

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

Citation: Deseau v. Sail Canada, 2025 CASDRC 23

Nº: SDRCC 25-0779

Date: 2025-07-18

**GUSTAVE DESEAU
(CLAIMANT)**

AND

**MAYA WOLF
(CLAIMANT)**

AND

**SAIL CANADA
(RESPONDENT)**

AND

**ELENA GRAHAM
(AFFECTED PARTY)**

BEFORE: Peter Lawless, KC (Arbitrator)

DECISION

APPEARANCES

For the Claimants:

Gustave Deseau

Maya Wolf

Adrian Vlastic (coach, as representative of the Claimants)

Kathy Parslow (parent)

Severin Wolf (parent)

For the Respondent:

Kate MacLennan (Board Chair)

Kim Garrett (Events and Competitive Development Director)

Lynne Beal (Representative of Sail Canada)

For the Affected Party:

Elena Graham

Eric Graham (parent)

Fraser Smith (coach)

PARTIES

1. The Complainants and Affected Party are youth sailors all of whom participated in the RVYC Spring Dinghy Championships in early May 2025.
2. Sail Canada is the national governing body for the sport of sailing in Canada and is the "National Authority" recognized for Canada under World Sailing's "Racing Rules of Sailing".

REQUEST

3. The Complainants seek to have the SDRCC review and set aside the actions of the Protest Committee and Sail Canada Appeal Committee which have each considered the protests (and appeals therefrom) filed as a result of on the water conduct during Race 8 of the Spring Dinghy Championships.

PROCEDURAL BACKGROUND

4. The Complainants' Request was filed on July 7, 2025 requesting an urgent procedure that required a decision by July 9, 2025 as the outcome of the Request could impact selection to the Canada Summer Games which had a deadline for registration of July 9, 2025.
5. I was selected by the Parties as the Arbitrator and a combined Administrative and Preliminary meeting was conducted on July 8, 2025.
6. At the Preliminary meeting it was determined that the Canada Games would permit substitutions of sailors until much closer to the Games and the real deadline for a decision was July 19, 2025 as it was on that date the selected sailors had to load their boats onto the trailer for transportation to the Games.
7. In its response and at the Preliminary Meeting the Respondent, Sail Canada, indicated that it was objecting to the SDRCC proceeding to hear this matter on jurisdictional grounds.
8. I directed the parties to file any further materials including on the question of jurisdiction and submit their witness lists and will say statements by July 11, 2025. A hearing was scheduled for July 14, 2025.
9. At the close of the hearing, I directed both parties to make any closing submissions in writing by noon on July 16, 2025.

ISSUE

10. The first question before me is one of jurisdiction. In short does the SDRCC have the jurisdiction to render determinations on the conduct and outcome of Protest and Appeal Committees constituted under the Racing Rules of Sailing.
11. If the answer to that question is yes, the SDRCC does have jurisdiction then I must turn to the merits of the Request and determine if the conduct of the several Protest and Appeals committees is such that there is a reversible error made by one or more of those committees.

DISCUSSION

12. The Complainants set out two discrete complaints about how first the Protest Committee and second the Sail Canada Appeals Committee each failed to follow the procedural rules they are required to follow under the Racing Rules of Sailing.

13. The Complainants' Request says:

Sail Canada and its Judges have made a series of errors which have resulted in now 7 protest/redress processes involving 3 youth sailors, two of whom are competing for the female sailing spot for Team BC at the Canada Summer Games. These errors have occurred from May 4th to the present. Most recently Sail Canada's Appeals Committee undertook a Request for Confirmation process (regarding a June 28th decision) on June 29th and issued their decision on June 30th. This decision resulted in a subsequent July 1st redress hearing that awarded a better score to one of the female sailors with the consequence of her winning the spot to Canada Summer Games, and the other losing it. On July 6th in response to an appeal we filed with respect to the July 1st redress hearing, Sail Canada Appeals Committee responded "The Sail Canada Appeals Committee had intended to send to you the request for correction or confirmation of the protest committee's decision of June 28. The letter was prepared, but having heard from the parties that it was not received, we have checked our records and found that it was not sent. We apologize." How can Sail Canada make an error in not sending-out a letter that has a requested 7 day response period and then issue the consequential decision 22 minutes after drafting the unsent letter? The consequences of this procedural oversight are material and irreversible. (1) One of the female sailors and the third (male) sailor experienced significant consequences as they did not have their full rights to participate, comment or defend themselves: (2) The male sailor was found guilty of unsportsmanlike behaviour as the Sail Canada Appeals Committee overturned a Protest Committee's majority finding that he was not guilty. (3) The female sailor had her qualification for Canada Summer Games revoked. It was only after we filed our appeal did Sail Canada apologize for not sending the required request for comment which further demonstrates that due process was not afforded at the appropriate stage.

14. The pith and substance of the Complainants' Request is a desire to overturn the decision of the Protest Committee scoring Gustave Deseau a DNE and consequently granting Elena Graham redress.

15. It is undisputed that the Protest Committee committed an error at the outset and that the Sail Canada Appeal Committee in its first review returned the matter to the Protest Committee and corrected that initial error.

16. In Sail Canada Appeal 2025-01 the Appeal Committee sets out its decision as follows:

In the protest against 220870, when announcing the original decision the protest committee admitted that it had not completed the facts needed to support its conclusion and decision to dismiss the protest. It subsequently found as fact that 220870 had tacked 5 or more times into a covering position directly to windward

of 220139 affecting 220139's wind. Prior to that race, 220870 had 14 points while 220139 had 55 points. The protest committee's draft facts included a statement from 220870 that he was not aware that 220870 was tacking on 220139 and his focus was on trying to beat 220490 who had 6 points. The protest committee's final facts, which deleted this statement, found that other boats in the same area were also tacking on wind shifts, but not as frequently as 220870 and 220139. The protest committee did not establish facts as to whether or not 220870's intention was to interfere with 220139's or any other boat's race, to benefit his own race, or to benefit 220951. World Sailing Cases 31, 47, 65, 73 and 138 interpreting rule 2 all involve the competitor knowingly breaking a rule. This fact was not established to warrant the conclusion that 220870 broke rule 2.

The protest committee determined that the conditions of rule 63.7(a)(2) to reopen the hearing had been met through its own significant error. However, it did not hold a reopened hearing in which parties and any witnesses were permitted to give evidence. Considering the absence of facts supporting the original decision and the significant change in the decision impacting the race score of 220870, the protest committee denied due process to the boats affected.

Rule 61.1(c) authorizes the protest committee to consider redress for a boat by calling a hearing. Rule 61.4(a) requires the protest committee to conduct a hearing to decide whether to grant redress. The protest committee erred by failing to hold a redress hearing. Since the original decision was to dismiss the protest alleging a breach of rule 2, there were no grounds for redress considered in the original hearing. With no redress hearing, the protest committee denied the parties the right to present evidence related to the redress being considered. The protest committee further erred in giving redress to 220139 in the absence of facts and conclusions that would establish her entitlement to redress under all of the conditions of rule 61.4(b) and 61.4(b)(5) and if so, making the fairest arrangement to all boats affected under rule 61.4(c).

The protest committee's decision in case 6 220139 vs 220870 is to be set aside, and the race scores shall revert to the original scores. A new hearing shall be held under rule 71.3(c). Depending on the outcome, a hearing would be held under rule 61.4(a) if a party submits a valid request for redress or the protest committee considers redress for a boat.

17. The new hearing was held where the Protest Committee again decided that Gustave Deseau had infringed the Racing Rules of Sailing, scored him a DNE and Elena Graham was consequently granted redress.
18. On a new appeal from that second Protest Committee decision to the Sail Canada Appeals Committee that Panel was required to provide a seven-day window within which the Complainants could make submissions on the matter.
19. The Sail Canada Appeals Committee drafted a letter to the Complainants inviting their submissions but that letter was never sent.
20. It is not in dispute that the Sail Canada Appeal Committee fell into error when it failed to provide the Complainants an opportunity to comment as contemplated under the rules.

21. Sail Canada says it has now corrected that second error by reopening the Sail Canada Appeal hearing and providing the Complainants with the opportunity to have their submissions considered.
22. In its decision (Sail Canada Appeal 2025-03) dated July 17, 2025 the Sail Canada Appeals Committee sets out:

The national authority received the request for confirmation or correction of the protest committee's decision in the new hearing on June 29 and was advised in the request for confirmation or correction that July 1 was the date by which the names of the athletes for the Canada Summer Games needed to be submitted to BC Sailing. The Appeals Committee prepared a letter to the parties to the hearing to provide them with this request and to invite them to make written comments on the request as required by rule R3 and R4.1. However, the letter was not sent. The Appeals Committee, in an attempt to meet the timeline of BC Sailing, rendered a decision on the request for confirmation or correction on June 30, prior to the expiry of the 7-day period under rule R4.1 for and without comments from the parties and the protest committee. Gustave through his representative, objected to the decision of the Appeals Committee, given that the parties had not received the invitation to make comments on the request.

The Appeals Committee acknowledged that it had made a procedural error in processing this request. since the parties had not enjoyed all of the processes provided by the Racing Rules of Sailing (RRS). This is an issue of fairness, and not of the interpretation of the RRS and the decision it had made through the application of the rules. The Appeals Committee was required under the rules to send the request for confirmation or correction to the parties and the protest committee and afford them the opportunity to submit comments. It is obligated to provide decisions for all requests for confirmation or correction of a protest committee's decision. Accordingly, the Appeals Committee undertook a review of the request for confirmation or correction and, with due consideration to the comments received within the 7-day period, reviewed its decision.

23. On this latter point the Complainants say that there is no authority under the rules to reopen this hearing.
24. Sail Canada at the hearing acknowledged the lack of a specific authority to reopen the matter. They stated that if they do not, then the matter is final with no opportunity to appeal and the parties must accept the decision that was without the Complainants' submissions.
25. In either event- whether the Sail Canada Appeal Committee made its decision without considering submissions from the Complainants or reopened the decision to consider those submissions, the outcome was the same; Gustave Deseau was scored as DNE and Elena Graham was entitled to claim redress.
26. The jurisdiction of the SDRCC is found in Article 2 of the Canadian Sport Dispute Resolution Code 2025 at Article 2:

2.1 Administration

(a) The SDRCC administers this Code, which may be amended from time to time by its Board of Directors, to resolve Sports-Related Disputes.

(b) This Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore only apply to a Sports-Related Dispute:

(i) in relation to which an agreement exists between the Parties to bring the dispute to the SDRCC, whether by virtue of a policy, contract clause or other form of agreement binding the Parties;

(ii) that the Parties are required to resolve through the SDRCC; or

(iii) that the Parties and the SDRCC expressly agree to have resolved using this Code.

(c) This Code shall not apply to any dispute:

(i) where a Panel or a Jurisdictional Arbitrator has determined that the SDRCC does not have jurisdiction to deal with the dispute; or

(ii) arising from the application of the Abuse-Free Sport Program, where the complaint was filed with the OSIC before February 1, 2025, to which the 2023 Canadian Sport Dispute Resolution Code shall apply.

27. The Code defines a Sports Related Dispute as follows:

“Sports-Related Dispute” « Différend sportif » means a dispute affecting participation of a Person in a sport program or a Sport Organization arising from, but not limited to:

(i) the selection of members to a team;

(ii) the Athlete Assistance Program of the Government of Canada;

(iii) a decision of an SO board of directors, a committee or an individual delegated to make a decision on behalf of an SO or its board of directors, which affects any Member of the SO;

(iv) the application of the CADP;

(v) the application of CSSP Rules 12.7, 13, 16 and 17;

(vi) the application of the CPPCM; or

(vii) the application of the UCCMS under the authority of an SO;

28. Sail Canada, in its closing submission addresses jurisdiction as follows:

This dispute stems from an event that occurred at a local regatta. The SDRCC website sets out that it does not have jurisdiction to resolve disputes at the local level and it is limited to disputes at the national level. Further, sections 2.1 and

3.1 of the Canadian Sport Dispute Resolution Code (the “Code”) provide that the SDRCC only has jurisdiction in a “Sport Related Dispute” where:

- A. There is an agreement, policy, contract or other form of agreement binding the parties to bring the dispute to the SDRCC, and
- B. all internal appeal processes have been finalized.

Neither of these conditions applies to this dispute.

The RRS (at Rule 4 and 71.6) and Sail Canada’s Dispute Resolution and Appeal Policy (the “SC Appeal Policy”) (at section 3.2(c)) specifically set out that the SDRCC does not have jurisdiction in this case. Further, even if 3.2 (c) of the SC Appeal Policy did not specifically exclude disputes of this nature, there are internal appeal processes that would need to be completed before the SDRCC had jurisdiction, and there has been no appeal filed from the SCAC decision to Sail Canada under the SC Appeal Policy.

29. The Complaints, unsurprisingly, see this differently. They say that the SDRCC does have jurisdiction for a variety of reasons including the nature of the federal government funding and the inability of national sports organizations to avoid SDRCC jurisdiction over their internal dispute policies and structures.

30. They argue this matter is a sports related dispute saying:

This matter before the SDRCC falls within the scope of a “sport-related dispute” set out in the SDRCC Code, at it involves “the decision of an SO [Sports Organization] board of directors, a committee or an individual delegated to make a decision on behalf of an SO or its board of directors, which affects any Member of the SO”. The Claimants (members of Sail Canada via West Vancouver Yacht Club) are challenging the decision of the “Sail Canada Appeals Committee” (an Operational Committee of Sail Canada, appointed by Sail Canada’s CEO, and exercising CEO delegated authority as per the Sail Canada Bylaws (C-27)).

31. As noted above they further say that they have exhausted all internal appeals as required under the Code (notwithstanding the Sail Canada decision to reopen the Sail Canada Appeal Committee hearing to allow them to make submissions).

DECISION

32. The challenge before me is that, in a sense, each party is correct. They have each correctly set out the applicable rules, etc., that they say I am to follow. However, the “choice” of which path to take isn’t a true choice for this Panel, or indeed any other Panel or the parties themselves. The “character” of the dispute will determine which of these paths is the correct one.

33. If this is a dispute arising on the field of play where the Racing Rules of Sailing provide a complete code for resolution then the Complainant’s Request must be denied as the SDRCC would not have jurisdiction as the matter is not a “Sports Related Dispute”.

34. Alternatively, if this dispute is about the operational or administrative behaviors of Sail Canada which affect the Complainant’s participation in the sport of sailing then it

becomes a “Sports Related Dispute” and the SDRCC has jurisdiction to resolve the Request.

35. I find that this dispute does not affect any parties’ participation rights and is therefore not a “Sports Related Dispute” which the SDRCC has jurisdiction over.
36. I find that, at its heart, this matter is clearly a dispute over how the Racing Rules of Sailing have been applied to the field of play actions of one of the Complainants.
37. This is clear on the face of the complaint as well as in the requested relief which asks me to change the decision of the Protest Committee to disqualify one of the Complainants as a result of a finding that he had infringed one of the Racing Rules of Sailing in the course of the race 8 at the Spring Dinghy Championships.
38. SDRCC does not have jurisdiction to intervene in the outcome of protests or appeals held pursuant to the Racing Rules of Sailing and as a result the Complainants’ Request is denied.
39. Despite my denial of the Request, I wish to commend both the Complainants and the Affected Party for their conduct throughout this process.
40. It is an understandable challenge to ask these youth sailors to see “fairness” in the sport’s rules when as noted in their Request:

Through this two-month long multi-hearing/appeal process, the three sailors have had the following impacts to them:

- Gustave, the male sailor, has had his result change five times: First place, disqualified, First place, First Place, and then disqualified
- Maya and the other female sailor, Elena Graham have alternated in qualifying positions three and two times respectively
- Maya who committed no rule violation, was involved in now seven hearings/appeals

41. At the end of the day it is beyond regrettable that the panels constituted under the Racing Rules of Sailing made the errors they did and it is my hope that given the impact these matters have had on selection to the Canada Summer Games that Sail Canada will take steps to ensure that all of these sailors have an opportunity to showcase their talents at an event of meaningful stature.

Signed at Victoria, BC this 18th day of July, 2025

Peter R. Lawless, KC
Arbitrator