



Procedural Justice and the Sport of Sailing

What is it and why do we do it?

Procedural Justice concerns the fairness and the transparency of the processes by which decisions are made.

Goals for this presentation.

1. Understand the underlying concepts of Procedural Justice.
2. Recognize the requirements as they apply to the sport of sailing.
3. Identify how we regularly apply them as judges.
4. Identify how we limit what we do apply.
5. Recognize when we should apply procedural justice beyond the RRS.
6. Train the trainers.

Disclaimer

The concept of procedural justice is very complex especially where we are working in a multi-national event. The presentation is not intended to answer all the questions and resolve all the issues. Instead, it is intended to provoke thought, discussion and a framework in relation to how we resolve conflicts at events governed by the RRS.

What is procedural justice?

It is the principle that an individual cannot be deprived of life, liberty, or property without appropriate procedures and safeguards. In short, it is an attempt to create fairness in the process of dispute resolution.

1. Notice to the accused.
 - a) Know the allegations
 - b) Know the accuser
 - c) Know the evidence
 - d) Informed of rules and policies that are relevant.
2. Timeliness of the action.
 - a) Opportunity to prepare
 - b) Opportunity to resolve the issue in a timely fashion

What is procedural justice?

3. Fair tribunal.
 - a) No bias or conflicts of interest
 - b) Relevant competency
4. Right to be present.
5. Right to be heard.
 - a) Right to a hearing
 - b) Present evidence
 - c) Question any evidence presented
 - d) Question witnesses
 - e) Argue their position
6. Right to be advised by or have counsel

What is procedural justice?

7. Fair decision.

- a) Based on relevant and substantial facts
- b) Based on laws/rules understandable by reasonably competent person
- c) Analytical route between the facts and the law/rules
- d) Not arbitrary, capricious or unreasonable in nature
- e) Uniform in how the laws/rules are applied to others

8. Right to appeal

- a) Accountability for the content of the decision
- b) Accountability for the behavior of the judge(s)

9. Freedom from retaliation.

10. Privacy.

Why do we provide procedural justice in Sailing?

1. There is no international law requiring procedural justice of any organization.
2. When we think of procedural justice, we are generally thinking of laws and policies developed by and unique to each nation.
3. The laws and customs of each country vary.
 1. The concept of Due Process in America generally applies only to government and quasi-government agencies. (World sailing and most MNA's are not governmental agencies).
 2. Natural justice in the UK generally binds *both* public and private entities.

Why do we provide procedural justice in Sailing?

4. The International Olympic Committee has created a Code of Ethics which applies to
 - a) IOC and each of its members and administration
 - b) National Olympic Committees (NOCs),
 - c) Olympic and Youth Olympic Organizational Authorities,
 - d) those taking part in the Olympics or Youth Olympics including delegations and officials.

Why do we provide procedural justice in Sailing?

5. The IOC Rules of Procedure (published in the “Ethics” publication) ensure the transparency of the procedure and the right to procedural justice.

Section A, Fundamental Principles, Article 1, Paragraph 1.4:

“Respect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities and which ensure in particular:

- Respect for human dignity;
- Rejection of discrimination of any kind on whatever grounds...
- Rejection of all forms of harassment and abuse...”

Why do we provide procedural justice in Sailing?

6. In 1984, the IOC created the Court of Arbitration for Sport (CAS). CAS' purpose was to resolve disputes directly or indirectly through voluntary arbitration.
7. Since 1994 (revised 2010) the Code of Sports-related Arbitration has governed CAS' arbitration procedures. Article 70 has two parts:
 1. Statutes of bodies for settlement of disputes (S1 – S26).
 2. Procedural Rules (R27 – R70) ensuring some level of procedural justice.
8. Many National Olympic Committees have recognized the jurisdiction of CAS and included in their regulations an arbitration clause making it mandatory.
9. World Anti-Doping Code, Article 13 states that the CAS is the appeals body for all international doping-related disputes.

Why do we provide procedural justice in Sailing?

10. World Sailing, as an International Sports Federation (IF) of the IOC has a mandatory arbitration clause and is subject to the appeal of disputes to CAS should they rise to that level.
11. RRS 3 provides that each competitor agrees to be bound by the rules, be subject to the appeal and review procedures provided in them and not to resort to any court of law or tribunal not provided for in the *rules*.
12. Some countries have laws that specifically require due process of their national sports organizations that govern Olympic sport competition.
 - The United States has the Ted Stevens Olympic and Amateur Sports Act which requires arbitration.

Procedural justice requirements in Sailing

1. Any qualifying event for the Olympics is subject to CAS procedural justice requirements under the IOC.
2. Any international event such as a World Championship or Continental Championship is subject to CAS procedural justice requirements under the World Sailing Regulations.
3. Every event is subject to the procedural justice requirements of the nation in which the event is held and is also quite likely to be subject to CAS jurisdiction under World Sailing Regulations.
4. Every action taken by anyone in the name of an MNA is subject to procedural justice requirements under World Sailing Regulations.

How is procedural justice applied?

There is no perfect example of providing complete procedural justice. Procedural justice is flexible and can only provide procedural protections as the situation demands and allows. The extent of procedural justice is balanced against:

1. The private interest that will be affected,
2. The risk of an erroneous deprivation of that interest, and;
3. The fiscal and administrative burden that additional or substitute procedural safeguards would require.

How is procedural justice applied in Sailing?

For protest and redress hearings:

1. Notice

- a) On the water (RRS 61.1 & 62.2)
- b) Publicly posted (RRS 63.2)
- c) Copy of protest/request to opposing party (RRS 63.2)
- d) Know the parties (RRS 61.2)
- e) Know the evidence (???)
- f) Informed of rules (RRS 61.2)

How is procedural justice applied in Sailing?

2. Timeliness

- a) Opportunity to prepare (RRS 63.2)
- b) Opportunity for timely hearing (???)

3. Fair Tribunal

- a) No interested party on panel (RRS 63.4)
- b) Relevant competency
 - 2. Properly constituted if no right of appeal (RRS App. N)

4. Right to be Present (RRS 63.3)

How is procedural justice applied in Sailing?

5. Right to be heard

- a) Right to a hearing (RRS 63.1)
- b) Present evidence (RRS 63.6)
- c) Question evidence (RRS 63.6)
- d) Question witnesses (RRS 63.6)
- e) Argue their position (???)

6. Right to be advised by or have counsel (RRS 63.3 “Representative”)

How is procedural justice applied in Sailing?

7. Fair decision

- a) Based on relevant and substantial facts.
- b) Based on rules understandable by reasonably competent person
- c) Analytical route between the facts and the rules
- d) Not arbitrary, capricious or unreasonable in nature
- e) Uniform in how the rules are applied to others

8. Right to appeal

- 7. Accountability for the content of the decision (RRS Section D)
- 8. Accountability for the behavior of the judges (VWS Regulation 35)

How is procedural justice applied in Sailing?

9. Freedom from retaliation (RRS 2 & 69)
10. Privacy (???)

What is Missing?

1. Right to see evidence before a hearing
 - a) We don't require that the parties exchange evidence
 - b) We don't require that witnesses be made available before the hearing
2. Right to a rapid resolution of the issue
 - a) There is no requirement that a hearing be held in a certain period of time
3. Right to counsel
 - a) We generally don't allow counsel, much less provide one
4. Fair decision
 - a) Uniform in how the rules are applied to others

What is Missing?

5. Right to appeal
 - a) No access to courts
 - b) Appeal denied in case of Appendix N
6. Freedom from retaliation
7. Privacy

Examples?

1. The private interest that will be affected,
2. The risk of an erroneous deprivation of that interest, and;
3. The fiscal and administrative burden that additional or substitute procedural safeguards would require.

1. Exchanging evidence (“discovery”) is too complicated and time consuming for related hearings
 - a) Note that RRS 69 hearings require it.
 - b) Should we require that the parties exchange pictures/video in a protest hearing?
2. Applying differing levels for determining conflict of interest for officials in order to accommodate the administrative burden
3. Allowing/requiring counsel is too costly and would delay the hearing.
 1. The exception is of course an RRS 69 hearing.

When should we require procedural justice?

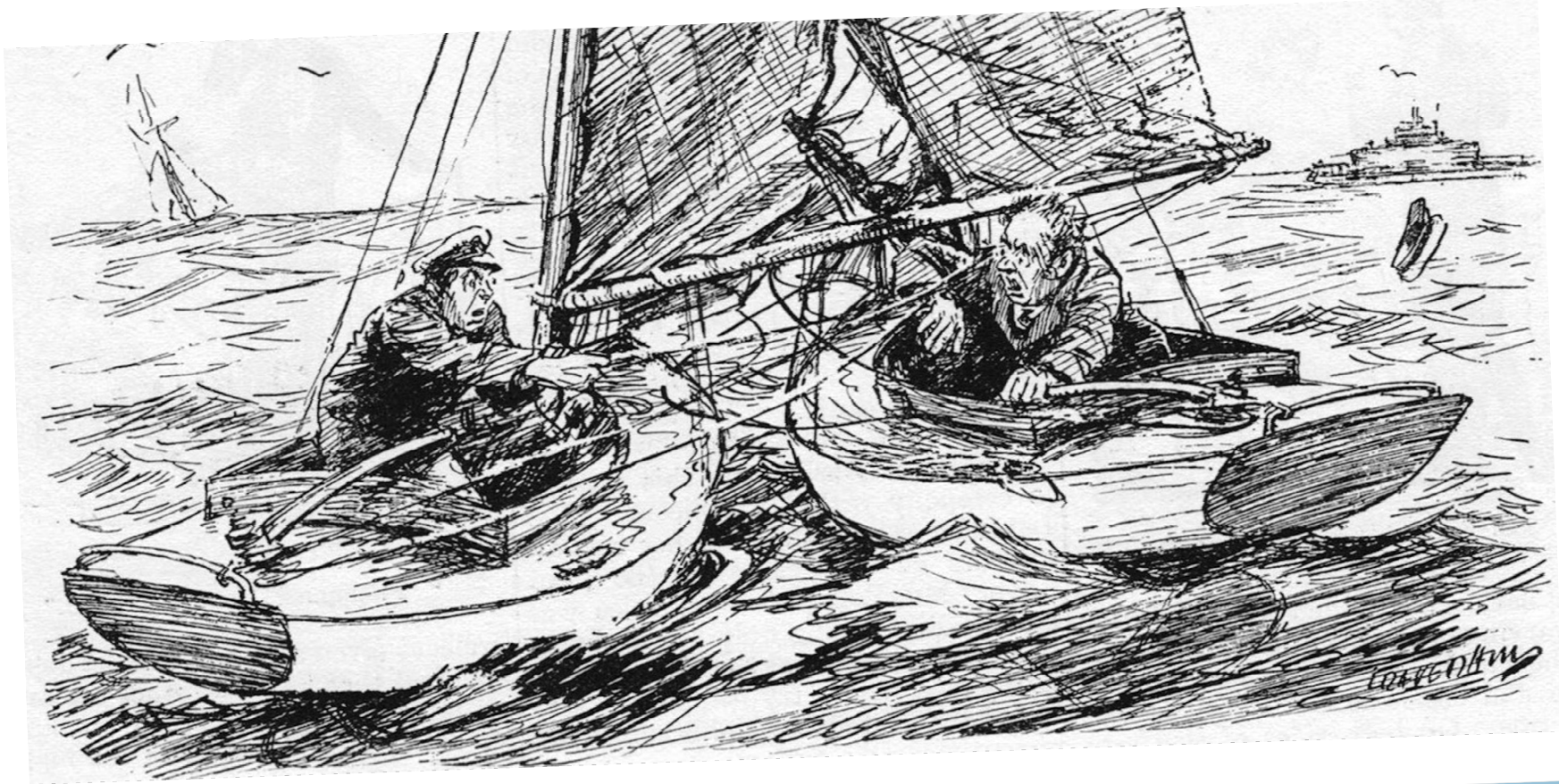
“Always”

Any time there is some challenge to an individual's life, liberty, or property. In the context of sailing, that means that we should provide as much due process as possible for any questions as to an individual's:

1. ability to participate
2. participation
3. penalty of any kind

When should procedural justice be applied?

1. Protest and redress issues
 - a) Invalid protest?
 - b) No standing or jurisdiction?
 - c) Obviously no rule supports the allegation?
2. Request to reopen
 - a) All parties present when determining if the panel will reopen?
3. Participation of support persons
4. Participation of officials
5. Disciplinary actions



Paul Zupan – June 2019