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MSA COURT OF ENQUIRY 1105
ENQUIRY TO INVESTIGATE VARIOUS ASPECTS ARISING FROM A MEETING OF THE HRSA BODY HELD ON 20TH NOVEMBER 2012. HEARING HELD IN THE MSA BOARDROOM AT 18H30 ON 18th APRIL 2013.

Present:	Johan Gericke	-	Court President
	Christo Reeders	-	Court Member
	Hanko Swart	-	Court Member
	Graeme Nathan	-	Court Member
	Glenn Rowden	-	MSA NR Chairman
	Roger Pearce	-	HRSA Club Member
	Selwyn Roberts	-	HRSA Club Member
	Nick Sheward	-	HRSA Chairman
	Tracy Cilliers	-	HRSA Secretary
	Jacques Cilliers	-	HRSA Saloon Car Chairman
	John Reidy	-	HRSA Club Member
	Barry Scott	-	HRSA Club Member
	Allison Atkinson	-	MSA – Court Scribe

The Court President introduced himself and the other Court members. There were no objections to the composition of the Court.

Hearing
The Court heard statements from all parties present and considered the evidence of the aforementioned witnesses. In considering the elements and evidence, the Court takes cognizance of the provisions of GCR 211 and GCR 220.

Findings:
After having heard the evidence and the submissions by all parties present, the Court finds as follows:

1. The events which form the subject matter of the abovementioned court of enquiry arose from the factual matrix set out below:

   1.1. Prior to April 2011, the Club that now purports to be HISTORIC RACING SOUTH AFRICA ("**HRSA**") used to be known as the HISTORIC RACING CAR REGISTER ("**HRCR**").

   1.2. Two distinct factions exist within the Club. The alleged majority faction was in favour of a name change from HRCR to HRSA. The leading figures of this faction appear to be Messrs Barry Scott, John Reidy, Nick Sheward and Jacques Cilliers.

2.

   2.1. A minority faction opposed the name change and although the opposition appears to be largely silent, the opposition faction was most volubly represented by Messrs Roger Pearce and Chris Myers.

2.2. On or about 10 April 2011 during the annual general meeting of the Sports Car Club of South Africa ("**SCC**"), a decision of the Club was purportedly ratified, the effect of which was to change the Club's name from the HRCR to the HRSA. This decision brought the opposing factions into conflict with one another.

2.3. The dispute aforementioned served as a catalyst for further instances of unhappiness; the simmering resentment which continued for the ensuing two (2) years until the chairman of the Club at the time, Mr Selwyn Roberts, elected to call a meeting in an attempt to have the opposing factions ventilate the various causes of the unresolved dispute and to explore an amicable resolution.

2.4. The meeting took the form of what is colloquially known as a "noggin"; a characteristic of which is the consumption of alcohol. When the meeting aforementioned was announced a week or so earlier, Mr Roberts indicated that at the proposed meeting, no alcohol would be allowed. This request was ignored by the members who brought along their own alcohol supplies; the consumption of which in due course proved to serve as a further catalyst for the conflict which subsequently ensued.

2.5. Notwithstanding manful attempts on the part of Mr Roberts to maintain order during the meeting, it would not be an overstatement to say that the proceedings descended into utter chaos.

2.6. It is particularly the exchanges between Messrs Scott and Pearce which culminated in written complaints that were ultimately brought before this Court.

3. It would be superfluous to traverse for purposes of this ruling the various allegations and counter-allegations that emerged from the written reports which had been submitted by the various stakeholders. During the course of the meeting certain of the minor elements of dispute were ventilated; however, the discussion of the change of name of the Club (an event which by this time had occurred more than two (2) years earlier) literally set fire to the tinderbox. What ensued was an exchange of profanity-laden insults and accusations among the conflicted parties to which Mr Scott's partner at the time (now his spouse) and Mrs Cilliers took significant offence.

4. Mr Scott in particular reacted emotionally when confronted with his partner being reduced to a tearful state in view of her expressed opinion that Mr Scott's efforts on behalf of the Club did not receive the recognition from the remaining members which she thought it merited.

5. In a further profanity-laden outburst, Mr Scott crassly suggested to Mr Pearce that he could take his leave and predictably Mr Pearce, now suitably provoked and antagonised, responded in a combative fashion. There was an allegation that Mr Pearce threatened to strike Mr Scott by means of a beer bottle. Careful examination of this allegation resulted in no concrete evidence in support thereof; the high watermark of the unfolding scenario being that Mr Pearce in any event was consuming beer at the time and held a bottle in his hand.

6. The parties tendered in evidence at least one (1) recording that had been made during the meeting and it was suggested to the Court that the recording would contain evidence of behaviour on the part of Messrs Pearce and Myers that would bring the sport into disrepute. The recording was carefully examined by the Court and no evidence as had been suggested was evident therefrom.

7. Of far greater importance was the response (or rather an absence of a response) to certain pertinent issues raised by the Court, these being:

   7.1. the constitutionality of the decision to effect the aforementioned name change;

   7.2 whether the change of name had indeed been supported by a majority of Club members;

   7.3 whether the punitive actions taken by the leaders of the "pro-change faction" in the aftermath of the disastrous meeting aforementioned are of any legal and/or binding force or effect.

8. The Court was assured by the Club's secretary, Mrs Cilliers, that all formalities had been observed. These included the dispatch to all stakeholders of a written notice providing adequate time in accordance with the Club's constitution of a meeting during which the change of name would be debated. At the instance of the Court, an undertaking was furnished that the prerequisite supporting documents, including the notice, would be provided. Mr Pearce challenged the assertion that notice of the meeting had been given and positively stated that at least he had never received such a notice. Suffice it to say that ultimately no supporting correspondence that would serve to confirm compliance with this essential requirement was provided by the Club's secretariat.

9. The members of the "pro-change faction" faintly contended that at the meeting during which the change of name was accepted, a majority of members supported the name change. Once again, the Court requested the minutes of the meeting allied to evidence which would support the allegations of a majority of the Club members being in favour of the name change and, once again, no such evidence was provided by the secretariat.

10. Under the circumstances, the Court is left with no alternative but to find that not a single aspect of the process and procedure followed in effecting the change of name complied with the provisions of the Club's constitution, there is no evidence that any verifiable voting process ever occurred (much less that the decision to effect the change of name was a majority decision) and in the process minority stakeholders' views were never entertained; a significant omission which in itself offends the *audi alteram partem* rule, one of the rules of natural justice. In the result, the decision to effect the change of name was invalid and falls to be set aside, as is directed by this Court.

11. Having come to the conclusions aforementioned, the Court nevertheless takes cognisance of the fact that, howsoever unlawful the change of name may have been, the Club is now generally known by the amended name; hence, loosely speaking, the "balance of convenience" falls in favour of the retention of the amended name. However, in order to ensure that the change of name is lawfully effected, the management of the Club is hereby directed to within sixty (60) days of the date of this order, take all steps that are required under the Club's constitution, including but not limited to adequate and timeous written notice of a meeting to all club members which will be convened in order to ratify the decision to effect the change of name aforementioned. In addition, the management corps of the Club is directed to ensure that the meeting itself is valid in terms of the presence of a quorated number of members of the Club eligible to vote, a roll of members eligible to vote is to be compiled and the votes in favour of the resolution to ratify and those against are to be meticulously recorded. The result of the entire process is to be submitted in writing to this Court within a further seven (7) days after the meeting. Any failure to comply strictly with these directives will culminate in the additional directive set out below.

12. In addition, it must be said that the current constitution of the Club is nothing short of disastrous. The Court could only marvel at the thought process that persuaded those in charge that the constitution constitutes a workable document that would ensure even-handed treatment of members. Within the same 60 day period aforementioned, the Club is

directed to redraft its constitution to a format consonant with the Memorandum of Incorporation of MSA, to ratify the amended constitution and confirm in writing the adoption of the amended constitution to this Court within 7 days after the ratification.

13. In the course of the court proceedings, it became evident that consequent upon the chaotic meeting aforementioned, in a fit of pique, the leadership of the "pro-change faction" embarked upon a witch-hunt. An informal meeting was arranged during which Mr Roberts was purportedly found to be incompetent consequent upon the manner in which he oversaw the meeting and summarily prevailed upon to tender his resignation as the chairman of the Club. Quite which powers the individuals who took this decision relied upon could not be explained and it is plainly apparent that also in this respect, no convention was followed and the individuals concerned obviously had no authority to unilaterally take such a decision under the circumstances. Consequently, also this decision falls to be set aside; however the Court makes no recommendations as to how this management failure ought to be remedied or how the disservice to Mr Roberts ought to be rectified.

14. In perpetuation of the aforementioned pogrom, the same marauding body of individuals also took it upon themselves to in writing inform Messrs Pearce and Myers of the suspension of their membership of the Club and an outright ban of their presence at any social event; all of which occurred without affording Messrs Pearce and Myers any hearing whatsoever. Also this "sanction" constitutes a grave infraction of the *audi alteram partem* rule, is entirely unlawful and is hereby set aside. It follows that all rights and privileges previously enjoyed by Messrs Pearce and Myers are restored. The Court's outrage at this blatant dismissal of one of the fundamental tenets of jurisprudence was exacerbated by an observation by the Club's current chairman and technical consultant, Mr Sheward, to the effect that the Club's constitution does not disallow such a decision.

15. The Court enquired as to the reasons for the failure not to apply the same sanction to Mr Scott. The unpersuasive response was that Mr Scott had allegedly "apologised" for his conduct. Significantly, the same latitude was not afforded to Messrs Pearce and Myers. They were simply banned. The fundamental unfairness of these actions is self-evident.

16. It would be remiss of this Court not to make the following observations:

    16.1. The feuding members are all senior citizens who have been involved in motorsport for many years.

    16.2. Many of them conduct private business ventures, hold sway over employees or otherwise fulfil senior managerial positions in significant corporate structures.

    16.3. The members of this Court are often called upon to adjudicate disputes which arise amongst MSA members across all of the various motorsport disciplines. During the past approximately two (2) years severe splintering in the sport has become apparent at all levels and a propensity has become evident on the part of several clubs and Clubs to establish alternative silos of influence/authority in an effort to establish alternative strongholds of influence.

    16.4. The jockeying for position which has resulted often times culminate in pedantic and autocratic decision making in conflict with not only internal rules and regulations, but also with the overarching rules of natural justice.

    16.5. The spreading inclination on the part of individuals to act as "judge, jury and executioner" in their own cause must be brought to an abrupt end and the gravity with which this Court views the frankly deplorable conduct of the members concerned, *vis-a-vis* one another is reflected in the observations and sanctions set out below.

17. The primary protagonists, as set out above, were Messrs Scott and Pearce. It is indeed so that the evidence revealed inflammatory behaviour on the part of Mr Pearce. However, as a member of a minority faction, his frustration at having a range of unlawful decisions foisted upon him and like-minded minority supporters was palpable and his retaliatory conduct, although frowned upon, is unsurprising. Mr Pearce is hereby reprimanded and cautioned, apart from being advised to familiarise himself with the alternative avenues of dispute resolution which are available.

18. There is no doubt that Mr Scott's conduct brought the sport into disrepute hence he is therefore found guilty of contravening GCR 172(iv). To Mr Scott's credit, he apologised (however, not without some prompting from the Court) for his adverse behaviour and demonstrated genuine remorse. Both he and Mr Pearce apologised the one to the other and reciprocally accepted each other's apology. The Court understands that Mr Scott is a competition licence holder, hence the Court has no hesitation to suspend his licence for a period of twelve (12) months, which suspension is in itself suspended for a period of two (2) years provided Mr Scott is not in the period of suspension convicted of any conduct which may tend to bring the sport into disrepute.

19. GCR 208 stipulates that the MSA National Court of Appeal has jurisdiction over MSA's "own licence holders". Mr Sheward is also such a licence holder, while Messrs Reidy and Cilliers, and Mrs Tracy Cilliers are not. These aforementioned individuals were not charged with any transgression of the GCR's and even had they been charged, the Court has no jurisdiction over them (save for Mr Sheward) by virtue of the specific wording of GCR 208. Nevertheless, in the course of the proceedings it became abundantly clear that the conduct of these club members, particularly their heavy-handed and cavalier approach to issues of corporate governance and the rights of fellow club members was the root cause of the dispute, was prejudicial to the sport and the manner in which those involved thought it prudent to deal with their opposition and the consequent eruption would on any basis serve to have brought the sport into disrepute. Had this Court enjoyed jurisdiction over these individuals, it would have had no hesitation to severely sanction this adverse conduct. As matters currently stand, the Court can only voice its strong disapproval of the conduct aforementioned and advise the members concerned to acquaint themselves with and apply the principles of transparent corporate governance and the rules of natural justice.

20. Any failure on the part of the above captioned individuals to implement the directive in paragraph 11 aforementioned will culminate in the Court setting aside the purported name change and the Club shall revert to its original identity.

Mr Scott is directed to pay costs in the amount of R5 000.00

All parties are reminded of their rights of appeal to the MSA National Court of Appeal.

Findings were distributed via email on the 30th May 2013 at 12:00

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