



**Ontario Sailing Appeal # OS2010-10**

**Proclivity Request for Redress**

Proclivity is appealing the decision of the protest committee on 22 July 2010 from the Lake Ontario 300 started on 17 July 2010, organized by the Lake Ontario 300 Committee under the authority of the Port Credit Yacht Club. Proclivity is also appealing the protest committee's later decision not to reopen the hearing.

**Rule 1.1, Safety; Helping Those in Danger**

**Rule 62.1(c), Redress**

**Rule 63.6, Taking Evidence and Finding Facts**

**Rule 64.2, Decisions; Decisions on Redress**

**Rule 66, Reopening a Hearing**

**Rule F5, Inadequate Facts; Reopening**

*When the protest committee decides that a boat is entitled to redress, it shall make as fair an arrangement as possible for all boats affected. A protest committee is not obligated to reopen a hearing if it is not convinced that there is significant new evidence.*

**Summary of the facts**

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

1. *Proclivity went to the assistance of an overturned boat (Cheekee Monkee) at 1515 on 17 July 2010*
2. *They were released at 1648 on 17 July 2010 and continued racing*
3. *Proclivity did not keep a log of the times*
4. *The total time spent on the rescue mission was 98 minutes*
5. *The skipper of Cheekee Monkee requested that Proclivity be granted redress equal to "approx 1.5 hours" (90 minutes)*

**Decision of the protest committee**

The protest committee concluded that Proclivity went to the assistance of an overturned boat (Cheekee Monkee) as required by rule 1.1 and initially granted redress under rule 62.1(c) by subtracting 90 minutes from her elapsed time. The protest committee communicated this decision verbally at the close of the hearing. The protest committee later adjusted its decision by subtracting 100 minutes from Proclivity's elapsed time and communicated this to Proclivity by e-mail on 27 July 2010.

On 27 July 2010, Proclivity made a request by e-mail to the protest committee to provide the facts found and decision in writing. At the same time, she also made a request to reopen the hearing because the protest committee was unable to consider the tracking data at the time of the

hearing. On 16 August 2010, the protest committee denied the request to reopen the hearing on the basis that the reliability of the tracking data was uncertain and would not add anything significantly new to the evidence presented at the hearing. On 30 August 2010, Proclivity received the protest committee's decision in writing, but not the facts found or conclusion and rules that apply.

Proclivity appealed claiming that the protest committee's decision to adjust her elapsed time by 100 minutes is insufficient and prejudices her finishing time and that the protest committee erred in not reopening the hearing to consider the electronic tracking data. She also alleges that procedural errors were made by the protest committee because she could not question written evidence provided by a representative of Cheekee Monkee related to the amount of time Proclivity stood by rendering assistance to her.

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

The appeals committee found the absence of facts found to be inadequate and asked the protest committee to provide the facts found under rule F5. It also asked the protest committee to provide its conclusion and rules that apply and the protest committee complied with these requests.

Appeal denied. The protest committee's facts support its conclusion that Proclivity was entitled to redress under rule 62.1(c) and its decision to deduct 100 minutes from her elapsed time as the fairest arrangement possible for all boats affected, as required by rule 64.2. The decision not to reopen the hearing is in accordance with rule 66 because the protest committee was not convinced that the electronic tracking data would provide any significant new evidence.

It is unclear if there was a procedural error in accepting written evidence from a witness who was not present at the hearing. The written evidence in question was addressed to the race officer and stated that Proclivity stood by to render assistance for approximately 1.5 hours to Cheekee Monkee, which supports Proclivity's claim for redress under rule 62.1(c). The appeals committee notes that the redress given was more favourable to the appellant than what was suggested by the written evidence. There is no evidence presented to suggest that Proclivity was prevented from producing any witness with evidence in support of her request, including a representative of Cheekee Monkee.

28 September 2010

### **OS Appeals Committee:**

Ms. Kathy Dyer, IJ, Chairman

Ms. Wendy Loat, RJ

Mr. Alex McAuley, IJ

Ms. Janet McDougall, NJ

Mr. Robert Stewart, NJ

Mr. Peter Wood, NJ