

**IN THE DISTRICT COURT
AT WESTPORT**

CRI-2009-086-000108

MARITIME NEW ZEALAND
Informant

v

LANCE GOODHEW
Defendant

Hearing: (At Nelson) 20 July 2009

Appearances: I R Murray for Informant
M J Logan for Defendant

Judgment: 7 August 2009

NOTES OF JUDGE DJR HOLDERNESS ON SENTENCING

[1] The defendant pleaded guilty on 20 July 2009 to a charge laid under s 68(1)(a) of the Maritime Transport Act 1994 (“the Act”).

[2] The defendant acknowledged by his plea that on 27 August 2008 he operated a ship, Enchanter, (“the vessel”) outside coastal limits without holding the appropriate current maritime document, namely an appropriate Safe Ship Management Certificate.

[3] The vessel was photographed on the date of the offence by an RNZAF aircraft. At the time it was approximately 26 nautical miles off the shore of the west coast of

the South Island. The certificate held in respect of the vessel authorised it to operate within New Zealand coastal waters which extend 20 nautical miles from Cape Foulwind. The vessel was therefore approximately six nautical miles outside the coastal limit.

[4] The defendant operates, jointly with his wife, a charter fishing business. He is the co-owner of the vessel. On the day of the offence he was the skipper of the vessel.

[5] Pursuant to s 68(3)(a) of the Act the defendant is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.

[6] In 2007 Maritime New Zealand launched a safety campaign to discourage the operators of vessels from exceeding their prescribed limits. The Safe Ship Management system is intended to protect vessels and the lives of those on board them. Operating limits are imposed upon vessels by the Safe Ship Management system.

[7] In a letter written to Maritime Investigations dated 9 December 2008 the defendant and his wife accepted that it was the skipper's responsibility to ensure that the vessel remained within coastal waters when operating. The defendant attributed the exceeding of the coastal limit to the inconsistent shoreline along the west coast.

[8] The informant submits that an aggravating feature of the offence is that it was committed in the course of a charter trip being carried out for financial gain.

[9] One of the objects of the Act is to ensure that participants in the Maritime Transport system are responsible for their actions. The informant points to the safety risks involved in relation to this type of offence. These are risks in respect of both the operators and the persons who charter such vessels. Mr Murray submits that any penalties should be sufficient to deter the defendant and other charter fishing operators from offences of this nature which involve a failure to comply with the requirements of the Act.

[10] The informant acknowledges, as a mitigating factor, the plea of guilty entered by the defendant and the fact that he has not previously been prosecuted for any maritime offence.

[11] The informant places reliance upon several cases in which fines have been imposed for offences against the Act namely, *Maritime in New Zealand Limited v Peninsula Moorings Limited*; *R v Rackley*; *Maritime New Zealand v Douglas*; *Maritime New Zealand v Coppell*; *Police v Tierney and Department of Labour v New Zealand King Salmon Company Limited*.

[12] The sentence in the *Peninsula Moorings* case was imposed by Judge Noble in the District Court at Christchurch in May 2008. The defendant company pleaded guilty to five charges laid under s 68 and five further charges of operating a ship after it had been detained but before it had been released by a competent authority. The vessel “Merlin” was used by the defendant for inspecting moorings in Akaroa Harbour. The facts were summarised by Judge Noble as follows:

Late in 2006 Maritime New Zealand ascertained that the Merlin had for some time been operating absent the necessary certificate and served a notice on the company’s director, that was a detention notice, which was issued in December of 2006 which demanded that the vessel be not sailed pending survey and the obtaining of the necessary certificate. Contrary to that notice in circumstances which Mr Davis has frankly acknowledged was the proffering of what turned out to be incorrect legal advice as to the issue of whether the term “at sea” also included a harbour, which it did. The Merlin sailed on five other occasions, if “sailed” is the appropriate expression but I suppose it is in these circumstances, between March and July 2007 engaging in mooring maintenance, checking and repair operations.

It was eventually surveyed, passed the survey and was released from detention in September 2007.

[13] In the course of his sentencing remarks, having noted the defendant company’s very limited means to pay fines, Judge Noble said this:

... if all things were equal, that is if this had been a financial viable undertaking, it had been conducted away from the placid waters of the inner harbour, and then matters may well have demanded a starting point in the order of \$20,000 but those circumstances do not prevail here.

[14] In the event Judge Noble took what he acknowledged was a pragmatic approach and fined the defendant \$1000 on each of the charges laid under s 68. On the other charges the defendant was convicted and discharged.

[15] The facts of the *Peninsula Moorings* case are significantly different from the facts of this case.

[16] In the *New Zealand King Salmon* case the defendant pleaded guilty to a charge under the Health and Safety in Employment Act and three charges laid under the Maritime Transport Act including two charges under s 68 of the Act. In relation to the Maritime Transport Act offences the defendant acknowledged having operated the vessel “Shikari” in a manner which caused unnecessary danger or risk.

[17] In my view the sentence imposed in *New Zealand King Salmon* is of limited assistance. This is because Judge Toohey decided that it was appropriate to impose “

... the substantive sentence on the charge under the Health and Safety in Employment Act, which carries the heavier penalty and in relation to which there is a clear path for sentencing provided to this Court by decisions of the Higher Courts and in particular a recent decision of *Department of Labour v Hannan & Philip Contractors Limited*.

[18] In the course of his sentencing remarks Judge Toohey also observed that the:

... difference between the first two charges on the one hand and the second two on the other is that the first two are based directly on the collision that killed two persons and injured another four.

[19] The judge noted that the latter two charges (the s 68 charges) did not depend upon the collision and that they were not directly relevant to it.

[20] Having weighed a number of factors, many of which were primarily relevant to the charge under the Health and Safety in Employment Act, and having imposed substantial reparation sentences Judge Toohey imposed a fine of \$60,000 for the charges under the Health and Safety in Employment Act and the charge under s 65 of the Maritime Safety Act. For each of the two s 68 offences the judge imposed a fine of \$3000.

[21] In *Douglas* there were four charges laid under s 68(2) of the Act. The other charges were laid under s 65 and involved the same maximum penalty. One or more of the charges arose from an accident that involved a minor injury, a bruised cheek sustained by one passenger. There had been unlawful operation of the vessel over a period of months. It was said that the operation resulted in a very small commercial gain of only about \$400. Judge Barry, in imposing sentence in *Douglas* in the Blenheim District Court on 12 May 2006 said this:

It is clear, certainly in respect of the charges under s 65(1)(a) that he (the defendant) was neither qualified at the time, nor competent. He ran the vessel aground at something like 18 knots as a result of following an old GPS line in the dark. There were five passengers and approximately 500 kilograms of equipment on board. At the time it was planing, and ran several metres up the beach, grounding approximately 50 metres from a jetty, causing about \$1200 of damage to the vessel and fortunately no serious injury.

[22] In *Douglas* Judge Barry considered a fine of \$2000 was justified as a starting point for the s 65 offences. After a discount of approximately one third the defendant was fined \$650 on each of those charges involved. For the s 68 offences, from a starting point in the range of \$2500, a fine of \$350 was imposed for each offence.

[23] In *Rackley* a fine of \$500 was imposed for a single s 68 offence. The sentencing judge said this:

Of course it is important to remember that these offences have to be treated seriously, or others who are similarly placed or might be similarly placed to you, would treat the law with scant regard.

[24] In *Police v Tierney* a fine of \$750 was imposed in January 2002 on two charges laid under s 65. For a s 68 offence the fine was \$1000.

[25] In *Coppell* the Court dealt with a s 68 offence involving a vessel which collided with a breakwater at Greymouth. A fine of \$2000 was imposed.

[26] Mr Logan submits that difficulties arise for operators because of the “somewhat arbitrary” way in which coastal limits are defined namely, by a straight line between fixed points. In his submissions Mr Logan emphasises that, because

the coastline does not follow a straight line, the distance between the shore and the coastal limit can vary significantly along the coastline. Nevertheless, Mr Logan acknowledges that the straight line coastal limit does have the benefit of clarity and that it would have been marked on navigation aids used by Mr Goodhew. However, Mr Logan contends that the straight line method of defining coastal limits can lead to confusion in practice because of the change in the legal status of the vessel in different positions along the coastline, despite the fact that it may be operating at the same distance from the shore. Mr Logan submits that this factor should be taken into account in assessing the informant's submission that safety issues arise when vessels arise more than a certain distance from the coast.

[27] It was submitted by Mr Logan that the *Enchanter* is typical of the type of sophisticated vessel used by charter fishing operators. The vessel had been surveyed by maritime surveyors and a current Safe Ship Management Certificate was held for the vessel.

[28] The primary submission advanced on behalf of the defendant is that the breach of the coastal limits was inadvertent and was caused not only by the nature of the limits, as discussed above, but also the nature of the charter fishing operation. It is submitted that the defendant's attention was diverted because of the need to locate and follow blue fin tuna and because, when hooked, a tuna generally puts up a powerful and lengthy fight. Mr Logan contends that, in these circumstances, a skipper may inadvertently stray beyond the coastal limits.

[29] The Court gives what weight it can to this submission. However, it is incumbent upon operators to remain within coastal waters and the Court considers that, given the navigational aids on sophisticated vessels such as the *Enchanter*, this is not as difficult a task as Mr Logan suggests it might be.

[30] However, the Court considers that in this case the defendant's culpability is somewhat less than the culpability of the individual offender in *Maritime New Zealand v Real Passion Charters Limited & Mark Andrew Hoare* (District Court, Nelson, CRI-2009-086-000106, 7 August 2009). In that case the defendant allowed

the offending vessel to stray significantly further beyond the coastal limit and there were two offences committed on different dates.

[31] In this case the Court is satisfied that an appropriate starting point is a fine of \$7500.

[32] The defendant is entitled to a credit for his plea of guilty and also for the fact that he has no previous convictions for any offence against the Act. The Court also takes into account that there was no accident or physical harm arising from the offence.

[33] Taking into account all the Sentencing Act factors which appear relevant the defendant will be fined the sum of \$2000 and ordered to pay court costs of \$130 and a solicitors fee of \$250.

DJR Holderness
District Court Judge