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**IN THE DISTRICT COURT
AT NELSON**

MARITIME SAFETY AUTHORITY

Informant

RODERICK MACK SIMPSON

Defendant

Hearing: 17 December 1999

Date of Sentence: 17 December 1999

Counsel: Mrs Maze for Applicant
Mr J Sandston for Defendant

NOTES OF JUDGE GRACE ON SENTENCING

Solicitors:
Crown Law for Applicant
McFadden McMeeken Phillips for Defendant

McR 3



Mr Simpson faces a prosecution brought against Regulation 3 (1) of the Maritime (Offence) Regulations 1998 in that on 21 March 1999 then the owner of a ship, the "Tanekaha" to which section 2 of the Maritime Rules part 21 applies breached rule 21.13(1)(C) (ii) in Maritime Rule part 21 by failing to ensure that the ship complied with the conditions and limitations stated in the ship's New Zealand Safe Ship Management Certification, namely the condition that the ship was not to carry more than 25 passengers in river limits. To that charge Mr Simpson has entered a plea of guilty.

The Informant has placed a summary of facts before the Court and from that it appears that the defendant is the owner and was the skipper of the Tanekaha and in 1987 the Tanekaha was a vessel used solely for fishing. In 1987 it was modified to enable it to carry passengers. At that time the vessel had cabin space capacity for 19 persons and a deck capacity for 16 persons and was certified to carry 35 people. In 1996 it was modified and certified therefor to carry 25 people and at the time this incident occurred that was the current certification namely that the vessel was not to carry more than 25 passengers in river limits, 15 passengers and extended limits and 3 passengers in extreme limits. That certification was confirmed on 9 June 1998. On the day in question the Tanekaha had left Havelock with 26 adults and 15 students on board, making a total of 41 passengers. These students were college students from Nelson College for Girls ranging from ages 7 – 17 and were on a school trip. The vessel had stopped at Jacobs Bay and then proceeded on to Maud Island a Department of Conservation Reserve where the passengers disembarked and the vessel waited while they completed their excursion and at 15.20 hours departed Maud Island. Upon entering the Havelock Channel it became stuck, the defendant asked 20 of the passengers to move to one side of the vessel and the vessel then moved off the mudflat and proceeded to its berth.

The case is mounted on the basis that the vessel did not have the capacity to carry 41 persons and was overloaded.

The Informant argues that this as this is a first prosecution brought under this particular piece of legislation that it is looking at clearly for some guidance for the future but in doing that it says that this was a breach of the safety requirements particularly bearing in mind the fact that earlier on when the vessel had been surveyed it only had life saving equipment for 32 lives. In other words there are only 32 life saving appliances on board so that factor coupled with the fact that the vessel was overloaded is said to lead to a greater safety hazard and that should therefore be reflected in the penalty the Court imposes.

I have listened to submissions made on Mr Simpson's behalf through Mr Sandston and he has produced a photograph of the vessel that was taken prior to this particular incident. It was taken after it was last surveyed. It shows some rafts on the top of the boat, which coupled with other equipment which was on the boat on the day in question, Mr Sandston says well exceeded the requirements for life saving equipment on the Boat. Mrs Maze was not able to respond to that and the issue of an adjournment was hinted at. It appears from the information given to me that the inquiry that was undertaken by the Marine Safety Authority was not commenced until ten days after the event, so that was the first time that somebody presumably visited the boat from the Marine Safety Authority. There was no information before me to say what that person saw on the boat at that time. We are now going back some 9 months in time. Had the vessel been inspected on the day in question no doubt that inspection would have recorded the equipment on board at the time. I am left in the situation where there is a bit of a vacuum there. The submission is made however on behalf of Mr Simpson that there was sufficient life saving equipment on board on this day in question.

In addition to that I have had placed before me a number of reference on behalf of Mr Simpson. He is a person who has had an impeccable history and work record, both within his current employment and within the community. He has a Queens Service Medal. He has been involved in the Fire Service. He has assisted the local Police in Havelock with various tasks from time to time and they speak well of him in the reference that they have provided, and it is said that he generally has a concern for safety issues. As to this particular trip Mr Sandston says Mr Simpson was not in it for profit on this occasion. He had undertaken to transport this group of school pupils and some adults out on this trip and he was doing that at cost so there was no monetary gain or motive for profit behind it.

It is said that Mr Simpson had expected a group of 30 to arrive and clearly from the numbers that were on the boat more than that had turned up for the trip, and that perhaps may have taken him by surprise.

The Defendant has also had some tilt tests done on the vessel since this incident and the purpose of that is to demonstrate that despite the fact that the vessel was carrying more than the numbers for which it was certified for it was still within its capacity.

Mr Sandston also says that when the vessel was originally certified it was certified for 45 passengers. The reason why it was downgraded to 35 passengers in 1998 was because some exterior seating was removed off the vessel and hence the downward movement in numbers which it was certified to carry. Having listened to what Mr Simpson himself has said there appears to have been some other alterations to the boat but I do not regard that that is significant.

As to the grounding of the vessel as it come through the channel back to Havelock, is a letter has been put in the submissions, signed by several other

boat owners in the area, indicating that this is a common problem. Because of the shallowness of the channel a vessel of this draft can easily be grounded without too much difficulty.

It is against all that the penalty is to be fixed. The maximum penalty for an offence under this regulation is \$5,000.00. There can in my view be little doubt that the regulations are directed at safety issues and that these are to ensure as best as possible the people in a boat such as this are assured of some degree of safety. In passing the regulation and issuing the certificates to boat owners the authorities are applying their collective knowledge and experience in seeking to achieve that aim of safety. The regulations are therefore in place for a quite clear and specific purpose.

There is in my view an obligation on any boat owner or captain to make himself familiar with the terms of the certificates that apply to that particular boat and to address them and ensure that they are followed. The aggravating feature in this case is that this boat was carrying 16 more people than it was certified to carry. I emphasise the word certified because that really is the purpose behind this regulation. It is a certification that is applied to a vessel and it means what it says, namely that that particular vessel was certified for a particular number. I note that the trip on this particular day was not for financial reward or commercial gain. Rather it was undertaken, done on the information before me, out of a genuine wish to provide a service for a group of school pupils and therefore give something towards the community service that this man has been involved in previously and I think that must be to his credit. I accept that he may have been taken by surprise with the greater number of pupils arriving for the trip than he had anticipated. But I believe there was an obligation on him, being the owner and master of the vessel, to apply the terms of the certificate that he knew existed for his boat and ensure that only the requisite number got on. It may well be that the vessel was still within its safe functioning capabilities when one considers the various tests that

have been subsequently been carried out, but on the day in question the safety standard that was applying to that vessel limited the number of people on board to 25. That was the purpose behind the regulations under which that certificate was given and there was therefore the obligation on the master to ensure that that certificate was complied with. Had he wished to alter that certificate there are procedures whereby he can have the vessel re-surveyed to ensure that he is able to carry a greater number of passengers.

This is not a case in my view which requires a deterrent aspect for the reasons which I have referred to but there must be a penalty that reflects the fact that there is a requirement on Masters and Captains to make sure that they comply with the law. A penalty will be imposed therefore that will in my view reflect that. I had anticipated imposing a penalty in the region of \$1,500.00. Mr Simpson is entitled to a credit for a plea of guilty and for his previous good record.

The fine will therefore be fixed at \$800.00 together with Court Costs of \$130.00 and a Solicitors fee of \$300.00 which is to be paid to the enforcement authority.



P R GRACE
District Court Judge.