

Mr. P. Woodhead
8 Greengate Road
KILLARA NSW 2071

March 22, 2007

Dear Mr. Woodhead,

**APPLICATION FOR REVIEW OF THE APPEAL DECISIONS OF YACHTING NEW
SOUTH WALES DATED 6 FEBRUARY 2007**

Protest hearing: Protest committee vs 2Xcess

Rule 69 hearing: Mr. P. Woodhead

I refer to an application to review the decisions of the Appeal Committee of Yachting New South Wales (No 14/06 dated 6 February 2007 in the two matters of the protest committee vs 2Xcess and the protest committee's rule 69 hearing involving P. Woodhead) and advise that the Yachting Australia Appeal Review Panel has considered the application.

Appeal overview

The Review Panel notes that much of the wording of the appeal argument and other information submitted to it by the appellant has been repeated within the appeal decision, yet the appeal committee has failed to properly address the allegations of rule misinterpretation which are the core of the appeal. The matters identified by the appeal committee in its decisions are relevant to the two hearings, but those appeal decisions could be described as 'tinkering at the edges' considering the key matter of rule 1.1 has not been confronted. Presumably the appeal committee has not supported the appellant's rule 1.1 contentions; however it has given no reasons for its opposing view.

The protest hearing

The appeal committee has identified the protest committee's failure to find any facts to support its decision that 2Xcess had broken IRPCS rules 5 and 8 by not keeping an adequate lookout, and the appeal committee properly required the protest committee to reopen the hearing to establish those facts.

But the appeal committee has not identified the protest committee's failure to find any facts to establish that any person or vessel was in danger as a result of the collision, although the appellant has clearly drawn attention to this omission. Without the protest committee arriving at any facts or conclusion that there was danger, what support was

Yachting Australia Inc.
ABN 34 573 037 987

Ground Floor,
16 Atchison Street,
St Leonards NSW 2065

Locked Bag 806
Milsons Point NSW 2061
Australia

T 612 8424 7400
F 612 9906 2366

office@yachting.org.au
www.yachting.org.au

there to find that rule 1.1 was broken? Even in its 'notes' submitted on the appeal the protest committee has not introduced danger as being a factor.

The first Appeal Decision is amended to read "The appeal is upheld to the extent that the reference to **1.1** is deleted from the protest decision and the protest committee is directed to reopen the hearing solely to examine the evidence to establish further facts to satisfy IRPCS rules 5 and 8."

The rule 69 hearing

The appeal committee agreed that the rule 69 hearing notification was inadequate in its detail so directed the protest committee to issue a new complying notice and reopen the hearing. The appellant had drawn attention to this lack of detail but had not contended this was prejudicial to his hearing, so this directive of the appeal committee would be unlikely to have any real consequence.

The protest decision that there had been a breach of rule 1.1 was the basis of the rule 69 hearing and its decision, but as this Review has deleted rule 1.1 from the protest decision, it follows that the decision of the rule 69 hearing (including any reopening) is overturned.

The second Appeal Decision is amended to read "The appeal is upheld and the decision to penalise M. Woodhead for a gross breach of rule 1.1 is overturned."

Gross breach of good manners?

The principal question related to rule 69 could be whether there may have been a gross breach of good manners or sportsmanship. This possibility appears to have been overlooked by the protest committee and the appeal committee, although the protest committee itself advised the appeal committee that

- "Mr. Woodhead did not stay to ascertain for himself or to enquire of the Avalon Sailing Club tenders as to the well being of the occupants of the dinghy."
- "Mr. Woodhead should have enquired of the Avalon Sailing Club tenders whether his assistance was needed but he failed to do so."
- "Mr. Woodhead's experience should have caused him to make every effort to remain in the vicinity and to make adequate enquiry into the safety of persons concerned which he failed to do so."

Neither an appeal committee or this Appeal Review Panel has the authority to direct a protest committee to call a rule 69 hearing, as such a decision can be taken only by a protest committee. Should the protest committee believe that there may have been a gross breach of good manners or sportsmanship then it is able to call a hearing, in which case it must comply with rule 69.1(a) by promptly informing Mr. Woodhead in writing of the alleged misconduct and the time and place of the hearing.

If at a proper rule 69 hearing the protest committee decided that its alleged misconduct had been committed then it would remain for the protest committee to decide whether it shall give a warning [rule 69.1(b)(1)] or a penalty [rule 69.1(b)(2)]. It appears to be within the jurisdiction of this protest committee to suspend a member from racing at RPAYC for a period of time, which time could take into account any suspension period already served.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Glen Stanaway', written in a cursive style.

Glen Stanaway
Sport Services Manager

Email: glen.stanaway@yachting.org.au

Cc Yachting New South Wales, Royal Prince Alfred Yacht Club, Appeal Review Panel