



# editorial

Keith Ingram,  
Editor



## Just who calls the shots?

**H**ave you ever been in the gun? Prosecuted by Maritime NZ? If not, then you are lucky – or you might be thinking, ‘There but for the grace of God go I’.

We all know there are times when a skipper or operator should be held to account for his or her actions. But what is hard to understand is the test that Maritime NZ uses to determine whether or not to prosecute. Many of us have seen cases worthy of prosecution, even jail, but are left wondering why Maritime NZ hasn’t acted.

Equally troubling, increasingly, we see Maritime NZ prosecutions or ‘enforcement actions’ tested in Court – only to see them tossed out, accompanied by various judges’ castigations of Maritime NZ’s actions, processes and decision-making. In some cases, the judge just falls short of accusing Maritime NZ of *wasting the court’s time*.

That waste aside, these ill-founded Maritime NZ prosecutions – and subsequent appeals, when the agency can’t take ‘No’ for an answer – inflict a huge personal toll on those who fall victim to the maritime ‘compliance system’.

Following our review of the recent Glass Bottom Boat judgment, I was given cause to reflect on the trail of personal destruction left in Maritime NZ’s wake – resulting from court proceedings over the past few years. This magazine has covered all of these cases, and the subsequent judgements and criticism of Maritime NZ that followed. Not so much coverage has been given to the personal and financial impact these cases have inflicted.

Maritime NZ’s continued attack on our industry through their relentless prosecution regime is not only lazy and incompetent – but it is now leaving a heart-breaking toll on the personal lives of its victims. (By ‘victims’ in this instance, I mean those targeted by Maritime NZ to undergo court proceedings, in some cases only to ‘test’ the agency’s clouded view of what qualifies as ‘an offence’.)

We also see cases where the Police report that there would be no case to answer under the Crimes Act. Then, with Maritime NZ struggling to make a case under the Maritime Transport Act, it pursues its target operator using the HSWAct – in some cases drawing a very long bow.

Now, most people would agree that criminal charges should be reserved for real crooks who have chosen a path of crime. Let me ask this question: Does Maritime NZ really believe that it is dealing with an industry of delinquent lawbreaking sinners? Because it’s plain that New Zealand’s judges don’t.

Do Maritime NZ officials have no conscience, and no regrets when they review their part in enforcement measures against: *Santa Regina’s* Captain John Henderson; Survey Nelson; Maritime Management Services; Surveyor Roger Hawkes; Richard Prentice and *Mack Attack*; Glass Bottom Boats; and the recent Red Boats saga – just to name a few?

What is a crime, in my book, is the heavy personal toll inflicted on the health and well-being of our operators as a result

of this aggressive, often unnecessary approach?

Most of those targeted for prosecution by Maritime NZ have no option but to give up. They roll over, plead guilty, or in some cases, seek an ‘enforceable undertaking’ (diversion on steroids) because *they just cannot afford the spiralling legal costs* – even though they may be innocent.

We are paying the cost of these failed prosecutions and appeals out of our levies, so where does the accountability stop? You guessed it: With the ‘Director’ himself. You would expect with such a large responsibility and accountability to the Minister and the industry he serves, that he would be maintaining a close oversight on his compliance team and their penchant to prosecute at will.

From where we sit, we see a plethora of ill-founded, poorly-investigated prosecutions heading to court. Then when those cases that are defended fail, mostly due to investigatory incompetence, Maritime NZ appeals and appeals again – just to try and save face.

All of this at a huge cost to the maritime industry. Yet we see many incidents on the water, that *should* be prosecuted, but are passed over. Why?

What sparked these reflections was the recent passing of Scotty Pennington from Glass Bottom Boats. He was being hounded by Maritime NZ officers –unfairly, as two courts found.

When Maritime NZ tried to shut him down by issuing an ill-founded *prohibition notice* stopping him from operating where he had worked for years, while still allowing any and every recreational boatie to continue to motor in the same waters, he rightfully challenged Maritime NZ and won.

Scotty was already an ill man. He was passionate about his small tourist operation in the Goat Island Marine Reserve and fought for his right to operate it. He was doing nothing illegal, and certainly not operating in a dangerous manner, as alleged.

Scotty won his day in court, only to be faced by a costly appeal by Maritime NZ – which he also won.

Yes, Maritime NZ looked seriously to appeal again, but then common-sense kicked in when they realized they would likely be appealing against a dead man. The stress of court battles and Maritime NZ’s persecution took its toll on Scotty, in his final days.

So, let me ask: Who are the heartless souls in Maritime NZ hiding behind the Director’s cloak, who make these stupid, insensitive decisions to pursue such prosecutions and appeals? In doing so, they impose a huge cost on our industry and often there is nothing to be gained for the public, or that the industry might be wiser from the knowledge.

