

IN THE MATTER of the Gambling Act 2003
AND of an appeal by **PUB CHARITY
INC**

BEFORE A DIVISION OF THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
R D Bell

Date of Decision: 11 July 2014

Date of Notification
of Decision: *just* August 2014

**DECISION ON THE REHEARING OF AN APPEAL BY PUB CHARITY AGAINST A
DECISION SUSPENDING ITS CLASS 4 OPERATOR'S LICENCE**

Introduction

1. Pub Charity (the "**Appellant**") appealed against a decision by the Secretary for Internal Affairs (the "**Secretary**") to suspend its class 4 operator's licence for one day. The ground on which the Secretary suspended the Appellant's licence was that, in the period 1 August 2008 to 31 July 2009, the Appellant made payments to venues in excess of Limit D of the Limits and Exclusions on Class 4 Venue Notice dated 17 July 2008.
2. This is the second time that the appeal has come before the Commission. The Commission's original decision on the appeal (GC06/12) was issued on 16 March 2012. On 10 December 2013, the Court of Appeal directed that the Commission re-hear the appeal. The procedural background to the re-hearing is set out below.
3. Notwithstanding that in the Court of Appeal it argued for and obtained relief in the form of a re-hearing of the appeal, Pub Charity subsequently gave notice withdrawing its appeal, and now takes the position that there is no proper basis for the appeal to be reheard. As a consequence, the Commission has had to consider whether to proceed to rehear the appeal as directed by the Court of Appeal.

Procedural background

4. The Secretary's decision to suspend the operator's licence was dated 27 June 2011. The date of suspension was notified as 25 July 2011.
5. On 7 July 2011, Pub Charity filed a notice of appeal of the decision with the Gambling Commission. The appeal had the effect of staying the suspension, pursuant to



section 62(2)(b)(ii), which provides that, on an appeal of a decision to suspend a class 4 operator's licence, the licence remains in force until the outcome of the appeal.

6. The Commission issued a decision dismissing the appeal on 16 March 2012. In doing so, the Commission did not notify a replacement suspension date. Rather than refer the omission back to the Commission, the Secretary himself gave notice of a new suspension date. Pub Charity sought judicial review of the decisions by the Secretary to suspend the licence and to set a new suspension date and of the decision of the Commission on the appeal. Among other things, the judicial review proceeding challenged the power of the Secretary to impose a replacement suspension date.
7. On 19 December 2012, the High Court made an order setting aside the Secretary's decision and made a consequent order setting aside the Commission's decision ("High Court Decision"). The Secretary appealed the High Court Decision to the Court of Appeal.
8. On 7 June 2013, the Secretary issued a "formal warning" letter to Pub Charity for three areas of non-compliance: costs incurred in relation to a venue upgrade, which the Secretary considered were in excess of what was actual, reasonable and necessary and therefore in breach of section 106; a grant of \$220,000 which the Secretary considered did not fall within one of Pub Charity's authorised purposes and therefore was in breach of section 106; and exceeding Limit D in the period 1 August 2008 to 31 July 2009. In a letter of the same date accompanying the warning letter, the Secretary advised that his appeal against the High Court Decision remained on foot and, if successful, the suspension might apply (in addition to the warning) or the Court might refer the matter back to the Commission.
9. No reference to the "formal warning" was made by any party in submissions to the Court of Appeal. Pub Charity argued that the Commission's hearing process was flawed and obtained the alternative relief that it had sought (the primary relief being a declaration that no suspension could lawfully be imposed), namely a rehearing of the appeal.
10. On 10 December 2013, the Court of Appeal issued its judgment, allowing the Secretary's appeal. The Court held that:
 - (a) the power to suspend conferred by section 58(1)(b) may be used to impose a sanction for past non-compliance with the Gambling Act, including when the breach does not provide grounds for cancellation and there is no remedial action which can be taken by the operator; and
 - (b) in the course of the Commission's decision of 16 March 2012, the Commission had failed to provide Pub Charity with the opportunity to be heard on the



relevance of its earlier Blue Waters decision and to comply with section 58(2) by taking into account relevant matters set out in section 52.

11. The Court of Appeal quashed the Commission's appeal decision and remitted the matter to the Commission for fresh consideration of Pub Charity's appeal. In order for that to happen, it reinstated the Secretary's decision of 27 June 2011 (which had been set aside by the High Court).
12. On 12 December 2013, the Commission wrote to the parties seeking submissions on an appropriate timetable, bearing in mind the impending Christmas vacation.
13. On 13 December 2013, Pub Charity wrote to the Commission, giving notice of withdrawal of its appeal. It did so, in the light of the formal warning letter from the Secretary dated 7 June 2013 which Pub Charity said amounted to a revision of the Secretary's earlier suspension decision.
14. An exchange of correspondence followed in which the Secretary contended that the withdrawal had been effected on the basis of a mistake of fact (as no revision had occurred) and Pub Charity disputed that contention.
15. By letter dated 24 January 2014, the Commission asked the parties to address the following matters in relation to the question of withdrawal of the appeal:
 - (a) Do appellants have a right generally to withdraw appeals to the Commission? If so, what is the source of the right to withdraw, are there any conditions or exceptions and is leave of the Commission required?
 - (b) Is the position altered if the original decision has been reinstated by a court with a direction to the Commission to rehear the appeal?
 - (c) Is the position altered if the appellant has obtained the benefit of a statutory stay as a result of the appeal which means that the original decision would not be effective unless a new date were set?
 - (d) Is the position altered if the parties disagree about the consequence of withdrawal for the original decision?
 - (e) If leave is required, should leave be granted in the present case?
16. On 24 January 2014, Pub Charity submitted that there was ample precedent for the withdrawal of appeals, referring to withdrawal of appeals by Lion Foundation and Perry Foundation, Infinity Foundation, Grassroots, Cue Sports, Youthtown and the Southern Trust. Pub Charity did not address the matters specified by the Commission in its letter of 24 January 2014 but said that it was "inconceivable that an appeal can proceed



without an Appellant". It took issue with what the Secretary had done in issuing the warning letter when "the matter was before the Courts" and advised that, if the Department disputed the effect of its warning letter, Pub Charity would seek judicial relief.

17. On 10 February 2014, the Secretary filed a memorandum addressing the matters set out at paragraph 15 above. The Secretary submitted that there was a general right to withdraw an appeal, but that this was not an unfettered right and that leave was required. The Secretary submitted that, in the present case, leave should not be granted, because of doubts about the Secretary's power to change the date of suspension of the reinstated decision. Accordingly, if the appeal were withdrawn, Pub Charity might benefit unjustly by escaping a period of suspension, despite the Secretary's suspension decision having been reinstated by the Court of Appeal. This would undermine the Secretary's regulatory function. It would also create a precedent, by which societies would seek to avoid the consequences of suspension for breaches by lodging an appeal to achieve a stay, and abandoning it as soon as the original date had passed, in an endeavour to render the Secretary's suspension decision ineffective.
18. On 21 February 2014, the Commission wrote to the parties, noting that the Secretary had addressed its questions but that Pub Charity had not. The Commission declined, at that stage, to conclude that Pub Charity could unilaterally withdraw the appeal, being conscious that the Court of Appeal had directed it to rehear the original appeal. The Commission decided that it should proceed to rehear the appeal as ordered, leaving the issue of the status of the appeal as a matter to be determined at the rehearing. If Pub Charity wished to argue that it had an unqualified right to withdraw the appeal in the circumstances or that leave should be granted for it to do so and that, as a consequence, the Commission should not render a decision on the rehearing of the appeal, it could do so in its submissions on the rehearing. Parties would be free to file submissions on all issues, both the status of the appeal and the substantive merits.
19. The Commission made timetable orders for the appeal. Pub Charity did not file submissions or evidence but set out its position in a letter of 25 February 2014, namely that Pub Charity had an unqualified right to withdraw its appeal. The Secretary filed submissions and evidence on 9 April 2014. The Commission invited Pub Charity to file submissions in reply (despite opposition from the Secretary). Pub Charity filed nothing in reply.

Relevant law

20. The key provisions of the Gambling Act 2003 are as follows:



59 Procedure for suspending, cancelling, or refusing to amend or renew class 4 operator's licence

...

- (4) If the Secretary decides to suspend a licence, the Secretary must notify the corporate society of—
- (a) the date that the suspension takes effect; and
 - (b) the suspension period (up to 6 months); and
 - (c) the reason for the suspension; and
 - (d) the matters to be dealt with in order for the Secretary to consider withdrawing the suspension before the end of the suspension period; and
 - (e) the consequences of not dealing with the matters identified.

....

- (6) If subsection (4) or subsection (5) applies, the Secretary must also notify the corporate society of—
- (a) the right to appeal the decision; and
 - (b) the process to be followed for an appeal under section 61.

60 Consequences of suspension, cancellation, or refusal to amend or renew class 4 operator's licence

...

- (2) The Secretary may decide to withdraw a suspension before the end of the suspension period if the reasons for the suspension are resolved to the satisfaction of the Secretary.
- (3) The Secretary may decide to cancel a suspended licence at the end of the suspension period if the reasons for the suspension are not resolved to the satisfaction of the Secretary.

...

- (5) Subject to section 62, a licence that is suspended or cancelled or refused to be renewed or amended remains in force or unchanged (as the case may be) until the period for making an appeal expires.....

61 Appeal to Gambling Commission regarding class 4 operator's licence

- (1) A corporate society may appeal to the Gambling Commission against a decision of the Secretary to—

....

- (e) suspend or cancel a class 4 operator's licence held by the corporate society.

...

- (3) The Gambling Commission—
- (a) may request any information from the corporate society or the Secretary; and
 - (b) is not bound to follow any formal procedure; and
 - (c) does not need to hold a hearing; and
 - (d) must consider any information provided by the corporate society or the Secretary.
- (4) The Gambling Commission may then—
- (a) confirm, vary, or reverse the decision of the Secretary; or
 - (b) refer the matter back to the Secretary with directions to reconsider the decision.

- (5) The Gambling Commission must give notice of its decision, with reasons, to both the corporate society and the Secretary.

62 Consequences of appeal regarding class 4 operator's licence

...

- (2) A class 4 operator's licence remains in force until—

....

- (b) the outcome of an appeal, if the appellant—

...

- (i) appeals a decision to suspend or cancel the licence under section 61(1)(e).

Issues for determination

21. The following issues arise for determination:

- (a) Does Pub Charity have an unqualified right to withdraw its appeal or may the Commission decline to accept its withdrawal?
- (b) If the latter, should the Commission allow Pub Charity to withdraw its appeal in all the circumstances?
- (c) If the appeal may not be withdrawn, should the Secretary's decision of 27 June 2011 be confirmed, reversed, varied or referred back to the Secretary?

Withdrawal of appeals

22. There is no provision in the Gambling Act 2003 for the withdrawal of appeals. The Act neither expressly confers a right to withdraw an appeal nor prohibits withdrawal.

23. The Act confers¹ on the Commission broad powers to determine its own procedure both generally:

The Gambling Commission may regulate its procedure as it thinks fit.

and more specifically in relation to appeals regarding class 4 operator's licences:²

The Gambling Commission -..... is not bound to follow any formal procedure.

In addition, pursuant to section 225, the Commission must be treated as if it were a Commission of Inquiry and has the powers conferred by the Commission of Inquiry Act 1908. Those powers include the powers of a District Court in the exercise of its civil jurisdiction in respect of conducting and maintaining order at the Inquiry.³

¹ Schedule 3, clause 2(1), which applies by virtue of section 234.

² Section 61(3)(b).

³ Section 4, Commission of Inquiry Act 1908.

24. The existence and breadth of the inherent procedural powers of inferior courts and tribunals is well established. Inherent powers enable a court or tribunal to regulate its own procedure and prevent abuses of its process, even in the absence of an expressly conferred statutory power to do so. In *McMenamin v Attorney General*,⁴ the Court of Appeal stated:

An inferior Court has the right to do what is necessary to enable it to exercise the functions, powers and duties conferred on it by statute. This is implicit as a matter of statutory construction. Such Court also has the duty to see that its process is used fairly. It is bound to prevent an abuse of that process. All this is well understood. See eg *Moevao v Department of Labour* [1980] 1 NZLR 464; *New Zealand Social Credit Political League Bank v O'Brien* [1984] 1 NZLR 84, and *Bryant v Collector of Customs* [1984] 1 NZLR 280. The latter case and *Bosch v Ministry of Transport* were both concerned with inferior courts.

25. The Commission is satisfied that it has the power necessary to control its own process to ensure that it may act effectively in discharging the functions which the Act confers upon it and to prevent abuse of process and that those powers extend to exercising control over withdrawal of appeals.
26. In the absence of an express right to withdraw an appeal or an express prohibition on withdrawal, withdrawal of appeals falls to be determined by the Commission as a matter of its own procedure. However, although the Commission issued a Practice Note in 2004 for the guidance of parties, the Practice Note does not address withdrawal of appeals.
27. Pub Charity has pointed to a number of occasions in the past when appellants have been allowed to withdraw appeals. The Commission recognises that all appellants to date who have wished to withdraw appeals have been allowed to do so. However, it also recognises that all prior withdrawals have been without controversy and with the support of the Secretary. In none of the earlier withdrawals has there been any issue about what consequences might follow from the withdrawal.
28. In the present case, the Secretary has expressed concern about bringing the appeal to an end without clarity around the Secretary's ability to set a new suspension date. In all prior withdrawals, the Secretary's original decision has resumed its full effect. The question which the withdrawal in this case raises is whether, following the withdrawal of the appeal, the Secretary may notify a new suspension date in the place of the original date which he was required to notify under section 59(4)(a). The Commission addresses this issue further below.
29. The Secretary's concern raises the issue whether it may be necessary for a tribunal to exercise control over withdrawal of a process before it when the withdrawing party has

⁴ [1985] 2 NZLR 274 (CA).



benefited from bringing that process. That is what has occurred in the present case. As a result of bringing the appeal which it now wishes to withdraw, Pub Charity avoided the one day suspension on 25 July 2011 which the Secretary had imposed.

30. The Commission has had regard to what other judicial bodies have done in similar circumstances. Parties can bring civil proceedings which they have instigated in the High Court to an end by virtue of rules which provide for discontinuance. It is noteworthy however that discontinuance is subject to express restrictions, including a requirement to obtain leave if the Court has granted an interim injunction or order, or a party to the proceedings has given an undertaking (HCR 15.2), and that the Court may set aside a discontinuance if satisfied that it is an abuse of process (HCR 15.22). The restrictions on discontinuance reflect the principle that a party may be constrained in discontinuing where it is necessary to address some injustice that would occur as a result of the manner in which the proceeding has been conducted to that point⁵. In the Commission's view, the automatic stay created by section 62(2)(b)(ii) creates a situation analogous to the circumstances in which a discontinuance in the High Court would require leave, namely an interim order suspending the effect of the challenged decision.
31. The Commission also had regard to the circumstances in which discontinuances have been considered previously to be an abuse of process, namely:
- (a) Where the discontinuance is intended to frustrate another party seeking some form of relief to which it would otherwise be entitled.⁶
 - (b) Where the discontinuance would give the plaintiff a collateral advantage which it would be unjust for it to retain.⁷
 - (c) When the legal process of a court is used to exert pressure to affect an object not within the scope of the process or for a purpose other than that for which the proceedings are properly designed.⁸
 - (d) Commencing and continuing litigation that a party has no intention of bringing to a conclusion.⁹
 - (e) Discontinuing in the hope of avoiding some unfinished business or remedy the defendant or another party may be entitled to.¹⁰

⁵ *Perpetual Trust v Mainzeal Property and Construction* [2012] NZHC 223 at [6].

⁶ *Telstra New Zealand Ltd v Commissioner of Inland Revenue* HC Auckland CIV 2009-404-120, 6 December 2010.

⁷ *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 at 571.

⁸ *Packer v Meagher* [1984] 3 NSWLR 486 (SC) at 492, cited in *Telstra v CIR* at [36].

⁹ *Grovit v Doctor* [1997] 1 WLR 640 (HL) at 647, cited in *Telstra v CIR* at [39].

It has been suggested that a sensible test for abuse is to consider whether the court would have granted unconditional leave if leave had been required.¹¹

32. The Commission has concluded, from the foregoing, that its powers to control its own procedure extend to control of the withdrawal of appeals.

Should the Commission decline to accept the withdrawal of appeal by Pub Charity in the present circumstances?

33. As indicated above, the Commission has never previously prevented a party from withdrawing an appeal nor imposed a leave requirement as part of its notified practice, albeit that all earlier withdrawals had mutual support. It does not regard it as appropriate to impose a leave requirement retrospectively so it approaches the present case on the basis that it should only decline to accept the withdrawal in order to prevent an abuse of process.
34. The potential for abuse of appeal rights which are accompanied by an automatic suspension of the effect of the adverse decision is obvious. Because the stay is automatic, with no assessment of the merits of the appeal, a society can obtain a suspension in order to buy time to re-order its affairs, without having any genuine intent of pursuing the appeal to hearing. The potential for abuse was noted by the High Court in *Cat's Niteclub (1991) Ltd v Police*¹² when commenting on a statutory amendment to remove a similar provision from the Sale of Liquor Act 1989:

The abuse of the automatic suspension regime is well known and well documented. The changes by Parliament are self-evident; they were to prevent that abuse.

Perception of such abuse had previously been recorded, in declining an adjournment application by an appellant on the grounds that it had entered into an agreement to sell the business, by the High Court in *Chef and Brewer Bar and Cafe Limited*.¹³

35. The Commission approached the issue of abuse of process on the basis that a serious concern would arise if the Secretary could not re-set the suspension date following the termination of the appeal. Accordingly, it considered whether the Secretary could do so.
36. As indicated above, the issue of whether the Secretary could re-set the suspension date after the Commission had exercised its appeal powers was before the High Court and Court of Appeal in the judicial review proceedings. The Court of Appeal recorded what

¹⁰ *Telstra New Zealand v Commissioner of Inland Revenue* at [34] referring to *Sim's Court Practice* at HCR 15.22.3.

¹¹ *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 at 572.

¹² [1996] 3 NZLR 581 (HC).

¹³ [1995] NZAR 158.



all parties recognised as the appropriate procedural course in those particular circumstances at [22]:

... [the Commission] upheld the suspension on different grounds and only dismissed the appeal, technically leaving the Secretary's decision as the operative decision. Counsel agreed the appropriate procedural course would have been for the Commission to have varied the Secretary's decision and set the new date itself or sent the matter back to the Secretary for that to be done.

However, there was nothing in the judgment of the Court to indicate that the Secretary could not do so and the procedural course then agreed to be appropriate was dependent upon different circumstances, namely the Commission hearing an appeal and exercising its power to vary or refer back.

37. The Commission recognises that, while the Act gives express powers to the Commission to reconsider its determinations (section 226(3)(a)), no similar power is expressly conferred upon the Secretary. While that absence might indicate a legislative intention that the Secretary does not have such a power, the omission is explicable in the light of the statutory appeal provisions and there is nothing in the Act which prohibits re-setting the suspension date in appropriate circumstances, such as by agreement with the affected society or following the withdrawal of an appeal. As the Act contains provision in section 60(2) and (3) for further steps by the Secretary after the issue of the suspension decision, he may not be *functus officio*, in the absence of appeal.¹⁴
38. Section 16(1) of the Interpretation Act 1999 provides:

A power conferred by an enactment may be exercised from time to time.

While expressed in broad terms, powers must be interpreted in the context in which they appear. Hence, section 4 provides:

Application

- (1) This Act applies to an enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act unless-
- (a) the enactment provides otherwise; or
 - (b) the context of the enactment requires a different interpretation.

39. In *Goulding v Chief Executive, Ministry of Fisheries*¹⁵ a decision was made to grant a marine farming permit to the applicant. An error was discovered before the decision was communicated to the applicant. Sometime later, following reconsideration, the permit was declined. The Court of Appeal considered the common law and the former, equivalent, statutory provision under the Acts Interpretation Act 1924. The Court noted that one looks first to the common law principles (interpreted in the statutory context),

¹⁴ *Bluegrass Holdings Ltd*, GC17/13, 24 June 2013, at para 16.

¹⁵ *Goulding v Chief Executive, Ministry of Fisheries* [2004] 3NZRL 173.

which must be applied “subject to the scope of the ... [Interpretation Act]”¹⁶ The Court found there was the ability to alter the decision as, applying the common law principles, the Chief Executive’s decision on the grant of a marine farming permit had not been “perfected” by notifying the applicant. In the absence of notice, he was not *functus officio* and was able to change the decision.

40. Applying the decision to the present case, the Secretary’s decision was arguably perfected when he communicated his decision to Pub Charity. However, in discussing the common law, the Court in *Goulding* noted¹⁷;

by analogy with the rules governing when judgments of a Court may be set aside, once an administrative decisions has been perfected it may no longer, save in an exceptional case, be revoked or varied by the decision maker. (Emphasis added).

41. The common law reflects a weighing of two conflicting policy considerations, discussed at [40] and [41] of the decision, namely:

- (a) the desirability of a degree of latitude to permit reconsideration of decisions for reasons such as mistake of fact or law, new information or further reflection; and
- (b) unnecessary risk of uncertainty and loss of public confidence in the integrity and competence of public administration.

The common law has generally fixed the balance between the competing considerations at the point where the decision is notified. Once citizens have notice of a favourable decision, they may be expected to have acted in reliance upon the conferred benefit, although this may not apply in exceptional cases.

42. However, the common law is also subject to the Interpretation Act 1999 and, in the Commission’s view, the circumstances strongly favour the ability to re-exercise the power in order to notify a new suspension date. The Gambling Act does not provide otherwise and the context does not require a different interpretation. Re-setting the suspension date after withdrawal of an appeal would restore the status quo. Certainty and the public confidence in the proper administration of the Act and in the competence of public administration point to the need to ensure that the penalty imposed by the Secretary is not defeated by absence of an ability to re-set the suspension date after the challenge to the decision, in the form of an appeal, is withdrawn. Application of section 16 would allow the restoration of the status quo following the withdrawal of the appeal as would generally be expected.

¹⁶ At [25].

¹⁷ At [30].



43. Section 16 was considered by the Court of Appeal, and upheld by the Supreme Court, in *Zaoui v Attorney-General*.¹⁸ The question for the Court in that case was whether the District Court could vary a warrant of commitment to alter the place of detention where Mr Zaoui was being held, in circumstances where it was common ground that he would be better off in a refugee detention centre than in prison.

44. In relation to section 16, McGrath J in the Court of Appeal observed as follows:

[52] The provision has limited effect in situations where a power, duty or function creates vested rights. As Wade and Forsyth (8th ed, 2000) suggest in *Administrative Law*, p235:

In the interpretation of statutory powers and duties there is a rule that, unless the contrary intention appears, 'the power may be exercised and the duty shall be performed from time to time as occasion requires'. But this gives a highly misleading view of the law where the power is a power to decide questions affecting legal rights. In those cases the courts are strongly inclined to hold that the decision, once validly made, is an irrevocable legal act and cannot be recalled or revised. The same arguments which require finality for the decisions of courts of law apply to the decisions of statutory tribunals, ministers and other authorities.

For this purpose a distinction has to be drawn between powers of a continuing character and powers which, *once exercised, are finally expended so far as concerns the particular case*. An authority which has a duty to maintain highways or a power to take land by compulsory purchase may clearly act 'from time to time as occasion requires'. But if in a particular case it has to determine the amount of compensation or to fix the pension of an employee, there are equally clear reasons for imposing finality. Citizens whose legal rights are determined administratively are entitled to know where they stand.

...

[53] ... [Section] 16 is unlikely to authorise exercising power of this nature afresh in the absence of some material change in circumstances.

[54] The order for detention pursuant to a warrant of commitment does not in my view create rights to which an important interest in finality attaches. The decision as to place of detention is an administrative one legitimately the subject of revision if circumstances change. That is also consistent with the apparent intention of Parliament to create a discretion as to place of detention rather than a conditional release regime in Part 4A. I conclude that to this limited extent the District Court has the power to vary the warrant. (Underlined emphasis added).

45. In *Zaoui*, the Court held that there was no ability to vary the decision to detain, but the place of suspension could be amended. An analogy can be drawn in the present case between the decision to suspend (detain) and the date of suspension (the place of suspension). In *Zaoui*, the place of detention was able to be changed in a very substantive way, owing to changed circumstances. In the present case, while the Secretary may not revise the decision to suspend Pub Charity's licence, the date of suspension may be altered because of the operation of the legislation (creating an interim stay) and Pub Charity's subsequent decision to withdraw its appeal, a material change in circumstances. Because of the effect of section 62(2)(b)(ii), it is difficult to

¹⁸ [2005]1 NZRL 577 (CA) and (SC)

argue that Pub Charity had a vested right to serve the one-day suspension on 25 July 2011. In the Commission's view, if Pub Charity had advised the Court of Appeal that it intended to withdraw its appeal to the Commission if the Secretary's appeal to the Court of Appeal succeeded, the Court would have made directions to ensure that the penalty imposed by the Secretary was effective.

46. As the Commission considers that the Secretary is able to re-set the date of suspension in the present circumstances, it does not regard withdrawal as an abuse of process and is prepared to accept the withdrawal of the appeal. As it has accepted the withdrawal of the appeal by Pub Charity, it does not consider whether it should confirm, reverse or vary the decision of 27 June 2011.

Decision

47. The Commission accepts the withdrawal of its appeal by Pub Charity with the result that the appeal is brought to an end.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

st August 2014