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**
	Defendant

SUBMISSIONS OF COUNSEL ON BEHALF OF THE APPELLANT

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MAY IT PLEASE THE EXECUTIVE OF TABLE TENNIS NZ

INTRODUCTION

1. The appellant, Andrew Palmer is appealing the decision of the North Harbour Table Tennis Association who found such serious fault in the conduct of the appellant that they saw fit to ban him from all forms of competition and high performance activities, any form of membership, participation or appointment to any committees, coaching and all related activities associated with North Harbour Table Tennis including fund raising and social activities for 24 months. In addition the North Harbour Executive also required the appellant to reimburse the executive for airfares and accommodation totaling $1,144.00. The Executive also claimed that the appellant has brought the NHTTA into disrepute by taking an extra player to a tournament allegedly causing the funding by Four-Winds to be stopped. It is submitted that this is untrue and that the executive and the club has been misled intentionally by a few executive members over this matter to further sully the reputation of the appellant and justify the decision to ban and punish the appellant.

2. The appellant therefore denies these claims and appeals the decision of the defendant on the grounds that the ban and payment required and disparaging reflections on the appellant's character are unjustified both substantively and procedurally. Substantively, the decisions were incorrect from a factual basis and the evidence presented in these submissions will support this. It is further submitted that the defendant's decisions were also procedurally unfair in that the defendant did not approach this disciplinary situation with an open mind, free of predetermination and bias. To the contrary, the appellant will show that the defendant failed to fully investigate the responses of the appellant and that they failed to accurately record the minutes of the disciplinary meeting and instead selectively recorded only what they wanted to record and left out vital facts and evidence that would have assisted the appellant, that they also acted unfairly and inappropriately by ignoring evidence supporting the appellant's actions regarding the taking of an extra player to a competition. They, the defendant, falsely claimed that the appellant had failed in his duty to inform the

executive in advance of a tournament regarding the taking of the extra player to the competition.

3. The defendant further acted unfairly and dishonestly by misleading the executive by claiming that funding from the Four Winds Foundation had been stopped allegedly because of the actions of the appellant and the inclusion of an extra player. It is submitted that this was not true, funding had not been stopped and in fact it will be shown that the executive never even contacted Four Winds to enquire about this and also that the players accommodation grant was paid by Four Winds contrary to what the executive, through its president, Jack Stapleton stated in their decision to ban and fine the appellant. In all matters it was neither true nor accurate to find that the appellant had acted inappropriately. By claiming these untruths, the defendant has both prejudiced the appellant in the process of investigating the actions of the appellant and brought the appellant's reputation into disrepute. It will be shown that these unjust, unfair and misleading actions by members of the executive representing NHTTA, has meant that the appellant's reputation has therefore been tarnished causing him unnecessary emotional harm and humiliation among his peers, friends and club members. It has not helped that a trespass notice has been issued against the appellant when the appellant has not acted in a manner that in any way warranted such harsh action.

THE ALLEGATIONS AND RESULTING DECISIONS

4. **ALLEGATION 1:** The NHTTA charged the appellant with the following**:**

"That you, pm Wednesday August 1st at a time between 5pm and 7pm at the NHTTA stadium, verbally abused and used foul language towards the Secretary and made threats to the Secretary against the General Manager"

The NHTTA found that:

"Our decision is that we require you to agree in the future to refrain from having sensitive discussions around times that young children may be present"

Refer Appellant's bundle document 5 – NHTTA decision document

5. It is submitted that it is unclear what decision the NHTTA have come to here. The NHTTA executive never provided any evidence of any complaint or statement that may, or may not, have been made by Geraldine Stapleton. The allegation timing and detail of the allegation is extremely vague. NHTTA have never provided any explanation to state what the foul language, or threat, the appellant is alleged to have made was. In the disciplinary meeting, the appellant asked the NHTTA Executive to state what the foul language or threats he was alleged to have made were, but the NHTTA executive refused to answer this question. The appellant can not defend himself against an allegation when he has no idea what he is being accused of in specific terms.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting– Page 1

6. The NHTTA did not provide any evidence of any complaint or statement that was made by Geraldine. However in contrast the appellant did provide the NHTTA Executive with documented evidence to show that the appellant had made a formal complaint to the NHTTA Chairman straight away following the conversation of 1st August about Geraldine's conduct in that conversation. The appellant never received a response to his complaint from the NHTTA Executive. However the NHTTA Executive tabled Geraldine's complaint but ignored the appellant's earlier complaint. It is submitted this shows bias by the NHTTA

Refer Appellant's bundle document item 24 – complaint re Stapleton behaviour

7. The appellant stated that the conversation with Geraldine ended amicably and he believed that he had resolved all issues. The appellant was unaware that Geraldine had seemingly found issue with anything the appellant had said in this conversation until he received the NHTTA's allegations of misconduct three and a half months later. It is noted that during the conversation in question between the appellant and Geraldine, (refer the appellant's brief of evidence) that Jack Stapleton was standing within earshot in the Stadium canteen. It is simply inconceivable that if the appellant had actually used foul language or

made threats against Geraldine, that Jack would not have intervened. He did not because the events as described by Geraldine did not occur.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting- Page 2

8. It is submitted that Geraldine had many opportunities in later meetings and private discussions with the appellant, to raise any concerns she may have had about the appellant's conduct in the conversation in question but she did not. If Geraldine did actually have concerns, it is very unlikely that Geraldine would not have raised these with the appellant at the time or immediately afterwards nor is it understandable why she would wait over three months before making these allegations. As the appellant had been a trusted volunteer for 22 years and a member of the NHTTA Executive and had already laid a written formal complaint against Geraldine regarding this same conversation, it shows arrogance and bias for the NHTTA executive to ignore and dismiss the appellant's original complaint and blindside the appellant with formal legal misconduct charges without even raising any of these issues with him prior to making these allegations.

9. The appellant provided a statement to the disciplinary meeting on the 23rd November 2012 that he could not have been at the stadium between 5pm and 7pm that night as he was competing in a tournament on the other side of the city between 5pm and 8pm. The appellant stated that the record of this tournament would back this up and that he could provide statements from other players attesting to this. The NHTTA Executive did not indicate in the meeting that this statement would not be accepted. The NHTTA Executive did not ask the appellant to provide this evidence yet and they clearly did not investigate it further which was a lapse in procedural fairness.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting – Page 2

10. Despite all of the evidence presented by the Appellant to support his viewpoint the NHTTA's decision document states that *"did not accept your explanation that you did not arrive at the stadium until 8pm"*. If the NHTTA did not accept

the appellant's statements why was this not stated in the meeting to provide the appellant the opportunity to present further evidence? It would appear that the NHTTA Executive simply did not want to see evidence that went against their pre-determined view's of the vague allegations laid against the appellant by one of their own executive members. This again shows bias, predetermination and a procedural lapse in fairness.

Refer Appellant's bundle document 5 – NHTTA decision document

11. It is clear that the NHTTA executive's decision is based solely on the version of events provided by the Secretary, who had already had a formal complaint laid against her for her conduct in this same discussion and in other meetings. It is submitted that the Secretary was conflicted as she was also on the disciplinary panel. It's noted therefore that despite being the complainant herself, the Secretary then voted against the appellant. This is in itself, a breach of natural justice and fair process.

12. It is submitted that no evidence was provided by the NHTTA executive to prove that the appellant acted at all inappropriately in this discussion.

13. We submit that the NHTTA Executive had no evidence to find the appellant was guilty of using "foul language" – both substantively and procedurally.

14. We submit 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.

15. We submit therefore 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.

16. **ALLEGATION 2:** The NHTTA ruled that:

"Our decision is that you acted dishonestly and inappropriately so that Blake Lovie could be included as a draft player and as Manager allowed him to play in the NZ Junior Championships team tournament without authority"

Refer Appellant's bundle document 5 – NHTTA decision document

17. In the 23rd November 2012 disciplinary meeting, the appellant provided a signed written statement from Mitchell Barker as evidence. Mitchell was a NHTTA selector and a coach on the trip to the 2012 Junior Nationals which was the tournament in question.

Refer Appellant's bundle, document 3 – transcript of disciplinary meeting – Page 3

Refer Appellant's bundle, document 4 – Affidavit Mitchell Barker – 1of 2

18. Mitchell's statement, provided to the NHTTA executive at the disciplinary meeting, supported the appellant's timeframe of events. Specifically, that the appellant had discussed with Mitchell, **as a NHTTA selector**, that Blake was considering playing in the individual events at the junior nationals. This was before Blake confirmed that he definitely could go.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting – Page 3

19. The appellant provided the NHTTA executive with an email dated 26th June 2012 sent to all NHTTA Selectors, including the NHTTA GM John Stapleton, informing them that Blake Lovie would be playing in the 2012 Junior nationals and that he had been asked to play in a composite team.

Refer Appellant's bundle document 10 –email notification to NHTTA selectors and GM

20. The appellant stated at the 23rd November meeting, that both the appellant and Brian Barker had verbal discussions with John Stapleton after this email and at no stage did John indicate that there would be any issue with Blake playing at the nationals or staying in the unit. In fact John's response was actually to show agreement, refer the appellant's brief of evidence, document 6 in the bundle, paragraph 41 and the transcript of the disciplinary meeting, pages 3 and 4 and

also the email exchange between the appellant and John Stapleton at document 10 in the bundle sent on the June 26 and 27 where John is informed of Blake Lovie's participation and responds:

> *"That's fine. Do you want to take a shirt down with you for him and get it back after the teams finish.."*
>
> ***Also refer Appellant's bundle, document 9 –Affidavit of Mitchell and Brian Barker***

21. In the meeting, the appellant provided evidence to the NHTTA executive to show that he had already provided this timeframe of events to the NHTTA in August 2012 in an email to the NHTTA Chairman June Logan.

Refer Appellant's bundle document 24 –email to June Logan Junior Nationals timeframe

22. The NHTTA executive have not disputed that John Stapleton knew on June 26th that Blake Lovie was going to the Junior Nationals and that he had been asked to play in a composite team and that the appellant notified John of this.

23. The NHTTA executive has somehow misconstrued the evidence by speculating that the appellant had "inappropriate motives" for "*only telling the GM on the 26th June*". However, the NHTTA executive were provided with evidence, which they have ignored, that it was only in a discussion with Blake Lovie's dad on the 25th June 2012 that details were finalised and approval given by Blake's dad to go to the junior nationals. This email was sent the day after Blake's Dad rang the appellant to confirm Blake would definitely be able to go to the Junior Nationals

Refer Appellant's bundle, document 13 –Affidavit of Blake Lovie

24. Further to ignoring Mitchell Barker's written statement as evidence, it would appear the NHTTA has lost or destroyed the written statements provided to them in the November disciplinary meeting.

Refer Appellant's bundle document 4 – Affidavit Mitchell Barker – (1 of 2)

25. Due to this, the appellant has had to obtain new affidavits. One of these affidavits was provided by Mitchell Barker.

26. Mitchell Barker, a NHTTA selector in 2012, states the following in his affidavit:

- *That prior to the Junior nationals Andrew Palmer, on the dates between June 20th and June 25th 2012, discussed with me, in my role as NHTTA Selector, that Blake Lovie was considering playing the individuals at the 2012 Junior Nationals*
- *That Andrew Palmer on the dates between June 20th and June 25th 2012 discussed with me and asked my opinion, in my role as Coach accompanying the NHTTA teams, on Blake Lovie staying in the NHTTA motel for the duration of the 2012 Junior nationals*
- *That Andrew Palmer on the dates between June 20th and June 25th 2012 advised me, in my role as a NHTTA Selector, that Blake Lovie had been asked to play in a composite team at the 2012 Junior Nationals.*
- *That on the 26th June 2012 Andrew Palmer emailed myself, and all other Selectors, including the NHTTA General Manager John Stapleton, advising us that TTNZ had asked Blake Lovie to play in a composite team at the 2012 Junior nationals and that Blake wished to play in the team.*
- *That as a selection panel, if we had so wished, on notification that Blake Lovie was intending on playing at the 2012 Junior Nationals we could have, and had time to, selected him for NHTTA teams but as a selection panel we simply did not discuss this as an option.*

Refer Appellant's bundle document 9 - Affidavit Mitchell Barker (2 of 4)

27. The email evidence clearly shows that the appellant did have discussions with NHTTA selectors prior to Blake confirming that he could definitely go and that the appellant then also emailed all selectors as soon as he knew that Blake would definitely be going. As Mitchell Barker, a NHTTA selector, states *"the NHTTA selectors could have, if they so wished, asked Blake to play in a NHTTA team"*

Refer Appellant's bundle document 9 - Affidavit Mitchell Barker (2 of 4)

28. It is submitted that the NHTTA executive had no grounds nor did it provide any evidence to show that the appellant was “dishonest”. The appellant finds this comment derogatory and completely unfounded.

29. To the contrary it is submitted that the evidence shows the appellant did notify the selectors that Blake had entered the individuals at the Junior Nationals and therefore denies the allegation that he was “dishonest” and acted without authority.

30. It is also clear that the NHTTA selectors were notified, by the appellant that Blake had been asked to play in a composite team by Alan Moore.

31. It is also submitted 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.

32. We say that the NHTTA selectors did not raise ANY issues prior to the junior nationals regarding Blake Lovie playing in a composite team at the 2012 Junior nationals even though they had ample time to do so as all was telegraphed in advance of the tournament.

33. It is therefore submitted 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.

34. It is noted that there has been no discussions or explanations put forward by the NHTTA to explain why they did not want Blake Lovie playing in the Junior Nationals. It is noted that NHTTA did originally invite Blake Lovie in April 2012, to play in the junior nationals, but that at this time Blake could not commit to this.

35. It is noted that Alan Moore has already provided an email statement to the NHTTA executive tabled in the disciplinary meeting stating that it was for the benefit of the tournament that Blake played.

Refer Appellant's bundle, document 38 – Email from Alan Moore

36. **Allegation 3**: The NHTTA executive made the following finding

*"Our decision is that you allowed Blake to stay in the motel where the NHTTA stayed for **free** despite the fact that Blake was not a team member and had not paid $310 as other players were required to. We consider it appropriate that you should pay $310 to NHTTA. This will enable NHTTA to allocate this amount between the other 9 players who paid to stay at the motel as reimbursement."*

Refer Appellant's bundle, document 5 – NHTTA decision document

37. It is submitted that this finding was not based on the evidence provided and does not take into account the facts as presented by the appellant.

38. The facts relating to who paid what for the trip are that the other juniors paid $310 each. This was for motel costs. These juniors paid nothing for food because NHTTA paid for the food costs for these juniors. The NHTTA paid $1,080 for food for 12 juniors. This was $90 per junior.

Refer Appellant's bundle, document 18 – Reconciliation of Junior Nationals expenses

39. The appellant stated, at the disciplinary meeting, that $150 (50%) seemed fair for Blake to pay because he would not have a bed to sleep in. Due to Blake's late entry the motel booking had already been made and as a result there were no spare bed's available for Blake to use. Therefore, it was agreed with Blake, prior to leaving that he would sleep on a couch and pay $150.

Refer Appellant's bundle, document 3 – Transcript of disciplinary meeting- Page 4

40. Blake Lovie paid $150. A signed statement providing evidence of this was provided to the NHTTA Executive at the disciplinary meeting.

Refer Appellant's bundle, document 13 – Affidavit Blake Lovie (1 of 2)

Refer Appellant's bundle, document 14 – Letter to Blake Lovie re payment

41. The NHTTA executive was made aware at the disciplinary meeting that Blake had paid $150 so it was factually incorrect for NHTTA to find that Blake stayed for free as he had paid $150.

42. It is submitted that the NHTTA would have been aware that the NHTTA had already committed to refund all motel costs to the other juniors as the NHTTA had already been paid a grant by Four Winds Foundation for the motel costs. Therefore all other juniors should have stayed at the motel for free. No agreement was ever made to refund Blake Lovie his $150, so considering the refund to the other juniors, (which is yet to happen one year later) Blake Lovie actually has paid $150 while the other juniors will have stayed for free, when the NHTTA decides to pay them back which is what the grant from Four Winds was all about. The NHHTA is claiming that they have not been paid when they actually have and they are blaming this alleged non payment on the inclusion of Blake Lovie when there is no justification for doing so because the grant wasn't stopped and they are claiming that Blake Lovie's inclusion was the fault of the appellant and that his inclusion put them at risk with Four Winds which is also untrue. All of these allegations are without foundation and the fact that the NHTTA is using deception to level a criticism against the appellant is both unfair, dishonest and a misuse of power for an improper purpose.

43. Based on the budgeted food costs the NHTTA was to pay $90 per player for food. Blake Lovie paid $150 in total. Therefore Blake actually paid $60 to sleep on the couch, even though, there was no additional motel costs charged by the motel for Blake Lovie to sleep on the couch.

Refer Appellant's bundle document 18 – Reconciliation of Junior Nationals expenses

44. The appellant provided evidence to the disciplinary meeting that he informed the NHTTA's general manager in an email dated 26th June 2012 of Blake's accommodation details, a week prior to the Junior Nationals.

Refer Appellant's bundle document 10 – email notification to NHTTA selectors and GM

45. The appellant has stated that he met with John Stapleton, NHTTA General Manager, (June 27) to go over the accommodation details and budget for the nationals. That the appellant brought up again Blake Lovie's late entry and discussed the arrangements for Blake with John. As John Stapleton was notified the day earlier, regarding Blake, it's inconceivable that if John Stapleton had actually had any issues with Blake going or with Blake staying at the NHTTA motel, that John would not have raised these issues in this meeting. No issues were in fact raised. The evidence shows (**refer Appellant's bundle document 39**) that the NHTTA gave the appellant a bank deposit on 27th June 2012 of $5,200 to pay for the motel and food costs for the trip. In order to authorise and make this payment, the General Manager, John Stapleton had to have known all the details of the trip and been happy with these details. Otherwise it's inconceivable that he would have approved this payment. It's also noted that the General Manager does not have delegated authority to approve a payment of $5,200 on his own. The appellant stated, to the disciplinary meeting, that after providing John Stapleton with all these details the appellant watched while John Stapleton wrote an email to the NHTTA executive asking for approval to deposit this money in the appellant's bank account. It is further submitted that John stated he was happy with the arrangements for the trip. It is noted that this email had to have been sent and John Stapleton must have received approval from the NHTTA executive as the NHTTA deposited $5,200 into the appellant's bank account that same night.

Refer Appellant's bundle, document 39 – cash advance from NHTTA $5,200

46. The appellant provided evidence that John Stapleton was fully aware of these details and that Blake Lovie had attended the nationals when John emailed the NHTTA executive on the 3rd of July 2012. He stated:

"Hi all

We received a grant today for accommodation for the Junior Nationals.

We had 9 players plus 3 coaches plus an extra player Blake Lovie who was playing in a composite team"

Refer Appellant's bundle, document 17 – email to Executive committee

47. The appellant provided evidence to the disciplinary executive committee that the NHTTA executive was provided with a full report and expenses in the July finance meeting when they approved the report and expenses.

Refer Appellant's bundle document 18 – expenses reconciliation

48. The appellant provided an email trail to the disciplinary committee that showed that John Stapleton yelled at the appellant in the August executive meeting stating that he (John) knew nothing of Blake Lovie going to the Junior Nationals, or any arrangements regarding this, *"until weeks after the event finished"*. The evidence provided above to the NHTTA executive showed that these statements made by John to the 14th August executive meeting were totally untrue.

Refer Appellant's bundle document 24 – email to June Logan

49. It is noted that John Stapleton is not a member of the NHTTA executive. It is unclear why he was present at this 14th August 2012 executive meeting or why he was allowed to talk over the top of the NHTTA executive members.

50. It is submitted 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.

Refer Appellant's bundle, document 24 – email to June Logan

51. It is submitted 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.

52. We submit 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.

53. **ALLEGATION 4:** The NHTTA outcome document found that:

"Our decision is that you have caused NHTTA to breach the terms of the grant application as a result of which we will need to advise the Four Winds Foundation that there was an extra unit that was paid for which was not needed for the NHTTA team. NHTTA may have to pay back funds and this has put NHTTA into disrepute by having to advise this situation and may put the success of future applications at risk. We consider it appropriate that you should pay the $750 to NHTTA so that this sum can be offered to the grant provider, and if the grant provider does not so require, then the monies can be refunded to the 9 players who paid to stay at the motel"

Refer Appellant's bundle document 5 – NHTTA decision document

54. The charges laid by NHTTA against the appellant are due to statements made by Jack Stapleton at the November disciplinary meeting regarding NHTTA being in disrepute with the Four Winds Foundation. Four Winds had agreed to give NHTTA a grant for motel costs. No evidence was provided by Jack to back up his statements at the meeting that they were offside with Four Winds. It was a blind accusation without substance or fact supporting it.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting page 6

55. The appellant asked the question at the meeting "why would that bring North Harbour into disrepute" (having an extra junior attending at no extra cost). This question was ignored and not answered by the NHTTA executive

Refer Appellant's bundle document 3 – transcript of disciplinary meeting-Page 8

56. Jack reported to the disciplinary meeting that NHTTA had gone back to Four Winds after the nationals to report that an extra player (Blake Lovie) had stayed at the motel, and that Four Winds Foundation was unhappy with this situation and the grant was at risk. No evidence was provided by Jack of this correspondence.

Refer Appellant's bundle document 3 – transcript of disciplinary meeting – page 6

57. In the disciplinary meeting, Jack Stapleton (President) stated that NHTTA was in disrepute with Four Winds and that the grant was at risk. He stated:

Jack: *"because if you go to paragraph C we now have an incorrect number of players when we applied to the four winds foundation for funding. So we have had to go back to the four winds foundation and tell them of the extra player"*

He further stated:

Jack: *"We applied to the four winds foundation prior to you going away for 9 players and 3 managers. 12 in total. We never applied for 13. Once you came back we then had to tell them that there was 13 and we are in the process of readjusting our grant. So the players havn't got any money back."*

Jack: "*We might have the entire grant taken off us"*

Refer Appellant's bundle document 3 – transcript of disciplinary meeting- page 6

58. Jack Stapleton stated in the disciplinary meeting that 9 players were originally picked. However the appellant provided email evidence to show that this was not factually correct and that he was originally asked by John Stapleton to book for 10 players and 3 managers but that Kwan Yuan pulled out and so the booking was then changed to 9 players and 3 managers.

Refer Appellant's bundle document 7 – email trail confirming accommodation details

59. Jack Stapleton stated in the disciplinary meeting that John did not know until **after** the nationals that Blake was attending so John applied for a grant for 12 people. The appellant questioned this:

> *Andrew: Then why did you tell them 9 players. Because you were fully aware that 10 players went.*
>
> *Jack: not until you came back*
>
> *Andrew: No. John knew on the 26th June which was before the nationals*

Refer Appellant's bundle document 3 – transcript of disciplinary meeting- page 6

60. However the appellant provided evidence to the meeting to show that in fact this was incorrect and that John Stapleton had received an email on the 26th June 2012, the month before the nationals, confirming that Blake would be staying at the NHTTA motel.

Refer Appellant's bundle document 10 – email notification to NHTTA selectors and GM

61. In the disciplinary meeting, the appellant also provided evidence to the NHTTA executive that showed that the appellant had actually already provided a timeframe of events via email to the NHTTA in an email to June Logan in August 2012. This timeframe showed clearly that John Stapleton had been notified on June 26th of Blake Lovie's intention to play the Junior Nationals

Refer Appellant's bundle document 24 –email to June Logan Junior Nationals timeframe

62. As NHTTA president, Jack Stapleton should have known that this evidence had already been provided by the Appellant which showed that John had been notified on June 26th. Prior to making a decision on alleged misconduct, it was the duty of NHTTA to thoroughly investigate this matter prior to making a decision and due process dictates that the NHTTA should have done its own investigation as well as reviewing the evidence that Andrew Palmer had previously provided to the NHTTA. It is inconceivable that Jack Stapleton did not know that he was being untruthful or inaccurate at best when he stated to the

NHTTA disciplinary meeting that John Stapleton did not know until **after** the nationals that Blake was attending. If he was telling what he thought was the truth, then he needed to have investigated further. He either failed to so or he refused to accept the obvious factual evidence provided by the appellant, further confirming predetermination and bias.

63. The appellant asked the following at the disciplinary meeting:

"I don't know why on July 13th when I gave you all the receipts and gave you a full report from the nationals and told you who went that you then said that's great and signed off on that and then waited another 6 weeks to then have a go at me in a meeting. Why didn't you raise this on July 13th if you knew then. Why didn't John tell me on June 26th. John gave me approval for Blake to go…."

Refer Appellant's bundle document 3 – transcript of disciplinary meeting- page 8

64. This question was not answered in the meeting, nor has it been since, by the NHTTA Executive.

EVIDENCE OF INTENTIONAL MISLEADING and DECEPTIVE CONDUCT by NHTTA

65. In the disciplinary meeting, Jack Stapleton stated that the NHTTA went to Four Winds to inform them that 13 people went to Christchurch instead of 12. That Four Winds had an issue with this and that this has brought NHTTA into dispute with Four Winds Foundation and that this money categorically would have to be paid back.

Refer Appellant's bundle document 1 – NHTTA invitation letter to disciplinary meeting

Refer Appellant's bundle document 2 – NHTTA minutes of disciplinary meeting

Refer Appellant's bundle document 3 – Transcript of disciplinary meeting

Refer Appellant's bundle document 5 – NHTTA decision document

66. These statements from NHTTA do not make sense and are not factually correct.

67. It is submitted that no evidence has ever been provided by NHTTA (despite requests) that show what information was initially passed on to the Four Winds Foundation when requesting a grant. It also has never shown any evidence that Four Winds refused to pay the grant.

68. It is further submitted 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.

69. Also no evidence has ever been provided by NHTTA (despite requests) that show that the Four Winds Foundation was unhappy with an extra junior staying at the motel (at no extra cost to NHTTA or Four Winds Foundation). In addition no evidence has been provided by NHTTA (despite requests) that show that the grant received from Four Winds Foundation was ever at risk nor has any evidence been provided (despite requests) that shows that NHTTA was in "disrepute" with Four Winds Foundation over any issue around this trip.

70. As NHTTA refused to provide this evidence, we contacted the Four Winds Foundation auditor Barry Thomas (09 636 7282) who confirmed on the phone that there is **no** correspondence with NHTTA regarding the above alleged problem.

71. It is submitted in evidence that Barry Thomas looked up the details of the grant in question to NHTTA for the junior nationals. Barry said according to the system, the grant money was paid to NHTTA in July 2012, accounted for and written off. He says there is no record of any problems with the grant, that the Foundation was totally happy with it. He can not see any correspondence from NHTTA raising any issues regarding player numbers in the motel.

72. It is submitted in evidence that before being put through to Barry Thomas, at Four Winds Foundation, we also spoke to the grants co-ordinator (09) 631 5262

who said she couldn't think of any reason why there would be a problem with an extra junior going to a sports event, especially if no extra cost was passed back on to them.

73. Barry Thomas also confirmed via email that the grant had been paid to NHTTA and fully accounted with NHTTA

"Further to our telephone conversation I confirm that the above grant has been fully accounted for by Four Winds"

Refer Appellant's bundle, document 34 – email from Four Winds Foundation

74. It is submitted that based on the evidence, that NHTTA did not go back to Four Winds foundation to report an extra player. The Four Winds Foundation never had any issues with the grant with NHTTA. The grant from Four Winds Foundation was not at risk as Jack Stapleton claimed. The grant has been paid, acknowledged and written off by Four Winds in July 2012.

75. It is submitted therefore that Jack Stapleton's statements at the disciplinary meeting were untrue and misled the NHTTA executive. Therefore any finding of wrongdoing against the appellant based on false allegations and false information must be found to be unjust as is any punishment resulting from that unjust finding.

76. It would appear also that the grant has been paid in full to NHTTA in July 2012 but the NHTTA executive has not refunded the accommodation money to the Juniors as required. If this is true and the evidence would seem to support this, then it is the NHTTA executive who is being dishonest and deceptive.

77. It would further appear, in submission that the only reason the players have not yet been refunded is due to some person or persons wanting to imply that the grant was at risk to strengthen a case against the appellant. This conclusion can be drawn as the NHTTA executive have not refunded the grant money to the juniors when they appear to have it in their possession so they could fabricate this risk to impugn the appellant.

78. It would appear that the NHTTA executive has been deceitful and manipulative for months.

79. Therefore we submit that the appellant did not bring NHTTA into disrepute with Four Winds Foundation and that this would appear to be a lie.

80. It is further submitted 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.

81. We further submit that NHTTA needs to refund the accommodation costs to the junior's concerned as promised by the NHTTA executive in June 2012.

82. It would appear 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.

83. We therefore submit 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 received the money from Four Winds when in fact it would appear that the executive has 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.

84. It is noted, as shown in this case, that NTTTA believe that dishonestly warrants a 2 year total ban. As these fraudulent statements have had a detrimental affect on the appellant's reputation and emotional and financial well being, as well as affected many other administrators, we would expect this ban to be consistently

applied to Jack Stapleton in this case or any executive member, or staff, complicit in this deception.

85. **ALLEGATION 5 -** the NHTTA found that:

Our decision is that we will advise the parents that you had no authority to organise Blake to stay for free at the motel, use Brian Baker's ticket or to be included as a draft player in a team at the NZ Junior Championships and as such have brought NHTTA into disrepute.

We further consider that you attempted to use an air ticket intended for another person to get Blake to and from Christchurch, when you knew that the ticket was non-transferable and needed photo ID. We consider it appropriate that you should reimburse the airfare costs, relating to Blake Lovie's travel from Auckland to Christchurch ($284) and return flight ($110) to NHTTA a total payment of $394

Refer Appellant's bundle, document 5 – NHTTA decision document

86. As already proven, the first statement is factually incorrect. Blake did not stay for free at the motel. Blake Lovie paid $150.

Refer Appellant's bundle, document 13 – Affidavit – Blake Lovie – (1 of 2) – re arrangements for Junior Nationals

Refer Appellant's bundle, document 14 – letter to Blake re payment

87. We submit that the statement that Blake stayed for free at the motel is factually incorrect and ignores the evidence provided to the NHTTA by the Appellant at the November meeting.

THE FACTS

88. The appellant provided statements to the NHTTA executive to show that Brian Barker purchased a completely new ticket, using his own money, for Brad Chen to go in his place as a manager because Brian could not attend after all.

Refer Appellant's bundle 3- transcript of disciplinary meeting

89. It is submitted that due to this, the appellant felt that Brian could do what he wanted with the original ticket, still in Brian's name, as Brian had effectively paid for it.

90. The appellant provided emails that show that there were discussions to find a replacement for Brian. Further, that Brian did consider giving this ticket away himself, without changing the name, for an additional adult to accompany the managers (Victor Pollett's mum). This did not eventuate as Victor's mum had to work and could not go. This is factual.

Refer Appellant's bundle 8- email trail finding a replacement for Brian Barker

91. It is submitted that the evidence also shows that there was an email from John Stapleton to NHTTA juniors informing them of selection (20/04/2012).

John states:

"All players are asked to book their own airfares on the flights they choose".

Therefore the NHTTA were fully aware of this email as they refer to it in their decision document.

Refer Appellant's bundle, document 7- email trail accommodation details for 2012 junior nationals (email 20/04/2012 John Stapleton – selection for Junior Nationals)

92. It is submitted that reading this email trail it becomes evident that the NHTTA did not want responsibility for organising flights. The NHTTA also did not provide any criteria for flights, except that they must be on the days required.

93. As the NHTTA specifically forewent any responsibility regarding flights and provided no criteria regarding flights, it is submitted that the NHTTA also forfeited any rights to query or disagree with flights booked by the juniors participating as they handed that responsibility over to the individuals. Due to John Stapleton asking juniors to book any flight they wanted, it would also appear that the NHTTA also forewent any responsibility in transporting the juniors to the Auckland airport for their flights to Christchurch. Juniors were

asked to make their own way to Auckland airport. It would appear that NHTTA was only willing to accept any form of responsibility for the juniors once they landed at Christchurch airport.

94. Blake Lovie provided a written statement as evidence to the NHTTA Executive (that it would appear the NHTTA have also subsequently lost) where Blake stated it was his and his Father's decision to use the ticket in Brian Barkers name.

Refer Appellant's bundle, document 13 – Affidavit Blake Lovie

95. We submit that it is factually incorrect for the NHTTA to hold the appellant somehow responsible for a decision made by Blake Lovie and Blake Lovie's Father regarding Blake's own flight arrangements, especially when the NHTTA had already notified all juniors, and managers, that they could book or arrange whatever flights they so wished.

96. The decision resulting from the disciplinary hearing goes on to demand that the appellant now should repay expenses that were previously approved and reimbursed by the NHTTA executive at the July 2012 finance meeting.

97. It is factual that Mitchell Barker offered Blake Lovie a ride to Auckland airport, as Blake happened to be on the same flight as Mitchell Barker. This was not organised by the appellant, or NHTTA. The appellant had previously advised Mitchell Barker that Blake Lovie intended to use the flight ticket in the name of Brian Barker and that Blake was using this ticket at his own risk.

Refer Appellant's bundle, document 15 – Affidavit Mitchell Barker (3 of 4)

98. We submit 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.

> *"Our supposition is that Mitchell and Blake arrived at the airport well in advance of the required time as they knew there was a very high likelihood (or in fact certainty) that Blake would not be able to use the ticket and that therefore it was known that a replacement ticket would need to be*

purchased and that this whole incident was organised in order that Blake would not have to pay an airfare"

Refer Appellant's bundle, document 5 – NHTTA decision document

This speculation is not factual and was not investigated by the NHTTA. It is factual that Mitchell arrived at the airport earlier than his scheduled flight as his girlfriend Diana Levinzon was travelling to Wellington on an earlier flight. The arrival time at Auckland Airport had nothing to do with Blake Lovie. It was the duty of NHTTA to thoroughly investigate the facts prior to making a decision on alleged misconduct. We submit that this supposition by the NHTTA which was not based on factual evidence, shows predetermination and bias and it is hard to understand the underlying suggestion that somehow the appellant was trying to organise a trip for Blake paid for by others. Such a suggestion is ridiculous, groundless and is hardly reason for a punitive response by the executive against the appellant.

Refer Appellant's bundle, document 15 – Affidavit Mitchell Barker 3of 4

99. It was Mitchell's decision, in consultation with Brad Chen, at the Auckland Airport, to purchase a new flight for Blake Lovie at the airport after he had problems using the ticket he was intending to use. The appellant knew nothing of this decision.

Refer Appellant's bundle, document 15 – Affidavit Mitchell Barker (3of 4)

100. At the time of purchasing the flight, Mitchell has stated in his affidavit that he hadn't considered if he should be reimbursed for this. Mitchell has stated that he thought it was best to get Blake to Christchurch and then sort it out there. It's noted that the NHTTA does not explain how the purchase of a new airfare for Blake would automatically mean that Blake would not have to pay for this ticket. This is faulty logic.

Refer Appellant's bundle, document 15 – Affidavit Mitchell Barker 3of 4

101. On arriving in Christchurch (3rd July), for the first day of the 2012 Junior Nationals, Mitchell has stated in his affidavit that he explained to the appellant

that he had purchased a new flight for Blake Lovie at the Auckland Airport as Mitchell and Brad Chen felt this was the right thing to do.

Refer Appellant's bundle document 16– Affidavit Mitchell Barker 4of 4

102. It is submitted 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.

Refer Appellant's bundle, document 16 – Affidavit Mitchell Barker 4of 4

103. That shortly after this discussion, the appellant received a phone call from John Stapleton. Straight away after the conversation with John, the appellant recounted back to Mitchell that John was perfectly happy to reimburse the flight expense and that NHTTA had received a grant for the accommodation motel costs.

Refer Appellant's bundle, document 16 – Affidavit Mitchell Barker 4of 4

104. The evidence shows that after discussing this with the appellant, John Stapleton emailed the NHTTA executive stating:

"We received a grant today …. Andrew has asked if we can delay the decision on how we distribute this grant money until he returns and can make a full report on the financials. He is partly concerned about the lack of cooking facilities which may add costs to the food, and he had to book an extra flight at the airport which he will explain at our next meeting

Refer Appellant's bundle document 17 – email (3rd July) from John Stapleton to NHTTA executive

105. The NHTTA executive did not dispute that the GM, John Stapleton would have agreed to reimburse these expenses. The NHTTA themselves state in their decision letter:

"The GM agreed to reimburse Mitchell"

Refer Appellant's bundle, document 5 – NHTTA Disciplinary Decision letter – page 6

It is inconceivable that the NHTTA GM would have agreed to reimburse Mitchell for an expense without discussing what this was for. It is submitted that John knew exactly what this was for and agreed to it willingly and the evidence supports this.

106. However if the NHTTA executive did not agree with the GM's decision, they were given a chance to question this and come to their own decision at the 13th July 2012 executive meeting shortly after the nationals. John's earlier email had previously alerted the executive to issues with flights and stated that Andrew would explain in the finance meeting. It is highly unlikely in fact not at all likely, that having received and been forewarned by this email from John Stapleton, about cost and flight issues, that the NHTTA Executive would not have enquired about these issues at the 13th July meeting. The executive members were provided with information and receipts in this meeting. The appellant Palmer asked the meeting if they thought it was appropriate to reimburse these expenses. The 13th July 2012 NHTTA executive approved the reimbursement of $284 to Mitchell Barker for the purchase of an AIR NZ flight for Blake Lovie and $110 to the appellant for the purchase of a Jetstar flight for Blake Lovie. This was voted on and approved and reimbursed to appellant on the night of the meeting.

Refer Appellant's bundle, document 18 – reconciliation of expenses provided to the executive

Refer Appellant's bundle, document 40 - Reimbursement from NHTTA – $629.93

107. It is submitted that the NHTTA executive is responsible for making this decision, not Mitchell nor the appellant. It is submitted that as per any executive meeting, there was an opportunity for any executive member to ask any questions deemed necessary prior to voting and approving these reimbursements.

108. The NHTTA disciplinary decision letter indicates that these same NHTTA executive members have now decided that they do not like the outcome of their

own meeting and wish to change their minds. It is submitted that "changing their minds" is not grounds for laying misconduct charges against the appellant.

Refer Appellant's bundle document 5 – NHTTA decision document

109. It is therefore submitted that there are no grounds to ask the appellant to repay previously approved expenses and reimbursements simply because the executive "changed their minds". The Appellant was transparent at all times and consulted along the way. All payments were voted on at the time and it is neither justifiable to now accuse the Appellant of wrong doing when clearly there is no wrong doing nor is it fair to ask the Appellant to pay back what was legitimately approved under democratic formal means.

110. We therefore submit that the NHTTA executive was provided with written statements in support of the appellant and that the NHTTA Executive ignored this evidence provided to it regarding the events surrounding the flights and chose to find fault where there is none.

111. We submit that the NHTTA executive approved the reimbursement. The appellant can't be held liable for a decision of the NHTTA Executive itself.

112. We further submit that the NHTTA has potentially intentionally destroyed or lost written statements provided by Mitchell Barker and Blake Lovie in support of the appellant, tabled in the November disciplinary meeting as evidence. They certainly have never acknowledged or also returned these documents and have ignored requests to return them. This act of losing or destroying or failing to return and acknowledge these important and relevant documents has shown the NHTTA executive to be prejudicial, vexatious and malicious and they have breached fair process and good faith and brought themselves into disrepute.

Refer Appellant's bundle document 16 – Affidavit Mitchell Barker 1 of 4

113. **ALLEGATION 6 -** The NHTTA found that:

"our decision is that by your actions you have caused NHTTA to breach Rule 14.2 of the TTNZ Handbook and have brought NHTTA into disrepute with TTNZ"

Refer Appellant's bundle document 5 – NHTTA decision document

114. The transcript of the disciplinary meeting shows that the appellant disagreed with the NHTTA Executive that Rule 14.2 only applies to draft players and not composite players.

Refer Appellant's bundle document 3 – Transcript of NHTTA disciplinary meeting – page 10

115. Irrespective of the technicalities of Rule 14.2, it is noted that NHTTA has never answered the question "why it would be detrimental to NHTTA for Blake Lovie, a NHTTA high performance junior, to play at the Junior nationals?"

116. The appellant provided evidence to the NHTTA executive in the disciplinary meeting that Shona Cudby had provided a statement that showed that John Stapleton himself brought in numerous unselected NHTTA players on the day to play in teams at the 2011 Junior Nationals. Also it was stated that, due to the late entry of these players, John could not have gained permission from the NHTTA executive for this. The appellant extracted actual tournament player records from this tournament.

Refer Appellant's bundle document 3- transcript of disciplinary meeting page 11

117. Without providing any actual evidence to the contrary, the NHTTA Executive ignored this factual evidence provided and simply decided that this evidence would not to be considered or worse denied that it was correct when it clearly was accurate and was also relevant because it showed disparity of treatment and inconsistency applying its own rules to similar events.

"This claim is considered to be without foundation and entirely incorrect…"

Refer Appellant's bundle, document 5 – NHTTA decision document

118. The NHTTA has stated as a fact, that NHTTA was in disrepute with TTNZ but the NHTTA executive has never provided any evidence to show that this was actually the case nor that this was as a result of Blake Lovie playing at the 2012 Junior Nationals. Such a suggestion is both misleading and mischievous and

makes no sense at all. Blake Lovie's inclusion in the team's tournament was approved and at the request of TTNZ. Blake's inclusion was also only helpful to TTNZ and he made a valuable contribution to the tournament.

Refer Appellant's bundle, document 5 – NHTTA decision document

119. The evidence shows the NHTTA's decision is not based on fact as it was not the appellant who allowed Blake to play in the Individuals at the Junior Nationals. As per TTNZ rules, **any** TTNZ player may enter and play in the Individuals at a national event. It was TTNZ, through their official Alan Moore, who authorised Blake's late entry into the Individuals.

Refer Appellant's bundle, document 38 - email from Alan Moore

120. The NHTTA found that the appellant allegedly "acted without authority" in advising that Blake Lovie could be included in a composite team. This was another finding not based on the evidence provided to the NHTTA executive. The appellant provided evidence that it was TTNZ, through their official, Alan Moore, who requested that Blake help out the tournament by playing in a composite team. Alan Moore states:

"Blake Lovie (NH) requested a very late entry into the individuals competition (mid to late June). When I learned that Blake Lovie was coming to Christchurch I asked Andrew Palmer if Blake would be available to complete a composite team. This request was made by me in order to benefit all three boys who would make up the composite team, particularly as the two draft list players were from minor associations and would have struggled to gain any playing opportunities if tagged onto an existing major association team.

The composite team played very well and it was obvious to me that they enjoyed their experience here at the teams event. It would disappoint me if there were any adverse repercussions to anyone as a result of Blake's inclusion in the composite team. The best interests of the game, and players, were served by his participation."

Refer Appellant's bundle document 38 - email from Alan Moore

121. The appellant stated at the disciplinary meeting that all he did was pass on Alan's request and then informed Alan of Blake's decision.

Refer Appellant's bundle document 3- transcript of disciplinary meeting – page 10

122. The appellant provided evidence that he notified the NHTTA selectors the day after details were confirmed (June 26)

Refer Appellant's bundle document 10- email notification to NHTTA selectors and GM

123. The NHTTA did not dispute that the appellant notified all Selectors and John Stapleton on June 26, a week prior to the event. The disciplinary decision document itself confirms that John Stapleton knew about Blake being named in a composite team on 26th June.

Refer Appellant's bundle, document 5 – NHTTA decision document

124. If the NHTTA had any concerns regarding this situation, they had every opportunity to rectify this prior to the event. It is factual that Associations do change team personnel right up to the managers meeting on the first morning of the nationals when teams are submitted.

125. It is submitted that the email trail shows that as at 26th June 2012, the NHTTA was short by 1 player. The NHTTA only had two players named in the NHTTA under 15 team. The Appellant was asked by John Stapleton to ask TTNZ for a draft player for this team.

Refer Appellant's bundle, document 10 - email notification to NHTTA selectors and GM

126. Further, it is submitted according to the appellant's brief of evidence (paragraph 33) that the NHTTA also had an under 15 player (Victor Pollett) who had been named in the NHTTA under 18 team. On the 26th June, the NHTTA selectors were aware Blake Lovie was available. The NHTTA selectors could have, if they so wished, moved Blake Lovie into the NHTTA under 18 team. The NHTTA selectors could have then moved Victor into the under 15 team. But the

NHTTA Selectors did not wish to do this as it would "weaken" the NHTTA under 18 team. The NHTTA decided to request the appellant contact TTNZ to find out if there were any spare players that could be found by TTNZ to play in the NHTTA under 15 team instead.

Refer Appellant's bundle, document 10 - email notification to NHTTA selectors and GM

Refer Appellant's bundle, document 9 – Affidavit of Mitchell Barker – (2 of 4) – Blake going to Junior Nationals

127. Despite the facts, the NHTTA executive's decision was that it was the appellant who decided that Blake could not play for NHTTA when in fact it was actually the NHTTA selectors, either by a conscious decision or lack of action, that determined that Blake would not play in a NHTTA team.

128. We submit 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.

129. We submit therefore, 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.

130. We further submit 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.

131. We further submit 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.

132. Further we submit that the NHTTA executive knowingly made incorrect and misleading claims regarding it being in disrepute with TTNZ as a result of these events and it is clear from this evidence that the appellant did not make

unilateral decisions or overstep his authority nor did he do anything that a reasonable observer would think was anything other than follow the request of his selectors and co-operate with others for the good of the game, players and the tournament. Any other conclusion would be misguided if not malicious.

133. **ALLEGATION 7 -** The NHTTA executive found that:

> *"Our decision is that having resigned from both committees, you misrepresented yourself, on Facebook (on October 3 and October 9 2012) as a member of the NHTTA Management Committee on Facebook"*
>
> *"Our decision is that having resigned from both committees, you misrepresented yourself as a member of the NHTTA Management Committee to the Day Club organisers"*
>
> ***Refer Appellant's bundle document 5 – NHTTA decision document***

134. Both of these decisions are not based on any factual evidence. Despite written requests from the appellant to the NHTTA executive to provide any written evidence that he had resigned, the NHTTA executive has produced none. That is because there is no evidence that the appellant did in fact resign.

135. The appellant stated that:

> *"I don't understand the charge. I am a North Harbour management committee member. I was voted on at the AGM. I received no notice that I am no longer a management committee member"*
>
> ***Refer Appellant's bundle document 3- transcript of disciplinary meeting page 11***

136. The appellant provided evidence to the NHTTA Executive to state that he had not resigned and that he had asked the Secretary in previous months to provide any evidence or correspondence that showed that he had resigned, but that the Secretary had refused.

> ***Refer Appellant's bundle, document 3- transcript of disciplinary meeting page 12***

137. The appellant explained in the November disciplinary meeting that he had a discussion with Jack Stapleton (August 24) during which Jack had threatened the appellant that he would be blamed for money going missing and demanding the appellant's resignation. A few days earlier Geraldine had told the appellant and the executive that money had gone missing from the safe, the amount was not mentioned. However allegations regarding theft have never been raised since even though counsel has asked for clear allegations, if the allegations existed and were real, to be put formally so they could be defended. This did not happen. Never the less, this is where the issue of resignation has arisen. After that confrontation between Jack and Andrew, the appellant rang June Logan and confirmed that he had not resigned and would not do so. The appellant tabled emails (August 26) that showed that the Appellant had notified NHTTA that he had not resigned in an email on the 26th August 2012 and then verbally again on 30th August 2012.

Refer Appellant's bundle, document 23 – email to June Logan

138. If Jack and Geraldine Stapleton (August 24) had mistakenly thought that the appellant had verbally resigned, well the appellant cleared this up in writing only two days later when he emailed June Logan (August 26). It is clear from the appellant's email (August 26) that he had given the keys back under threat only, but that he had not resigned. The appellant wanted to talk to June Logan before doing anything. The appellant does not respond well to direct confrontation.

139. In June Logan's reply she notes that she expects she will also be expected to resign. We note that 2 months after this, TTNZ was notified that June had resigned. It is unclear to us if this was her own decision or it was a forced resignation.

> *"my gut feeling at this moment is that i all so will be expected to resign, as I was planning to do this anyway at Christmas its no big deal just not the way I would have liked to have left. need a bit of time to think this through but give me a ring to discuss"*

Refer Appellant's bundle document 23 – email to June Logan

140. The appellant again clarified this in an email on 14th October 2012. He stated:

> *I have <u>not</u> resigned. As I told you when I rung you (August 30), I did hand my keys back to Geraldine but in my view this was in no way a resignation. I did not feel safe being in the stadium alone, given the proceeding threats and events, and no longer wanted access to the stadium. I am told that you have emailed the committee informing them that I have resigned. This is a misunderstanding that needs to be publicly cleared up.*
>
> *As I have not resigned from the committee please advise the committee members of this asap to prevent any misunderstandings regarding this. If you feel I have resigned then please provide asap any written correspondence from me that you feel constitutes such a resignation."*
>
> ***Refer Appellant's bundle, document 31 – email to June Logan***

141. Jack Stapleton stated at the November disciplinary meeting that the appellant's resignation was tabled at an Executive meeting. NHTTA have provided no evidence that this resignation has been tabled, despite numerous requests for them to do so. Thus despite requesting evidence that the alleged resignation was tabled, the appellant was not been provided with the minutes of any of these meetings. Therefore the appellant has no idea, even now, if the subject of his resignation was ever tabled at these meetings. It is submitted that to resign after 22 years, it would require a lot more than handing over keys under threat. Any resignation forced under threat is not a resignation anyway, it is a sacking. The appellant clearly did not want to resign voluntarily.

142. The NHTTA Executive has not explained why a resignation tabled by someone other than the appellant (we have not been told by who), at a meeting without the appellant present, would be accepted when there is prior written confirmation available to the executive that the appellant had not resigned.

143. It is normal process, that if the appellant's resignation had been tabled at a meeting, then the minutes of the meeting would reflect this and the appellant would be provided with the minutes of that meeting. This did not happen. The appellant has not been provided with any minutes of any meeting discussing his

alleged resignation and was unaware that a resignation was tabled. As the appellant was not present at any meeting and didn't table any resignation himself, then due process dictates that the Secretary should have promptly sent the appellant a copy of any minutes of a meeting discussing his resignation to notify him. This is accepted practice and trite law in all matters pertaining to resignation. It is called a "cooling off period" which requires each party to reflect on hasty decisions. If a mistake had been made this would allow the appellant a chance to rectify this. This did not happen either. This aside no resignation occurred or was initiated by the appellant.

144. After August 2012, the appellant emailed NHTTA on multiple occasions requesting copies of meetings that he had missed as a result of not being invited. Despite these requests NHTTA did not inform the appellant that they were treating him as a "resigned" or ex-committee member. It would appear that the **NHTTA did not want the appellant to know that his resignation had been tabled**, if in fact it had?

145. We note as part of this appeal process, that we have also formally requested NHTTA to provide a copy of the minutes where the appellant's resignation was tabled. This request has been denied or ignored also. Any conduct of this nature is contemptuous but in terms of an alleged resignation, it is hardly true to say that a resignation has actually occurred when there is absolutely no evidence of it and the appellant does not wish to resign and says he never did.

146. It is a fact that the appellant emailed the management committee twice in October 2012, believing himself to be a management committee member, three months after NHTTA claimed that the appellant's resignation was allegedly tabled, expressing concerns that Craig Dye had being denied access to represent NHTTA at the 2012 Senior Nationals. The appellant asked for an urgent management committee meeting to resolve the issue. The appellant's emails to the committee were never responded to. If NHTTA believed at this time, that the appellant had resigned, why did no one from the NHTTA executive email the appellant clarifying this with the appellant, even out of courtesy.

Refer Appellant's bundle, document 29 – email to management committee regarding Craig Dye

Refer Appellant's bundle, document 30 – email to management committee regarding Craig Dye

147. After the appellant's emails in October 2012 (refer appellants bundle documents 29 and 30) there is evidence available that shows that June Logan did email the committee asking them not to respond to the appellant and informing them that the appellant had "resigned". But June **did not** send this email to the appellant. It is clear that the NHTTA executive wanted to give the appearance to the rest of the management committee that the appellant had resigned, **but did not want the appellant to know that the committee was being told he had resigned**. This was deceptive and manipulative and displays a lack of transparency and honesty.

Refer Appellant's bundle, document 32 – email from June Logan

148. It is submitted 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.

149. We submit 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.

150. We submit that if the appellant's resignation was tabled at a meeting without his knowledge, then the NHTTA executive took extraordinary steps to keep this resignation hidden from the appellant. This deceptive behaviour brings the entire NHTTA Executive into disrepute and shows bad faith and a lack of integrity. This aside, the Facebook entry was hardly a banning offence regardless.

151. **ALLEGATION 8:** In the decision document NHTTA wrongly speculated that 4 units were booked and that 3 units would have accommodated 12 people. The NHTTA then imposed a $750.00 financial penalty on the appellant based on this faulty speculation.

Refer Appellant's bundle, document 5 – NHTTA decision document

152. However the appellant provided evidence that John Stapleton was fully aware, months in advance (May), of all accommodation booking details including what motel rooms and beds, were booked.

Refer Appellant's bundle, document 7 – email trail regarding accommodation details

153. Despite this evidence, the NHTTA has speculated (without providing any evidence to back up this speculation) that the appellant booked four units solely so Blake Lovie could be accommodated. This decision is incorrect and ridiculous and not based on any evidence at all but worse, it is contrary to the evidence. It also demonstrates bias and a lack of a fair and proper investigation by NHTTA.

154. The appellant submitted evidence to the disciplinary meeting that showed that 4 units were booked, which provided only 12 beds. The appellant provided to the NHTTA executive an email (May 2012) sent to the General Manager (and Brian Barker) prior to booking the rooms to request approval prior to booking. The booking confirmation clearly shows that 4 units were booked, which provided only 12 beds.

Refer Appellant's bundle document 7 –email trail accommodation details

155. NHTTA were again provided with the motel invoice in the July finance meeting. The motel invoice showed 4 rooms and 12 beds booked. The NHTTA decision document itself also refers to this same motel invoice in the decision document. It is unclear how the NHTTA executive, looking at all the evidence, could come to such a wrong decision regarding the number of beds booked.

Counsel wonders if they considered the appellant's responses to the allegations at all?

156. The NHTTA executive was provided with evidence that Blake Lovie was the 13th person, and slept on the couch. This could have been confirmed by a thorough investigation if they did not accept the evidence of the appellant.

Refer Appellant's bundle document 13 –affidavit Blake Lovie

157. The information that the NHTTA had at hand clearly shows that 3 units would only have provided 9 beds. Not 12.

158. The appellant was never given an opportunity to correct the inaccurate statements made by the NHTTA executive in the decision letter (refer appellant's bundle document 5) regarding the allegation of an unrequired unit, as this allegation was never raised or discussed in the November disciplinary meeting. They have simply made a unilateral decision which has summary and serious consequences for the appellant without any chance to defend this decision.

159. The NHTTA also then subsequently refused to allow the appellant to view the minutes of the meeting despite this being an agreed process discussed in the disciplinary meeting.

160. As the NHTTA executive had full access to the accommodation booking and the invoice, they must have known the details of this when making their decision. They chose instead to ignore it and make a decision that takes no heed of clear evidence in support of the appellant and instead makes a completely unfair and erroneous decision based on nothing but bias, blind thinking and pre-determination.

161. The NHTTA referenced the accommodation invoice in their own outcome decision document so there is no way the NHTTA executive did not know, as they were in full possession of the facts, that their statement regarding an un-

required unit being booked was false or at best misguided as a result of a lack of a fair and unbiased investigation.

162. We submit that the financial penalty regarding an un-required unit is not based on the facts provided to NHTTA nor is it fair or just. It is in fact, a nonsense.

163. We submit 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.

164. **ALLEGATION 9**: The NHTTA, in many of its findings, state that the appellant Andrew Palmer acted without authority regarding his role as team manager of the NHTTA junior teams. It is submitted that it was the NHTTA who asked the appellant to go on the trip to Christchurch and the NHTTA who appointed the appellant as the team manager. However it is further submitted that despite this appointment, no guidance was provided by NHTTA relating to what delegated authority the appellant did or did not have.

165. It was also NHTTA who asked the appellant to communicate with the coaches and juniors but no guidelines were provided which placed any restrictions on these communications.

166. We submit 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.

167. We submit that as 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. In reality the appellant's conduct was nothing but exemplary, enthusiastic, helpful and professional and was actually congratulated for his involvement in the tournament, organisation and team management. It is quite ridiculous to have actually attempted and in fact carried out, finding misconduct against the appellant. No reasonable and objective person would have done so. Unfortunately the executive disciplinary committee was neither objective nor reasonable.

168. **ALLEGATION 10**: The NHTTA outcome document arrives at the following finding

> *"That you acted dishonestly and inappropriately in relation to the NHTTA trip to Christchurch for the NZ Junior Championships in July last, for which you were the manager"*
>
> ***Refer Appellant's bundle document 5 – NHTTA decision document***

169. However no where in the NHTTA disciplinary decision letter does it explain how the appellant was "dishonest". No evidence has been presented to show that the appellant was "dishonest" nor it is submitted, did he act dishonestly. Dishonesty requires a high legal test and nothing surrounding the events of the tournament in question warrants any suggestion of conduct that would justify such an allegation.

170. The appellant has clearly shown that he kept the NHTTA General Manager fully up to date with who was going to the Junior nationals, that Blake was given a letter outlining what he should pay, that the General manager notified the executive committee of details and that the appellant provided a reconciliation of Junior nationals expenses which the General Manager and NHTTA executive agreed to. Everything the appellant did was honest, above board, transparent and in consultation with others including management therefore the allegation of dishonestly is therefore inappropriate, unfounded, unfair, harsh, ridiculous and casts unwarranted aspersions on the appellant's character and this has caused him great emotional harm. It is also submitted that

the actions of the appellant have only been carried out with a genuine interest in table tennis and for the good of the game and club.

171. We submit therefore that the appellant did not act dishonestly or inappropriately and this allegation should be withdrawn.

GENERAL SUBMISSIONS ON PROCEDURAL UNFAIRNESS LEADING TO AN UNJUST DECISION

172. It is submitted 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.

173. It is further submitted that the appellant had previously raised a written formal complaint with the NHTTA chairperson June Logan regarding the tone and threats uttered by Geraldine Stapleton in a conversation in July 2012. The appellant is not aware that this complaint was ever actioned, and no resolution regarding this complaint was ever brought to his attention. The appellant's complaint should have been actioned in good time.

Refer Appellant's bundle, document 24 – email to June Logan

174. Geraldine's complaint to NHTTA regarding the July conversation with the appellant is vague and appears to have been laid months later after the event. This complaint appears to have been made as payback or retribution because of the appellant raising formal concerns regarding the Secretary's performance (incorrect minutes, inappropriate behaviour in meetings). As stated the appellant has had no resolution to his complaint against the Secretary.

Refer Appellant's bundle, document 25 – email to June Logan

175. The appellant had also previously raised an issue regarding John Stapleton's behaviour. This issue has also not been resolved**.** It is a conflict of interest for Jack and Geraldine Stapleton to be voting on allegations and making decisions which affect the appellant when the appellant has raised employment issues regarding their son which have not yet been resolved

Refer Appellant's bundle, document 19 – letter from juniors

Refer Appellant's bundle, document 20 – affidavit Momo Miura

Refer Appellant's bundle, document 21 – affidavit Blake Lovie

FURTHER ISSUES

176. It is submitted that he appellant raised concerns that, on 24th August 2012, that between 6:30 and 7:15pm, Jack Stapleton threatened him, stating if he did not resign, the appellant would be "blamed" for money going missing from the stadium. The appellant was upset by this threat and was very concerned as he was both intimidated and innocent of any money theft but knew the power that the Stapleton's had. The appellant was fully aware that the Stapleton family had access to the safe and banking and as such were the only people who could verify if any money had **actually** gone missing. The appellant was also aware that Jack and Geraldine Stapleton were the only NHTTA executive who were investigating this apparent theft. It was clear that no one independent had been asked to assist in the investigation. Due to this, the appellant viewed Jack's threat as extremely dangerous.

Refer Appellant's bundle, document 23 – email to June Logan

177. It is further submitted that part of this conversation was overheard during a call from the appellant's phone

That during this conversation I heard the other party say "listen if you don't resign, well everyone is upset about the money going missing, we will hold you to blame for the money going missing

Refer Appellant's bundle document 22 – affidavit Jai Sheppard

178. Jack Stapleton's statements to the November disciplinary meeting confirm that Jack agreed that a discussion did take place between himself and the appellant on the 24th August and that Jack did indeed ask the appellant to step down from the committee

Refer Appellant's bundle, document 3 – transcript of NHTTA disciplinary meeting – page 13

179. The NHTTA executive was provided with evidence that a discussion did take place and the appellant also provided the NHTTA executive with email evidence that showed that the appellant had previously raised a formal complaint in August 2012 regarding threats made against him by Jack

Stapleton. This fact is relevant to the resignation issue and the claim of defamation against Jack Stapleton. While this issue of the threat to "resign or else" was part of the background to the treatment handed out to the appellant in their banning of the appellant, the alleged theft has never been put forward as a reason for the ill feeling toward the appellant and yet by keeping it as a bubbling issue it might be seen to be an underlying issue motivating the executive, but in reality it is not. It is submitted that the executive have not been honest in their motives and hence what appears to be, trumped up allegations against Andrew Palmer. It is submitted that the real motivation behind the threat was to use intimidation to get the appellant to resign in retaliation for him raising issues against John Stapleton. Certainly the executive did not want to pursue the theft issue formally because it could not, so instead the insinuation of it and the threat by Jack was a way to achieve the ultimate goal of resignation. Thus the alleged theft was **not a reason for seeking a resignation but it was a way of achieving it.**

Refer Appellant's bundle document 23 - Email to June Logan (26th August 2021) – document conversation with Jack (24th August 2012)

180. We submit 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 while Jack was on the executive.

181. We further submit 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. This complaint was also underlying the predetermination shown by the executive to find fault with the actions of the appellant regardless of how unfounded they were.

182. The appellant had also previously raised a written formal complaint with NHTTA chairperson June Logan regarding statements he felt were defamatory made by John Stapleton which the appellant felt labelled him as a "thief". It was a conflict of interest for Jack and Geraldine to both be voting on allegations

against the appellant when there were serious issues outstanding against their family regarding defamation claims regarding allegations of theft.

Refer Appellant's bundle document 31 –email to June Logan concerns re defamation

Jack Stapleton has confirmed, at the November disciplinary meeting, that he was aware of the Appellant's formal complaints, but that these formal complaints had not been tabled or resolved by the NHTTA Executive.

183. Counsel quotes from the transcript:

> *Jack: You have never actually sent an email to North Harbour Table Tennis*
> *Andrew: I sent it to the entire executive*
> *Jack: You sent it to the chairman*
> *Andrew: No I cc'd the entire executive committee*
> *Jack: Who have never tabled the emails at any executive meeting. So we can't respond because we have never have the complaint tabled at an executive committee meeting*

Refer Appellant's bundle, document 3 – transcript of NHTTA disciplinary meeting- page 15

184. The NHTTA's reasoning for not being able to respond to a serious formal complaint is due to inaction on their part in not tabling the complaints at a meeting. Thus despite having months to do this, they had not responded. But the NHTTA do not deny knowing about the appellant's serious formal complaints which were submitted months prior to the NHTTA laying counter misconduct charges against the appellant. It is submitted that this shows deception and improper motives and bad faith in hiding behind inaction and refusing to deal with a complaint because they refused to table it.

185. The appellant has tried to resolve this matter amicably with NHTTA who have refused to respond to the appellant's many written communications. This refusal has only escalated the damage to the appellant's reputation. **Counsel has also sought mediation and the defendant has refused.**

186. The transcript, from the audio of the November disciplinary meeting, shows that the appellant then requested that these issues be resolved by minuting this issue of alleged theft in the meetings minutes and that NHTTA agreed to do this.

> *Jack: if you put in a formal complaint that you think we have made allegations that you stole the money then we are quite prepared to send you back a written statement that no body on the executive did this.*
> *The appellant: So as I have said, if the executive committee would like to minute that there are no allegations of theft against me then that will be the end of any discussions with the association regarding that, and I will talk directly to individuals who may have spread that gossip and resolve that that way with the individuals.*
> *Jack: the association agrees*
> ***Refer Appellant's bundle, document 3 –transcript of NHTTA disciplinary meeting – page 16***

187. Despite formally agreeing to minute this important matter i.e. that there never were any allegations against the appellant, the NHTTA has subsequently reneged on this assurance given in a formal legal meeting and refused to put this into their minutes. This shows bad faith.

> ***Refer Appellant's bundle document 2 –NHTTA minutes of disciplinary meeting***

188. It is submitted that the NHTTA Executive's repeated refusal to respond to requests by The appellant to resolve defamatory statements made by the NHTTA General Manager has damaged the appellant's reputation and brought the entire NHTTA Executive into disrepute due to its deceptive actions, improper motives and their handling of this whole matter from the outset.

189. We also submit that the NHTTA Executive's actions in refusing to minute an action agreed in a formal legal disciplinary meeting has brought the entire NHTTA Executive into disrepute and questions the integrity of the executive, their decisions made and their motives.

190. It is further submitted 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.

191. It is also submitted that the appellant has a right to be judged in an even-handed manner and to be treated without bias. We submit that this did not happen in this case. The transcript of the November 2012 NHTTA disciplinary meeting shows that the Secretary (Geraldine Stapleton) and President (Jack Stapleton) had already formed their conclusions prior to the meeting. The decision was therefore predetermined biased and unfair.

Refer Appellant's bundle, document 3 – transcript of NHTTA disciplinary meeting

192. During the meeting in question the President and Secretary can be clearly heard in the audio interrupting and talking over the appellant in the meeting. The interruptions from the President and Secretary show prejudice against the appellant. These interruptions are evident when one reads the typed transcript.

Refer Appellant's bundle document 3 –transcript of NHTTA disciplinary meeting

193. We submit therefore that the transcript of the November 2012 NHTTA's disciplinary meeting shows that when the appellant is presenting his defence, Jack Stapleton interrupted the appellant on numerous occasions stating that the facts that the appellant was presenting were false. It is submitted that this was not impartial behaviour nor was it a fair and just hearing. It was a kangaroo court designed to bring about a preconceived outcome.

Refer Appellant's bundle, document 3 – transcript of NHTTA disciplinary meeting

194. This prejudice and predetermination is obvious. Despite the appellant referring to emails that had been sent to the President, therefore proving that the President would have known they existed and those same emails, which had previously been provided to the NHTTA by the appellant in August 2012 and were proof

that issues needed to be addressed were clear and obvious but still the executive refused to acknowledge them. During each of these outbursts from Jack Stapleton, who stated that the emails did not exist, the appellant presented written evidence to show that the appellant was in fact telling the truth. The continued negative assertions from the President were shown to be false but also demonstrated hostility and prejudice against the appellant.

195. We submit that the appellant was not fairly judged in a manner free of bias and predetermination.

196. It is also submitted 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.

The appellant asked the following in the disciplinary meeting:

"So how did I bring North Harbour into disrepute."

Refer Appellant's bundle, document 3 – transcript of NHTTA disciplinary meeting – page 8

197. This question was ignored and has never been answered by the NHTTA executive.

THE PENALTIES

198. The NHTTA executive based its decision on the opinion and speculation of several executive members who it is submitted have been shown to be conflicted with a personal interest in a negative outcome regardless of evidence to the contrary.

199. Regarding the unjust banning of the appellant for two years, preventing him from playing at NHTTA, it is clear from subsequent NHTTA actions and communications (refer also Chris Davis's letter below to TTNZ) which indicate that *"The appellant will never be accepted as a NHTTA member"* that it is submitted therefore that the NHTTA executive's intention is that the appellant will never again be a member and may never again be able to enter the stadium as a spectator or to talk to long term friends if this ban which is unjust, is upheld. The appellant calls upon TTNZ to overturn this decision and restore justice and fairness by reinstating the appellant.

> *"NHTTA's current position is that it has no interest in Mr Palmer being a member of NHTT. Mr Palmer is not a member of NHTT and NHTT will accept no application, by Mr Palmer, to become a member of NHTT"*
>
> ***Refer Appellant's bundle, document 41 – letter 17 April 2013 Chris Davis to TTNZ***

200. Thus despite the NHTTA admitting in earlier communications that the constitution clearly states that any penalty made by the NHTTA executive can not be enacted until **after an appeal is heard**, it is clear from the Armstrong Murray letter above, that NHTTA has no intention of abiding by any decision at appeal that is in the appellant's favour, that as far as NHTTA is concerned the appellant will never be accepted as a member of NHTTA. This strongly points to a predetermined life ban unless the NHTTA is reigned in.

201. This approach shows predetermination contravening due process and natural justice and demonstrates an arrogant disregard for the NHTTA's own constitution and rules. It further demonstrates a harsh and vindictive punitive approach which goes well beyond appropriate consequences for the misconduct alleged, even if the allegations were proved which they are not. The punishment far outweighs the crime so to speak. It is therefore submitted that the consequences put in place by NHTTA are a harsh over reaction to underlying motives which have not been revealed by the NHTTA. It is submitted that not only is this case against the appellant not about the allegations but it is really

about something hidden. It is also a reflection of the lack of integrity of the NHTTA that they would attempt to make these allegations fly in the face of evidence which clearly shows these allegations to be unproven and without foundation.

202. Also, it is submitted that no ban can be enacted while there is an appeal on foot. Despite being free to go to the NHTTA stadium whenever the appellant wishes, following his appeal, the appellant has limited this to only twice during 2013 to play table tennis. On both these occasions he emailed prior to going, to notify the NHTTA executive, out of consideration and fair play that he intended to use the stadium. This notification was to allow the NHTTA executive the ability to make arrangements so that no contact needed to be made inside the stadium between the appellant and the NHTTA executive. The appellant hoped this would minimise any escalation of ill-feeling.

203. Unfortunately on both occasions the NHTTA has acted badly and attempted to intimidate the appellant.

204. On the first occasion, 18th March, the NHTTA General Manager was witnessed in an unprovoked attack on the appellant, to verbally intimidate the appellant in an embarrassing incident while the appellant was (as he was allowed) filling in at NHTTA interclub for a sick player.

Refer Appellant's bundle document 33 –email trail Ben Jung

205. On the second occasion, the appellant provided 24 hours notice by email that he intended to train on Monday April 15. On arrival Jack, Geraldine and John Stapleton were all present. One of these three subsequently deliberately turned the lights off on the appellant while he was attempting to train with Victor Pollett, a NHTTA junior. Victor was attempting to prepare for the Norths individuals (where he was playing doubles with the appellant) and subsequent TTNZ junior trip to India. This act of negligence on this night caused the appellant to injure himself due to the confusion of lights being turned off. This injury caused physical discomfort for over 2 months and required an ACC claim and medical treatment.

Refer Appellant's bundle, document 35 –affidavit Momo Miura

Refer Appellant's bundle, document 36 –affidavit Victor Pollett

206. After the appellant alerted NHTTA to this malicious act causing injury to the appellant, the NHTTA executive reacted in a further malicious manner by placing a trespass order on the appellant, without justifiable grounds.

Refer Appellant's bundle, document 37 – Trespass notice

207. By placing a trespass order on the appellant, the NHTTA executive has demonstrated itself to be unconstitutional, heavy handed and malicious.

208. We further submit that in May 2013, by placing a trespass order on the appellant the NHTTA contravened its own constitution by attempting to enforce a ban on the appellant, even though he is still in the process of appealing such a ban. This contravenes the appellant's constitutional rights to appeal.

209. We submit that on 15th April 2013 one of either Jack, Geraldine or John Stapleton acted negligently by turning the lights off on the appellant causing personal injury to the appellant

210. We also submit that the NHTTA Executive has shown a blatant disregard for due process and natural justice and its own rules, and 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.

211. The NHTTA imposed a financial penalty of $1144. It is submitted that the NHTTA constitution does not allow for the NHTTA Executive to have the power to impose financial penalties in relation to misconduct, even if misconduct was proven, which it is not.

212. The NHTTA constitution allows the NHTTA executive to impose only the following with relation to misconduct charges.

> i) Expel the member, team, Club or sub-Association as the case may be, from the Association, or;
> ii) Suspend the member, team, Club or sub-Association from taking part in the Association's activities for such period as the Committee may specify, or;
>
> iii) Where the misconduct took place during any match, tournament, or other competition, disqualify the member, team, Club or sub-Association from that match, tournament or competition, as the case may be, or;
> iv) Reprimand the member, team, Club or sub-Association.
>
> ***Refer NHTTA constitution***

213. It is submitted that the NHTTA constitution allows the NHTTA executive the authority to expel, suspend or reprimand a member BUT it does not allow the NHTTA executive to impose a financial penalty for alleged misconduct even if these allegations were proved to be misconduct, which they clearly are not.

214. It is further submitted that due process dictates that on inviting the Appellant to a disciplinary meeting, the NHTTA was required to inform the Appellant what possible consequences of this meeting could include. If the consequence of this meeting could be a financial penalty then this should have been notified to the Appellant in the invitation letter. It is submitted that the possibility of a financial penalty was not notified.

215. The NHTTA letter to the Appellant inviting him to a disciplinary meeting states this:

> *"..if allegations are well-found the Committee may choose to impose sanctions in respect of these allegations as allowed under the constitution. Those sanctions may be a reprimand, suspension from NHTTA and its activities or expulsion from NHTTA"*

Refer Appellant's bundle, document 1 – NHTTA invitation letter

216. It is submitted that the NHTTA executive has gone further than the consequences formally notified to the appellant in the disciplinary meeting invitation, and has imposed penalties (financial) on the appellant which are also outside of their constitutional powers.

217. It is also noted that the NHTTA stadium is a public place. Non members and members of the public are free to walk in and converse with NHTTA members. Even an outcome of expulsion should not remove this right, but in Andrew Palmer's case it is clear that the NHTTA executive does not wish Andrew to even enter the building. This is unjust, unfair and nothing but malicious, cruel and personal.

218. It is further submitted that the NHTTA constitution dictates that the Executive committee shall consist of:

- President
- Chairman
- Treasurer
- Two other members elected by and from the management committee
- **Two independent members appointed by the executive committee**

Refer NHTTA constitution

219. The appellant formally emailed the NHTTA Chairperson June Logan on 27/08/2012 alerting her that the NHTTA executive formed in 2012 was formed unconstitutionally. This has never been resolved by NHTTA. It is submitted that the executive committee that met to discuss the charges laid against the appellant has been set up unconstitutionally and therefore is in breach of the NHTTA constitution. This is a side issue but is relevant to the legitimacy of the executive to act so unilaterally, harshly, unopposed and unsanctioned.

220. We therefore submit that the NHTTA executive that sat on the 23rd November 2012 disciplinary meeting was set up unconstitutionally and any decision made by this meeting is therefore unenforceable.

221. It is further submitted that NHTTA have breached the agreed timeframe for providing the appellant with a decision. Timeframes for resolution were confirmed in the disciplinary meeting. The agreed timeframe was 3 working days. It became two months. This was unfair and hurtful to the appellant causing him harm and stress.

222. Therefore we submit that agreed timeframes were breached by the NHTTA executive in reaching a decision albeit that the decision reached was a nonsense, unjustified and harsh beyond reasonableness.

THE APPEAL

223. It is submitted that the appellant subsequently submitted an appeal to TTNZ within the deadline prescribed under the NHTTA constitution.

224. The NHTTA constitution states that on appeal the NHTTA secretary must provide all evidence and documents to the national body **as soon as practicable.**

> h) Any member, team, Club or sub-Association who is dissatisfied with the decision of the Committee may apply to the secretary of the relevant governing body, (as defined in article four), within fourteen days of the decision, to have the matter determined by that governing body, and on receipt of any such application the secretary shall, as soon as practicable, forward it to the secretary of such named governing body together with all the documents relevant to the matter.
>
> ***Refer NHTTA constitution***

225. Almost 6 months have passed since the appellant tabled his appeal. Despite repeated requests to NHTTA, the NHTTA Secretary has failed to provide any

reason for disputing the appeal and therefore the executive has shown disrespect and contempt for fair process.

226. The NHTTA Secretary, Geraldine Stapleton has failed to do what is required of her under her own constitution which is to pass on all evidence and documents that she has at hand to the national body in the event of an appeal. This has not happened. The NHTTA is therefore in contempt.

227. The original signed evidence statements provided to Geraldine Stapleton to photocopy during the November disciplinary meeting was not returned to the appellant and despite numerous email requests for these documents to be returned they have not been handed over by NHTTA

Refer Appellant's bundle, document 4 – affidavit Mitchell Barker (1of 4)

228. We submit that Geraldine Stapleton has either lost or destroyed evidence tabled at the disciplinary meeting and handed to her to photocopy during this meeting and it is unlikely that these documents would ever have surfaced again unless the appellant was able to get them written again.

229. We submit that on appeal the constitution timeframes have been breached by the NHTTA executive. We submit that they are in contempt of due process and natural justice and the requirements under the NHTTA regulations regarding what is reasonable on appeal.

230. Also Terry Shorter who is a member of the NHTTA executive and sat in the November 2012 disciplinary meeting called the appellant a "thief" in an incident at the NHTTA day-club in October 2012. This issue was notified to June Logan in an email in October 2012.
Refer Appellant's bundle, document 31 – email to June Logan re defamation

231. It is a further argued that it was therefore inappropriate due to a conflict of interest for Terry Shorter to sit and vote on charges against the appellant when the appellant's serious legal concerns regarding slander against Terry Shorter

have been made but not addressed or resolved by the executive. Clearly an unbiased executive who did not have complaints against them would have served fair process more appropriately.

232. Also due process dictates that after formal meetings, the minutes are signed off by all parties involved in the meeting. This enables the minutes to be agreed to be a fair and true reflection of the meeting.

233. It was agreed in the 23rd November 2012 NHTTA disciplinary meeting that the minutes would be provided to the appellant, to check for inaccuracies. The appellant advised NHTTA that he would use a transcript of the meeting to do this.

234. Despite reminding NHTTA in correspondence afterwards, NHTTA distributed the minutes as "FINAL" without allowing the appellant a chance to review the minutes and therefore breaching the agreed process. The appellant identified factual errors and omissions in the minutes distributed as "final". The NHTTA have refused to correct these errors. On 7th February 2012 Chris Davis emailed and referred to the NHTTA's undertaking to send the minutes to the appellant, but further stated that NHTTA had "changed their mind" and the appellant would now no longer be allowed to check the draft minutes.

"…The minutes are the minutes of the North Harbour Table Tennis Executive Committee. Mr Palmer had no right to view them before they were completed, nor any authority to have any influence over the contents. The minutes were provided to Mr Palmer, to honour our client's undertaking to do so (given at the meeting)…"

Refer Appellant's bundle document 42 – email Chris Davis Thursday, 7 February 2013

235. We submit that the agreed process was breached and therefore the process is unfair and demonstrates bad faith.

236. We submit that the minutes, taken by Geraldine Stapleton, published by NHTTA contained factual errors regarding statements made by the appellant

and that the appellant was not allowed the opportunity to correct these minutes and therefore the minutes provided by the executive are not a true record of the meeting but further demonstrate the unfairness and deliberate violation of due process and fairness.

237. It is submitted in conclusion that in all instances and at all levels 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.

238. The appellant seeks the strongest sanctions against NHTTA and seeks justice in terms of the wrongful findings by NHHTA against him. Accordingly the appellant is seeking remedies.

THE APPELLANT SEEKS THE FOLLOWING REMEDIES

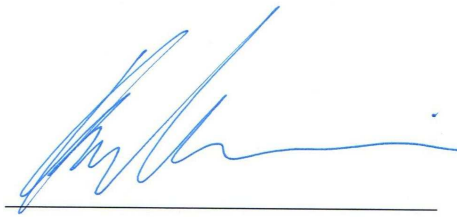
a. For TTNZ as the relevant governing body, to uphold the reasons for appeal and find in favour of the appellant.
b. For TTNZ to agree that NHTTA did not come to a correct finding based on the facts in all matters.
c. For TTNZ to agree that NHTTA did not afford the appellant, Andrew Palmer, Natural Justice as they went about the process with a closed mind and with a biased predetermined approach.
d. For NHTTA to provide a public retraction of the misconduct allegations
e. For NTTTA to issue an apology and compensation to the appellant, of $10,000 or whatever amount the TTNZ sees as an appropriate compensation to pay Andrew Palmer for embarrassment, injury to reputation and hurt feelings due to defamatory comments and actions.
f. For NHTTA to issue an apology to the appellant, Andrew Palmer, for comments made by the NHTTA President on the 24th of August 2012 to Andrew Palmer that have been interpreted as being threatening, and implying blackmail.
g. For NHTTA to issue an apology to the appellant Andrew Palmer, for failing to respond adequately to formal complaints raised by Andrew Palmer regarding threatening, bullying and inappropriate behaviour toward himself by NHTTA staff and officers.
h. For TTNZ to investigate formal complaints raised by Andrew Palmer regarding a culture of threatening, bullying and inappropriate behaviour from NHTTA staff and officers.
i. For TTNZ to conduct a full independent investigation into large sums of money being reported as missing from the NHTTA safe in August 2012.
j. For NHTTA to issue an apology to all NHTTA high performance juniors, for failing to respond adequately to formal complaints raised via letter regarding inappropriate behaviour and bullying from the NHTTA General Manager in July 2012.
k. For TTNZ to reprimand or issue a ban on Jack Stapleton or require a resignation for deliberately misleading the NHTTA executive with false

and untrue statements in the 23rd November disciplinary meeting with the appellant.

l. For TTNZ to investigate the claims by Jack Stapleton that the executive have not received a grant from Four Winds Foundation when it would appear they have the money already but have not passed this onto the players who paid the actual cost of the motel. This was used as a major allegation against the appellant. He seeks to have this matter rectified and appropriate accountability put in place.

239. Costs are reserved.

THOSE ARE MY SUBMISSIONS FOR THE APPELLANT



KEN NICOLSON
Counsel for the appellant

DATED: this day of July 2013.