



**Ontario Sailing Appeal #OS2008-07**

**Panache vs Diana of Hastings**

Panache delivered an appeal of the 4 September 2008 decision of the protest committee at the Bay of Quinte Yacht Club and of its 10 September 2008 decision not to reopen the hearing, to the CYA on 24 September 2008.

**Rule 61.1 Protest Requirements; Informing the Protestee**

**Rule 63.2 Hearings; Time and Place of the Hearing; Time for Parties to Prepare**

**Rule 63.3 Hearings; Right to Be Present**

**Rule 63.5 Hearings; Validity of the Protest or Request for Redress**

**Rule 63.6 Hearings; Taking Evidence and Finding Facts**

**Rule 65.2 Informing the Parties and Others**

In her appeal, Panache claims the protest committee failed to follow the procedures of rules 63.2, 63.3(a), 63.6 and 65.2.

There was an incident in the race of 3 September 2008 involving a collision between Panache and Diana of Hastings. Panache was holed and after the crews separated the boats, Panache returned to harbour under power out of concern for the seaworthiness of the boat. Both boats delivered protests naming the other as protestee.

The sailing instructions for the series required the time and date of a protest hearing be posted on the racing results bulletin board. In response to a number of questions posed to the protest committee chairman by the appeals committee, the chairman stated that no such posting was made. Diana of Hastings was informed verbally and the hearing was convened directly following the race in which the incident occurred. Panache had left the BQYC premises to attend to the boat and did not learn of the hearing until the following day by telephone.

After hearing evidence from Diana of Hastings and some witnesses, the protest committee suspended the hearing due to the absence of a representative from Panache. Some witnesses were interviewed in the absence of both parties. The hearing reconvened the following day and the evidence of Panache and her witnesses was given in the absence of the representative of Diana of Hastings.

Subsequently, the protest committee concluded that Panache broke rule 15. Panache requested the hearing be reopened, claiming the protest committee had not properly applied rule 15. The protest committee had a hearing to consider this request and refused it, because it found there was neither significant new evidence nor a belief by the committee that it had made a significant error.

## **Decision of the appeals committee**

The appeal is upheld to the extent that the appeals committee directs the Bay of Quinte Yacht Club to conduct a new hearing of the protests under rule 71.2. The protests shall be considered valid under rule 63.5 and rule 61.1(a)(3) since there was an incident resulting in damage that was obvious to both boats and both boats intended to protest. Ontario Sailing is to provide a certified CYA judge to chair the protest committee for the new hearing. The protest committee shall have at least three members, including no more than one member of the original protest committee.

Panache was not properly informed of the time and place of the hearing as required by rule 63.2 and BQYC sailing instruction 15.3. Further, it was not reasonable to expect Panache to attend the hearing when she was not informed of the time of the hearing until after the fact, therefore the protest committee acted improperly under rule 63.3(b) and sailing instruction 15.3 when it proceeded with the hearing in her absence.

In conducting the hearing in two parts, the first in the absence of a representative of Panache and the second in the absence of a representative of Diana of Hastings and taking the evidence of some witnesses in the absence of both parties, both parties were denied the right under rule 63.3(a) to be present throughout the hearing of all of the evidence and under rule 63.6 to question any person who gave evidence.

With respect to Panache's claim that the protest committee failed to follow the procedures of rule 65.2, the appeals committee has no information to support or refute this claim. However, there is nothing to be gained by seeking this information because it does not change the fact that the protest committee did not follow the procedures of rules 63.2, 63.3 and 63.6.

5 February 2009

### **OS Appeals Committee:**

Mr. Andrew Alberti, SNJ, Chairman

Ms. Kathy Dyer, IJ

Mr. Alex McAuley, IJ

Ms. Janet McDougall, SNJ

Dr. Mel Preston, SNJ

Mr. Peter Wood, SNJ