

EQUESTRIAN TASMANIA INC.

In the Matters of the Following Complaints between the Parties Specified:

First Matter:

Between

Erica Clark, Tamara Macleod, George Self, Madelaine Way (Complainants);

and

Tania Hay, Laurie Smith, (Respondents);

and

Equestrian Tasmania Inc, (Interested Party);

Second Matter:

Between

Tania Hay, Laurie Smith, (Complainants);

and

Erica Clark, Tamara Macleod, George Self, Madelaine Way (Respondents);

and

Equestrian Tasmania Inc., (Interested Party);

Judiciary Committee Comprising:

Stephen McEwen QC
Dr Warwick Vale
Wendy Hunt

Hearing Date: 16.4.2016

REASONS FOR DECISION

The Complaints

This Judiciary Committee has been convened by the Board of Equestrian Tasmania to conduct this hearing. The hearing relates to:

- A complaint, by letter dated 29/6/15, against Laurie Smith and Tania Hay. The complainants are Erica Clark, Tamara MacLeod, George Self and Madeleine Way; for convenience they shall be referred to as Clark and Others.
- A complaint, by letter dated 13/2/16 against Clark and Others. The complainants are Laurie Smith and Tania Hay.

Succinctly paraphrased, the first complaint alleges social media harassment and conduct said to amount to intimidation and bullying. Some of the specific complaints raised in the letter are alleged conduct by Smith; some alleged conduct by Hay; and some allegations are directed to both Smith and Hay. Their conduct is said to be in breach of the ETAS Constitution and/or various EA policies.

The second letter, succinctly paraphrased, has two functions. Firstly, it is a detailed response to the allegations made against Smith and/or Hay in the first letter. Secondly, it is a complaint against Clark and Others, that they, in making the first complaint, have made statements that are without merit or foundation. In so doing, the second complaint alleges that Clark and Others are in breach of the ETAS Constitution and/or EA policies.

The Hearing

The hearing was conducted on Saturday 16 April 2016 at the Travel Lodge, Hobart.

Complainants George Self and Madeleine Way were present for the hearing, together with their advocate, Katherine Way. Ms Clark was unable to attend the hearing as she was overseas. She was permitted to submit written material, which included a “Response and Particulars” document of 65 pages.

Respondents Tania Hay and Laurie Smith attended the hearing, together with their advocate Roseanne Mason.

Ms Susan McDermott, chairperson of ETAS, attended the hearing for the third party.

The approach taken by the Tribunal was to delineate the 15 allegations that were identified in the first letter, and the particulars. These are set out in the following part of this judgment.

For each of these allegations, we invited the complainants to address the Tribunal upon that specific allegation; to direct us to any of the written material, including annexures, relating to that allegation; and to tell us anything further, relevant to that allegation. We then made similar invitations to the respondent in relation to that allegation. We adopted this procedure in relation to the 14 specific allegations, and the further general allegation of bullying and intimidation.

During the hearing the Tribunal asked questions of Ms McDermott on a few of the topics that arose; and requested two witnesses, Jill Hart and David Smith.

At the request of the complainants (of the first matter), we heard evidence from Josh Clark and Sally Smith. The complainants then declined to present any further witnesses to the Tribunal.

Smith and Hay elected not to present any witnesses to the Tribunal. They relied upon written material, and what was said by them, and their advocate during the hearing.

We have considered and had regard to all of the written material submitted by all parties prior to the hearing; and to further materials tendered to the Tribunal during the hearing.

We note that at the hearing, and in this judgment, by approaching our task from the point of view of the issues particularised by the complainants in the first matter, in their letter and written particulars; we are effectively at the same time dealing with the second matter also. This is because the second matter is a mirror image of the first matter; Hay and Smith allege that all of the issues raised in the first matter are so lacking in foundation or merit, as to amount to misconduct on the part of the complainants in the first matter. Accordingly, by examining each of the issues in the manner we do, we are dealing with both matters.

Before turning to the specific allegations that were addressed during the hearing, we point out that this judgment is a succinct statement of our reasoning and

conclusions in relation to each allegation. We have carefully considered all of the written material, and carefully listened to everything the parties wish to say relating to each allegation at the hearing. It is neither necessary, nor practicable, to comprehensively set out that material in this judgment.

The Allegations

Allegation 1 against Tania Hay (particulars 7.5). It is alleged that on 23/5/15 she made, or caused to be made, the Facebook post:

“There’s no substitute for experience. Your degree clearly doesn’t give you a degree in manners or respect. You don’t measure up in my eyes.”

It is asserted that this post is directed to “me and other committee members”, meaning Ms Clark and the other signatories to the first complaint.

We do not need to dwell upon this allegation. It is not disputed that Ms Hay made the post, although she claims to have no recollection of it. Even assuming that it was directed at Clark and/or her fellow committee members, the content of the posting is quite unexceptional. We find it surprising, and even a little troubling, that the complainants would point to that post as amounting to misconduct justifying disciplinary action. The Social Media Policy does not prevent members from expressing opinions, including opinions disagreeing with, or taking issue with, other members or officials. There is nothing offensive or inappropriate, in that post.

Allegation 2 against Hay (particular 7.5). It is alleged that on 27 June 2015 Tania Hay posted or caused to be posted the following:

“My patience is running thin. My blood pressure is rising high. My silence is no longer guaranteed. You keep it up you rude, disrespectful person and you will get knocked into the middle of next week. How dare you treat others in such a belittling manner. Whatever vendetta you are running, whatever game you are playing, I suggest you lose it. He might bury you but I WILL”.

The complainants allege that this post refers to Clark and/or her fellow Show Horse Committee members.

It is not disputed that this post was made by Tania Hay. Through her advocate, Ms Hay told the Tribunal she does not recall making the posting but believes it is a reference to a person within her work environment.

The Tribunal find this explanation quite implausible. Upon all of the material before the Tribunal, we consider this is a reference to Ms Clark.

We shall return to this allegation later in the judgment.

Allegation 3 is an allegation against Smith (particular 8.3) that he, on 27/6/15, and on periodic occasions between 23/5/15 and now, constantly questioned Ms Dinka Ireland’s accreditation and belittled her reputation as an EA Measurer.

We note the original letter of complaint of 29/6/15 asserted that Ms Dinka Ireland:

“Has been treated poorly by fellow officials, Mr Laurie Smith and Mr Davidson. On 23 May, Ms Ireland was prevented from measuring by not being allowed to go near horses that were to be measured. Further, Mr Laurie Smith consistently asserts that she lacks accreditation ...”

The context of this assertion in the original letter of complaint, plainly suggests that it was Laurie Smith who prevented Ms Ireland from measuring on 23 May. However, Mr Smith’s response is that he was not even present at the event on 23 May.

The complainants' written submission now focuses on 27 June 2015 as the only specific date.

The reference to 27 June, may, or may not, be a reference to the occasion referred to in the statement of Dinka Ireland. Ms Ireland's statement does not identify the date she is referring to.

In any event, Mr Ireland's statement (of 30/3/16) asserts:

"I was told that an email had been sent around by Laurie Smith stating that I was not a measurer and needed to qualify".

If there was such an email, it has not been provided to us.

The complainants' assertion relating to 27 June 2015 relies upon the statement of Dinka Ireland and/or the (apparent) email that she says she was told about. It falls well short of establishing any misconduct on the part of Mr Smith.

Similarly for the period between 23 May 2015 and now, there is no material before us to make out the allegation of misconduct by Mr Smith in relation to Dinka Ireland and her qualifications or role as a measurer.

Allegation 4 against Laurie Smith (submission 9.3). It is alleged that on 22 September 2014 Smith sent aggressive communications to Clark for the apparent purpose of intimidating her into relinquishing her role as chair of the ETAS Show Horse Subcommittee.

If there were any written or electronic communications, they have not been produced. Attachment 4 is an email from Ms Clark to the ETAS manager, of 22/9/14. It appears to be a reference to a telephone conversation with Mr Smith earlier that day. It alleges Mr Smith:

“Asked me to step down as chair and that he should be chair instead.”

It then quotes the reasons he apparently gave for this.

There is nothing before us that amounts to sending aggressive communications. If the telephone call did occur as alleged in the email; and even if Ms Clark “felt quite pressured” as she suggests in the email; we still do not see how this amounts to any type of misconduct requiring disciplinary action. We note Ms Clark did not want to take any action at the time.

It may be that Mr Smith should exercise more caution in deciding whether he makes approaches to persons about Committee positions; especially after the positions have been filled. Moreover, if he is to have discussions regarding committee positions, more tact and sensitivity may be called for.

But the material we have been provided with, does not make out misconduct.

Allegation 5 against Laurie Smith (submission paragraph 9.7). On 19 September 2014 respondent Smith applied to the TEC Subcommittee on behalf of the Show Horse Committee and without the complainants’ knowledge, discussion or approval, to become a user group of TEC.

The relevant attachment in support of this allegation is an email from Laurie Smith of 19/9/14 seeking access by Show Horse to the Tasmanian Equestrian Centre. The response from the chairman of TEC was favourable.

Ms McDermott told the Tribunal that she had requested Mr Smith to make the approach to TEC; and that it was effectively on behalf of the Committee. Based upon all of the material before us, we accept that Mr Smith was authorised to make the approach to TEC.

Even if that had not been the case, it is patently clear that Mr Smith was genuinely pursuing the interests of show horse members in Tasmania. So it still would not have amounted to a plausible allegation of misconduct, justifying disciplinary action.

Allegation 6 against Smith (Particulars 9.9). On 29 and 30 October 2015 respondent Smith prevented subcommittee members from having administrator access to the ETAS Facebook page.

There was a good deal of spirited discussion on this topic at the hearing. For instance:

- It was suggested by Ms Mason, that as Mr George Self had administrator access, he could have authorised Ms Clark to have administrator access. Mr Self responded that he was unaware of this.
- The provenance of the Facebook page was in dispute. In written submissions Smith and Hay assert that it was originally set up by Tania Hay. At the hearing it was asserted it was originally set up by Ms Clare Reynolds.
- The extent to which this Facebook page is, or purports to be, an official ETAS page, is in contention.

- The point made on behalf of the complainants is that if this is the ETAS Show Horse Facebook Page, then the chair of the Show Horse Committee should have administrator access to it. This appears to be a plausible position.

This Tribunal is not in a position to make a formal finding as to ownership of the Facebook page. It does appear that there is some confusion or uncertainty about the Facebook page, and it would be in the interests of members and officials if this was cleared up. We shall return to this in our recommendations in due course.

Although we were unable to reach any firm factual conclusions on this topic, we consider that as a matter of logic this allegation of misconduct is not made out against Mr Smith because either:

- The Facebook page belongs to ETAS and therefore it is for ETAS, not Mr Smith, to grant or refuse administrator access; or
- The Facebook page does not belong to ETAS and therefore Ms Clark, in her capacity as chair of Show Horse Committee, did not have an entitlement to be granted administrator access.

Allegation 7 against Smith (submission paragraph 9.11). On 27 June 2015 respondent Smith attended the measuring day without approval; acted aggressively towards Clark and Others; and prevented Ms Clark from utilising ETAS owned equipment.

It emerged during evidence and discussions on this topic that this was a measuring day jointly organised by ETAS Show Horse Committee and the Show Horse Council of Tasmania. This may have led to some ambiguity or confusion of roles.

On the evidence and material before the Tribunal, it appears that Mr Smith was entitled to attend on this day, and had done some scanning of horses. The scanning equipment which Ms Clark required him to hand over had been in his possession for a number of years; and he was intending to take it to the further joint measuring day in the north of the State on the following day.

It was never made entirely clear to the Tribunal why Ms Clark required the scanner from Mr Smith.

As to Mr Smith acting aggressively, we note that there are two competing versions of the facts. On the material before us, we are not in a position to choose between those competing versions.

Allegations 8 and 9 can conveniently be dealt with together:

Allegation 8 against Smith (Particular 9.12). Between November 2014 and 24 June 2015 respondent Smith did not remit the fees of approximately \$470 to the ETAS office.

Allegation 9 against Smith (9.13). Between November 2014 and at least June 2015 respondent Smith did not furnish measuring records to the ETAS Branch as required.

It was acknowledged at the hearing that there had been a delay in remitting the fees and data. There was discussion of the importance of fees and data being properly remitted to ETAS. According to Ms McDermott, ETAS were not troubled by the

delay in this case. Again, we consider this topic to justify a recommendation, but not any disciplinary finding.

Allegations 10 to 13 all arise out of the 2015 Horse of the Year (HOTY) event. We shall set out these allegations, then deal with them compendiously.

Allegation 10 (11.3). On 24 and 25 January 2015 respondent Smith did not act professionally and competently in managing swabbing practices at the HOTY event.

Allegation 11 (11.4) alleges conflict of interest by respondent Smith by placing himself in a position of influence over swabbing decisions and practices at the 2015 ETAS HOTY event where his two nieces and his de facto spouse and her students were competing.

Allegation 12 (12.3) against Smith. On 24 and 25 January 2015 respondent Smith did not ensure that the organising committees' decision as to method of swabbing was procured.

This appears to be a complaint that he is responsible for some confusion or difficulties in having a vet present.

Allegation 13 (12.4) against Smith. On 25 January 2015 respondent Smith who was acting or assisting as a swabbing steward, selected a horse to be swabbed.

Ms Jill Hart provided evidence relating to the medication control practices at the HOTY event. It was Ms Hart, not Laurie Smith who had responsibility for the medication control.

Discussions of this topic reveal some issues with the medication control practices, a topic we shall return to in our recommendations. Again, however, we do not consider the evidence amounts to misconduct on the part of Mr Smith. What occurred may have fallen short of what had been required or expected by the Committee. Some people appear to have formed the perception that Mr Smith acted inappropriately or with a conflict. However, having heard detailed discussion and submissions, we consider that what actually occurred was a result of a number of unexpected or unfortunate circumstances, rather than any misconduct or neglect on Mr Smith's part.

Moreover, as Ms Mason correctly points out, the Show Horse Committee resolution was that Jill Hart was to organise and find a vet. Ms Hart told the Tribunal of the difficulties she encountered in this regard.

Allegation 14 (13.2) against Tania Hay. On 14 September 2013 respondent Hay procured a measuring certificate for a horse she operates via her family member, David Smith, her de facto partner's brother.

Without dwelling upon the evidence and discussion of this topic, we consider that it fell short of making out any impropriety by Ms Hay. Again, we shall include recommendations regarding measuring certificates.

Allegation 14 was a general allegation of intimidating and bullying conduct by Mr Smith towards ETAS members or officials over a period of time.

In addition to the written material, the complainant produced two witnesses on this topic. Their evidence fell well short of establishing any bullying or intimidation on the part of Smith.

Conclusion

As noted in relation to allegation 2, we are not persuaded by Ms Hay's explanation of that post. We find that it was directed towards Ms Clark.

The posting includes content which is intemperate, and inadvisable. It would be open to the Tribunal to find that the post amounts to a breach of the Social Media Policy or Member Protection Policy. However, we are mindful of the entire circumstances, of this case, including allegations and counter allegations over a significant period of time, which have heightened emotions on each side. Secondly, all parties, including Ms Hay have been subjected to a prolonged period of apprehension and uncertainty relating to the investigation and hearing of these matters. In those circumstances we consider that the post comprising allegation 2, is sufficiently addressed by the Tribunal finding, as we do, that it was intemperate and inadvisable; and firmly cautioning Ms Hay to avoid making such postings in future.

For the reasons stated above, we consider that allegation 1, and allegations 3 to 15, are not made out. Allegation 2 is made out, and we have dealt with it to the extent deemed necessary.

Given the evidence and material before us, and the discussion generated by these issues, we do not consider that the counter allegations by Smith and Hay justify

disciplinary action against the complainants in the first matter. It is sufficient that all parties have now had their opportunity to ventilate the issues. The failure of Clark and others to make out the majority of their allegations, does not constitute misconduct on their part.

Those findings formally conclude this matter. However, in the interests of the sport of equestrian in Tasmania, and to assist in addressing issues genuinely raised by the parties, we make the following recommendations. It will be for ETAS or EA to consider the extent to which they wish to pursue or implement them.

Recommendations

1. Social Media: Members be reminded of their responsibilities under the Member Protection Policy and Social Media Policy, and be cautioned to exercise courtesy and restraint.
2. Medication Control: During the hearing we heard evidence and submissions that suggest the medication control procedures would benefit from a review. Based upon the limited material before the Tribunal we are not in a position to make a more specific recommendation.
3. Measuring:
 - a) ETAS take steps to qualify additional measurers.
 - b) Where two measurers both measure a horse (on the same occasion) they both sign the certificate.

4. Facebook Page: That ownership and administration of the ETAS Facebook site be clarified. If this turns out to be impossible, that a fresh site be set up and administered by Equestrian Tasmania.
5. Remitting fees and data: The time frames and procedures for remitting measuring data and fees should be reviewed.



Signed for the Judiciary Committee

Stephen McEwen, QC
6 May 2016