

In the matter of	An Appeal to the National Court of Appeal of Motorsport
Between	NORTH ISLAND ENDURANCE RACING DRIVERS CLUB INC ("NIERDC")
	Appellant
And	MOTORSPORT NEW ZEALAND ("MNZ")
	Respondent

DECISION OF THE COURT

Prepared by:

LANGFORD LAW
PO Box 344, Wellington 6140
Telephone: (04) 472 4286: Facsimilie: (04) 472 4289
Solicitor Acting: John Langford
Email: jal@langfordlaw.co.nz

DECISION OF THE COURT

1. This appeal was heard at Lower Hutt on Friday, 19 August 2022, Mark Petch represented the Appellant and presented its case. Elton Goonan appeared for MNZ. Ricky Grey represented the Car 96 entrant, and made some brief submissions.
2. In advance of the hearing we had received very competent submissions from the Appellant. It was helpful to have these, as they assisted in identifying the issues in the appeal. Having read the submissions the court issued a Memorandum, raising issues, or requesting advice, as to the parties' position on a number of matters. The Appellants further submissions assisted us in understanding what were, and what were not, the relevant issues.
3. We now set out the background facts, which in themselves, are not overly complex:
 - (a) NIERDC is a club/incorporated society which arranged the 2022 Golden Homes North Island three Hour Endurance Racing series. The cars involved are very high performance vehicles. The series is/was governed by a set of approved articles, and by MNZ's National Sport code (NSC). The series was sanctioned by MNZ.
 - (b) Article 2 states that the objection of the series is "to promote foster and advance racing, by providing entrants with a well promoted series, with enjoyable and relaxed competition, in the spirit of endurance racing."

Whilst this objective is noted, the racing itself is highly competitive, requires great skill, and the allocation of points is very important to the drivers and/or entrants.

(c) At the second round which took place at Taupo on 22 May 2022 there was a disappointingly small number of entrants (12 cars), and the drivers and entrants all expressed their concern about that.

(d) This Appeal concerns round three held at Hampton Downs on 17/18 June 2022 for which there were only nine entrants. Qualifying took place on 17 June. It needs to be stated that the series is a type of "pro/am" series, with three drivers allowed per car – but only one "elite driver" per team allowed, at each round of the series.

(e) On the morning of 18 June Shane Helms, "the non elite" driver entered as a driver of Car 51 had to withdraw, for family reasons. This reduced the number of cars competing to eight. Because conditions were wet, as there was no opportunity to practice, there was no non elite driver who could safely step into Shane Helms's shoes. However, an elite driver, Tom Alexander, was at the track, and was available. Representatives of the NIERDC Committee therefore sought and obtained, signatures of entrants/competitors, to allow a second elite driver (Tom Alexander) to "compete" in Car 51, on condition that Tom started the race from pit lane, and that "no series points will be awarded".

(f) As a result, the clerk of the course, authorised by the stewards of the meeting, issued "Bulletin Number 1" (copy attached) under the provisions of NSC Article 18 "in confirmation that the following amendments, notices, or points of clarification have been authorised to the text of the Supplementary Regulations It is recommended that in addition to retaining a copy of this bulletin, **all parties modify the text of the regulations**, according to the following":

It goes on to state that the change of driver for Car 51 (is approved).

(g) The race took place, and despite the various handicaps, Car 51 was first over the line, followed by Car 96. Initially Car 96 was awarded the win (thus winning the championship), but later, apparently after the drivers of Car 96 had left the track, Car 51 was declared the winner – thus "demoting Car 96" to second, and affecting the outcome of the series.

(h) MNZ, at the request of the entrant(s) of Car 96 convened an enquiry Review Panel which recommended that there be an enquiry before the Judicial Committee. The Judicial Committee found that Bulletin 1 was an attempt to amend the series articles (which could not occur without the approval of MNZ Office, which was not obtained). In short, the Bulletin was found to be invalid, and the Judicial Committee expressed its disapproval of the approach taken by the stewards at the event, and NIERDC were ordered to be reprimanded for their handling of the event.

Discussion

4. (a) At first sight Bulletin 1 does appear to authorise an amendment (to the Supplementary regulations – not the series articles)

— It refers to Article 18 in the NSC which allows **amendments**, notices, or points of clarification.

—It states that all parties should “modify” (i.e. amend) the text of the regulations.

(b) NIERDC strongly submitted that Bulletin 1 was not intended to be, and could not be construed or interpreted as, a series articles amendment. NIERDC argued that Bulletin 1 fell within one of the the definitions in NSC Art (2)(i) i.e.

*“any document, advising **important information** to the competition*

(c) Bulletin 1 certainly was a document advising important information, but how do its contents reconcile with article 3.1.3 which is mandatory in its wording? “there **shall** be a minimum of two (2) drivers.” etc etc

(d) In its first set of submissions NIERDC referred to the objectives set out in the series articles

“enjoyable and relaxed competition. . . .” and argued for a purposive interpretation of the articles (in particular art 3.1.3).

However even taking the most fair, large and liberal interpretation of 3.1.3, it could not be stretched or interpreted to

allow a clear breach of the rule. The rule is clear and unambiguous.

(e) The appellant's first submission (para 11) refers to "the ineligibility of Bulletin 1." So we come back to considering the validity of Bulletin.

(f) It is considered relevant that the consent form refers to series articles 3.1.4 and allows second elite **driver to compete** in car # 51:

It says "no series points will be awarded". (Clearly this is referring to the driver).

On the face of it, the form only refers to the **driver**, not to the car /team . Of course we do not know what was intended by, or in the mind of the person who drafted the form. But it seems there is a possibility that no thought was given to the classification of the car, or to the effect that the placing of the car would have on the other competitors. As it turned out, because car # 51 crossed the line first, it potentially affected, all of the competing teams.

(g) It is significant that the Bulletin 1 merely states:

"Item 1. Change of driver for car 51 – Three Hour Race". It does attach the signed consent form, but it does not state that the form, forms part of the Bulletin.

No doubt time was short, and there is no doubt that the officials genuinely and rightly believed that the change of driver was in

the best interests of the event, and the sport. But on this occasion, with the benefit of hindsight, and with the benefit of the submissions, and discussion at the hearing, the officials got it wrong. If there was to be a change of driver, in breach of the articles, it should have been made clear that neither the non compliant car, nor its drivers, would be eligible for any points or for classification in the results.

(h) As stated above, it is probable that if application had been made to MNZ for an amendment to the articles, to allow the two elite drivers on this occasion, the amendment would have been clearly worded, to make it clear that car # 51 and its drivers were not eligible for either classification or series points.

(i) We have given some thought to how article 3.1.4 might be amended, to assist in future similar situations, but using such words as “except in an exceptional situation”, might give rise to disputes as to what that phrase meant, or how it was to be applied.

5. Mr Petch’s presentation

Mr Petch, very clearly and articulately, presented the Appellant’s case. In discussions he reiterated that there was no amendment to series articles intended, or attempted. He distilled his argument by stating that what he sought was “an exception” (to article 3.1.4) given all of the surrounding circumstances.

Our findings

6. We fully accept that the circumstances on day were difficult (possibility not exceptional, because a similar situation had arisen in the previous round). The field was depleted, at least partly due to Covid. NIERDC were doing their best to present a credible field, and some exciting and competitive racing.

7. As already stated, it is likely that had there been time, MNZ would have authorised a change to the series articles to allow the second elite driver to take part, with the conditions clearly set out. The Officials of the event were not (and nor are we), able to grant an exception, because the article is mandatory and clear. The substantive appeal therefore fails, however we are of the view that some of the ancillary orders of the Judicial Committee were somewhat unnecessary, or inappropriate, and we order as follows:

-Orders 1 to 3 of the Judicial Committee are confirmed


- order 4 (that NIERDC be reprimanded) is quashed, due to mitigating factors

-order 5 confirmed

-order 6 altered to "The Stewards be reminded that their authority to amend Accredited Series Articles, or to authorise an ineligible competitor or team to take part in a sanctioned event, is strictly limited, and that they have a duty to prevent any ineligible competitor or competing vehicle from taking part.

-cost order (7) quashed

-order 8, costs (and appeal fee) to lie where they fall, confirmed.


Chairperson

John Langford
Solicitor
Wellington

22 August 2022

NIES – Round 3

NIERDC / Speedworks Events.

Bulletin Number	1
Implementation Date	Immediate
Issue Date	18 June 2022

OFFICIAL BULLETIN

This bulletin is issued under the provisions of the MotorSport NZ National Sporting Code Article 18 in confirmation that the following amendments, notices or points of clarification have been authorised to the text of the Supplementary Regulations issued for the above named event. It is recommended that in addition to retaining a copy of this bulletin all parties modify the text of the regulations according to the following:

Item 1. *Change of driver for car 51 – 3 Hour Race.*

Reason:

Shane Helms is unable to compete due to personal reason. NIERDC requested that Tom Alexander replace him. All other competitors in the 3 Hour race have agreed to this changed and signed a document to this effect. The document is attached too this bulletin.

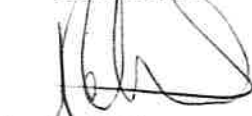
This bulletin is issued by the event Clerk of the Course on behalf of the Organisers.

Clerk of the Course



Steve Collier

Bulletin authorised by:
Stewards of the Meeting



Campbell Robertson



Dale Crossley



2022 GOLDEN HOMES NORTH ISLAND ENDURANCE SERIES
ROUND THREE: HAMPTON DOWNS MOTORSPORT PARK 17-18 JUNE 2022
THREE HOUR RACE

Due to the family circumstances of the Driver of Car #51 Shane Helms, and under Series Article 3.1.4, in the interests of retaining another car in the 3-hour race, we the undersigned car driver agree to allow a second elite driver to compete in car #51 under the following conditions:

- Tom Alexander starts the Race from Pit Lane.
- No series points will be awarded.

Car #	Driver	Signature		
4	Marco Giltrap			
9	Francois Beziac			
10	Andrew Fawcet			
27	Sam Filmore			
62	David Cremer			
88	Steve Brooks			
90	Glenn Smith			
96	Paul Pedersen			