



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MSA COURT OF ENQUIRY 1190

**HEARING HELD AT THE MSA OFFICE IN CAPE TOWN AT 18H00 ON 23 MARCH 2017**

<b>Present:</b>	Steve Miller	-	Court President
	Jan Thorsen	-	Court Member
	Roy Pheiffer	-	Court Member
	Bertus du Toit	-	Clerk of the Course (Defendant)
	Neva vd Merwe	-	Assistant Clerk of the Course (Defendant)
	Brian Hoskins	-	Club Steward (Defendant)
	Chantal Pieters	-	Race Secretary (Defendant)
	Joy Dolinschek	-	Officials Controller (Defendant)
	John Coetzee	-	Chairman of WPMC Karting Section / Organiser (Defendant)
	Wally Dolinschek	-	Father and Entrant of competitor Troy Dolinschek
	Charl Visser	-	Father and Entrant of competitor Kyle Visser and Defendant
	Tony Norton	-	Alternative MSA Steward for hearing on 18/02/2017
	Ian Long	-	Post Race Paddock Official
<b>Apology:</b>	Phil Herholdt	-	MSA Steward (Defendant)
<b>In attendance:</b>	Lizelle van Rensburg	-	MSA Scribe

### FINDINGS OF COURT OF ENQUIRY NO 1190:

1. Motorsport South Africa is convened a Court of Enquiry in terms of GCR 211 to investigate, inter alia:
  - a. Whether Mr Bertus du Toit has breached the General Competition Rule (GCR) 175 or any other GCR in relation to allegedly imposing a penalty on a competitor without a hearing;

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Directors: Adv. G. T. Avvakoumides (Chairman), A. Scholtz (Chief Executive Officer), A. Taylor (Financial), P. du Toit, D. Easom, J. Fourie, G. Hall, A. Harri, M. Rowe, R. Schilling, Ms N. Singh, Ms M. Spurr  
Honorary Presidents – Mrs B. Schoeman, T. Kilburn

- b. Whether WPMC Karting Section has breached GCR172 (iv) or any other GCR in relation to allegedly conducting any proceeding or act prejudicial to the interest of MSA or motor sport in general;
- c. The organisational issues at the WPMC Karting event held on the 11<sup>th</sup> February 2017;
- d. The alleged verbal abuse of an official by Mr Charl Visser.

2. In the matter of Mr Bertus du Toit the Court determined:

- a. Mr du Toit 'de facto' held three hearings.
- b. The first hearing was held post-race 1.
  - i. Both competitors, T. Dolinschek and K. Visser, were present.
  - ii. A verbal warning was issued to both competitors by the CoC.
  - iii. The hearing and its findings were not reduced to writing nor were they entered into any of the official documentation on the day.
- c. The second hearing occurred after repeated infractions between the competitors in race 3.
  - i. The incident was brought to the attention of the Clerk of course by a trackside marshal.
  - ii. A potential protest by competitor Visser's father was dismissed by the CoC given the incident report by the marshal.
  - iii. Neither competitor Visser nor the complainant, the marshal, was present at the hearing.
  - iv. Trackside video evidence was led, but no video was provided by competitor Visser, despite it being available. (The Court notes that this video has subsequently never been shown despite it being material to the incident and subsequent penalties, and being required by Karting SSR's).
  - v. A five place penalty was applied by the CoC to competitor Dolinschek and verbally accepted by the competitor and his parent/guardian.
  - vi. The written penalty was not signed by the offending competitor.
  - vii. The penalty was not posted on the official notice board.
  - viii. In spite of this lack of visibility of the hearing or penalty, competitor Visser protested the CoC's decision.
  - ix. The protest was escalated by the CoC to the Stewards.
  - x. The officials erroneously believed that Dolinschek had left the circuit. It would appear that the Steward for the day had also left the circuit.
  - xi. The Steward's hearing was accordingly held over for a week.
  - xii. At the Stewards hearing competitor Visser introduced new evidence, namely the suspended sentence hanging over competitor Dolinschek, also for driver conduct. He argued for the exclusion of Dolinschek.
  - xiii. The Stewards decided not to adjudicate but rather to return the protest fee to Visser, and then instructed the CoC to conduct a 'de novo' hearing in the light of the new evidence.

- d. At the Stewards' insistence the third hearing was thus conducted by Mr Bertus du Toit:
- i. This 'de novo' (sic) hearing occurred in the presence of all parties.
  - ii. However, this 'de novo' hearing occurred adjudicated by the original official who made the first determination, without any original evidence being led, without the video evidence available, without the original marshal present, and with new photographic evidence led by Visser but not shown to Dolinschek.
  - iii. The CoC overturned his original decision and excluded Dolinschek.
  - iv. The process and the outcome of the "new" hearing were protested by Dolinschek.
- e. The Court accordingly finds as follows:
- i. Hearing 1
    1. The CoC conducted a satisfactory hearing. It would appear he applied an appropriate touch with a process and penalty fitting the nature of the incident.
    2. The CoC is, however, reminded to record and reduce to writing every hearing, even if they result in nothing more than a verbal warning.
    3. **CONCLUSION:** There was no transgression of GCR 175 by the CoC, Mr Bertus du Toit.
  - ii. Hearing 2
    1. Whilst the hearing did not strictly follow the all the guidelines for a perfect hearing, where ALL parties should be present to state their case and be given the opportunity to rebut the testimony of others, the Court believes nonetheless that the punished party had sufficient access to a hearing and that the hearing and its outcome were largely satisfactory, especially in the light of karting hearing precedent.
    2. The fact that a seasoned karting parent, Mr W Dolinschek, somewhat reluctantly verbally accepted the process and findings, offers credence to the Court's assertion that justice prevailed.
    3. **FINDING:** There was no transgression of GCR 175 by the CoC, Mr Bertus du Toit.
    4. **RECOMMENDATION 1:** The Court counsels the CoC to reacquaint himself with the detail of GCR 175 and to follow both the letter and spirit of GCR 175 in future.
    5. **RECOMMENDATION 2:** The Court does, however, find that competitor was unfairly and significantly prejudiced by the lack of administrative follow-through after the hearing. The CoC and the WPMC Kart Club administration are reprimanded for their lack of attention to detail and lack of adherence to administrative protocol. It is the responsibility of race administration to timeously complete the paperwork, ensure the signatures of the relevant parties, and the public and official posting of such findings. The WPMC Kart Club

needs to review its secretariat structures, processes and competencies as a matter of urgency.

iii. Hearing 3.

1. The Stewards sent the parties back to the CoC with the instruction that he conduct a 'de novo' hearing in the light of the new evidence Visser had provided.
2. Note well: A 'de novo' hearing is exactly as it sounds in English – a hearing “anew and afresh”, or “from the beginning”. A 'de novo' hearing requires a fresh exploration of the incident and all the evidence with all the role players present. It must be conducted by someone with a fresh, unjaundiced and unprejudiced perspective, ideally by someone even more senior and more experienced than those who call for the hearing. That is the intent of a 'de novo' hearing, as enshrined by the MSA GCR's.
3. In sending this issue back to the CoC for a second finding the Stewards thwarted justice in three fundamental ways:
  - a. They attempted to force responsibility “downhill.” Instead of accepting their authority and responsibility they effectively abdicated both and foisted them down onto younger and less experienced shoulders. If they were unwilling or unable to adjudicate their only available course of action was to escalate the problem to MSA and call for a Court of enquiry, not to devolve the issue, and certainly not to the same individual who made the first determination.
  - b. They forced a young CoC into “double jeopardy”, where he effectively was asked to find Dolinschek guilty of the same offence twice. This is legally and ethically unacceptable.
  - c. They perverted the concept of a 'de novo' hearing in its entirety.
4. **FINDING 1:** The Court strongly believes that the third hearing was illegitimate and should never have happened. If the Stewards had shouldered their responsibilities instead of devolving them back down to a young and inexperienced CoC, this travesty of justice would never have occurred. Whilst the CoC is not completely blameless the court has sympathy for the invidious position in which he found himself. It finds that the hearing was proscribed, should be scrapped in its entirety, and its process and findings ignored. In the light of this finding there can therefore be no determination of any transgression of GCR 175 by the CoC, Mr Bertus du Toit.
5. **FINDING 2:** The Court reprimands the Stewards in the strongest terms. As Stewards they need to understand their role and the responsibilities that go with it, and execute them correctly. The example they set for a young and impressionable CoC was poor, to understate the obvious.

6. **FINDING 3:** The Court instructs that the findings of this illegitimate hearing be set aside in their entirety. The findings of Hearing 2 will stand and the race results will be published accordingly.
7. **RECOMMENDATION 1:** The Court instructs the CoC that, in future, if he is ever faced with a situation where the Stewards fail so abjectly in their duties, that he summarily refuse to accept their instruction and that he refer the matter directly to MSA for adjudication.
8. **RECOMMENDATION 2:** The Court is cognisant of the fact that the Stewards, as with most officials, are volunteers. It also acknowledges that many of the incidents these officials are called to adjudicate, race-meeting-after-race-meeting, are driven by a competitor ego and small perceived slights: they are seldom matters of “life and death”. The Court therefore has a modicum of sympathy for Stewards who seek no-nonsense off-track solutions to apparently petty on-track incidents.

The problem is that our sport can (and unfortunately sometimes does) rapidly devolve into incidents that do court risk of life and limb. It is primarily for reasons of safety that MSA has evolved and codified its processes and protocols into its General Competition Rules. These have been pragmatically honed over many decades, philosophically debated ‘ad nauseum’, and legally tested through thousands of hearings and Courts, to a point where they represent our best current understanding of how to balance the needs for safe and fair competition, with the promotion of transparent, equitable and fair justice for our competitors, and the necessary legal safeguards for both our officials and our umbrella body.

In a nutshell, they are NOT trivial. Their formulation and their consistent, fair execution are crucial to MSA’s authority and ultimately its right to exist.

They do NOT beg creative interpretation by officials, even those more seasoned and who may have convinced themselves that they “know better” than the White Book by dint of years of service.

They ARE prescriptive, they ARE mandatory, and they ARE binding on anyone involved in motor sport under MSA’s aegis.

The Court cannot adequately express its disappointment in the poor behaviour, attitude and decision-making exhibited by the Stewards of the original race meeting.

It debated myriad potential penalties to be applied. Ultimately, however, it believes that the greatest punishment for experienced and otherwise exemplary MSA officials is the fact MSA felt it necessary to convene this Court at all, and that during the hearing and in these findings the Stewards’ failings have been so publically vented.

The Court however seeks rehabilitation for its officials, rather than retribution. It therefore instructs the Stewards to re-read GCR's 152, 154 and 177 and to once again become conversant with their obligations. GCR 152, in particular, details the roles, responsibilities and required behaviours of MSA Steward that should be internalised and must be exhibited in future to avoid further censure.

3. In the matter of the WPMC Karting's breach of GCR 172 (iv) and the matter of the organisational issues at the event of 11<sup>th</sup> February 2017 the Court determined:
  - a. The inaccuracy of the scale.
    - i. This matter was handled pragmatically, and without undue prejudice to any of the competitors on the day.
    - ii. The single 'pro forma' protest, the lack of further incident, and the relative normality of the day's results bear testimony to a set of decisions and a process that served to allow a reasonable day's racing for all.
    - iii. RECOMMENDATION: If the Club faces this issue in future Club race days it may give thought to temporarily adjusting class minimum weight limits for the day in line with the scale's inaccuracy in order that heavier competitors are not unfairly prejudiced.
  - b. That having been said, the Court finds that the administrative short-comings of the race secretariat on the day were myriad.
    - i. Driver's Bulletins:
      1. The Club asserts that three separate Driver's Bulletins were created on the day to communicate the scale's inaccuracy and deterioration. They can, however, only provide evidence of one, posted at 12h09 in the day. This suggests they used the same bulletin number to update the competitors as the day went on. This behaviour is unacceptable and will lead to unnecessary protests in future if not remedied.
      2. RECOMMENDATION: Race secretariat needs to issue new sequentially numbered Driver's Bulletins for each separate update made, and to keep permanent records of these.
    - ii. Record-keeping at hearings:
      1. The findings of all hearings MUST be recorded and reduced to writing
      2. The findings of all hearings MUST be posted publically and timeously. In not doing so they contributed to the series of protests and counter-protests that followed.
    - iii. Completion and filing of incident reports:
      1. It would appear that competitors have fallen into a bad habit of rushing to protests at the first hint of an incident. The race secretariat is reminded that it is the competitors' responsibility to first complete an incident report for the CoC's review. The CoC can

then determine whether a hearing is necessary or not. The secretariat is responsible to file these incident reports for future use. This is not occurring and must commence henceforth.

- iv. Competitor communication.
    - 1. Whilst competitors have the responsibility to apprise themselves of formal communication posted on the official notice board, they can also reasonably expect to be personally informed of hearings taking place that involve them.
  - v. **RECOMMENDATION 1:** The WPMC Kart Club needs a review of its race-day record keeping processes. A skills audit and further training may be required to ensure due processes are adhered to and adequate records are kept.
  - vi. **RECOMMENDATION 2:** It is recommended that a member of the clerical staff be present in all hearings to summarise findings and issue a formal record for the CoC's signature.
  - vii. **RECOMMENDATION 3:** WPMC Karting should explore some mechanism to improve communication from race control to competitors e.g. the possibility of employing young 'runners' to inform competitors of the CoC's need to see them, especially where hearings and/or protests are involved.
4. In the matter of Mr Charl Visser's verbal abuse of an official the Court determined:
- a. Mr Visser protested his innocence, insisting that he was neither physically intimidating, nor did he use foul language, nor was he "rude" to the MSA Steward, Mr Tony Norton, and took exception to Mr Dolinschek's categorisation of his behaviour as being "absolutely uncontrollable".
  - b. It is clear, however, that Mr Norton was forced to curtail the hearing prematurely, citing Mr Visser's poor behaviour. This he reiterated at the hearing.
  - c. Mr Norton is an experienced MSA official. In his testimony he struck the Court as being trustworthy, honest, reasonable, phlegmatic, and not particularly excitable.
  - d. For an official with Mr Norton's track record and disposition to close a hearing and recommend a Court of Enquiry it is evident that he must have been the subject of significant harassment.
  - e. It is clear that Mr Visser was disruptive and persistent in his disruption. In this behaviour he evidenced little respect for the official position of Mr Norton, nor to the protocol and process of a formal MSA hearing.
  - f. This behaviour is disrespectful and intolerable. To persist with it in the company of minors sets a poor and indefensible example.
  - g. **FINDING:** The Court finds Mr Visser guilty of the harassment and abuse of an MSA official in the execution of his duties.
  - h. **RECOMMENDATION:** The Court recommends that Mr Visser be debarred from attending any and all karting activities in South Africa for a period of one year from the published date of these findings. This sentence will be suspended until 31 December 2017 provided Mr Visser is not found guilty of further abuse of MSA officials during this period.

5. **COSTS:** No costs are apportioned.

All parties are reminded of their rights in terms of GCR212B.

These findings are published via email on 31/03/2017.

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