



**Ontario Sailing Appeal #2007-04**

**Le Papillon (612) vs Lady Jane 4 (984) – 20 June 2007**

Le Papillon is appealing a decision of the protest committee on 25 June 2007 from a race at Port Credit Yacht Club on 25 July 2007

**Rule 11 Same Tack Overlapped**

**Rule 14 Avoiding Contact**

**Rule 15 On the Same Tack, Overlapped.**

**Rule 44.4 Limits on Penalties**

**Rule 61.1(a)(3) Protest Requirements**

**Rule 66 Reopening a Hearing**

**Rule 70.1 Appeals; Confirmation or Correction of Decisions; Rule Interpretations**

**Rule F5 Inadequate Facts; Reopening**

**Summary of the facts**

(numbers in brackets refer to the protest committee decision, *italics* are paraphrases or summaries from the original decision)

1. No hail of protest was made, no protest flags were flown, both boats protested. Both boats informed the other that they were protesting. There was damage obvious to both boats.
- 2.(1) The wind was light and variable with shifts of up to 100 degrees to the right during the 10 minutes prior to the warning signal.
3. (3) At the preparatory signal, the win was below 1 knot
4. (6) At 1:30 minutes before the starting signal, Papillon's boat speed was 2-3 notes.
5. (7) Lady Jane 4 on starboard tack, was early for the start and did a 360 degree turn to starboard of the RC boat by first tacking, then gibing to a downwind course towards the stern of the RC boat. Her speed was 3-4 knots and accelerating.
- 6.(8) Between 1:20 and 1:25 minutes before the starting signal, Papillon was by the lee on port tack and gybed to starboard by putting her helm over hard.
- 7.(9) Papillon and Lady Jane 4 were on collision courses within 5 boat lengths of each other.
- 8.(10) Papillon hailed Lady Jane 4 to "head up" 4 times.
9. (11) Lady Jane 4 heard yelling from Papillon's bowman and turned one way and then the other, in an attempt to avoid collision.
10. (13) Approximately 5 seconds before the lowering of the preparatory signal (1:05), contact occurred between the bow of Lady Jane 4 and the starboard side of Papillon just after of the bow.

11. (14-17) The boats became entangled and *there was damage to both boats.*
12. (18) Papillion retired from the race.

### **Decision of the protest committee**

The protest was valid under rule 61.1(a)(3) When Papillon completed her gybe to starboard, she acquired right of way as the leeward boat under rule 11. Lady Jane did not initially have room to keep clear of Papillon, therefore Papillon broke rule 15. It was not reasonably possible for Lady Jane 4 to avoid contact with Papillon, therefore Lady Jane did not break rule 14. Papillon retired from the race and cannot be further penalized for breaking rule 15, according to rule 44.4(b)

### **Request to Reopen**

Le Papillon requested a reopening based on the new evidence from two witnesses. The protest committee reviewed the evidence provided and concluded that there was no reason to reopen the hearing as no new evidence was being advanced and that the information appeared to be have been available at the time of the hearing.

### **Appeal**

Le Papillon appealed disagreeing with the facts found and pointing out that the new witnesses contradicted those facts.

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

Appeal dismissed. The protest is valid under rule 61.1(a)(3) and the facts found by the protest committee support the conclusion that Le Papillon broke rule 15.

According to rule 70.1 a party may appeal a protest committee decision but not the facts found and according to rule F5 the appeals committee shall accept the protest committee's finding of facts.

The protest committee properly reviewed the additional evidence provided and concluded that it did not meet the criteria of "significant new evidence" required by rule 66

### **OS Appeals Committee:**

Mr. Andrew Alberti, SNJ, Chairman  
Mr. Alex McAuley, IJ  
Dr. Mel Preston, SNJ  
Mr. Peter Wood, SNJ

October 10, 2007