



## Ontario Sailing Appeal #2008-09

### Iroquois – Request for redress

Iroquois is appealing a decision of the protest committee on 25 September 2008 from a race on 14 September 2008 of the Basin Frostbite Series, organized jointly by Bluffers Park Yacht Club, Cathedral Bluffs Yacht Club and Highland Yacht Club.

#### **Rule 62.1(a) Redress**

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

#### **Rule 63.3(a) and (b) Hearings; Right to Be Present**

#### **Rule 63.4 Hearings; Interested Party**

#### **Rule 64.2 Decisions; Decisions on Redress**

*When the protest committee decides that a boat is entitled to redress under rule 62, it shall make as fair an arrangement as possible for all boats affected.*

#### **Summary of the facts:**

(Including additional facts, *in italics*, provided by the protest committee under rule F5)

1. The race committee failed to post the fleet splits in time, prior to the first race in the series.
2. *Iroquois started race 1 of the series in the wrong division, 10 minutes after her starting signal.*
3. Iroquois' score in the race was adversely affected as a result.
4. *Iroquois was informed of the time and place of the hearing, but did not attend. The hearing was held under rule 63.3(b).*

#### **Decision of the protest committee**

Redress is given. Iroquois' score for the race in question will be adjusted to a score equal to the average of the remaining races of the series. Rules 62.1(a), 64.2 and A10(a).

Iroquois requested the hearing be reopened, claiming the redress given was not the fairest arrangement possible, that she had not been invited to the hearing and that a member of the protest committee was an interested party. The protest committee refused her request to reopen, finding that no significant new evidence had become available and that it had not made a significant error. Iroquois is appealing the protest committee's original decision.

#### **Decision of the appeals committee**

Appeal denied. The facts found by the protest committee support the conclusion that there was an improper action or omission by the race committee that made Iroquois'

score in the race significantly worse, through no fault of her own. The protest committee complied with rule 64.2 and made as fair an arrangement as possible for all boats affected when it applied rule A10(a).

The main complaint of her appeal is Iroquois' claim that the redress given was not the fairest arrangement for all boats affected. Her request to the protest committee was to have her score adjusted by subtracting 10 minutes from her elapsed time. In its comments on the appeal, the protest committee stated that it considered that as an option but discarded it as not being fair to other boats. It also considered abandoning the race and rejected that option as not being fair to other boats, before settling on giving Iroquois average points for the race in question. The appeals committee is satisfied that the protest committee came to the fairest arrangement possible for all boats affected, as required by rule 64.2.

The remainder of Iroquois' appeal alleges procedural errors by the protest committee.

Firstly, Iroquois stated that she was not invited to the hearing and thus was unable to present evidence that she looked for and could not find the fleet splits before the race. The protest committee believed that Iroquois' attendance at the hearing was unnecessary because the race committee had already admitted that the fleet splits had not been posted and therefore no significant new evidence would be presented by her. Iroquois was notified of the time and place of the hearing via e-mail on the day of the hearing. She replied that she was unable to attend the hearing due to the short notice and the protest committee proceeded to decide the request for redress in her absence, in accordance with rule 63.3(b).

According to the sailing instructions, hearings would be held either at the close of the protest time limit or at a later date that is agreed upon by all parties. Scheduling the hearing without the agreement of Iroquois was contrary to the sailing instructions and deprived Iroquois of her right to be present at the hearing in accordance with rule 63.3(a). However, this error by the protest committee does not change the facts of the case and her additional evidence is not relevant to the protest committee's determination of the redress given to Iroquois.

Secondly, Iroquois alleges that a member of the protest committee was an interested party because that member was listed as a competitor in the same division as Iroquois. In its comments on the appeal, the protest committee stated that the member in question did not in fact, compete in any of the races in the series. The appeals committee is satisfied that no member of the protest committee was an interested party.

**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

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