IN THE DISTRICT COURT
AT CHRISTCHURCH

I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI

CRI-2020-009-000187
[2022] NZDC 2048

WORKSAFE NEW ZEALAND
Prosecutor

v

JOHN CHRISTOPHER BLACKADDER
SANDRA RAYLEEN BLACKADDER
JC and SR Blackadder Partnership, trading as Blackadder Racing
Defendants

Hearing:	9 February 2022
Appearances:	R Woods for the Prosecutor B Nathan for the Defendants
Judgment:	9 February 2022

NOTES OF JUDGE M A CROSBIE ON SENTENCING

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[1] This afternoon Mr and Mrs Blackadder as partners in the J and S Blackadder Partnership (trading as Blackadder Racing) appear for sentence on one charge of failing to ensure the health and safety of a worker contrary to the provisions of s 36(1)(a), 48(1), 48(2)(c) of the Health and Safety at Work Act 2015.

[2] I acknowledge their presence today and of those in support. I also acknowledge the presence today and welcome Eleanor and her family, Mr Stokes, Mrs Stokes and Megan. No one wants to be here today. No one wanted what happened to you Eleanor, to happen. No one intended that it happen. That is the inherent difficulty of cases like this and it is what distinguishes these classes of cases

from the routine work of the District Court where more often than not people did intend bad things to happen.

[3] The reason we are here is that the WorkSafe legislation works effectively to apportion responsibility for workplace deaths and injuries where such deaths and injuries are avoidable. It does that through obligation on individuals and businesses (PCBUs) to take practicable steps. The reason we are here today is through a hybrid of Mr and Mrs Blackadder acknowledging and the Court finding failure to take practicable steps.

[4] I acknowledge the sense of remorse, if not grief, that you Mr and Mrs Blackadder have suffered. I acknowledge the steps that you have taken and the way in which you have reached out to the Stokes family.

[5] I acknowledge Eleanor, your bravery. I know that you did not want to be here as the victim impact statements were read, but you were here throughout the hearing. The hearing must have appeared to be quite odd to you at times because people were talking about all sorts of things that you might have thought had no great relevance to what happened to you on the day. I acknowledge that you and your family sat through that hearing.

[6] I also acknowledge what a wonderful family you appear to be, how you have all; Mum, Dad and Megan, wrapped yourselves around your daughter and sister and supported her to the full extent that is humanly possible. I acknowledge that and I respect that very much. I am sad that this process has taken as long as it has but hopefully today will bring everybody some closure in that respect.

[7] The formal part is going to take a little bit longer. There are some things that I am required to say. I have been greatly assisted by the effort that Ms Woods and Mr Nathan have put into both the hearing but also the written submissions that they have provided to the Court in advance of today's hearing; that includes submissions on the law and submissions and evidence about Mr and Mrs Blackadder's financial position.

[8] The reason that I am going to say a little bit about the law is that while these types of prosecutions are not unusual, they are not run of the mill. We do not hear them every day and certainly the judges of my Court tend to rely very much on what others have to say in particular cases. So there are some things that I am required to say.

[9] The offence description that we are all dealing with today is that Blackadder Racing, being a PCBU, failed to ensure so far as was reasonably practicable the health and safety of workers who worked for the PCBU, including Eleanor Velvet Stokes, while the worker was at work in the business or undertaking, namely Blackadder Racing's Thoroughbred Horse Racing Training Facility, and that failure exposed Eleanor Velvet Stokes to a risk of serious injury arising from falling from a Thoroughbred horse.

[10] The charge arises from an incident which occurred on Ms Stokes' very first day of permanent work at Blackadder Racing. She was advised by Mr Blackadder to undertake some trackwork riding with an experienced trackwork rider, Ms Marquet. In the course of undertaking that work the Thoroughbred horse assigned to Ms Stokes, known as Fleur Delacour, or Podge, bolted from the track and jumped a nearby wire fence and Ms Stokes was thrown from the horse and suffered life-changing injuries as a result. She was but 16 at the time of the accident.

[11] I turn first to examine the summary of facts in somewhat more depth. In January 2019 Mr Blackadder contacted an instructor at the National Equestrian Academy in Rangiora to enquire about a particular student to assist at the property Easterbrook which are the stables that Blackadder Racing operates out of. That particular student was unavailable, but the instructor suggested that Ms Stokes be contacted.

[12] As we have heard, Ms Stokes had recently completed a National Certificate in Equine Skills Level 3 and that achievement of course is something that the family are very proud of and are right to be proud of that. That course is described as an 18 weeks hand-on training covering all aspects and disciplines of horse management, care, riding and industries and Ms Stokes had specialised in the Sport horse Stable Assistant

strand of that qualification. Graduates would be able to apply routine procedures when exercising horses and training for a sporthorse discipline, as well as be capable of attending to routine preparation and requirements of a horse at an event.

[13] The specialisation did not however include any specific training or assessment of riding trackwork with Thoroughbred horses. Ms Stokes did have some experience on a variety of horses while completing both that Certificate and a Level 2 Certificate. Ms Stokes was known to Mr Blackadder in that she had previously undertaken three days of work experience at Eastbrook in late 2018 which primarily involved groundwork but on one occasion had ridden an out of work Thoroughbred racehorse named Rocky.

[14] While Ms Stokes was described as appearing to be very capable of riding that Thoroughbred, that was on one occasion completing but one lap of the 800 metre track at a trot, and two further at a canter without incident. There was also evidence about other work experience riding for Mr Brown, included riding combination of ponies and four Thoroughbred racehorses, the latter being under his direct supervision. Mr Brown facilitated Ms Stokes' application for a trackwork licence. That was necessary for her to ride any Thoroughbred racehorse at a training facility and that licence was issued on 7 May 2018. That riding with Mr Brown ceased when he suffered a broken leg in late 2018.

[15] So, the phone conversation about being employed at Eastbrook occurred on 2 January and Ms Stokes began work at 6.30 am understanding from the phone call that the work would consist of groundwork. In the course of the investigation Mr Blackadder described the intended work as initially being a stable hand and saddling up horses before eventually riding them.

[16] Consistent with the understanding that Ms Stokes would not be riding, she arrived in trackpants and gumboots and was taken by Mr Blackadder on a tour of the stables. The formal induction process was not completed. While Mr Blackadder had intended to do that, he had already gone through the induction list prior to meeting with Ms Stokes and had ticked off some checklist based on his knowledge of previous

experience. I have set out in my reserved decision my assessment of shortcomings as far as that process is concerned.

[17] Shortly thereafter, Mr Blackadder advised that he wanted Ms Stokes to undertake some trackwork riding together with Ms Marquet, who of course was very experienced. There was a lot of evidence about selection of an appropriate horse and comments about the horse's demeanour. Whatever the demeanour, there is also with a Thoroughbred an inherent risk, which was the effect of Ms Owen's evidence. Everyone appeared to agree that, as far as horses in that stable were concerned, that Podge was the most suitable. There was an observation of Ms Stokes saddling, ensuring she knew what she was doing in that regard and discussion about her previous riding. There was an assessment by Ms Marquet that Ms Stokes appeared capable and confident, and advice that if she did not feel comfortable or did not want to ride that was fine.

[18] Saddling occurred. Then Ms Stokes retrieved a helmet and riding boots but did not have a safety vest with her. Ms Marquet showed her where the vests were, but ultimately mounted Podge without a safety vest, while the helmet was not of a standard approved for use in Thoroughbred racehorse riding. There is an obligation on a part of licenced riders to have an appropriate helmet and safety vest when riding Thoroughbred horses.

[19] The facts from that point are well known. I will not repeat them now. They are in my decision. Ms Stokes has suffered enough. The injuries are also well established. The reasonably practical steps that were identified by WorkSafe that Blackadder Racing has both accepted and been found to have been ought to have taken, refers to:

> Develop, document and implement process of safely assessing the capability of new employees to undertake trackwork riding at the facility including by seeking references from appropriately qualified individuals and by observation in a controlled environment, referred to as an assessment failure (which is where the defended hearing came in) and to communicate and monitor a safe system of work requiring the use of approved personal protective equipment, PPE, for the riding of Thoroughbred racehorses included helmets and safety vests to ensure that workers used personal protective equipment appropriate to the type of work being undertaken.

[20] Having found the first of those particulars proved and the other admitted, I accept and find there were reasonable grounds available to Blackadder Racing and steps that would have minimised the harm that eventually occurred to Ms Stokes.

[21] Having read and heard the victim impact statements from Ms Stokes, her mother and father and sister, the impact of the incident has quite blatantly been horrific and horrendous for everyone. As I said, Ms Stokes was 16 when the incident occurred. It was her first day of paid work in a field she was passionate about. After only 30 minutes on that first day of work she was rushed to hospital for spinal surgery. She suffered significant life-changing injuries. Ms Stokes has spoken through her victim impact statement eloquently about the lifelong effects and her statement, which I will not repeat. Her parents' and sister's statement (which I will not repeat because they have been read onto the record) also make for tumultuous reading. Her parents' and sister's comments are consistent and echo many of her own. It is clear that the entire family lives in a constant state of 'fight or flight' in terms of subsequent and ongoing medical conditions.

[22] Most of all, what is abundantly clear is how much the Stokes family love their daughter and sister and how much all of them want her to succeed. I hope that for all of you, and I know that Mr and Mrs Blackadder hope that for all of you as well.

[23] There was an offer to engage with restorative justice. As is her right, Ms Stokes did not want to engage with that process. I have heard from Mr Nathan that there has been a resumption of the Blackadders reaching out. I hope that that can continue in the future.

[24] In terms of the parties' submissions, WorkSafe submits following orders are appropriate:

(a) Reparation for emotional harm for Ms Stokes of $110,000;

(b) Reparation for emotional harm for Mr and Mrs Stokes between $30,000 to $40,000; and

(c) Reparation for consequential losses which reflect effectively the statutory shortfall from Accident Compensation Corporation of $167,464. Total emotional harm payments of $317,464.

[25] In terms of appropriate starting point for a fine, WorkSafe submits:

(a) The offending falls at the top of the medium band of culpability with an appropriate starting point of $550,000; and

(b) That the Blackadders are entitled to an overall discount of 40 per cent resulting in an end fine of $330,000 with costs towards prosecution in an amount which Ms Woods today has amended downwards to roughly $14,000.

[26] Mr and Mrs Blackadder and Mr Nathan accept the reparation orders for emotional harm and consequential loss, confirming that the Blackadders' hold statutory liability insurance to cover an award of up to $250,000. I have already observed that with the reparation that is effectively agreed of $317,464, that figure will be some $67,400 odd above the insurance cover. When one also takes into account a contribution towards WorkSafe's costs they will be significantly above the cover which is a factor for me to take into account.

[27] In terms of the quantum of reparation orders, there is effectively an agreement for the upper figure of $110,000 with Mr Nathan submitting $30,000 is appropriate to award to Ms Stokes' parents. The defendants, through Mr Nathan, accept consequential costs that I have set out of $167,474. So the parties are very close indeed.

[28] As to the fine, it is accepted by Mr Nathan that the offending falls within the medium band of culpability. He submits that a starting point of $450,000 is more appropriate to reflect the Blackadder's culpability. I will return to these particular circumstances in a moment, Mr Nathan submits overall discounts of some 55 per cent are available to the Blackadders. However, and in any event, it is submitted on behalf of the Blackadders that there is limited ability to pay any substantial fine. Referring

to a decision of Judge Sainsbury in *McKee*, Mr Nathan in effect submits a starting point of around $101,250 as appropriate reflecting the total fine prior to me taking into account the Blackadder's financial ability to pay.[1] Mr Nathan submits an appropriate costs order is in the region of $7,000 to $10,500. He again highlights the Blackadder's ability to pay costs is coloured by the same analysis with respect to its ability to pay a fine.

[29] Section 151 of the legislation requires the sentencing court to have regard to ss 7 to 10 of the Sentencing Act 2002, the purposes of the Health and Safety at Work Act 2015, the risk and potential for illness, injury or death that could have occurred, whether death, serious injury or serious illness did occur or could have been reasonably expected to have occurred, safety record of the offender, the degree of departure of prevailing standards in the offender's industry and the offender's capacity to pay any fine to the extent that it has the effect of increasing the amount of the fine.

[30] The guideline judgment under s 48 is the decision of the High Court in *Stumpmaster v Worksafe*.[2] The Court held that the approach, and the approach that has been followed by counsel, is first to assess the amount of reparation, second, to fix the amount of the fine by reference to guideline bands and aggravating and mitigating factors, next, to determine whether orders under ss 152 to 158 of the Health and Safety at Work Act are required, making an overall assessment of the proportionality and appropriateness of the penalty imposed.

[31] Under step 1, the High Court found that while the legislation had increased, the level of fines did not mean reparation levels should be lessened because the harm remains unchanged. At step 2 the starting point is determined by an assessment of the culpability forming within one of four bands and here the parties are agreed that it falls within the medium culpability band, however, that band is a broad one of a fine between $250,000 and $600,000. In determining the band the Court found that the often quoted factors from the *Department of Labour v Hanham & Philp Contractors Ltd* and felt contractors are still relevant as they are encompassed in s 151 of the Act.[3]

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[1] *Worksafe New Zealand v McKee* [2019] NZDC 16341.
[2] *Stumpmaster v Worksafe New Zealand* [2019] DCR 19, (2018) 15 NZELR 1100, [2018] 3 NZLR 881, [2018] NZHC 2020; BC201861634.
[3] *Dept of Labour v Hanham & Philp Contractors Ltd* (2008) 6 NZELR 79.

I will set out those factors at a later point. Step 3 allows WorkSafe to apply for orders under ss 152 to 158 of the Act, including under s 152 for a sum towards costs of prosecution which it has done in this case.

[32] Step 4 is the major issue for the Court today and involved an assessment of proportionality and appropriateness of penalties. That requires an assessment of the combined package of sanctions imposed by all of the steps that I have referred to, including an assessment of financial capacity of the offender to pay. That may justify an increase under s 151(2)(g) or a discount under a variety of sections under the Sentencing Act 2002. Any discounts should be taken off the fine and not the reparation which is always dealt with separately.

[33] The Health and Safety at Work Act does not affect the provision of ss 32 to 38A of the Sentencing Act. Section 32 provides the Court may impose a sentence of reparation if the offender has, through or by means of its offending, caused a person to suffer emotional harm and loss, consequential and any physical harm. The sentences of reparation and fine serve distinct and discrete purposes. The assessment of reparation must be made taking into account s 32 of the Sentencing Act including any offer of amends made by the offender and offender's financial capacity. As I have noted already there is no great disagreement.

[34] I have had regard to the cases that counsel have referred me to, as well as my overall impression of the harm caused by this accident to Eleanor, who was at the time a teenager and who will, it is clear, be affected by this throughout her life. I have taken into account the significant effect on her family by reason of their provision for her. Largely that is because of her age and the fact that she had no financial independence at the age of the incident. I consider the reparation is at the higher end of $110,000 being appropriate for Ms Stokes. In terms of her parents I accept that reparation in the sum of $40,000 is appropriate. I will make those orders, as I will make an order for consequential loss in the sum of $167,464.

[35] That will bring three separate reparation totals to $317,464 which, as I have said, is $67,464 above that which the Blackadder's are insured for.

[36] The next step is assessing the quantum of the fine. WorkSafe makes a number of submissions under five headings. First:

Practicable steps

[37] The Blackadder's own policies required the business as employer to assess Ms Stokes's riding ability prior to permitting her to ride a Thoroughbred racehorse and for a plan to be developed and agreed between the parties. This was required despite any experience held. The health and safety policy stated that the Blackadder's would provide appropriate PPE to any person riding. No steps were taken to ensure the PPE worn by Ms Stokes was suitable for the racehorse she would be riding which was a significant breach of obligations.

Assessment of risk and actual harm

[38] WorkSafe submits, as has been highlighted in the victim impact statements, that the actual harm has been nothing short of devastating. It is trite to say, and I took this from Ms Owen's evidence, that the risk that eventually occurred was well-known in the particular industry, and in particular where Thoroughbred racehorses are concerned.

Departure from Industry Standards

[39] The investigation was an incredibly thorough and important investigation because it seemed to me from the evidence of Mr Wheeler that the industry needed to look at its policies and procedures. WorkSafe have taken some steps as far as the industry is concerned. The tragedy is that it took this event to provide some impetus to do that. I was pleased to hear today that Mr Blackadder himself agitated to see that some of the deficiencies readily apparent to the Court during the evidence have now been remedied in terms of what now is required of applicants for licences to be administered by Trackwork Racing New Zealand. That is probably of little consequence to Eleanor but will be a huge consequence to many young people who aspire to do what she worked so hard to achieve herself. Hopefully it might be something for you to reflect on that some good to others might come of all of this in the future.

[40] There were those shortcomings and I made other observations in my reserve decision that I will not refer to now. WorkSafe submits further that it was known that Ms Stokes was in training. No reference was sought from her former instructor Mr Brown, nor were any steps taken to assess Ms Stokes' riding ability in the controlled environment such as a controlled yard.

[41] Ms Woods' oral submissions today started off on this basis that the entire incident occurred within 30 minutes of Ms Stokes arriving at the stables and about 12 hours after confirming that she would be working. WorkSafe submits that the pace at which events unfolded indicates that the stables were acting contrary to industry standards. I have used the term 'pace', what was clear to me from the evidence is that this was a busy place with some events occurring at the time, that saw people distracted. The submission of WorkSafe is that there was an air of casualness and a lack of caution. WorkSafe refers to the obviousness of the hazard and the means necessary to avoid, which of course the Court has now commented on.

[42] Relying on the decision in *Worksafe New Zealand v McKee* but also decisions of *Worksafe New Zealand v Glaziers Choice Ltd* and *Worksafe New Zealand v Davey's Tree Service Ltd,* WorkSafe, submits a starting point of a fine of $550,000 is appropriate.[4]

[43] Mr Nathan accepts on behalf of the Blackadders that there was and is a prominent risk of serious injury when a person rides a horse, in particular a Thoroughbred.

[44] In terms of reasonable expectation of injury occurring, it is submitted that while the licensing requirements did suffer from the issues that I have identified, the Blackadders adherence to an industry standard applicable at the time. Mr Nathan submits that I should not infer that Mr Blackadder was aware that this licencing regime was deficient. I think that is right as far as Mr Blackadder personally is concerned. Mr Wheeler certainly, did but he was appearing as an expert.

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[4] *Worksafe New Zealand v McKee* [2020] NZHC 1002; *Worksafe New Zealand v Glaziers Choice Ltd* [2021] NZDC 13492; *Worksafe New Zealand v Davey's Tree Service Ltd* [2019] NZDC 8584.

[45] In terms of reasonable expectation it is submitted on behalf of the Blackadders that there had been previous work experience, albeit that was limited in my assessment. While the induction process did not formally occur, there was a form of review through the induction checklist which was cross-listed. Obviously the effect of my reserve decision is that such a process was simply not enough. As to the recommendation by the head of the academy, the evidence was that the academy was not training young people to ride Thoroughbred racehorses. Hopefully that is something that organisation has looked at and the industry will be aware of. I accept there was a form of relevant experience and that experience is probably a hard thing to find and gain in this industry. There was some care taken with respect to the horse selection, although I have already commented about Ms Owen's evidence in that regard. Steps were taken to ensure that Ms Stokes was accompanied by a very experienced rider.

[46] As to safety record, there is no previous appearance before the Court and well documented health and safety systems now in place. There was a policy, Mr Nathan submits, of assessing riders. However, there was no specific guidance or requirement to check references or undertake an assessment in a controlled environment. That was the upshot of my decision. It is said that WorkSafe has not issued any industry guidance in that regard. Mr Nathan submits that, while shortcomings on behalf of New Zealand Track Racing became apparent, WorkSafe's investigation and subsequent identification of shortcomings cannot be shot home to the defendant. I have made my views known on that.

[47] Relying on the decisions of *WorkSafe New Zealand v Sidogg Investments Ltd*, *Worksafe New Zealand v Supermac Group Resources* and *McKee*, Mr Nathan submits that a starting point of $450,000 is appropriate.[5] I accept that *Worksafe New Zealand v McKee* is an analogous decision. Judge Sainsbury placed the defendant's breach in that case as at the higher end of the median band of culpability. The prosecution was brought against an individual with a starting point of $100,000 adopted. It was at the higher end of that band of culpability. The victim had not held a licence and had only about two weeks previous experience directly before starting the role of riding horses.

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[5] *WorkSafe New Zealand v Sidogg Investments Ltd* [2020] NZDC 12458; *Worksafe New Zealand v Supermac Group Resources* [2019] NZDC 15023, [2020] DCR 14.

The defendant had not sought feedback from the riding company as to the victim's progress or suitability to ride Thoroughbred horses and trackwork. The riding company had formed the opinion she was not ready to ride in work or race fit racehorses. The defendant then put the victim on a three-year old working Thoroughbred horse (described as a generally well-mannered and quiet) in a smaller work area when the horse bolted and the victim fell onto the fence with the horse's hoof injuring her spine and rendering her a tetraplegic.

[48] There are some differences between that case and the current one. Ms Stokes was an individual who had had some limited experience. However the key issue is what kind of experience she had and whether Mr Blackadder ought to have reasonably done more to ascertain the extent of her suitability to ride Thoroughbred horses prior to putting her on one. My judgment found that more ought to have been done. I accept there was some information about Ms Stokes available. I accept that there was a form of licencing regime. However, the conclusion I reach, consistent with my findings and the results decision, is that further enquiries ought to have been made to ascertain Ms Stokes's ability to ride Thoroughbred racehorses. This ought to occurred prior to riding Podge or any other horse at the facility. It simply was not enough to rely on one previous observation and a list of previous experience without more to be satisfied that she could be put on a Thoroughbred on a track, particularly given her young age.

[49] In addition, Blackadder's policy stated that the training plan should be implemented for trainees, with the employer to monitor and supervise all trainees. What occurred in this instance was very quick employment followed by a very quick decision to place Ms Stokes on a racehorse. This occurred against a backdrop of Ms Stokes considering that she would not be riding horses for the job, at least initially. Indeed, Mr Blackadder accepted that the work would involve primarily stable work until later evolving into some riding. While I accept there were no guidelines around how this policy was carried out, the wording was plain. There was a duty to consult as to how riding would occur and what training would be needed. There was also a requirement to be under constant supervision which means retaining constant control over the trainee's tasks. Such a trainee plan was not discussed with Ms Stokes.

[50] There is an inference from Mr Wheeler's evidence and from what I saw and heard that the industry, that such requirements might be regarded as onerous. However, the evidence of WorkSafe's expert, Ms Owens, is that the inherent risk of danger from Thoroughbred racehorses requires that, however onerous, policies and guidelines need to be in place and followed through.

[51] Having regard to the decisions that I have been referred to and the submissions raised, in my view an appropriate starting point fine in this case comes out at $500,000.

[52] The parties accept there are no aggravating features that would warrant an uplift.

[53] In terms of discounts, there is some disagreement between the parties. Mr Nathan submits total discount of 55 per cent is available. WorkSafe submits the proper discount is 40 per cent. Both parties accept five per cent is appropriate for each of the Blackadder's remorse; cooperation with WorkSafe's investigation; and previous good character. Both parties accept 10 per cent is available to recognise the reparation orders. Mr Nathan submits a further five per cent is available to recognise Blackadder's remedial steps since the incident occurred. This includes construction of an enclosed round yard, an independent health and safety audit and as I have said, assisting New Zealand Tracking Racing with the establishment of a formal assessment process to assess the ability of a trackwork rider to mount and ride a Thoroughbred racehorse. It appears that Mr Blackadder initiated that process. So I accept a further discount is available for the remedial steps taken.

[54] The last consideration is guilty plea discounts. Mr Nathan submits that a full discount is available as the Blackadder's intimated a guilty plea early on. WorkSafe accepts that the Blackadder's acknowledged liability with respect to the PPE charge. However, the entire matter proceeded to trial on the basis that the Blackadder's denied responsibility and liability with respect to the first particular. In my assessment, there is some merit in WorkSafe's submission. However, I think as I alluded to in my results decision, there was perhaps a little bit of overlapping between the first part of the second particular and that which was in dispute. I accept that Blackadder's are entitled, as WorkSafe accepts, to discounts for; remorse; cooperation with the

investigation; the remedial steps taken; reparation and previous good record. Those percentages come out at 35 per cent. In addition, I am minded to provide a discount of 15 per cent for plea. Overall discounts of 50 per cent which halves the fine.

[55] In terms of ancillary orders, the prosecutor seeks expenses being $5,557.16 for Ms Owen and 50 per cent of external legal costs of $8,939.50, a total of $14,496.66. Mr Nathan submits costs in the range of 20 per cent to 30 per cent of the prosecutors' actual costs is appropriate pointing to civil costs scale and submits a two-day judge-alone trial is relatively straight forward. Having reviewed cost decisions in this area I observe that the standard approach is to make orders for 50 per cent of the actual fees incurred by WorkSafe.

[56] While the quantum sought in many cases were very modest in comparison to the current case, I observe that in a recent decision of *WorkSafe New Zealand v Idea Services Ltd*, his Honour Judge Large made an order of $43,382 for prosecutorial costs, that being 50 per cent of the actual costs incurred.[6] Ultimately, the question is what sum is just and reasonable. In my view, 50 per cent of the cost would be just and reasonable which WorkSafe has already calculated. However, as I detail below, Blackadder's financial capacity to pay a fine may be further impacted by those costs. I am going to order the costs on the basis of the 50 per cent in the order of $14,496.66.

[57] In terms of overall assessment, I accept that the reparation orders are significant. I accept, as I have already stated that the Blackadders are going to be required to pay an amount over and above the sum that which they are insured for.

[58] As to their financial capacity, I observe the comments of his Honour Judge Phillips in *WorkSafe New Zealand v Wilson Contractors (2003) Ltd* where His Honour held that the Court's assessment of financial capacity to pay a fine under the Act requires a robust and common sense approach to the accounting information adduced.[7] I also refer to the principles relevant to assessing the effect of financial capacity upon a defendant's ability to pay a fine under the Act as reiterated in *YSB Group Limited v WorkSafe New Zealand*; namely it is important to determine a provisional fine or

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[6] *Worksafe New Zealand v Idea Services Ltd* [2021] NZDC 1526.
[7] *Worksafe New Zealand v Wilson Contractors (2003) Ltd* [2020] NZDC 17784.

starting point before adjustment to reflect financial capacity.[8] Fines may be paid in instalments but should not be ordered for any undue length of time and that 12 months is normally an appropriate lengthy maximum period. A fine ought not to place a company at risk but should be large enough to bring home the message to directors and shareholders of corporates. One must avoid a risk of overlap in a small company the directors are likely to be the shareholders.

[59] The Court must be alert to ensuring that it is not in effect imposing a double punishment. Ms Greenwood, who is an independent chartered accountant, has filed a statement on behalf of the Blackadder's outlining financial position. Her statement is compiled based on: data from the last three financial years; a statement for six months ended 30 September last year; a letter from the Blackadder's usual accountant and phone consultation with the accountant. Ms Greenwood's statement cast considerable doubt on the Blackadder's ability pay any sort of fine. Her evidence is, in effect, that there is a pool of money totalling $6,448 which would be available to pay a fine.

[60] I have had regard to the further affidavit filed by WorkSafe of 4 February in which Mr Shaw goes into the ability to pay a fine by lumpsum or by instalment. It is clear that this is a business that is reliant on the Blackadder's personal involvement. The assets of the business are effectively the assets of the Blackadder's. The business, their personal assets, and their home are closely connected. The partnership has $1.4 million in assets. It follows from *YSB Group Ltd v Worksafe New Zealand* that to impose a fine on the Blackadder's on top of the residual reparation and costs that I am going to order would a) be beyond their capacity to service and; b) would require perhaps an end to the business or the sale of property or home which, on the basis of *YSB Group Ltd v Worksafe New Zealand,* is to be discouraged.

[61] I do not accept that this is a case that would send a signal to others in the industry that a fine can be avoided. That is because each case must be looked at on its own facts. Each case must be looked at taking into account the financial circumstances of the individual. Based on the financial information that I have, and having teased that out slightly with Ms Woods, I am satisfied that the Blackadders are unable to pay

[8] *YSB Group Ltd v Worksafe New Zealand* [2019] NZHC 2570, (2019) 16 NZELR 493.

that out slightly with Ms Woods, I am satisfied that the Blackadders are unable to pay a fine due to financial incapacity and, consistent with finding in *WorkSafe New Zealand v Skyline Buildings Ltd.*[9] I will order in this case that no fine is to be paid.

[62] So the orders of the Court are reparation of $110,000 to Eleanor Stokes, plus $40,000 to Mr and Mrs Stokes, plus the reparations sum previously referred to of $167,484, that will be to Eleanor Stokes. That totals $317,464 together with costs of $14,496.66.

[63] I apologise for that taking so long. I am grateful for the tremendous amount of work that counsel have put into these submissions to enable me to sentence the Blackadders today. I am grateful for the changes that, through Mr Blackadder's work, are going to occur in the industry as far as training riders is concerned.

[64] I acknowledge once again the sentiments of the Blackadder's towards Eleanor and the Stokes family. I acknowledge again Eleanor your bravery and how hard this has been and how hard it is going to be for you and for also for the family in the future. I am really glad that you all have each other because you seem like a good bunch of people.

[65] The final matter and that is name suppression. I am told that the Blackadders applied for suppression and non-publication pursuant to s 205(2)(a) of the Criminal Procedure Act 2011. Mrs Blackadder's affidavit supports that application. The threshold under the Criminal Procedure Act is high. It requires serious hardship on behalf of the victim of an offence. It requires serious hardship with respect to a defendant.

[66] While I accept Mrs Blackadder seeks suppression on the basis of a genuine concern for Ms Stokes, something more than what is contained in Mrs Blackadder's affidavit would be required for me to be satisfied that publication of the material contained in these notes would cause Ms Stokes serious hardship. Unless Ms Stokes seeks an order then I would not be inclined to make it. In the circumstances, therefore,

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[9] *Worksafe New Zealand v Skyline Buildings Ltd* [2020] NZDC 10681.

I will be declining to make any order for suppression or non-publication and my sentencing notes will be available to counsel in due course.

M A Crosbie
District Court Judge