

## **A Boater's Experience in Active Pass**

### **Bill Cowan**

On the 2 July 2012, my wife and I were returning to Pt Roberts from Montague Harbour on Galliano Island. We (as we have often done many times before) stayed close on the Galliano Island shore of Active Pass to: 1 - avoid crossing Active Pass and 2 - to avoid being in the way of any ferry traffic. We timed our departure from Montague Harbour to take advantage of the favourable 3 kt current flowing through Active Pass.

As we entered Active Pass there were three pleasure vessels ahead of us also close on the Galliano shore. Approx.: five mins later three more pleasure vessels entered the Pass, but they chose to stay in the centre of Active Pass. All seven of us were heading toward Georgia Strait.

The three vessels ahead of us rounded the 90° corner at Mary Anne Pt and disappeared from our view. Shortly thereafter the bow of a BC ferry started to come into view and began her right hand turn around Mary Anne Pt to head south west down Active Pass. The ferries normally sound their horn as they approach this blind corner.....we always listen for a horn as we approach these corners but we do not always hear them....partly due to engine noise in our enclosed cockpit. We did not hear the ferry's horn on this occasion.....which is of no great concern to us, as we always assume there might be a ferry and are careful to be close to shore and thereby out of their way.

As the ferry continued her turn she appeared to be heading closer to Galliano than we were used to seeing, so while we were quite close to shore already, we could get a little closer, so we did that. The ferry passed safely (in our opinion) by us. We thought no more about encounter.

A few weeks after this I was contacted by the Galliano Detachment of the RCMP about this and gave my recollection of the event. A few weeks after that, I was called again and this time t officer explained that in his investigation he had come to the conclusion that I had NOT operated my vessel in a careless or reckless manner but that I had violated Rule 9 of the Collision Regulations. This rule has a number of sections, but the one in question was sec (a) "A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable".

I had Galliano on my port side. The concern was that by ignoring this RULE I had acted in a "Careless and Reckless Manner" and so the charge was laid against me.

I contacted the Canadian Coast Guard for their opinion and was told "Rule 9" does NOT APPLY TO ACTIVE PASS. But they referred me to Ottawa and Transport Canada...who then referred me to the Pacific region (who were very pleasant to deal with) and they were very clear about this and confirmed that Rule 9 does not apply to Active Pass. Both of these agencies did add that "Only BC Ferries believe this rule applies". Based on that, I decided to fight the charge and plead "Not Guilty". It took 1½ years to get to trial. I LOST and was found "Guilty".

In preparing for the trial, Rule 9 was my main focus. During the trial however a number of other matters came up that had an effect on the outcome. The captain of the ferry (although he had advised by another ferry, of numerous pleasure vessels in Active Pass ahead of him) was only positively aware of one, and that was because that vessel had AIS and was showing on the ferry's chartplotter. That vessel was near centre channel. Because of that, the captain decided to go as close to Galliano as his company rules allowed...600ft. It was only on rounding Mary Anne Pt that he saw this vessel and now realized that it was in company with two other

vessels.....and then he saw ME ....close to the Galliano Shore. The only option now was for his ferry to go between the three mid channel boats and me; which he did.

The complaint was filed against me because the captain believed I was in violation of Rule 9. I pointed out during the trial that "Nowhere in the Sailing Directions or pleasure boating guides is any mention made of Rule 9 applying to Active Pass". In my summation at the end of the trial I again pointed out that "Nothing was put before the court that showed RULE 9 Applies". The Prosecution also claimed that I had violated the "Port to Port" Rule. I explained to the court that the expression "Port to Port" only comes up in the Collision Regulations under Rule 14. This rule only applies to "Head on Approach" which was not our situation.

**In the end the Judge found that Active Pass seemed narrow to him.....so Rule 9 applied and that Rule 14 (head on) also applied ...so he found me Guilty.**

I did contact Transport Canada here in Vancouver after the trial....and spoke with the Acting Manager, Office of Boating Safety, to tell him of the verdict. He was stunned and reconfirmed that the only rule that applies is Rule 8 which essentially says "small vessels (less than 20 metres) must give way etc." I did also ask him what he thought about the three vessels that were in the centre of the channel.....were they in violation of any rule? He replied NO they were not. You can be wherever you want "Just stay out of the way of larger Vessels".

I gave serious thought to an Appeal but the costs would be substantial.....most likely around \$5000. I have been told that BC Ferries have been frustrated with pleasure boats in Active Pass for many years now and have decided to take a much more aggressive approach to the slightest (in their opinion) violation of any rule.

**We need our Yacht Clubs, Power Squadrons, etc to get together with BC Ferries and see if we can come up with a workable solution. Then make every effort to get the word out to the boating community before this cruising season arrives.**