

LEGAL OBLIGATIONS ON ALL MASTERS AND SKIPPERS

On Anzac Day 2007 two children aged eight and five tragically drowned when their family boat sank near Shag Island in the Hauraki Gulf. Maritime New Zealand has charged the children's father who was the skipper of the boat at the time of the accident. The charges are to be defended but relate to a legal obligation on all mariners to ensure that any ship or maritime product is not used in a manner which causes unnecessary danger or risk to any person.

The tragic events and the subsequent charging of the children's father brings into sharp focus the requirements of all boaties whether commercial or recreational to comply with the rules under the Maritime Transport Act. All too often the Courts hear of amateur standards being applied to boating activities when in reality the same fundamental rules of the sea apply equally to recreational boaties as they do to our commercial colleagues.

This article is the first in a series looking at boaties' legal obligations, how they are enforced and how on occasions prosecutions can result. When topical cases such as the one currently before the Court are completed we will look to analyse their facts and outcome so that we can hopefully learn from the events faced by others.

Principally within New Zealand it is the Police that have the job of enforcing legislation that governs the behaviour of all people within New Zealand. Typically, the Government passes Acts to prescribe limits to our behaviour. Two Acts that control our behaviour in the marine environment are the Maritime Transport Act 1993 and the later 1994 Act. The 1993 Act empowered the Government to establish the Maritime Safety Authority (now known as Maritime New Zealand) and the 1994 Act imposes legal obligations on maritime users.

Further rules are created by subordinate legislation called Regulations. The Maritime Transport Act 1993 allows for the making of regulations and these regulations or rules as they are referred to can be found in the Maritime (Offences) Regulations 1998.

Both the New Zealand Police and Maritime New Zealand are able to enforce the Acts and the Rules. One of the ways Maritime New Zealand achieve this objective is by publishing advisory circulars. For instance, part 22 of the Maritime (Offences) Regulations 1998 relates to collision prevention. This rule is the source for steering and sailing rules. Rule 22 is the reason why we yell STARBOARD on the race track. Thankfully you are not required to yell "Pursuant to Rule 22 of the Maritime (Offences) Regulations 1998 I advise that I am on Starboard Tack and you are on Port Tack, I therefore require you to give way forthwith".

A further obligation is under section 31 of the Maritime Transport Act 1994, which requires the master of any New Zealand ship (which includes you and I

sailing in the weekend) to notify Maritime New Zealand of any mishap that results in serious harm to a person, an accident, or an incident.

Mishap, accident and incident are words defined in the Act and together they have a wide and liberal meaning. Obviously where serious harm results, Maritime New Zealand should be advised, but arguably an “incident or accident” may include touching a sandbank, dragging anchor or near collision.

The obligation to report requires the master or skipper to report any mishap to Maritime New Zealand as soon as practicable after it occurs. The definitions contained within the Maritime New Zealand website as to examples of “as soon as practicable” leave little scope for leeway. For example they quote that:

“It would not be ‘as soon as practicable’ if the ship received damage and the skipper reported it at the same time as lodging his insurance claim when he returned to port, particularly when he had mobile phone coverage for VHS facilities available at sea.”

An example of how a charge of operating a vessel in a manner which causes unnecessary danger or risk to persons, may be brought is evidenced in the case of *T v the Maritime Safety Authority*.

T was the skipper of a fishing vessel and was returning at night to the port of Auckland. His deckhand had initially taken the wheel when T took over while the deckhand got some sleep. As the vessel was coming into Rangitoto Channel following the leading light at Takapuna, T was feeling tired and thought of getting the deckhand up from his rest to do the last hour of sailing. T did not wake his crew and subsequently fell asleep himself. The fishing vessel went aground on Takapuna beach and was extensively damaged but no-one was injured.

It was argued that T had fallen asleep suddenly and for that reason was without fault. However the Court rejected that submission. In T’s case the law imposes liability on any person who operates maintains or services any ship in a manner which causes unnecessary danger or risk to any other person or to any property. The words “operates, maintains or services” relate to voluntary and conscious acts. T was not charged on the basis that he operated the vessel while he was asleep. He was charged and convicted on the basis that he continued to operate the vessel with knowledge that he was liable to fall asleep. This was held to be operation in a manner which caused unnecessary danger or risk.

Although we have to date successfully resisted compulsory registration of pleasure boats and licensing of operators, that does not exonerate us from compliance with rules. Your behaviour while afloat is governed by a set of rules just as it would be if you were driving a motor vehicle.

Both the Police and Maritime New Zealand are becoming more vigilant in enforcing compliance of Maritime Rules and we should all be aware that the

sense of freedom we get from being afloat and enjoying our wonderful coast does not excuse us from abiding by the law.

Resume:

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