

PRESS RELEASE

Gross Misconduct Allegations filed against AC Jury Members

Matt Mitchell, previously a member of Oracle Team USA, has filed complaints of Gross Misconduct against all five Americas Cup jury members with the International governing body (ISAF). This action follows on from his recently laid charges of cheating against another team member Simeon Tienpont.

ISAF were paid USD \$1million to provide judicial expertise in the running of the 34th Americas Cup. The complaints allege a trail of conspiratorial ineptitude that is hard to refute.

In possession of an admission signed by Simeon Tienpont, Investigators Bryan Willis and Graham McKenzie, who went on to preside over the case, chose not to bring charges of cheating against Tienpont. Why and how could a 5 person jury ignore this?

The Jury members also had in their possession a document they failed to disclose. This document records a meeting between Willis, McKenzie, Grant Simmer (OTUSA General Manager) and Lee Ann La France (OTUSA appointed independent investigator) that fuels the implication of collusion. Simmer has a reputation for telling the truth and after this meeting was removed from the 'witness list' and was no longer required to attend the hearing.

Graham McKenzie has since been found not to hold the required certification to be a member of any International Jury. Paul Henderson a past ISAF President and IOC member has also laid a similar complaint in this regard. McKenzie faces a further allegation of witness tampering by acting in an intimidating and or threatening manner. McKenzie holds a position on the ISAF Ethics Committee which makes this behavior all the more abhorrent.

Mitchell claims the Jury members were selectively negligent and that he was unwittingly used as a pawn in OTUSA's quest to defend the Cup against ETNZ.

The disruption to Mitchell's family, and himself, has been monumental. ISAF recently ruled a close to his case and no breach of the rules found. This follows on from Yachting New Zealand's report in April of last year which also cleared him. Mitchell is now embarking on an indefatigable quest to bring the real perpetrators to account.

"I have at all times told the truth during this episode and placed my reliance in the ISAF and ACIJ process to establish the facts. As competitors we are faced with no alternative but to trust in the administrators of our sport to adjudicate without bias" Mitchell says. In this regard the ACIJ failed completely.

New Zealand, 5 February 2015

5 February 2015

Chief Executive Officer
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Sent via email to Helen.Fry@isaf.com and disciplinary@isaf.com

Dear Sir/Madam

In August of 2013 the Americas Cup International Jury (ACIJ) convened and conducted hearings under Racing Rules of Sailing – Americas Cup edition (RRSAC) rule 69 – Allegations of Gross Misconduct.

I was a member of Oracle Team USA subject to the allegation.

The investigation and hearing was conducted in a clandestine manner. The passage of time has revealed a number of occurrences that bring into question the result. It is evident that the actions of the ACIJ members, who had an inherent responsibility to ensure that they conducted themselves in a fitting manner, exercising the ethics and principles that are demanded by such a position of responsibility, came well short of the required standard.

The actions of the ACIJ in AC31 have caused extensive and unnecessary hardship to both my family and myself. The ineptitude and failure to uphold basic principles of justice, and to execute their duties in a diligent manner question their motives, and have brought the ISAF process into disrepute amongst fellow competitors, and other interested observers.

As a result I submit requests for disciplinary action against Mr David Tillett, Mr Graham McKenzie, Mr Bryan Willis, Mr John Doerr and Ms Josje Hofland while representing ISAF in the capacity of a Race Official, namely a member of the ACIJ at the 34th Americas Cup presiding over the events of AC31.

In accordance with RRSAC 69 a report was sent to both my Member National Association (MNA) and the International Sailing Federation (ISAF).

Yachting New Zealand in its report recommended “No Further Action” and raised a number of questions with regard to the conduct and actions of the ACIJ while conducting the case. Stating in its conclusion that (86):

In relation to Matthew Mitchell examination of the evidence does not satisfy us that we would be able to establish to the *comfortable* satisfaction standard that he was involved in filling the forward king post of Boat BAR with resinous material. In relation to his being aware that

the king post was heavy having picked it up from a workbench, and given that he was aware that a written instruction had been given to carry out this work, we do not consider that a Hearings Committee would likely be persuaded to impose any additional sanction or penalty. We do not recommend further action be taken by YNZ in that respect.

The Disciplinary Panel, appointed by ISAF Disciplinary Commission, to address the report (from the ACIJ) concluded that "No Further Proceedings in this matter", closed the case and proceeded to make "no finding as to the truth or otherwise of the AC Jury report or of any breach by Mr Mitchell".

In a related case of AC31, the international governing body for all sports, Court of Arbitration for Sport (CAS), stated in their findings with regard to "Procedural fairness" that:

There should be a clear demarcation line between the roles of Investigator, Prosecutor and Adjudicator - in short a legal separation of powers.

There should be a full disclosure of all material in the possession of the prosecution which may be of assistance to the person charged with a disciplinary offence.

The material on which the adjudicator is invited to base its verdict should be clearly defined to the person charged, and, as far as possible, the adjudicator should be shielded from material potentially prejudicial to the person charged but on which the prosecution does not intend to rely.

There should be a clear demarcation between persons who sit at first instance and those who sit on any bodies to which first instance decisions may be appealed within the same disciplinary structure.

A person charged should be informed of and given access to the procedures to be applied in his or her case.

No change to a disciplinary procedure should be introduced with retrospective effect and less favorable to the person charged.

The actions of the ACIJ contravened these principles in all respects. The members of the ACIJ are in a trusted position and are expected by the participants in our sport of sailing to be beyond reproach.

After the hearing the ACIJ concluded the following;

FINDINGS IN RESPECT OF MATTHEW MITCHELL

63. After his arrival in San Francisco on 15th July 2012, Matthew Mitchell was involved with the assembly of boat BAR. It was the first time Matt assembled an AC45. Matt testified that he had never read the AC45 Class Rule.

64. He was aware that filling a king post was on the BAR job list, but at the hearing he claimed that he did not know what 'fill kingpost' meant and that he did not realize that it might involve a rules violation.

65. Simeon Tienpont stated in his signed interview record as well as in the hearing that, after Matt asked him for help, he and Matt carried out the job of filling the kingpost with resin together. Matt claimed he did not see anyone fill the kingpost. The Jury is comfortably satisfied that Matt participated in filling the forward kingpost of BAR with resinous material.

66. In his evidence Matt claimed he had only picked up the kingpost from the workbench and noted it was heavy, and that he looked into the end and saw resinous material with something floating in it. In his signed interview record Matt stated that he did not think the kingpost being heavy was exceptional. The Jury finds that Matt participated in filling the forward kingpost, but even if he was not involved in including the additional weight, Matt knew that the kingpost was heavy. It should have been apparent to a sailor of Matt's experience that when finding a kingpost that was nearly 2.5 times heavier than the norm, its legality was obviously questionable.

67. Matt was the BAR boat captain. He is currently a AC72 boat captain and AC34 is his fifth America's Cup campaign. The AC45 class rule is 12 pages long. It is difficult to accept that a person with Matt's experience would not have familiarized himself with the rules.

DECISION AS TO MATTHEW MITCHELL

68. The Jury is comfortably satisfied that the action was a gross breach of a rule and of good sportsmanship.

This ACIJ finding is at odds with the evidence, ISAF regulations and remains unexplained.

Please confirm receipt of my complaint by return email.

Yours faithfully



Matthew Mitchell

Complaint alleging a breach of ISAF Regulation 35.3 (misconduct by an ISAF representative or ISAF race official)

David Tillett (ACIJ Jury Chairman – 34th Americas Cup):

- Failed to uphold the policies of ISAF, its objectives, Rules and Regulations in that he failed to represent and protect the interests of any member of the federation (ISAF objective (h));
- Failed to provide the leadership expected of a person with the responsibility in his capacity as Jury Chairman;
- Failed to uphold fundamental principles of justice in his capacity as ACIJ Jury Chairman;
- Failed to adhere to the Agreement dated 4th August 2011 between International Sailing Federation (ISAF) and Americas Cup Race Management (ACRM) - clause 5(e):
- Failed to advise the parties to the hearing of the impending implementation of the Disciplinary Commission (DC) and its effect on the parties while being a member of the committee that orchestrated an entirely new disciplinary process. The DC was approved on August 27 2013. The hearings took place August 26 & 27 2013 - no notification of the change was made, while in full knowledge that the new DC process would have substantial affect to any party found guilty of a breach;
- Failed to oversee and ensure that all Competitors were treated equally;
- Failed to oversee and ensure that the standard of Proof was applied correctly, in that the "Comfortable Satisfaction" test requiring the Jury to take into consideration the "seriousness of the alleged breach" and the required criteria to substantiate the findings of the ACIJ in AC case 31 – namely failing to demonstrate that "Intent", a fundamental to a gross breach of sportsmanship was established;
- Failed to disclose evidence that was material to those charged with an alleged Rule 69 Disciplinary offences;
- Failed to establish "intent", a fundamental to a gross breach of sportsmanship; and

- Was a party to the decision to remove Grant Simmer GM from the list of witnesses without disclosing the removal formally to the other parties involved in the case. Grant Simmer has a reputation for speaking only the truth and his surreptitious removal is gravely concerning considering his knowledge of the internal workings of OTUSA and in particular the inquiry conducted by Ms Lee Ann La France.

Complaint alleging a breach of ISAF regulation 35.3 (misconduct by an ISAF representative or ISAF race official)

Mr Graham McKenzie, an ISAF representative in the capacity of an International Judge and a member of the 34th Americas Cup International Jury did by the following actions commit a gross breach of ISAF regulation 35.3 (a) and consequently brought the sport of sailing into disrepute, in that:

- Mr. McKenzie did not hold ISAF certification as an ISAF International Judge and as such misrepresented himself to be a properly appointed ISAF official,

Furthermore, while holding this appointment while not properly certified:

- Failed to uphold the policies of ISAF, its objectives, Rules and Regulations in that he failed to represent and protect the interests of any member of the federation (ISAF objective (h));
- Failed to treat all competitors equally;
- Failed to apply the “comfortable satisfaction” standard correctly in accordance with the International Jury Manual;
- Failed to disclose evidence that was material to those charged with an alleged Rule 69 Disciplinary offence;
- Failed to establish “intent”, a fundamental to a gross breach of sportsmanship;
- Performed the role of investigator and then participated in the hearing of AC case 31 in the capacity of ACIJ member;
- Participated in actions in an attempt to “pervert the course of Justice” by acting in an intimidating and or threatening manner in the capacity of a representative of ISAF; and
- Was a party to the decision to remove Grant Simmer GM from the list of witnesses without disclosing the removal formally to the other parties involved in the case. Grant Simmer has a reputation for speaking only the truth and his surreptitious removal is gravely concerning considering his knowledge of the internal workings of OTUSA and in particular the inquiry conducted by Ms Lee Ann LaFrance.

Complaint alleging a breach of ISAF Regulation 35.3 (misconduct by an ISAF representative or ISAF race official)

Mr Bryan Willis, an ISAF representative in the capacity of an International Judge and a member of the 34th Americas Cup International Jury did by the following actions commit a gross breach of ISAF Regulation 35.3 (a) and consequently brought the sport of sailing into disrepute, in that he:

- Failed to uphold the policies of ISAF, its objectives, Rules and Regulations in that he failed to represent and protect the interests of any member of the federation (ISAF objective (h));
- Failed to advise the parties to the hearing of the impending implementation of the Disciplinary Commission (DC) and its effect on the parties while being a member of the committee that orchestrated an entirely new disciplinary process. The DC was approved on August 27 2013. The hearings took place August 26 & 27 2013 - no notification of the change was made, while in full knowledge that the new DC process would have substantial affect to any party found guilty of a breach;
- Failed to treat all competitors equally;
- Failed to apply the "comfortable satisfaction" standard correctly in accordance with the International Jury Manual;
- Failed to disclose evidence that was material to those charged with an alleged Rule 69 Disciplinary offence;
- Failed to establish "intent", a fundamental to a gross breach of sportsmanship;
- Performed the role of investigator and then participated in the hearing of AC case 31 in the capacity of ACIJ member; and
- Was a party to the decision to remove Grant Simmer GM from the list of witnesses without disclosing the removal formally to the other parties involved in the case. Grant Simmer has a reputation for speaking only the truth and his surreptitious removal is gravely concerning considering his knowledge of the internal workings of OTUSA and in particular the inquiry conducted by Ms Lee Ann La France.

Complaint alleging a breach of ISAF Regulation 35.3 (misconduct by an ISAF representative or ISAF race official)

Mr John Doerr, an ISAF representative in the capacity of an International Judge and a member of the 34th Americas Cup International Jury did by the following actions commit a gross breach of ISAF regulation 35.3 (a) and consequently brought the sport of sailing into disrepute, in that he:

- Failed to uphold the policies of ISAF, its objectives, Rules and Regulations in that he failed to represent and protect the interests of any member of the federation (ISAF objective (h));
- Failed to treat all competitors equally;
- Failed to apply the “comfortable satisfaction” standard correctly in accordance with the International Jury Manual;
- Failed to disclose evidence that was material to those charged with an alleged Rule 69 Disciplinary offence; and
- Failed to establish “intent”, a fundamental to a gross breach of sportsmanship.

Complaint alleging a breach of ISAF Regulation 35.3 (misconduct by an ISAF representative or ISAF race official)

Ms Josje Hofland, an ISAF representative in the capacity of an International Judge and a member of the 34th Americas Cup International Jury did by the following actions commit a gross breach of ISAF Regulation 35.3 (a) and consequently brought the sport of sailing into disrepute, in that she:

- Failed to uphold the policies of ISAF, its objectives, Rules and Regulations in that she failed to represent and protect the interests of any member of the federation (ISAF objective (h));
- Failed to treat all competitors equally;
- Failed to apply the "comfortable satisfaction" standard correctly in accordance with the International Jury Manual;
- Failed to advise the parties to the hearing of the impending implementation of the Disciplinary Commission (DC) and its effect on the parties while being a member of the committee that orchestrated an entirely new disciplinary process. The DC was approved on August 27 2013. The hearings took place August 26 & 27 2013 - no notification of the change was made, while in full knowledge that the new DC process would have substantial affect to any party found guilty of a breach;
- Failed to disclose evidence that was material to those charged with an alleged Rule 69 Disciplinary offence; and
- Failed to establish "intent", a fundamental to a gross breach of sportsmanship.