
NATIONAL MOTORSPORT COURT OF APPEAL

IN THE MATTER of an appeal Against the Decision of the Stewards

BETWEEN **JOHN McINTYRE**

Appellant

AND **MOTORSPORT NEW ZEALAND INC**
("Motorsport")

Respondent

DECISION AS TO COSTS AND APPEAL FEE

J A LANGFORD
SOLICITOR
CHAIRMAN OF THE COURT

**DECISION OF THE COURT AS TO
COSTS AND APPEAL FEE**

- 1 The Appellant brought his appeal, partly based on procedural/jurisdictional grounds, and partly based on factual issues, regarding an on track incident. The appeal was very fully argued, at Invercargill on 14 January 2011, following the adjournment of a hearing scheduled to take place in Wellington on 17 December 2010.

- 2 We need not revisit the background to the adjournment, as the hearing of the matter in Invercargill facilitated the appearance of witnesses, and seems to have added little, if anything, to the expenses of the hearing. Some Court members would have incurred travel and accommodation expenses, wherever it was held. The total costs (or reimbursements) sought, total a relatively modest \$1,308.61.

- 3 As conceded in paragraph 4 of Mr Drummond's submission, costs will normally follow the event, and Motorsport is entitled to reimbursement of actual costs.

- 4 Mr Drummond submits that the appeal fee of \$5,000 should be refunded in full, in the exercise of the Court's discretion. He submits that because the appeal had merit, though unsuccessful, it is a proper case for the return of the fee.

- 5 The discretion in relation to the appeal fee is referred to in the Court's guidelines. Those make it clear that if the appeal is wholly unsuccessful, the fee will usually be forfeited. They also clearly state that the imposition of a substantial appeal fee is part of the risk assessment, and is intended to dissuade appeals. Whilst the appeal was not without merit, in the sense that it was not frivolous, and caused us anxious consideration, it was ultimately wholly unsuccessful. It would be undesirable for us, and a bad precedent, for us to

somehow give credit (or try to make an apportionment) for the fact that an appeal had some merit (in the sense that there were validly arguable points), though ultimately unsuccessful.

- 6 There is therefore no reason for us to depart from the general position set out in the guidelines. The Appellant is therefore ordered to pay Motorsports expenses of \$1,308.61, and the appeal fee is forfeited.

DATED this

13th

day of April 2011


.....

J A Langford

Chairman