

Interpretation Number	Interpretation of Regulations/Articles	Issue	Date of Interpretation
002-08	Articles: 51-55 Regulations: 9.4.2, 9.5.1	Council Alternates, Declaration of Interest, Objects	21 April 2008

## Request for Interpretation by the International Tornado Class Number 1 - Alternates

### Constitution Committee Interpretation

1. The attention of the Class is drawn to the separate document where the interests and offices of various members of the Constitution Committee are recorded.
2. Regulation 9.4.2 must be read in conjunction with articles 51 to 55.
3. Article 51 provides that "Each nominated member of Council may at any time appoint some other yachtsman from his Group or nominating body to be an Alternate member of the Council, and may at any time remove any Alternate member so appointed by him."
4. Regulation 9.4.2 contains two separate provisions. Firstly it requires Council Members to notify the Secretary General if they are unable to attend a meeting. Secondly it makes it clear that members may use the procedure in article 55 to appoint an Alternate. There is no conflict between the two separate provisions and equally no conflict between this regulation and the articles.
5. By virtue of Article 51, a Council member may appoint an Alternate at any time. There is no requirement that the member is 'absent' or anything similar other than a reference to the method of appointment and removal, namely by notice to the Secretary General.
6. There is no provision in either the Constitution or Regulation which requires that the Member should be absent during the appointment of the Alternate. The only place where the words 'present' and 'absence' are used is in Article 53. That article deals with the entitlement of the Alternate to receive notices when he is appointed and also makes it clear that he is entitled to attend meetings even if the Member is not present. There is no requirement there or elsewhere that the Member be absent from the locality or even absent the room where the meeting is held.
7. It is desirable that all Groups are represented for as much of any meeting of Council as possible so that the interests of the Group are represented in debate.
8. The appointment of the Alternate to represent Group J while the Member considered that he was disqualified from doing so, and the Alternate's participation in the vote, was entirely proper.
9. The pleading in the Request appears to confuse the requirement to declare an interest with the right to appoint an alternate. The requirement to declare an interest is personal to each and every Council Member (as well as members of

committees). The fact that a Council Member has an interest does not mean that his alternate is tainted with that interest or disqualify the alternate from taking part in the debate or voting.

10. It is not within the authority of the Constitution Committee to comment on an allegation that the proceedings of Council are out of order or not. However, since the appointment of the alternate was valid, the issue does not arise.

## **Request for Interpretation by the International Tornado Class Number 2 – Declaration of Interest (1)**

### **Constitution Committee Interpretation**

1. The attention of the class is drawn to the separate document where the interests and offices of various members of the Constitution Committee are recorded.
2. Regulation 3 authorises the Constitution Committee to interpret the Constitution and Regulations. It does not authorise it to determine whether a vote is properly taken or whether the proceedings of Council are in order or not.
3. This reply is therefore limited to an interpretation of the words 'personal vested interest' in the context of regulation 9.5.1 and of the facts alleged in the request although it contains certain additional comments which are considered relevant.
4. In the context of Regulation 9.5.1 a 'personal vested interest' should be declared where the person concerned;
  - (a) has a direct involvement in the matter concerned and that involvement is such that a reasonable man would consider that it could result in his not considering the issue fairly for the good of the sport in general;
  - (b) has a close connection with an organisation which has a direct involvement in the matter concerned and that connection is such that a reasonable man would consider that it could result in his not considering the issue fairly for the good of the sport in general; or
  - (c) knows or ought to know that he or someone close to him will gain financially or personally in some other way if the matter being debated goes a certain way.
5. The allegation by the International Tornado Class does not name the Council Member who, it alleges, is an officer of an Olympic class, nor does it specify the position he holds in that class or his responsibilities as a result of holding that office. This interpretation must therefore be of a general nature and it cannot consider any particular responsibility.
6. However, the Constitution Committee considers that a Council Member who is an officer of an Olympic class had a declarable interest in the debate and vote on the Selection of Olympic events for the 2012 Olympic Sailing Competition and should have made that declaration.

7. However it must be stated that the declaration is only the first part of a procedure set out in Regulation 9.5.1. The second part requires the President to decide whether the person making the declaration should be allowed to remain in Council during the debate and the vote and whether he should be allowed to vote.
8. It is not for the Constitution Committee to rule how the discretion of the President should have been exercised. This is a matter entirely within the hands of the President and it would be wrong for the Constitution Committee to consider the issue.

### **Request for Interpretation by the International Tornado Class Number 3 – Declaration of Interest (2)**

#### **Constitution Committee Interpretation**

1. The attention of the class is drawn to the separate document where the interests and offices of various members of the Constitution Committee are recorded.
2. Regulation 3 authorises the Constitution Committee to interpret the Constitution and Regulations. It does not authorise it to determine whether a vote is properly taken or whether the proceedings of Council are in order or not.
3. This reply is therefore limited to an interpretation of the words ‘personal vested interest’ in the context of regulation 9.5.1 and of the facts alleged in the request although it contains certain additional comments which are considered relevant.
4. In the context of Regulation 9.5.1 a ‘personal vested interest’ should be declared where the person concerned;
  - (a) has a direct involvement in the matter concerned and that involvement is such that a reasonable man would consider that it could result in his not considering the issue fairly for the good of the sport in general;
  - (b) has a close connection with an organisation which has a direct involvement in the matter concerned and that connection is such that a reasonable man would consider that it could result in his not considering the issue fairly for the good of the sport in general; or
  - (c) knows or ought to know that he or someone close to him will gain financially or personally in some other way if the matter being debated goes a certain way.
5. The Constitution Committee does not consider that a Member of Council who is an international umpire has such an interest.
6. In the first place, Regulation 18.16.1 (c) provides that international umpires will not be paid the fees referred to for a women’s match racing event unless the prize money exceeds 15,500 Euros. There has been no indication that there will be any prize money awarded in the qualifiers for a women’s match racing event in the Olympic Sailing Competition. *A fortiori*, there has been no indication what the amount of any prize money will be. There was no reason for a Council Member who is an international umpire to believe that he would receive any money or other

financial reward, if he is selected to umpire at a qualifier event. It is understood that officials at the Olympic Sailing Games may receive a fee, but it is not considered that the remote chance of a Council Member who is an International Umpire being selected is not sufficient to warrant a declaration.

7. In any event, there are approximately 100 international umpires and probably eight will be selected for any individual event. The chances of the Council Member umpire being selected is statistically small.
8. The suggestion by the International Tornado Class that International Umpires have a declarable interest is not valid.
9. It should also be stated that the declaration is only the first part of a procedure set out in Regulation 9.5.1. The second part requires the President to decide whether the person making the declaration should be allowed to remain in Council during the debate and the vote and whether he should be allowed to vote. It is not for the Constitution Committee to rule whether the discretion of the President should have been exercised or not.

#### **Request for Interpretation by the International Tornado Class Number 4 – Breach of the Objects Clause**

#### **Constitution Committee Interpretation**

1. The attention of the class is drawn to the separate document, previously supplied, where the interests and offices of various members of the Constitution Committee are recorded.
2. The Constitution Committee is requested to issue an interpretation regarding certain actions of ISAF on the ground that those actions are in breach of certain of the Objects which constitute an appendix to the Constitution. The Constitution Committee can issue interpretations of the constitution and the regulations. It is not empowered to comment on actions by ISAF or its Council.
3. The International Tornado Class alleges for a number of reasons that the decision of Council in regard to the selection of events for the 2012 Olympic Sailing Competition failed to comply with paragraphs (b) and (h) of the Objects. It lists a number of alleged facts which it considers result from that decision.
4. By Article 41 Members of the Council are required in the exercise of their votes to have regard to the interest of the sport of yachting throughout the world as a whole. While Article 41 does not refer to the Objects, the Constitution Committee considers that they are an expression of the ISAF's understanding of what constitutes that interest, although the list should not be considered exclusive; there may be other matters in the interest of the sport which are not referred to in the Objects. Council is therefore expected to consider the Objects when making its decisions.
5. The Object expressed in paragraph (b) is "to promote the sport of sailing in all its branches regardless of race, religion, gender or political affiliation." By its very

nature, the selection of events for the Olympic Sailing Competition requires the Members of Council to weigh up the advantages and disadvantages of each branch of sailing as an Olympic event. Inevitably in making its decision, it has to choose between branches of the sport. The International Olympic Committee has allocated ten events for sailing in the 2012 Games, and as there are more than ten branches in the sport, inevitably some of them will not be selected. Failure by Council to select a particular branch is not in breach of the Object.

6. The Object expressed in paragraph (h) is “to represent and protect the interests of any member of the Federation.”
7. Paragraph (h) of the Objects imposes a duty on ISAF and therefore on the Council, but does not grant any rights to individual members. It requires the ISAF and the Council to protect the interests of members from attack and interference from outside bodies. Failure by the Council to select a particular member or branch of the sport for the Olympic Sailing Games is not in breach of the Object.