



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MSA COURT OF ENQUIRY 1257

HEARING HELD ELECTRONICALLY VIA ZOOM ON THURSDAY 10<sup>th</sup> OCTOBER 2022 AT 17H30

**Present:** Steve Harding - Court President  
Adv. Michelle Rodrigues - Court Member  
Mrs. Miranda du Plessis - Court Member  
Complainant  
Father of Complainant  
Defendant  
Wife of Defendant  
Friend of Defendant

**In Attendance:** Rashaad Monteiro - MSA Safeguarding Officer  
Marc Hardwick - Initiator / The Guardian  
Vic Maharaj - MSA Sporting Services Manager  
Jacqui Monteiro - MSA Operations Manager

1. Court of Enquiry 1257 was convened by Motorsport South Africa in terms of the provisions of GCR 211, to investigate whether the Defendant conducted himself inappropriately towards the Complainant or in any way that infringed upon her rights and dignity.
2. For reasons, which will become self-evident in these findings, we have chosen not to name the parties or provide information, which would otherwise identify them in the interests of sparing the parties any further indignity or humiliation. Notwithstanding, our findings of the non-applicability of the MSA Safeguarding Policy referred to in paragraph 6 below, this non-disclosure of the identity of the parties is consistent with paragraphs 6.3 (i) and (ii) of such policy and appropriate.
3. The hearing was conducted in an online format, and all parties attended remotely via Zoom.
4. At the commencement of the court hearing, the Court President asked if there was any objection to the constitution of the court and no objection was received.

*MOTORSPORT SOUTH AFRICA IS THE ONLY RECOGNISED MOTORSPORT FEDERATION IN SOUTH AFRICA*



Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), R. Beekun (Financial),  
Mrs. D Abrahams, Mrs. D. Ballington, K. Govender, M. Hashe, FC. Kraamwinkel, Dr G. Mills, C. Oates, S. Themba, G. Waberski  
Honorary President: R. Schilling

5. The court of enquiry was appointed to investigate, inter alia, the following allegations against the Defendant:
- 5.1 Harassment of a minor, namely the Complainant, by the Defendant, during the period 2017 to 2021. These alleged instances of harassment include, but are not limited to, both sexual and emotional harassment and include, but are not limited to:
- a. Slapping/smacking the Complainant on the buttocks.
  - b. Stating that there were rumours of a sexual relationship between the Defendant and the Complainant.
  - c. The Defendant engaging in a conversation in relation to sexual acts with another adult, Mr. X, whilst in a vehicle with the Complainant.
  - d. The Defendant engaging in a conversation relating to pornography with another adult, Mr. X, whilst in the pit with the Complainant.
  - e. Making sexually inappropriate jokes in the presence of the Complainant.
  - f. Sending an image from an adult, Mr. X, depicting a penis on the Complainant's Instagram page, to the Complainant.
- 5.2 Gross negligence in the execution of the Defendant's *Duty of Care* as a coach to the Complainant, a minor, in that the Defendant:
- a. Did not adequately address or raise a concern relating to alleged rumours of a sexual relationship between the Defendant and the Complainant.
  - b. Failed to stop a conversation relating to pornography and sexual acts in the presence of the Complainant by an adult, Mr. X.
  - c. Failed to raise concern regarding the inappropriate behaviour of a driver when the said driver sent the Defendant a picture of the Complainant's Instagram page with the representation of a penis on it.

The court was also required to investigate whether the Defendant is guilty of breaching, inter alia, GCRs 172 iv) and vi), and/or any part of the MSA Code of Conduct and/or the MSA Safeguarding Policy.

6. The MSA Safeguarding Policy is a relatively recent innovation, which was first adopted and published in final format by MSA in August 2022. The alleged acts complained of took place during the period 2017 to 2021. This court is of the view that the policy cannot be interpreted in such a manner as to apply retroactively and that the matter be determined exclusively on the basis of MSA's GCRs and Code of Conduct.
7. GCR 172 reads, in part, as follows:-

**GCR172. BREACH OF RULES**

*Any of the following offences in addition to any other offences specifically referred to previously or thereafter, shall be deemed to be a breach of these rules.*

...

- iv) *Any proceeding or act prejudicial to the interests of MSA or of motor sport generally shall be deemed a breach of the regulations and disciplinary action may be taken against offenders. By way of clarification, it is confirmed that the following shall be included in the definition of "prejudicial acts" as per the above:*
- *Intimidation, either on track or off track.*
  - *Verbal and or physical abuse.*
  - *The distribution/publication by email, cell phone text message or Internet website and social media of comments which may be deemed abusive and/or slanderous and/or demeaning and/or inappropriate.*

- Acts (including comments and or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

*It is stressed that the above list is not exhaustive, and that each case will be treated on an individual basis.*

...

- vi) Misbehaviour or unfair practice.

8. The preamble to the MSA Code of Conduct reads as follows:-

*This code of conduct represents Motorsport South Africa's (MSA's) guidelines and expectations in relation to the behaviour and conduct of its employees, commission and committee members, officials and other persons under its direction or representing MSA at any time and in any place ('Representatives'). This code of conduct is binding on all MSA representatives.*

9. At no point was the Defendant alleged to have acted as a representative of MSA and accordingly the Code of Conduct has no application, to him as a competitor and licence holder. The matter therefore falls exclusively to be determined in terms of the relevant provisions of GCR 172, quoted above.
10. The court heard evidence from the Complainant and her father, and from the Defendant, his wife and a fellow competitor who shared a pit with the Defendant and the Complainant.
11. The court heard from all parties that there was a long and multigenerational relationship between the families of the Complainant and the Defendant, which extended beyond purely motorsport related activities and revealed that the 2 families took part in each other's family events from time to time. The court heard that there was a sponsorship relationship between the Complainant's father's business and the Defendant.
12. Arising from this relationship the Defendant and his fellow competitor began to assist the Complainant with her racing activities. Notwithstanding the Defendant's denials, we find that the Defendant clearly formed an informal coaching relationship with the Defendant, notwithstanding that there was never any express agreement in this regard nor any consideration passing in respect thereof. This relationship clearly would have given rise to a duty of care owed by the Defendant to the Complainant, and to the extent that she was a minor, to her parents, had the Safeguarding Policy of MSA been in place at the time of the alleged incidents.
13. In February 2022, the relationship between the Defendant, (and his fellow competitor), and the Complainant, and her father, broke down over issues relating to sporting matters. These issues concerned the assistance by the Defendant, (and his fellow competitor) in relation to the Complainant's racecar and other practical issues.
14. MSA was represented in these proceedings by Mr. Marc Hardwick, a person with extensive experience in the area of child protection. The Defendant was extensively cross-examined by Mr. Hardwick who placed considerable emphasis on the failure of the Defendant to conduct himself in accordance with the duty of care, which he would have owed to the Complainant, had the Safeguarding Policy been in place at the time in which the alleged incidents occurred.

15. It is important to note the role played by the person we have identified in our summary of the charges in paragraph 5 above as Mr. X. Mr. X is or was a friend and fellow competitor of the Defendant. Mr. X was not before the court as a co-Defendant despite the worst of the conduct relating to sexually inappropriate language and behaviour with and in front of a minor being directly attributed to him by the Complainant. Mr. X is a foreign competitor, licenced by his national sporting authority and not the holder of a licence issued by MSA and hence was not joined in these proceedings as a Defendant.
16. In addition to hearing evidence as referred to in paragraph 10 above both the Complainant and the Defendant provided several statements from 3<sup>rd</sup> parties. Very few of these dealt in any way with the issues in question, and the majority of them took the form of character evidence, to which little weight can be given in establishing the veracity or otherwise of the various versions of events offered.
17. Much of the evidence is common cause between the parties and the differences between them lie in issues of detail, nuance and context.
18. It was common cause between the parties that the Defendant from time to time struck or smacked the Complainant on the buttocks. He explained this as a game between team members of which the Complainant was a part and joined in by slapping back. This was denied by her. While we accept that this was a regular part of the conduct of the Defendant in regard to parties other than the Complainant and accept further that there was nothing malicious or sexual intended by this gesture, we nonetheless consider this conduct to have been inappropriate. It can never be appropriate for an adult man considerably older than the Complainant to treat a young woman in this way whether she voiced any complaint at the time, or not.
19. We are unable on the evidence in front of us to determine that the Defendant is guilty of any of the other acts attributed to him by the Complainant.
20. Mr. Hardwick on behalf of MSA requested the suspension of the competition licence of the Defendant for a period of 5 years and for this court to order that MSA take steps to place the Defendant on the Child Protection Register maintained in terms of the Children's Act. We do not consider the Defendant to be a person "unsuitable to work with children" as contemplated in Sections 118 to 120 of the Children's Act 38 of 2005 and accordingly decline to make such a finding.
21. Given our conclusion as reflected in paragraph 18 above of the inappropriateness of the bottom smacking/slapping, and the absence of maliciousness or sexual intent we consider that the suspension of the competition licence of the Defendant for a period of one year, which suspension is itself to be suspended for a period of 3 years on condition that the Defendant is not during that period found to have contravened the provisions of GCR 172 iv) or vi), is an appropriate sanction.
22. Accordingly, we hold that the competition licence of the Defendant be suspended for a period of one year, which suspension is itself to be suspended for a period of 3 years on condition that the Defendant is not during that period found to have contravened the provisions of GCR 172 iv) or vi),

23. The Defendant is further directed in terms of GCR 196 to make payment of a contribution towards costs of the sum of R7,500.

All parties are reminded of their rights in terms of GCR 212 B.

These findings are distributed via email on 24 November 2022.

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