



# HOW TO AVOID A **CLOSE**

*(both in and out of court!)*

For those of you who are professional skippers, the last place you want to be is in a courtroom defending your actions to some heavy questioning from a smart lawyer.

But if you do find yourself subject to a judge's gaze, hopefully it will be as a result of you being a witness for the prosecution and not as a defendant. Be warned, you have to be just as well prepared for either situation.

After a recent visit to a courtroom, where I was a witness for the prosecution (Maritime New Zealand), here are a few ideas that may help you, both afloat and in the courtroom.

This will sound obvious, but know and understand well your responsibilities when in a crossing situation with another vessel and if you are the stand-on or give-way vessel. (Maritime Rules 22.15, 22.16, 22.17).

All too often, a give-way vessel's skipper will either leave it too late to take the appropriate action or speed up to make it across your bow. Unfortunately, as skippers of private vessels are under no obligation (apart from a moral one) to have any knowledge of the Maritime Rules, the onus to take the correct action falls directly into the wheelhouse of the professional skipper.

Again stating the obvious, the best way of taking a relative bearing is usually sighting the possible offending vessel over part of your own vessel's structures as seen from your helm position. If that bearing doesn't appreciably change, it's a fair bet you're going to get very close to each other.

For some years now I have always had my camera ready at the helm and it's not just for taking pretty pictures. If I am the stand-on vessel and I see a give-way vessel coming across from port that may present a problem, I start taking photographs of it in relation to my own heading. Needless to say, I have an interesting library of images showing vessels racing across my bows!

This may all seem a bit over the top, but if you end up in court,

photographic evidence is hard to refute and it may just save your ticket. In a situation like this, you should at least make a note of times, course, speed and position and have the other watchkeeper verify it.

I had been the relief skipper on the Sealink ferry *Seaway 2* on the run between downtown Auckland and Kennedy Point on Waiheke Island, and had just rounded the southern end of Motuihe Island on the return trip to the city. On regular runs it is common to line the vessel's bow up with a known landmark to keep on the preferred track and, after checking we were clear to do so, I brought her round to head for the tallest building in Takapuna on 286° true, checking the compass heading at the time.

I sighted a large cruising yacht ahead, just to the north of Brown's Island, on our port bow and crossing port to starboard. At this time she was approximately two miles away and at our speed of 15.5 knots and her estimated seven knots we had the potential time of around six minutes before collision, if indeed we were on a collision course.

As usual with a crossing vessel, I took a relative bearing using part of our vessel's structure as a reference point. The bearing was not changing significantly and so I began taking photographs, just in case the skipper of that vessel was unaware of the consequences that were developing.

I then recognised her as being the well known 22.8m cutter *Classique*. She was maintaining her course and speed with her relative bearing unchanging.

It became very obvious we were going to collide unless the *Classique* took some drastic action. Photograph number two was taken and five blasts were sounded on our whistle, with still no reaction from the *Classique*.

A further five blasts were sounded with again the same result. It now became obvious that unless I took some action, the *Classique* was going to go to the bottom.



# QUARTERS SITUATION

BY MICHAEL PIGNEGUY

With our size and speed it was too late for a turn to starboard, so I put our engines astern to bring the *Seaway 2* almost to a halt to allow the *Classique* to slip under our bow and clear us. Another sounding of five blasts brought a wave from the helmsperson of the *Classique* as she continued on her original course and speed!

It was an outstanding demonstration of ignorance of the Rules of the Road, and I had another watchkeeper with me who witnessed the event.

*Classique's* skipper and owner, Mel Bolton, who conducted his own defence, questioned me as to why I hadn't gone to port, as that was what he assumed I would do. This was a man with a ticket asking me this!

He also said he could see no reason why either of us should have had to alter course or speed, as he had taken a relative bearing of us using his "infallible" method of seeing that the land behind us was moving which, according to him, proved we were not on a collision course. He said he had been in the wheelhouse sewing cushions at the time.

His second ground for defence was that a local custom had developed an assumed, unspoken agreement between yacht and ferry skippers, whereby the Maritime Rules are put aside to navigate around each other in the harbour. This was why he expected the *Seaway 2* to ignore the Maritime Rules and instead of standing on, as rule 22.17 states, he maintained I should have altered course to port, "like all the other ferries do".

Bolton also insinuated I had "manufactured the incident" by altering the *Seaway 2's* course to starboard, following the *Classique* as she was crossing the *Seaway 2's* bow. The photographs I took that were presented in court clearly showed this was not the case, a point proved by the independent expert witness, Barry Young.

Another accusation by Bolton was that I had Photoshopped the photographs to make it look like the *Classique* was closer than she really was. He then went on to produce a photograph that he had (very poorly and obviously) altered himself to make it look like the *Classique* was further away.

Meanwhile, his witness, the lady on the helm, said she had taken a relative bearing of us and had recognised we were indeed on a collision course, but had also assumed we would go to port around their stern. Upon the last sounding of my five blasts, as the *Classique* slid past our starboard bow, she waved at me. In the witness stand she said they often wave at other ferries that hoot at them. One doesn't have to wonder why!

The case was an interesting demonstration of how our democratic system works when we allow someone with obviously minimal legal knowledge and, as it turned out, minimal knowledge of the Rules of the Road, to tie up a courtroom for

A crossing situation existed and the onus was on Mr Bolton to have kept out of the way

the best part of three days for something that should have taken a morning at most. He had me in the witness box for the better part of five hours, during which time we went around in circles with his rather obscure questioning technique.

Although I hope this was one of the more extreme cases of democratic leniency, we must count ourselves lucky enough to live in a society that allows this process.

Judge G Davis, who readily admitted to having no nautical knowledge, was very impressive in the way he quickly picked up the salient points of the case and I'm sure he was ready to sit his skipper's ticket at the end! He was also very understanding of the defendant's lack of legal knowledge and gave him ►

every assistance when needed, although his patience, like that of everyone else in the courtroom, was sorely tested at times.

But justice was at last seen to be done and Bolton was found guilty under section 65 of the Maritime Transport Act 1994 of operating a ship, the *Classique*, in a manner which caused unnecessary danger or risk to any other person or property.

In his reserved judgment, Judge Davis wrote: "In my view, the defence mounted by Mr Bolton must fail. I found in drawing these conclusions Mr Bolton to be a thoroughly unreliable witness who appeared to the court to adopt an attitude that the Maritime Rules did not apply to him.

"He suggested in court that there was a conspiracy by members in the maritime fraternity to bring this prosecution

The photographs were an essential part of the prosecution's case because they showed exactly what occurred

against him, notwithstanding the witnesses for the prosecution did not know either of the conspirators Mr Bolton suggested had put the witness up to the prosecution.

"I reject that there was any conspiracy. The evidence in my view was clear and unequivocal. A crossing situation existed and the onus was on Mr Bolton to have kept out of the way. He did not do so and, in my view, deliberately chose to ignore the Maritime Rules and what appears to me to be proper maritime practice and etiquette."

We appeared in court 21 months after the incident. The

photographs I took were an essential part of the prosecution's case, not only because they showed exactly what occurred, but also because they were a good reminder of what happened before and after the event.


Just stick to the facts; make no assumptions and keep your response to questions clear, concise and minimal. Be very clear what rules and regulations you were operating under at the time of the incident.

If you see a possible incident in the making while you are at the helm, ensure you have another watchkeeper as a witness and you are able to use a camera.

Yes, I could have altered to port quite easily, gone around the stern of the *Classique* and nothing would have happened, as that was what Bolton had assumed I would do. But if I had done that I would then be assuming he would have maintained his course and speed.

If I had done so I would be breaking two Maritime Rules, namely 22.17 (Action by the stand-on vessel) and 22.7(3) (Assumptions made on scanty information...). Unfortunately, I have seen both these rules broken on numerous occasions, the vast majority of times by recreational craft.

But some skippers of commercial craft out there, because of their vessel's size and speed, tend to turn a blind eye to the rule book for the sake of convenience. It's certainly not professional and they are making dangerous assumptions. They may one day need the services of a very smart lawyer in order to keep their certificate.

The day when everyone will need a certificate to operate a private craft is indeed a long way off, unfortunately. Meanwhile, those of us who are professional skippers will just have to keep a sharp lookout and keep that camera at the ready! 

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