



## National Court of Appeal Practice Guidelines

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### Introduction

This document is intended to be a guideline for both competitors and officials. Persons contemplating an appeal to the Court should be aware of the consequences of lodging an appeal, and the powers and procedures of the Court in disposing of the appeal.

The Chairman of the Court and the President of MotorSport New Zealand have consulted and are agreed that this guideline document should be produced to assist all persons considering an appeal, and those who might be affected by the outcome of an appeal. Hopefully this document will help avoid any future misunderstanding, grievance or sense of injustice that may follow an adverse decision of the Court.

This document is of general application only, and does not cover every possible situation. It is not binding on the Court – it is of guidance and for assistance only.

### Jurisdiction

The powers and the constitution of the Court are created by Part XI of the National Sporting Code. A further power is contained in Appendix 1 Schedule P at paragraph 2(e)(ii).

There are four main features to the jurisdiction and power of the Court:

- (1) Appeals are heard by way of re-hearing;
- (2) There is no right to representation;
- (3) The Court is not bound by any maximum fine prescribed, but is bound by any prescribed penalty;
- (4) The Court has discretion on disposal of the appeal to determine the outcome of the appeal fee paid, and to award costs.

## The Role of the National Court Of Appeal

Due to the high appeal fee and the cost to the Sport of convening the Court, an appeal to the Court should be regarded as a body of last resort, and should be used sparingly. The Sport has a very effective means of dealing with protests and rulings at the second tier level – the Stewards' Hearing.

Stewards are well qualified and very experienced in dealing with disputes trackside. The procedures are fair to all participants, and comprehensively explained in the National Sporting Code. Parties to a Stewards' Hearing should be well prepared and take care and time over the presentation of their cases. The Stewards can make an assessment of the merits of a case, assess the witnesses, determining their reliability and credibility, and give a reasoned decision in writing.

The Court has confidence in the ability of the Stewards to reach a proper decision in the first instance, and the onus is on the appellant to show that the Stewards got it wrong. Prospective appellants should be aware that the Court will be persuaded and influenced by the decision of a Stewards' Hearing, if it has been properly conducted. For this reason it is important that the decision of the Stewards' Hearing fully sets out the parties' cases and the reasons for the decision reached. The written decision forms part of the record of the Court on appeal. Nevertheless, the Court may make its own findings on the facts of a case, and can substitute its findings for those of the Stewards.

## Procedure for Filing an Appeal

The procedures for the filing of an appeal are set out in Clause 123 of the National Sporting Code. The time limits will be strictly enforced and observed by the Court. The Court may refuse to hear an appeal where there has been failure to comply with the time limits prescribed. There is a limited discretion to extend the time limit allowed to the Court. Only by reason of delay caused by *force majeure* can the discretion be exercised.

A Notice of Intention to Appeal and the payment of the appeal fee must be made within **one hour** of the issue of the decision in the lower court or Stewards' Hearing.

The appellant then has **three working days** to file either by post or fax or delivery with the Secretary of the Court a copy of the Notice of Intention to Appeal. The Notice should be accompanied with details of the decision appealed against and state with reasonable specificity

and particularity the grounds of appeal. If special equipment is required such as video players or other technical apparatus, notice should also be given at this time.

The period of three working days allows time for the Court to be convened. Notification to affected parties can be made during this period. Parties should use this period constructively to consider the likely outcomes and the consequences of pursuing their appeal. If, after reflection, it is decided not to proceed, any notice of abandonment should be filed within three days to avoid unnecessary cost and inconvenience.

The Court will be convened as soon as practical, depending on the existing commitments of its members. The Court will endeavour to sit, hear and determine the appeal expeditiously. In doing so, the Court will take into account matters such as championship rounds and standings. The Court will usually sit at Wellington, but other venues may be considered depending on the timing of the hearing and the location of the parties.

### **Exchange of Documents/Information**

It often happens that fresh or additional evidence and information becomes available after the notice of appeal is given. For this reason, the Court requires that both parties exchange their proposed statements of evidence and supporting documents **seven days** prior to the hearing date. This will help prevent “trial by ambush” and will also assist the Court to obtain an understanding of the issues, before the hearing starts.

Once the exchange of statements has taken place, only evidence in rebuttal of the matters raised in the statements, will be accepted from either party.

The seven day time limit will be applied flexibly, particularly in the case of urgent hearings, where time is short.

### **Appeal by way of Re-hearing**

The Court may regulate its own procedure. It is bound by rules of natural justice and fairness. Beyond that major requirement, which the Court strives to uphold, the Court hears the appeal as if the case had never been heard previously. This is known as a hearing *de novo* – literally a hearing from new or from the start.

In order to provide clarification and to expedite hearings, the Court may issue directions in writing to the parties before the hearing.

The appellant will be required to present their case first, unless agreed otherwise by both parties. The appellant presents the whole of their case, including any written materials, documents, drawings, photographs, and if available, video recordings. The appellant calls their witnesses to support their case. The appellant is not restricted to the evidence given to the Stewards' Hearing, as additional evidence may become available after the conclusion of the Stewards' Hearing. The appellant makes submissions to the Court setting out why the decision of the lower hearing was wrong.

Where there is a record available of the evidence given at the Stewards' Hearing, the Court will have regard to this, in order to understand the basis of, or reasoning behind, the Stewards' decision.

The respondent or any affected party in effect defends the Stewards' finding or decision. The respondent has the right to call evidence through witnesses and other exhibits, and to cross-examine the appellant or their witnesses. Similarly the appellant may cross-examine the respondent and their witnesses. In every case there is the opportunity for limited and relevant re-examination.

The Court does not insist on strict compliance with the rules of evidence, and has discretion as to the method by which evidence is admitted, nor will it require evidence to be given on oath, except where it considers credibility to be an issue. Where possible, written briefs of evidence should be provided at the hearing for all witnesses, and care should be taken with hearsay evidence. Where possible, evidence should be given by a person who has direct personal knowledge of the facts. Affidavit evidence may be given. The weight to be attached to affidavit evidence may be diminished as the Court does not have the opportunity to see and hear the witness and assess his credibility and reliability. Evidence given in this form cannot be tested by cross-examination. Generally affidavit evidence should be restricted to formal matters. Witnesses of fact will be excluded from the hearing room until they have given their evidence. Expert or technical witnesses may be present throughout the hearing. The Court will allow a certain degree of flexibility in the presentation of the cases, to ensure that both parties have a full opportunity to be heard, and that all relevant facts are before the Court.

Once the evidence is complete and all exhibits are produced, the appellant makes submissions to the Court, followed by the respondent. The appellant has a final opportunity to reply briefly.

The Court then considers its decision. Every attempt will be made to deliver the decision in writing as soon as practical after the hearing. Where there is urgency, a decision may be given orally immediately, with reasons in writing to follow later.

In order to ensure a completely new hearing, the Stewards do not give evidence at the appeal hearing. Generally an official of MotorSport does not appear or in any way participate in the appeal except as an observer. However a sporting official who is involved as a party to an appeal may be represented by a member of the MotorSport Executive or its General Manager.

### **Disposition of the Appeal**

It is impossible to set out all the variables available to the Court. In brief terms the Court may uphold the appeal, dismiss it, or vary the decision of the Stewards' Hearing. It may substitute any other breach of a rule or regulation or amend the original protest.

### **The Penalty Phase**

Where a monetary penalty was discretionary, the Court may increase or decrease any penalty imposed. It may substitute another penalty. Where the penalty, monetary or otherwise, is prescribed, the Court cannot interfere with the penalty, if the appeal on the facts fails.

Any party to an appeal who in the opinion of the Court is in jeopardy of an increased or substituted penalty will have the right to address the Court further and to be heard.

### **The Appeal Fee**

The fee is paid to MotorSport New Zealand upon the filing of the appeal. If the appeal is wholly successful, the whole of the fee will usually be remitted to the appellant. Similarly, if the appeal is wholly unsuccessful, the fee will usually be forfeited.

Between these outcomes there exists a wide discretion. The order of the Court may then turn on a determination of the merits of the appeal. Depending on the merits of the appeal the fee may be remitted or forfeited in full or in part. An example may be if an appeal is founded on an attempted procedural irregularity but the outcome is the same as in the lower hearing, then the fee may be fully forfeited.

Little further guidance can be given on the issue of the remittance or the forfeiture of the appeal fee. It is a substantial sum of money partially intended by MotorSport New Zealand to dissuade likely appeals. Additionally there are significant costs incurred when an appeal hearing is

convened. Whilst the members of the Court are not paid for their services they are reimbursed for their costs of travel and incidental expenses which MotorSport is expected to pay. The venue and the equipment used for the hearing are also a cost borne by MotorSport.

The likely remittance or forfeiture of the appeal fee should be part of the risk assessment made by any person contemplating an appeal, as is the possibility of an order for costs.

## **Costs**

The Court now has the power to award costs. It is likely that costs will be awarded against an unsuccessful appellant, as a matter of course. Potential appellants need to be aware that the costs of convening a hearing can run into thousands of dollars, particularly where accommodation and air fares are incurred. The Court will exercise its discretion to award all or part of the costs, depending on the merits of the appeal, and other relevant factors.

## **Legal Representation**

Consistent with the policy behind the denial of legal representation at the Stewards' Hearing, the parties do not have a right to legal representation at an appeal. This means that lawyers representing the parties are not to be present in the hearing room. However that does not prevent the parties taking legal advice in the consideration and preparation of an appeal. Indeed, parties are encouraged to take legal advice, as the Court cannot and will not give advice to either appellants or respondents as to the manner in which they conduct their appeal. The Court is often assisted by professionally prepared submissions.

## **Conclusion**

It is hoped that this explanation assists any competitor or official likely to be affected by an appeal or contemplating an appeal to the Court in the future. It should be stressed that the creation of the Court is directly determined by the rules prescribed in the National Sporting Code. The rules are clear and create the wide discretions identified in these guidelines. If the Sport believes that the operation of the Court does not reflect the spirit of motor sport, then change has to occur through a recommendation supported by the Executive to the MotorSport Council.

In the meantime the Court will endeavour to achieve consistency and justice in the resolution of conflicts arising from motor sport competition. The members of the Court are volunteers, along with hundreds of others in the support of motor sport. As the final arbiter of disputes in motor sport the Court must be perceived as independent and impartial and fair. The present constitution and the rules of the Court achieve this aim.

Dated at Wellington

This 31<sup>st</sup> day of August 2006

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**John Langford**

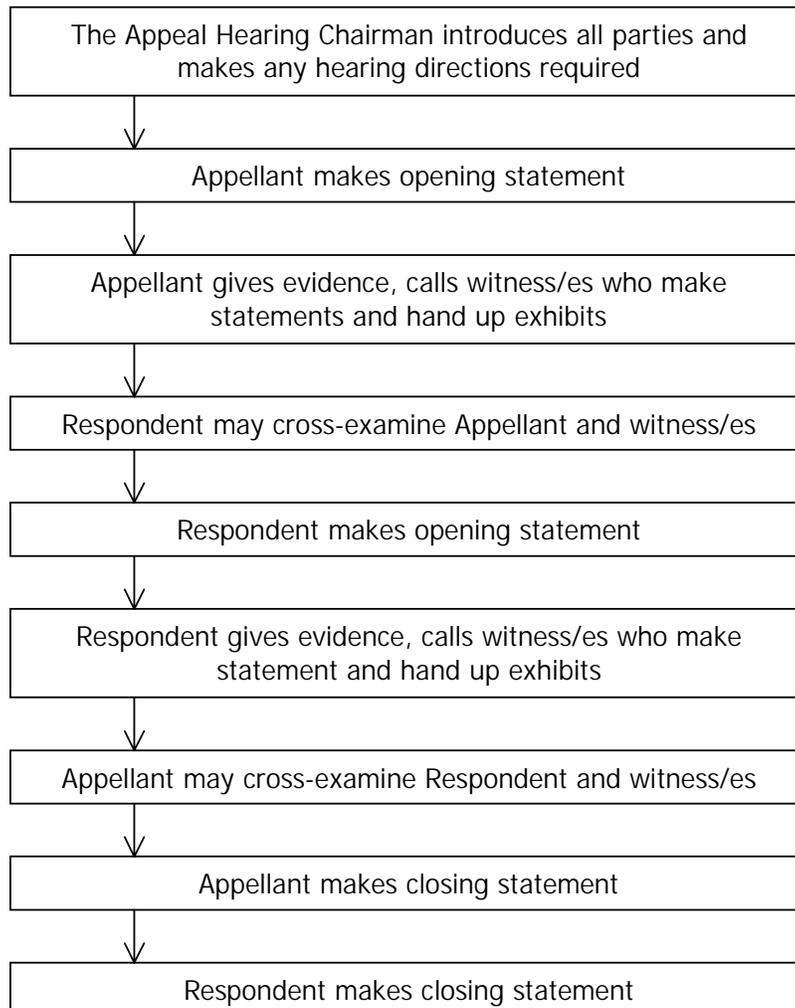
Chairman – National Court of Appeal

## Flow Chart of Guidelines for MotorSport New Zealand National Court of Appeal Hearings

### Definitions

- Appellant: *Person who lodged an appeal*
  
- Respondent: *Person either representing MotorSport New Zealand Official/s or whom is named the other party by the appellant*

### 1. The Hearing Begins



### 2. The Court then retires to consider its decision.