



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Washed-up Boat Still Belongs to Owner

A Greater Victoria (Canada) conservation group's recent beach clean up after two pleasure boats washed up at Cadboro Bay (near the southern tip of Vancouver Island) has drawn the spotlight on marine salvage rights.

According to local newspaper, the *Times Colonist*, items of value were taken from at least one of the boats – albeit, the boat owner asserted the looting took place before the Peninsula Streams Society volunteers commenced their clean-up work

Darren Williams (pictured), principal of Vancouver-headquartered law firm League and Williams, stated that people do not have ownership rights to remove items from what may appear to be a wreck. He clarified that in Canada, the law of salvage is based on federal legislation – the Canada Shipping Act – as well as international convention and common law.

“Anybody finding a wreck should note the vessel’s registration number and inform the Receiver of Wrecks,” Mr Williams reportedly told the *Times Colonist*.



“Sometimes a boat has been reported to the Receiver of Wrecks, but it can take them months to find the owner. It is not available for salvage until the owner waives his right.”

It is understood the advice applies to both recently-shipwrecked boats and those that have been aground for months and appear to be abandoned.

Failure to adhere could reportedly result in a charge of trespass, plundering or interfering with the Receiver of Wrecks, which is an office of the Canadian Coast Guard.

Furthermore, Mr Williams said if there was any suspicions of hazardous materials or a threat of potential pollution coming from wrecked or ground boats, contact should also be immediately made with the Canadian Coast Guard, which would safely remove the materials.

“If you choose to remove hazardous materials yourself, you then assume all risks of injury – to yourself or the environment. You put yourself in jeopardy if you make the situation worse.”

A spokesperson for the Peninsula Streams Society reportedly stated that the organisation’s members never board a boat to remove items and only recover washed-off items.

It is understood the six-person clean up team removed two tonnes of debris – which, after the aforementioned boat owner had opportunity to review, was later taken to landfill.

Australasian Context

Wackrow Williams & Davies consultant Piers Davies notes that although the law and practice relating to wrecks in Canada, Australia and New Zealand originated from English Admiralty Law, it has since developed separately as a result of different legislation in each jurisdiction.

“However, all three countries are states parties to the IMO International Salvage Convention 1989 and therefore apply the same salvage principles – the key principle being ‘no cure no pay’ that salvors



The two pleasure boats washed up on Canada's Cadboro Bay

respond to an incident at their own risk in the expectation of a fair reward if they are successful," he advised *Semaphore*.

"In New Zealand there is an unresolved mish-mash of legislation that can apply to wrecks and underwater cultural heritage, but the most relevant to the circumstances described above is the Maritime Transport Act 1994. Section 105 requires anyone who finds or takes possession of a wreck (or part of a wreck) within the limits of New Zealand to notify the Director of Maritime New Zealand and deliver that wreck to the Police or allow the Police to take possession of it."

Mr Davies observes the latter requirement is "neither sensible nor practical".

"The Police do not have the facilities nor the interest – especially with items of historic wreck, which need immediate ongoing preservation if they are to avoid disintegration. This situation has arisen from the decision in 1999 to scrap the Receiver of Wreck system, which worked well, without providing a practical alternative.

"Failure to comply with section 105 'without reasonable cause' is an offence resulting in the finder forfeiting any salvage claim against the wreck and being liable to pay double the value of the wreck."

He adds that the Director of Maritime New Zealand "may" inform Heritage New Zealand Pouhere Taonga (HNZPT) of any historic wreckage but has not done so in the last decade.

"HNZPT is the Crown entity that administers the New Zealand cultural heritage legislation. Maritime New Zealand has developed an 'integrated readiness and response strategy in regard to

maritime incident response' since the Rena grounding in 2011 to deal with emergencies arising from maritime crises.

“Apart from any long-term wreck where an issue of abandonment or bona vacantia might arise, ownership of a wreck and any goods or cargo relating to it remains with the owners. Attempts to argue that cargo floating ashore from the Rena was subject to ‘finders keepers’, as in the United States, were firmly rejected by the authorities so there was no repeat of the wholesale scavenging that occurred in Devon after the Napoli ran ashore.”

Two members of the Queensland Branch of MLAANZ, Professor Nick Gaskell and Professor Craig Forrest of the University of Queensland, recently published an authoritative book on *The Law of Wreck* which explains the relevant Australian legal position.

December 2021

