Neutral Citation: [2014] IEHC 175

THE HIGH COURT

[2013 No. 658 JR]

BETWEEN

EDWARD O'CONNELL AND JAMES LAMBE

APPLICANTS

AND

THE TURF CLUB

RESPONDENT

AND

THE ATTORNEY GENERAL

NOTICE PARTY

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 3rd day of April, 2014

1. This application by way of judicial review comes before the court arising out of an inquiry conducted by the respondent into the conduct of a horserace at Downpatrick in Northern Ireland. The first named applicant is a jockey and the second named applicant is a racehorse trainer, both licensed to carry on their respective trades by the respondent.

2. It was alleged that a suspicious betting pattern, in particular, the placing of a Stg.£10,000 "lay bet" with the British bookmaker, Betfair, was evident relating to the running of a horse named 'Yachvilli' in a race held at Downpatrick on 21st September, 2011. The horse had been ridden by the first named applicant and trained by the second named applicant. It was further alleged that the first named applicant had failed to ride the horse in such a manner as to allow it to run to its maximum ability in the race, contrary to the Rules of Racing (the "Rules").

3. The applicants were respectively interviewed by officers of the respondent on dates in October 2011, June 2012 and December 2012, in relation to these matters. By letters dated 16th July, 2013, the respondent advised the applicants that the respondent's Referrals Committee (the "Committee") would, on 3rd September, 2013, consider the allegations against the applicants and three other individuals alleged to have an involvement in the matters at issue. The applicants were served under cover of same with papers prepared by the respondent, including a case summary, 'Topics of Inquiry', setting out particulars of the alleged breaches of the Rules, other items of evidence (including copies of the race video and recordings of the race) and copies of the Rules that were alleged to have been breached.

4. By letter dated 28th August, 2013, the solicitors for the applicants informed the respondent of their intention to institute these proceedings. On 29th August, 2013, leave was granted by Charleton J. to apply for the following reliefs by way of judicial review:-

> (i) A declaration by way of judicial review that the Rules of Racing were made *ultra vires* the Respondent and/or without jurisdiction and/or otherwise than in accordance with law;
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> (ii) in the alternative, a declaration by way of judicial review that the Rules of Racing hereinafter particularised were made *ultra vires* the respondent and/or without jurisdiction and/or otherwise than in accordance with law: 19A, 19C, 20, 22, 25, 272, 273(xiii), 273(vi), 273(viii), 273(ix), 273(xiv)(5), 212(a)(i) and/or 212(a)(ii);
>
> (iii) if necessary, a declaration by way of judicial review that sections 39 and/or 45 and/or 62 of the Irish Horseracing Industry Act 1994, as amended, are invalid having regard to the provisions of the Constitution, and in particular, Article 15.2.1° thereof;
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> (iv) if necessary, a declaration by way of judicial review that sections 39, 45 and/or 62 of the Irish Horseracing Industry Act 1994, as amended, are invalid having regard to the provisions of the Constitution, and in particular, Article 34.1 thereof;
>
> (v) a declaration that the allegation made contrary to Rule 273(ix) of the Rules of Racing amount to an allegation of an extraterritorial criminal offence in respect of which the respondent is precluded from conducting a trial by virtue of Article 38.1 of the Constitution.

5. Charleton J. refused a stay on the proceedings of the Committee and the Committee did, in fact, consider the matter on 4th and 5th September, 2013. An application to adjourn the hearing was refused. The applicants both tendered oral evidence to the Committee, the first named applicant participating by means of internet telephony, as he was at the time in Australia taking part in a racing event. The Committee completed its deliberations and informed the applicants of its decision. In the course of the hearing before me, there was some disagreement between the parties as to whether the results of the Committee's deliberations should be published in this judgment. As the Committee's conclusions do not affect the issues which I have to decide, I do not intend to refer to them.

Legal Issues Arising

6. This application raises interesting and important issues as to the constitution and status of the respondent and has potentially far-reaching consequences. The application brings into focus the extent to which it is permissible (or desirable) for the courts to intervene in sporting matters. The applicants allege that because the respondent has been granted at least some measure of statutory recognition in the Irish Horseracing Industry Act 1994 (the "Act of 1994"), it is a public body whose actions are amenable to judicial review, although prior to that Act, it had been constituted as a voluntary association on a contractual basis. It is further submitted that the promulgation of the impugned Rules by the respondent is *ultra vires* the statutory authority vested in it by the Act

of 1994, as amended by the Horse and Greyhound Racing Act 2001 (the "Act of 2001") insofar as the particular Rules purportedly do not advance principles or policies contained in the legislative scheme.

7. In the alternative, the applicants submit that sections 39 and 45 of the Act of 1994 should be declared invalid, pursuant to Article 15.2.1° of the Constitution, in failing to set out principles and policies to guide the exercise of the authority vested thereunder in the respondent, and in failing to impose sufficient constraints upon the purported ability of the respondent to issue secondary instruments, representing in *toto* an impermissible derogation of the legislative functions.

8. The applicants' final point broadly concerns the purported impermissible exercise by the respondent, pursuant to sections 39, 45 and 62 of the Act of 1994, of a judicial function without apparent limitations. The applicants, on that basis, seek declarations that each of any of the impugned sections is repugnant to Articles 34.1 and 37 of the Constitution.

9. In response, the respondent submits that it does not exercise a public law function and is not amenable to judicial review. Rather, the respondent claims that it is a private voluntary association governed by the law of contract. As such, the respondent contends that there is no delegated legislative function, as alleged, or at all, nor did the Oireachtas countenance, in the Act of 1994, the transposition of the Rules into the form of secondary legislation. In the alternative, the respondent claims that the applicants are without *locus standi* to pursue this application, or that they are estopped from pursuing these proceedings on the basis that they had voluntarily consented to be bound by the Rules.

10. The notice party's submissions are supportive of the position advanced on behalf of the respondent, contending that while Horseracing Ireland and its predecessor, Irish Horseracing, are bodies of a "*quintessentially public character*", the respondent is essentially a private body and is not amenable to judicial review. In the alternative, the notice party submits that the Act of 1994 and Act of 2001 (taken together, the "Acts" set out sufficient principles and policies to guide the respondent in the exercise of its purported legislative function, and that any quasi-judicial function is sufficiently limited to be constitutionally permissible.

11. Therefore, it appears to me that the legal issues arising in this application are as follows:-

(a) Is the respondent a body of such character as must be amenable to judicial review?

(b) Do the applicants have *locus standi* to bring these proceedings?

(c) Are the applicants estopped from maintaining these proceedings, by reason of their having previously agreed to be bound by the Rules?

(d) Does the respondent exercise a delegated legislative function? If so, is the exercise of this function limited to the furtherance of principles and policies set out in the Acts?

(e) Does the respondent exercise a judicial function? If so, are these powers impermissibly broad in their scope?

(f) Are there any other factors which should influence the court in exercising its discretion to grant relief by way of judicial review?

(g) What form of relief, if any, is appropriate in this case?

Is the respondent amendable to judicial review?

12. While the pre-1994 jurisprudence clearly establishes that the respondent was not, at that time, amenable to judicial review, the applicant argues that the position has changed entirely by virtue of the enactment of the 1994 and 2001 Acts. Section 39 of the Act of 1994 establishes the Racing Regulatory Body which is given a number of general functions for the purposes of that Act which are expressed to be:-

"*(a) to regulate horseracing;*

(b) to make and enforce the Rules of Racing and in so doing to promote integrity and fair play in horseracing;

(c) to provide adequate integrity services for horseracing and

(d) to licence racecourses under the Rules of Racing."

In the Definitions section of the Act, "Racing Regulatory Body" means:

"*(a) the Irish Turf Club, in relation to flat racing;*

(b) the Irish National Hunt Steeplechase Committee in relation to national hunt racing or

(c) both in relation to horseracing generally."

"Rules of Racing" are defined as meaning-

"*(a) in relation to flat racing, the Rules of Racing as laid down by the Irish Turf Club and*

(b) in relation to national hunt racing, the Irish National Hunt Steeplechase Rules as laid down by the Irish National Hunt Steeplechase Committee."

13. Legally, the respondent is in a somewhat unusual position. It was founded in 1790 and the Irish National Hunt Steeplechase Committee (INHS) was founded in 1869. They are voluntary members' organisations. The Act of 1994 does not establish either the respondent or the INHS. While the Racing Regulatory Body is established under the Act of 1994, it incorporates the two existing bodies mentioned above. Furthermore, the two bodies which have been incorporated into the Racing Regulatory Body have an all-Ireland jurisdiction. It must be assumed that the Oireachtas was aware of this when the legislation was enacted. The applicants, being a jockey and trainer, respectively, have entered into a contract with the respondent and have agreed to be bound in all

respects by the Rules of Racing and the INHS Rules enforced from time to time. But there are others who can be affected by the Rules who may have no contractual relationship with either the respondent or the INHS, such as members of the public who may be barred from attending certain racecourses or races. Furthermore, it is the Racing Regulatory Body which is given the power to regulate horseracing and make and enforce the Rules of Racing and the other functions specified in Part III of the Act of 1994. It seems clear, therefore, that the regulation of horseracing has now been put on a statutory footing even if the Rules which heretofore existed (and operated on the basis of contract) continue to apply.

14. The position is somewhat similar to that of the Irish Coursing Club described by Clarke J. in *Greenband Investments v. Bruton & Ors.* [2009] IEHC 67, where he said at p. 21 of his judgment:-

> *"6.1 The position of the ICC is somewhat unusual. It would appear to have existed for a very considerable period of time and carried out its functions in respect of the greyhound industry as a private organisation. However, the ICC was given a certain recognition by Statue under the provisions of the Greyhound Industry Act 1958 . . . in which it is recognised, in s. 26(2), as being, subject to the provisions of that Act, and of the constitution of the club and subject to the general control and direction of Bord na gCon, to be the controlling authority for the breeding and coursing of greyhounds.*
>
> *6.2 The same section also places some control over the constitution of the club which is, as of the date of the Act, required to be in the form set out in the schedule to that Act. In addition, changes to its constitution can only occur, by reason of s. 26(1), with the prior written consent of Bord na gCon.*
>
> *6.3 However, it does not seem to me that those provisions change the essential legal character of the ICC. It remains a members club. It is true to say that, in the ordinary way, as was argued by counsel for Greenband, a members club is governed by its rules which amount to a contract between the members which contract can, in turn, be altered in whatever way the rules provide. That common feature of a typical members club is not, in one sense, to be found in the case of the ICC where the arrangements between the members are specified in a schedule to an Act of the Oireachtas and can only be altered by the agreement of a statutory body in the shape of Bord na gCon. However, it does not seem to me to be appropriate to characterise the ICC as a 'creature of statue'. It is not set up by the 1958 Act. It is not continued in existence by that Act. Rather the 1958 Act confers powers on the ICC and regulates the terms of its constitution and amendments of that constitution. The 1958 Act does not, in my view, alter the fundamental fact that the ICC has no corporate existence conferred on it, and thus can only exist as a members club albeit a unusual one whose constitution is determined and regulated by statute..."*

The Acts, in issue in this case, do not place the respondent under the same degree of control as the Irish Coursing Club under the 1958 Act.

15. One cannot ignore the fact that horseracing is a sport, even if it is carried on professionally. As Macken J. observed in *Bolger v. Osborne* [2000] 1 ILRM 250 at p. 259, "*... on its face, decision on whether or not a horse runs as fast as it can or ought, has little apparent public law issues attaching to it*".

16. Nevertheless, it seems to me that it is no longer possible to look at the position of the respondent through the prism of *Murphy v. The Turf Club* [1989] IR 171 as the respondent has now been incorporated into the Racing Regulatory Body which has been established under the Act of 1994. Within Part III of that Act, are provisions concerning appeals against sanctions of the Racing Regulatory Body which require that the appeals procedure be created in a manner so as to ensure that they are heard "*... in a fair and impartial manner*" (s. 45(2)).

17. The Racing Regulatory Body is, in my view, amenable to judicial review. It is established under the Act of 1994. Quite apart from the requirements of Part III of the Act, and in particular, s. 45, the Racing Regulatory Body may issue an Exclusion Notice against persons who have not entered into any contractual arrangement with the respondent (s. 62). There can be no doubt that a person affected by such an Exclusion Order would be entitled to challenge the Racing Regulatory Body in respect of any want of *vires* or fair procedures in the purported exercise of its jurisdiction. The Act of 1994 placed the traditional role of The Turf Club on a statutory footing. The precise character and implications of this development are at the core of the dispute between the parties and will be considered in detail *infra*. In the long title of the Act of 1994, that legislation's purpose was stated, *inter alia*, as being:-

> *"... to provide for the improvement and development of the horseracing industry and for the better control of racecourses and for this and other purposes to establish a body to be called the Irish Horseracing Authority, to define its functions... to assign functions to the Irish Turf Club and the Irish National Hunt Steeplechase Committee in relation to horseracing..."*

18. The Act of 2001 made significant amendments to the scheme of the Act of 1994, most notably in the establishment of Horseracing Ireland to supersede the Irish Horseracing Authority. The definition of "Racing Regulatory Body" set out in s.2 of the Act of 1994 (see para. 12 *supra*) was retained without amendment. Section 39 of the Act of 1994, as amended by s.6 of the Act of 2001, provides:-

> *"On the establishment day there shall stand established the Racing Regulatory Body whose general functions shall for the purposes of this Act be—*
>
> *(a) to be solely and independently responsible for the making and enforcing of the Rules of Racing and ensuring the particular rules governing the functions referred to in paragraphs (a) and (b) of section 8(1) of the Horse and Greyhound Racing Act, 2001, are complied with,*
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> *(b) to provide adequate on-course integrity services for horseracing by employing, licensing, monitoring and controlling the activities of horseracing officials including the following—*
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> *(i) inspector of courses,*
>
> *(ii) clerks of courses,*
>
> *(iii) clerks of scales,*
>
> *(iv) handicappers,*

(v) starters,

(vi) judges,

(vii) veterinary officers,

(viii) veterinary assistants,

(ix) medical officers,

(x) stewards secretaries, and

(xi) security officers

(c) to license racecourses under the Rules of Racing and all participants in racing including all classes of trainers, jockeys, jockeys' valets, jockeys' agents and stablestaff,

(d) to make all decisions relating to doping control, forensics and handicapping in respect of horse-racing, and

(e) to be responsible for the representation of Irish horseracing internationally in respect of its functions under this Act."

19. Since the respondent is incorporated in the Racing Regulatory Body, it would seem to follow that it must be amenable to judicial review because its decisions can no longer be considered as "*... solely and exclusively derived from an individual contract made in private law*". See *Beirne v. Commissioner of An Garda Síochána* [1993] ILRM 1 at p. 2.

Locus Standi
20. Even if the respondent is amenable to judicial review, *the locus standi* of the applicants remains an issue to be considered by the court. Before the two-tiered inquiry process provided for under the Rules of Racing had been determined, the applicants commenced these proceedings.

21. The applicants in this case challenge the constitutionality of sections 39, 45 and 62 of the Act of 1994, as amended. It is clear that they are persons who could be affected by sections 39 and 45 of the Act. But it seems to me that they could also come within the ambit of s. 62, even though that section would also encompass people who had not entered into any contractual arrangement with the respondent. In *East Donegal Co-Operative v. Attorney General* [1970] I.R. 317 at 338, Walsh J. said:-

"Rights which are guaranteed by the Constitution are intended to be protected by the provisions of the Constitution. To afford proper protection, the provisions must enable the person invoking them not merely to redress a wrong resulting from an infringement of the guarantees but also to prevent the threatened or impending infringement of the guarantees and to put to the test an apprehended infringement of these guarantees."

In *State (Lynch) v. Cooney* [1982] I.R. 337, Walsh J. stated at p. 371:

"In the judgment of the Court in East Donegal Co-Operative v. The Attorney General 12 [1970] I.R. 317, this Court expressly rejected . . . the contention that it was necessary for a plaintiff to show that the provisions of the legislation impugned applied not only to the activities in which he was currently engaged but that their application has 'affected his activities adversely'. This decided that a person does not have to wait to be injured. Once again, the question of sufficiency of interest will depend upon the circumstances of the case and upon what appears to be the extent or nature of the impact of the impugned law on the plaintiff's position."

In *Curtis v. Attorney General* [1985] I.R. 458, Carroll J. said at 462:

"It is not necessary that a determination adversely affecting rights must first be made before a constitutional challenge can be started. It is sufficient if there is a reasonable apprehension of such determination."

Egan J. also stated a similar view in *Osmanovic v. DPP* [2006] 3 I.R. 504 at p. 511, where he said:

"I do not accept that locus standi is such a narrow concept or that the views of the trial judge conformed with the principles of this court set out in Cahill v. Sutton [1980] I.R. 269. I appreciate that prematurity and locus standi are not quite the same thing. In each of these three cases, however, I am of the opinion that if the applicants' complaints based on the Constitution could be arguably justified, they are perfectly entitled to air them at this stage. In each case, prosecutions have at least been instituted."

22. Applying these principles, the applicants have *locus standi* to bring the application for judicial review.

Estoppel
23. The first named applicant first sought to be licensed by the respondent on 1st November, 2004, and on other occasions subsequently. On 15th July, 2011, he completed and signed an application form for a Professional Jockey's Licence under the Rules of Racing. In that application form, he acknowledged that he had read and understood the contents of the form and accompanying instructions and accepted that he would "*. . . be bound in all respects by the Rules of Racing and the INHS Rules enforced from time to time, and the Rules of the recognised Turf Authority concerned when racing horses abroad*". He also agreed to be bound "*. . . by any and all decisions of the Licensing Committee and the Appeals/Referrals Committee*". He submitted to the jurisdiction of these committees and agreed to comply with any sanction imposed on him pursuant to the Rules of Racing and the INHS Rules.

24. The second named applicant first sought to be licensed by the Turf Club some time around 1999, and on other occasions subsequently made further applications to be licensed by the respondent. On or about 25th January, 2011, he completed and signed an application form for the renewal of a Trainer's Licence under the Rules of Racing and the INHS Rules and he agreed to be bound by the Rules of Racing and INHS Rules and instructions and orders currently in force, together with any further additions and alterations which may be enforced in the future. He also agreed to be bound by the Rules of the recognised Turf Authority concerned when racing horses abroad. So far as Turf Club fines were concerned, he authorised the respondent to debit his Horseracing Ireland account where necessary for that purpose.

25. In those circumstances, the respondent and notice party argue that the applicants are estopped from bringing this application as it effectively amounts to a repudiation of the agreement they entered into. The applicants, for their part, argue that they had no option but to sign up to these conditions if they wished to take part in horseracing in Ireland. In *R. v. Jockey Club ex parte Aga Khan* [1993] 1 WLR 909 at p. 928, Farquharson L.J. stated:-

> *"Mr. Kentridge has referred to the lack of reality in describing such a relationship as consensual. The fact is that if the applicant wished to race his horses in this country he had no choice but to submit to the Club's jurisdiction. This may be true but nobody is obliged to race his horses in this country and it does not destroy the element of consensuality."*

26. Does this mean that the applicants cannot argue the case that by virtue of the Acts of 1994 and 2001, the respondent has a statutory mandate to make and enforce the Rules of Racing and that aspects of the Acts are repugnant to the Constitution? I think not. If, by virtue of the Acts, the regulation of horseracing in Ireland has been put on a statutory basis and the decisions of the respondent are amenable to judicial review, then the applicants cannot be estopped from maintaining these proceedings merely because they entered into the agreements specified above. It may be a relevant consideration in determining how the court should exercise its discretion.

Does the respondent exercise a delegated legislative function?

27. In an affidavit sworn on 20th December, 2013, the first named applicant stated that the applicants', "*. . . fundamental complaint [is] that the Respondent has, by making and enforcing the Rules of Racing, taken to itself the exclusive power to regulate the industry without any guidance from the Oireachtas regarding the principles and policies to be pursued in this regard*". This assertion is at the heart of the application. The respondent was not established by the legislation but has been in existence since 1790, and the Rules of Racing were in existence prior to the Act of 1994. The power of the respondent to make the Rules of Racing was not in any way dependent on the enactment of that Act. The Rules represent a common understanding and agreement of how horseracing should be run and what is required to ensure the integrity and fairness of horseracing and the mechanics of its operation. In their current form, the Rules reflect the culmination of over 200 years of regulation and what is generally understood to be best international practice. The respondent is not a statutory body empowered to make delegated legislation but remains a "private body" which has been in existence since 1790 and to which the Oireachtas assigned certain general functions for the purposes of the Act of 1994, including the making and enforcing of the Rules of Racing as laid down by the respondent. It exercises this power on an all-Ireland basis. Before the enactment of the Act of 1994, the respondent did not have the power to make delegated legislation or regulations and it did not acquire such a power under the Act. Such a power was given to the Racing Regulatory Body which incorporated the respondent. Unlike the Irish Horseracing Authority established under the Act, the respondent was given general functions which were entirely connected with the running of flat racing and maintaining the integrity of the sport. It is of some significance that the Act did not make reference to the Rules of Racing in s. 7 of the Act which reserved to the Houses of the Oireachtas a power to annul orders or regulations made by the Minister for the Authority. The Rules of Racing, and in particular the Rules which the applicants seek to challenge, have been, and are, an inherent and integral part of the proper and fair conduct and regulation of horseracing in Ireland and in other countries. In *Moran v. O'Sullivan* (Unreported, High Court, 18th March, 2003), Carroll J. stated at p. 5:-

> *"... it is central to the sport of racing that a horse should be run on its merits in a race… if it is not "the competitive element essential to the sport is lost".*

Carroll J. added:

> *". . . the Racing Regulatory Authority which includes the Turf Club is concerned with ensuring that horses are run fairly and properly."*

28. The power of the Oireachtas to delegate legislative power is set out in the judgment of the Supreme Court in *City View Press Ltd. v. Anco* [1980] I.R. 381. In that case, the Supreme Court held that, per O'Higgins C.J. at p. 399:-

> *"[T]he test is whether that which is challenged as an unauthorised delegation of Parliamentary power is more than a mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits - if the law is laid down in the statute and details only are filled in or completed by the designated Minister or subordinate body - there is no unauthorised delegation of legislative power".*

29. In *Maher v. Minister for Agriculture and Rural Development* [2001] 2 I.R. 139, the Supreme Court confirmed the *City View Press Ltd*. case as remaining the leading authority on the permissible bounds of delegation of legislative power. Fennelly J. stated at pp. 245-246:-

> *"Delegated legislation is permitted and does not infringe Article 15.2.1° provided that the principles and policies which it is the objective of the law to pursue, can be discerned from an Act passed by the Oireachtas, so that the delegated power can only be exercised within the four walls of the law".*

30. The respondent argues that the principles and policies guiding and/or constraining the making of Rules of Racing and/or the amendment thereof are provided by and/or are discernible by reference to the provisions of the 1994 and 2001 Acts. The impugned statutory provisions enjoy a presumption of constitutionality. In my view, the Acts set out ample principles and policies which enable the respondent to make and enforce the Rules. These principles and policies are not only to be found within the Acts, but are also discernible by reference to the Rules of Racing as laid down by the respondent at the date of the enactment of the 1994 and 2001 Acts. The Oireachtas was aware of the existence of those Rules because they are defined in the Act of 1994 as meaning, *inter alia,* "*. . . in relation to flat racing, the Rule of Racing as laid down by the Irish Turf Club*" [emphasis added]. The principles and policies are also provided by and/or are discernible by reference to the inherent nature and attributes of the sport of competitive horseracing.

31. The applicants claim that the respondent was not assigned the function of making, for example, a rule to preserve "*the good reputation of horseracing*". But this is clearly not so. Section 39 of the Act of 1994 allows the Racing Regulatory Body (and through it the respondent), *inter alia, "to make and enforce the Rules of Racing and in so doing to promote integrity and fair play in horseracing" and "to provide adequate integrity services for horseracing*".

32. The power enjoyed by the Oireachtas to provide for delegated legislation was reiterated by Fennelly J. in *Maher v. Minister for Agriculture* [2001] 2 I.R. 139 at 245:-

"This type of delegated legislation is, by common accord, indispensable for the functioning of the modern state. The necessary regulation of many branches of social and economic activity involves the framing of rules at a level of detail that would inappropriately burden the capacity of the legislature. The evaluation of complex technical problems is better left to the implementing rules. They are not, in their nature such as to involve the concerns and take up the time of the legislature. Furthermore, there is frequently a need for a measure of flexibility and capacity for rapid adjustment to meet changing circumstances."

33. In the 1994 and 2001 Acts, the Oireachtas prescribed sufficient principles and policies and the impugned Rules are no more than a giving effect to those principles and policies. One cannot ignore the fact that the Rules of Racing are rules governing a sport (albeit a professional sport) which more properly come within the sphere of control of the body or bodies governing the sport and not the Oireachtas, nor indeed the Courts. I would adopt the observation of Feeney J. in *John Grace Fried Chicken Ltd. v. Catering JLC* [2011] 3 I.R. 211, where he said at p. 227 "*in addressing the principles and policies test, the purpose of the legislation under consideration is of real significance and provides the backdrop against which the test is to be applied*".

34. In the context of the legislation and Rules impugned in this case, the purpose of the legislative provisions which are highlighted is clear; namely, to promote integrity and fair play in horseracing. Each of the impugned Rules is consistent with and serves that purpose.

Article 34.1 of the Constitution
35. The applicants contend that sections 39, 45 and 62 of the Act of 1994, as amended, are invalid having regard to Article 34.1 of the Constitution on the grounds that the powers and functions delegated under those sections are judicial powers and functions which are not limited within the meaning of Article 37 of the Constitution.

36. I find nothing in the Acts to indicate an intention on the part of the legislature to delegate legislative or judicial powers to the respondent as part of the Racing Regulatory Body. The courts in this jurisdiction and elsewhere have taken the view that the regulation of sporting activities should not, as a general rule, come within the remit of judicial scrutiny but is best left to those organisations themselves. The respondent and the notice party argue that the provisions of sections 39, 45 and 62 of the Act of 1994, as amended, do not confer or purport to confer any power or function to administer justice and therefore do no entail any breach of Article 34.1 of the Constitution. They also argue that neither the making nor the enforcement of the Rules of Racing entails the administration of justice and that neither the respondent nor any of its committees is engaged in such a process. But even if they are to be regarded as conferring functions and powers of a judicial nature, the respondent and notice party argue that they are, at most, limited functions and powers within the meaning of Article 37.1 and, accordingly, do not involve any breach of Article 34.1 of the Constitution. They make the same argument with respect to the exercise of powers in connection with the Rules.

37. In *McDonald v. Bord na gCon (No. 2)* [1956] I.R. 217, the Supreme Court adopted the identification by Kenny J. in the High Court of the characteristic features of the administration of justice. In *State (Plunkett) v. Registrar Friendly Societies (No. 1)* [1998] 1 I.R. 1, the Supreme Court confirmed that, "*for an activity to qualify as being an administration of justice, each of the five McDonald tests must be satisfied*", per O'Flaherty J. at p. 5. In this case, the impugned sections of the Act and the powers exercised by the respondent under the Rules of Racing do not satisfy the McDonald test and do not amount to an "*administration of justice*". It is a relevant consideration that each of the applicants agreed to be bound by the Rules.

38. While the applicants raise an issue that an allegation made contrary to Rules 273(ix) of the Rules of Racing amounts to an allegation of an extraterritorial criminal offence in respect of which the respondent is precluded from conducting a trial by virtue of Article 38.1 of the Constitution, that claim cannot succeed because there was no question of either of the applicants being tried on criminal charges. The respondent does not exercise a judicial function. Insofar as it is given powers by virtue of the Rules or the provisions of the Acts, the powers are not impermissibly broad in their scope.

Conclusion
39. It is worth noting that in this case, while the applicants challenge sections of the legislation and the constitutionality of the powers exercised by the respondent, they make no claim that they were denied fair procedures or natural justice. The attack is focused on the legislation and the effect of the Rules.

40. The circumstances that arise in this case are somewhat unusual. The respondent is not a creature of the legislation but pre-existed it and operates in a somewhat hybrid state as it has been incorporated in the Racing Regulation Body established under the Act of 1994. The challenge must be viewed against the background that the Rules of Racing pre-existed the legislation and have been operated throughout the island of Ireland for many years. Indeed, they are comparable to what is deemed best practice in many other countries. That is the general background.

41. The respondent is a sporting body exercising a regulatory function over the applicants, being interested persons who have voluntarily submitted to its jurisdiction. The inquiry giving rise to this legal challenge has its origin in an allegation against the applicants that they failed to ensure that a horse was ridden on its merits and that they conspired to prevent a horse from running to its maximum ability and/or to commit a fraudulent or corrupt practice in relation to racing in Ireland. It is difficult to see how this is something which comes within the ambit of public law.

42. For the reasons I have expressed earlier, I am satisfied that the respondent is of such a character as to be amendable to judicial review because of its incorporation into the Racing Regulatory Body by the Act of 1994. I am also satisfied that the applicants have *locus standi* to bring these proceedings and are not estopped from doing so.

43. Insofar as the respondent (through the Racing Regulatory Body) exercises a delegated legislative function, the exercise of this function is limited to the furtherance of principles and policies set out in the Acts and is necessary "*to promote integrity and fair play in horseracing…"* as provided for in s. 39 of the Act of 1994 and to give effect to the objectives of the Acts.

44. The respondent does not exercise a judicial function.

45. The applicants have not established any grounds for the relief claimed.