



Ontario Sailing Appeal # OS2013-05

Loose Cannon v Great Escape

Great Escape is appealing the decision of the protest committee at the Mimico Cruising Club on 17 September 2013 from a hearing on 11 September 2013 after a race on 21 August 2013.

Definition	Interested party
Rule 44.1	Penalties at the time of an incident: Taking a penalty
Rule 61.1	Protest requirements: Informing the protestee
Rule 64.1	Decisions: Penalties and exoneration
Rule 63.4	Hearings: Interested party
Rule 70.1(a)	Appeals: Appeals and requests to a national authority

A boat that may have broken a rule of Part 2 and takes a Two-Turns Penalty at the time of the incident has exonerated herself and cannot be further penalized unless she caused injury or serious damage.

A competitor in a race or series is an interested party. A member of a protest committee who is an interested party shall not take any further part in the hearing.

Facts found

1. The wind was approximately 15 knots with one-half meter waves. There was no tide to be considered.
2. Loose Cannon (LC) was sailing on starboard tack towards the starting line, approximately 1–2 lengths from the line, and one-half to one length to port of the committee boat.
3. Great Escape (GE) was windward of LC, reaching along the line, also on starboard tack approaching LC. GE testified that they were at least one length down the line from the committee boat.
4. LC hailed GE that there was no room between themselves and the committee boat.
5. LC was not able to alter course to avoid the collision due to the proximity of other boats.
6. GE held her course and did not try to avoid a collision.
7. The boats collided resulting in material damage to LC which will require repair.
8. GE recognizing the protest hail by LC, immediately got clear of other boats and completed two penalty turns.

The protest committee concluded that GE to windward did not keep clear of LC overlapped to leeward, breaking rule 11 (On the same tack, overlapped) and did not avoid contact with LC when it was reasonably possible, breaking rule 14 (Avoiding contact) and disqualified her.

GE appealed claiming that the protest was not valid, she took a penalty and should not have been disqualified and cited other procedural errors by the protest committee.

Decision of the appeals committee

In her appeal, the appellant claimed that LC removed her protest flag after GE took a Two-Turns Penalty. In its comments on the appeal, the protest committee stated there was no evidence to support this claim. It also stated: "Because this incident resulted in a collision, and the collision resulted in serious damage (as defined as likely to result in an insurance claim), we do not believe she can exonerate herself from breaking rule 14 by doing a 720 (rule 44.1(b))." Whether or not a boat exonerates herself appropriately according to rule 44.1, has no bearing on the validity of the protest. In its consideration of validity, the protest committee found as fact that LC flew a red protest flag and hailed "Protest." It did not find as fact that LC displayed her flag until she was no longer racing – a requirement of rule 61.1.

There is no dispute that there was a collision between the parties. However, the characterization of the resulting damage as being material is not a fact. Rather it is a conclusion that may be appealed under rule 70.1(a). The protest committee did not find any facts describing the damage on which to base a conclusion of serious damage, which is the standard required by rule 44.1(b) to render a Two-Turns Penalty insufficient. LC's written protest does not allege any damage. GE's appeal alleges the damage to LC is a minor scrape in the gel coat.

During its consideration of the appeal, the appeals committee became aware that two of the three members of the protest committee compete in the same division as the parties to the protest. The two members of the protest committee were in a position to gain or lose as a result of the protest committee's decision and are therefore interested parties.

The appellant did not include an allegation that members of the protest committee were interested parties in her reasons for appeal. There is no evidence that she objected to these members of the protest committee at the time of the hearing. However, these errors of omission by the appellant do not change the fact that two members of the protest committee are interested parties and as such, took part in the hearing, contrary to the requirements of rule 63.4. An interested party does not cease to be such because a party to the hearing is willing to accept that person as a member of the protest committee or does not object to that person as an interested party.

Appeal upheld. A majority of the members of the protest committee are interested parties, which leads the appeals committee to question the protest committee's finding of validity and its conclusion that the damage justifies the disqualification of GE under rule 64.1(b) is not supported by the facts. Therefore, the appeals committee sets the decision of the protest committee aside. Under rule 71.2, the protest is returned to the Mimico Cruising Club for a new hearing and decision by a new protest committee. The appeals committee will appoint the protest committee chairman and at least one additional member.

24 October 2013

OS Appeals Committee:

Ms. Kathy Dyer, IJ, Chairman

Mr. Alex McAuley, IJ

Mr. Robert Stewart, IJ

Ms. Wendy Loat, NJ

Ms. Katie Nicoll, NJ

Mr. Peter Wood, NJ