insight and good faith.
97. The NHTTA has denied the submissions in paragraphs 191-195 without providing any explanations of conduct observed which showed that the appellant was not fairly judged in a manner free of bias and predetermination. A denial without providing reasoning or evidence is worthless.
98. The NHTTA has not responded to paragraph 196 therefore it has to be accepted that a ban of two years is excessive, unfair and is unwarranted. The appellant has been a volunteer at NHTTA for 22 years. The NHTTA has not stated what motive the appellant would have for any alleged misconduct, nor has any misconduct occurred. The NHTTA has not stated what benefit the appellant might have derived from any alleged wrong doing. The NHTTA has not provided any evidence of dishonestly. The NHTTA did not provide evidence that the NHTTA was ever in disrepute with any external organisation.
99. The NHTTA has not responded to paragraph 210 therefore it has to be accepted that the NHTTA Executive has shown a blatant disregard for due process and natural justice and its own rules. The NHTTA Executive's malicious actions have brought the entire NHTTA Executive into disrepute by its bullying behaviour and contemptuous actions and blatant disregard for due process and fairness.

100. The matters raised in paragraphs 230 and 231 are relevant as they provide evidence of a conflict of interest for Terry Shorter to sit and vote on allegations against the appellant.

101. The NHTTA has not responded to paragraph 237 therefore it has to be accepted that in all instances and at all levels, that the NHTTA has not acted with integrity, honesty or transparency. Their actions have demonstrated bias and stubborn predetermination and contempt for all the rules which make due process fair and democratic.

THOSE ARE MY SUBMISSIONS IN REPLY FOR THE APPELLANT



KEN NICOLSON

Counsel for the appellant

DATED: this 21st day of August 2013.