



Ontario Sailing Appeal #OS2009-01

In Depth vs Iroquois

Iroquois is appealing a decision of the protest committee on 24 June 2009 from a race on the same day of the Bluffers Basin Challenge Series, organized jointly by Bluffers Park Yacht Club, Cathedral Bluffs Yacht Club and Highland Yacht Club.

Rule 2 Fair Sailing

Rule 44.1 Penalties at the Time of an Incident; Taking a Penalty

Rule 44.2 Penalties at the Time of an Incident; One-Turn and Two-Turns Penalties

A boat taking a Two-Turns Penalty when she may have broken a rule of Part 2 while racing, shall do so as soon after the incident as possible.

A boat may be penalized under rule 2 only if it is clearly established that she violated the recognized principles of sportsmanship and fair play.

Summary of the facts:

(Including additional facts, *in italics*, derived by the appeals committee)

1. Iroquois admitted that she broke rule 10 and caused In Depth to alter course (rule 13), *before the starting signal*.
2. Iroquois was the first boat to start the race.
3. Iroquois did take her penalty (Two-Turns), but not until she was more than half way up the first leg.

Decision of the protest committee

Iroquois broke rules 10 and 13. Iroquois did not take her penalty as soon after the incident as possible. Iroquois gained a significant advantage and did not retire. The protest committee penalized Iroquois with a score of DSQ. Later, the protest committee decided to change the score from DSQ to DNE claiming that Iroquois had breached rule 2. Iroquois appealed, claiming the protest committee's procedures were incorrect.

Decision of the appeals committee

The protest committee's facts support its conclusion that Iroquois broke rule 10 and did not take a Two-Turns Penalty as soon after the incident as possible.

Iroquois admits that In Depth's hail of protest and the display of a red flag were in compliance with rule 61.1(a). She alleges that other requirements set out in the sailing instructions were not followed, and the protest should have been found invalid for that

reason. The sailing instruction is designed to provide the protest committee notice that it will be required. The summary of ISAF Case 48 states “Part 5 of the racing rules aims to protect a boat from miscarriages of justice, not to provide loopholes for protestees.” The protest committee found the protest valid and any lack of notice to the race committee had no impact on Iroquois’ ability to represent herself in the protest.

Iroquois claims she was not properly informed of the hearing, yet she attended the hearing. She alleges she was excluded from the hearing during the testimony of the protestor’s witness. There is no evidence to support this allegation and it is denied by the protest committee chair. She also alleges that she was prevented from calling a witness of her own to establish that the penalty taken was nearer to one-third of the way up the first leg than one-half of the way up the first leg. While she should have been allowed to call this witness, taking a penalty one-third of the way up the leg is not as soon as possible when the incident occurred before the starting signal.

Iroquois admitted she broke rule 10 before the starting signal and made two turns after sailing at least one-third of the distance to the first mark. The requirement of rule 44.2 to get well clear of other boats as soon after the incident does not mean when convenient. A boat intending to take a Two-Turns Penalty must promptly act to get well clear and then take her penalty. If she does not, the penalty has not been taken and the protest committee correctly penalized her with a score of DSQ. Iroquois believes the protest committee incorrectly concluded that she gained a significant advantage. There is nothing to be gained by seeking the facts to reach that conclusion because Iroquois did not retire from the race, and can not be penalized with a score worse than DSQ, even if she did gain a significant advantage.

The appeals committee does not support the protest committee's retroactive decision to change the score of DSQ to DNE. A boat may be penalized under rule 2 only if it is clearly established that she violated the recognized principles of sportsmanship and fair play. Simply taking a penalty late or not retiring are not sufficient to justify a penalty under rule 2. The protest committee did not find any other facts relating to rule 2 when it retroactively decided to apply rule 2 and changed Iroquois’ score to DNE. To conclude a boat has violated the recognized principles of sportsmanship and fair play requires a hearing of a protest of an incident where those principles are alleged to have been violated.

Appeal upheld, but only to the extent that Iroquois is to be scored DSQ for the race instead of DNE.

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

September 1, 2009