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## **APPLICATION FOR REVIEW OF AN APPEAL DECISION OF YACHTING NEW SOUTH WALES**

### **Protest hearing 11 June 2008: *IF!* and *Razor's Edge***

I refer to an application from boat *IF!* to review a decision of the Appeal Committee of Yachting New South Wales (reference No 05/08 undated) in the matter of the protest hearing *IF!* vs *Razor's Edge* heard on 11 June 2008, and advise that the Yachting Australia Appeal Review Panel has considered the application.

### **Overview of the Protest Decision**

The protest committee had concluded that *Razor's Edge* had broken rules 15, 16.1 and 14 and in so doing had significantly disadvantaged *IF!* and then had taken a penalty which was not performed promptly as required by rule 44.2 so resulting in her gaining a significant advantage in the race. It was not established that *IF!* had suffered any physical damage or injury and no other facts were given which would lead to the conclusion that *IF!* was significantly disadvantaged. The protest committee disqualified *Razor's Edge*.

### **Overview of the Appeal**

The appellant *Razor's Edge* submitted five grounds to YNSW contending the protest committee's decisions were improper. The appeal committee of YNSW addressed each of the five grounds in detail, providing its detailed reasons for upholding or dismissing each ground.

The appeal committee dismissed the matter of significant disadvantage to *IF!* noting that as no redress for *IF!* had been requested or considered, the matter was not relevant.

The appeal committee upheld the appellant's contention that the penalty for breaking the Part 2 rules had been correctly taken and made promptly within the meaning of rule 44.2.

The appeal committee dismissed the matter of whether the manner in which *Razor's Edge* had taken her penalty resulted in her gaining an advantage, noting that any such outcome was not relevant.

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## Overview of the Application for Review

The applicant requested a review claiming that the appeal committee had misinterpreted rule 44.2 in finding that *Razor's Edge* had complied with that rule's promptly requirement, and had misinterpreted rule 44.1 by not finding that a failure to comply with rule 44.2 enabled *Razor's Edge* to gain a significant advantage in the race. Without so stating, the applicant inferred that these claimed misinterpretations had resulted in significant unfairness to the applicant [AB4(b)].

## Review of the Appeal Decision

In its decision the appeal committee has given in some detail the reasons for its interpretation of promptly as required in rule 44.2. That interpretation is endorsed by the appeal review committee.

Both the applicant and the appeal committee have emphasised the words of rule 44.1 that if a boat *gained a significant advantage in the race by her breach her penalty shall be to retire*. The breach being referred to in these words is the breach of Part 2 of the RRS, and in this case refers to *Razor's Edge's* breach of rules 15, 16.1 and 14.

Rule 44.1 is not referring to a breach of rule 44.1 or 44.2. In fact these rules are not rules to be breached. Should a penalty be performed which is found to have failed to comply with these rules then it remains that no valid penalty has been taken, but that boat has not broken an additional rule.

The breaking of rules 15, 16.1 and 14 did not in themselves provide *Razor's Edge* with a significant advantage in the race so retirement from the race was not a requirement, and the appeal review panel endorses the appeal committee's finding that any positional advantage in the race which *Razor's Edge* may have secured after taking her penalty was of no relevance.

The appeal decision is confirmed.

Yours sincerely,

James Burman  
For: Bob Chapman  
on behalf of G.M. Owens,  
Chairman, National Racing Rules Committee