IN THE DISTRICT COURT
AT QUEENSTOWN

CRI-2015-059-000149
[2018] NZDC 3559

CIVIL AVIATION AUTHORITY
Prosecutor

v

THE HELICOPTER LINE LIMITED
Defendant

Hearing: 1 March 2018

Appearances: D R La Hood for the Prosecutor
G Gallaway for the Defendant

Judgment: 1 March 2018

NOTES OF CHIEF JUDGE JAN-MARIE DOOGUE ON SENTENCING

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[1] On 16 August 2014, an AS350B2 "Squirrel" helicopter piloted by Dave Matthews and carrying a guide and five passengers crashed on Mount Alta, Wanaka, somersaulting 700 meters down the slope before coming to a stop ("the incident"). During the incident, five of the seven occupants of the helicopter were ejected from the cabin and all suffered various injuries. Tragically, one passenger, Jerome Box, was crushed under the cabin and killed.

[2] The Helicopter Line Limited ("THL") has pleaded guilty to two charges brought under the Health and Safety in Employment Act 1992 ("HSEA"), these being that THL:

(a) Being an employer, failed to take all practicable steps to ensure the safety of its employee while at work, contrary to ss 6 and 50(1)(a) of the HSEA; and

(b) Being an employer, failed to take all practicable steps to ensure that no action or inaction of any employee while at work harmed any other person contrary to ss 15 and 50(1)(a) of the HSEA.

[3] The maximum penalty for each charge is a fine not exceeding $250,000.

[4] THL acknowledges that it breached the HSEA by failing to take the following practicable steps:

(a) The defendant should have formulated and implemented an adequate weight and balance policy to ensure aircraft were flown within weight and balance limitations, including:

(i) Requiring the pilot to ensure that a weight and balance calculation is completed prior to every heli-ski operation;

(ii) Requiring the total weight of passengers in accordance with CAR 135.303(b) and the actual weight of gear to be obtained and provided to the pilot well in advance of the pilot planning the operation;

(iii) Requiring the pilot to build in planning and preparation time prior to any heli-ski operation in order to complete a weight and balance calculation if necessary.

(iv) Providing a calibrated set of scales at the staging area so that the pilot could perform the weight and balance calculation if necessary;

(v) Ensuring the pilot had access to a computer or device that enabled him/her to conduct the calculation and save that information;

(vi) Creating a computer programme to assess the loading and performance of the aircraft;

(vii) Implementing a documents system for high density loading of helicopters used in heli-skiing, requiring the total weight of passengers in accordance with CAR 135.303(b) and weighing equipment, which is subject to annual review and audit.

(b) The defendant should have ensured the aircraft in question was operating within weight and balance limitations, including:

(i) Ensuring that a weight and balance calculation was completed prior to operating;

(ii) Ensuring the pilot had access to and used a computer or device that enabled him/her to conduct the calculation; and

(iii) Providing a calibrated set of scales at the staging area so that the pilot could perform the calculation if necessary.

Background

[5] Mr Matthews, who was the pilot flying the helicopter that day was an employee of THL at the time of the incident. THL is a helicopter business in the adventure and tourism sector. THL was the operator of the attempted heli-ski run that day and the owner of the aircraft in question.

[6] Prior to the incident occurring, the five passengers had verbally provided their unclothed weights to THL for the purposes of them establishing the total weights of passengers, crew and other items in accordance with Civil Aviation Rule ("CAR") 135.303. Use of declared passenger weights is permitted under CAR 135.303(b)(3), but there is a requirement that an additional 4 kg is added to the declared weight of each passenger. The pilot did not do so and as a consequence THL accepts the aircraft was approximately 27.6 kg heavier than calculated.

[7] I note at the outset that the parties have agreed sentencing is to occur on the basis that the failings were not causative of the crash.

Purposes and principles

[8] The leading case on sentencing in health and safety prosecutions such as this is the decision of a full High Court in *Department of Labour v Hanham & Philp Contractors Ltd* ("*Hanham & Philp*").[1]

[9] The object of the HSEA is to prevent harm in the workplace,[2] and to achieve that object I have regard to the purposes and principles of the Sentencing Act 2002. I place particular weight on the purposes of denunciation, deterrence and accountability for the harm done.

[10] I have received a number of victim impact statements from those injured in the incident, and from Jerome Box's wife and children. I especially have regard to these statements in sentencing THL.[3] While the parties agree that THL's failings were not causative of the crash, the injured passengers and Jerome Box's wife Adelle and children family are properly regarded as being victims of the offending in this case.

[11] In sentencing THL I adopt the three-step approach set out in *Hanham & Philp*, which is as follows:[4]

(a) assessing the amount of reparation;

(b) fixing the amount of the fine; and

(c) making an overall assessment of the proportionality and appropriateness of the penalty imposed on the offender.

Reparation

[12] As I have noted, the parties in a joint memorandum dated 8 November 2017, and in the agreed summary of facts, accept that THL's failings were not causative of

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1 *Department of Labour v Hanham and Philp Contractors Limited* (2008) 6 NZELR 79 (HC), (2009) 9 NZELC 93,095.
2 At [40].
3 Sentencing Act 2002, s 8(f).
4 *Department of Labour v Hanham and Philp Contractors Limited* (2008) 6 NZELR 79 (HC), (2009) 9 NZELC 93,095 at [80].

the crash at Mount Alta. In view of this, they do not regard a sentence of reparation under s 32 of the Sentencing Act 2002 is appropriate and the Civil Aviation Authority ("CAA") does not seek such a sentence.

[13] That being said, THL has made a voluntary reparation payment totalling $365,000 to the victims: $165,000 to Adelle and her family, and $50,000 to each of the other victims.

[14] I acknowledge this payment and I will have regard to it in assessing any mitigating factors to THL's offending in fixing the fine.

[15] But I must also acknowledge that placing a monetary value on the loss of life in this case cannot make up for the grief so acutely felt by the loss of Mr Box – as a husband, a father, a brother and a friend.

Jerome Box's Family

[16] Adelle, I come to you first. Everything about your life changed the day you lost your husband, the father to your children. You have bravely read to the Court this morning your victim impact statement. I heard from you the unimaginable difficulty that you have had over the past three and a half years simultaneously processing your grief at the loss of Jerome whilst being there as a solo mother for your children, who are also processing the loss of their dad in the formative years of their lives. At the same time, you have had to bear the responsibility for what to do with the construction business that Jerome had run, the flow-on financial pressures compounded by your experience with ACC, and your understandable frustrations and confusion as to the length of time that it has taken to get to this point in the legal proceedings. Your victim impact statement shows your trauma has been just getting through every day – one foot in front of the other day after day for you and your children.

[17] You have expressed in your statement your dissatisfaction with THL's conduct in these proceedings, with the investigations, the lasting questions, the inadequacy of monetary values involved, the involvement of insurance companies, and the delays in arriving to this point today.

[18] Jerome and Adelle's children Briana and Xavier, I now come to you. In your statements you both describe the effect the loss of your dad has had on you; how you miss going on adventures with him. You have both courageously detailed your feelings of sadness and grief that you have had to live with.

[19] I turn to you Greg. Jerome was your brother and a mate. You have expressed your anger. You have every right to be angry. That anger is a manifestation of the love you held and hold for him.

[20] Nothing the Court can do today will be enough to recognise the extent of your family's loss and the grief, frustration and stress that has followed it. I only hope that these court proceedings coming to a close helps you, in some small way, with your grieving process.

The Injured Passengers

[21] I now turn to the passengers injured in the incident: Craig Peirce, David Bensley, David Reid, and Gregory McLeod.

[22] Your statements chronicle the physical and emotional toll of the incident on you. Some of these effects will be life-long. Craig first met Jerome on the day of the incident, but the other three of you all talk about losing a great friend that day.

Conclusion

[23] I hope the voluntary amount paid by THL represents an awareness and acknowledgement of the grief, loss and harm you have all felt. No price can be placed on the loss of a life, nor is the Court capable of taking any step today that could ever be enough to make up for the loss of Jerome Box or the pain and suffering experienced because of injury, both physical and psychological.

Fine

[24] I turn now to assess the appropriate fine for THL's offending.

[25] The High Court in *Hanham & Philp* established three bands of culpability, as follows:

(a) low culpability: a fine of no more than $50,000;

(b) medium culpability: a fine between $50,000 and $100,000; and

(c) high culpability: a fine between $100,000 and $175,000.

[26] The Court also recognised that in cases of extremely high culpability a fine between $175,000 and the maximum of $250,000 may be appropriate.

[27] I will fix the starting point having regard to which of the above bands I consider THL's culpability falls within. I will then adjust that figure having regard to relevant aggravating and mitigating factors, as well as THL's guilty plea.

[28] My assessment of THL's culpability includes:[5]

(a) Identification of the operative acts and omissions at issue.

(b) An assessment of the nature and seriousness of the risk of harm occurring as well as the realised risk.

(c) The degree of departure from standards prevailing in the industry.

(d) The obviousness of the hazard.

(e) The availability, cost and effectiveness of the means necessary to avoid the hazard.

(f) The current state of knowledge of the risks and of the nature and severity of the harm which could result.

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5 At [54].

(g) The current state of knowledge of the means available to avoid the hazard or mitigate the risk of its occurrence.

[29] The operative acts and omissions are set out at [4] above as the practicable steps THL has acknowledged it did not take.

[30] The nature and seriousness of the risk of harm that might occur when proper procedures are not followed in respect of heli-ski operations is plainly that the helicopter might crash, which is a serious risk indeed given the very real chance that serious injury or even loss of life might result. However, it is not alleged that THL's failings in this case were causative of the crash at Mount Alta. I therefore do not regard the crash here to have been a realisation of the risk of harm occurring.

[31] THL departed from prevailing standards insofar as the pilot did not calculate the weight and balance of the aircraft in accordance with CAR 135.303(b).

[32] THL has referred me to the maximum penalties for breaches of CARs 135.303 and 135.305, as set out in the Civil Aviation (Offences) Regulations 2006 ("the Regulations"), which are as follows:

Provision (Rule)	**Brief description**	**Individual**	**Body corporate**
135.303(a)	Holder of air operator certificate must establish weights of passengers, crew, goods and baggage in accordance with prescribed requirements.	$2,500	$15,000
135.305(a)	Holder of air operator certificate must ensure aircraft load limitations are complied with.	$5,000	$30,000
135.305(b)	Pilot-in-command assess prescribed information before taking-off on operation.	$2,500	N/A

[33] THL submits that weight should be placed on the fact these offences carry "minor penalties" under the Regulations, particularly that the penalty for incorrect weight and balance processes is "low".

[34] The Regulations dealing with the relevant CAR which is CAR 135, relating to air operations by helicopters and small aeroplanes, carries the following range of penalties for breaches:

(a) for an individual: $1,250 - $5,000; and

(b) for a body corporate: $7,500 - $30,000.

[35] In light of these ranges, the breaches THL have referred to me are properly regarded as carrying penalties within the medium to high end of the range, so far as the helicopter industry is concerned, as opposed to being minor or low.

[36] CAA submits that the hazard was an obvious one, as flying within weight and balance limitations is a fundamental requirement for operating a helicopter the importance of which is recognised and specifically provided for by CAR 135, in particular CARs 135.303, which requires that for every air operation the total weights of passengers, crew and goods and baggage must be established, and 135.305, which requires that aircraft load limitations are complied with. I agree with this submission.

[37] The hazard could have been avoided by complying with CAR 135.303(b), which provides:

> **135.303 Goods, passenger, and baggage weights**
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> …
>
> (b) The total weight of passengers (excluding their carry-on baggage (if any)) must be determined by using only 1 of the following:
>
> (1) the actual weight of every passenger:
>
> (2) a standard weight for every passenger that is established by the certificate holder and detailed in the certificate holder's exposition:
>
> (3) a weight that is declared by the passengers plus an additional 4 kg for every passenger.

[38] THL also could have implemented the practicable steps outlined above at [4]. CAA rightly points out that THL easily could have implemented practicable steps (a)(i) through (a)(iii) (which relate to ensuring a weight and balance calculation is

undertaken prior to every heli-ski operation), and that steps (a)(iv) through (a)(vii) (which specify the documents, devices and systems that could have been employed to aid in the calculation) were not particularly onerous either though they do involve the provision of equipment. Therefore, I consider the steps available to THL to avoid the hazard would have been effective and would not have involved a great deal of cost.

[39] As to the state of knowledge of the risks and the nature of severity of harm which could result, as well as the means to avoid the hazard, CAA has helpfully referred me to the decision of Judge Hastings in *Creeggan v New Zealand Defence Force*.[6] In *Creeggan*, His Honour succinctly captures this limb of the assessment, observing:[7]

> Helicopter crashes are an obvious hazard. They are inherently dangerous… The risks of hazards from helicopter operations are well known, as are [sic] the severity of the harm which could result from those operations. The defendant was very well placed to know of these hazards.

[40] I consider the same to be the case here.

Starting point

[41] I now turn to fix the starting point, but before doing so I address the question of how I should deal with the two charges in this case.

[42] THL suggests I should treat the section 6 offence as the lead charge and apply a modest uplift for the section 15 offence: a $65,000 fine for what THL considers the lead charge with a $5,000 uplift. CAA on the other hand is silent as to the apportionment of the fine among the charges, progressing in their submissions a global approach in which they propose a starting point of $90,000.

[43] Both charges arise from the same incident and the practicable steps not taken are the same in relation to both. I therefore consider the best approach to sentencing THL is a global one. In any event, I do not consider any material difference would arise were I to take either of the approaches available to me.

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6 *Creeggan v New Zealand Defence Force* DC Wellington, CRI-2014-085-007231, 18 July 2014.
7 At [31]-[32].

[44] As I have mentioned, THL proposes a starting point of $70,000 representing what they consider to be culpability falling squarely within the medium band. CAA proposes a starting point of $90,000 representing culpability toward the high end of the medium band.

[45] THL has not referred me to any case law on fixing the starting point, relying on arguments that I have considered in undertaking my assessment of culpability above at [29]-[40] having regard to the six considerations outlined in paragraph [54] of *Hanham & Philp*.

[46] CAA has however referred me to a number of authorities, including those where a fine was assessed despite the absence of realised risk. Relevantly, Dobson J has noted:[8]

> Certainly, the degree of harm that has occurred has to be taken into account. In determining the level of culpability, however, it would rarely be justified to treat the lack of actual harm as transforming the band of culpability into which a particular case would otherwise fit. The nature of the risk which the defendant ought to have been aware of, and the extent to which that risk was realised by actual harm being inflicted, are two components of the culpability analysis.

[47] Of the authorities referred to by CAA I regard the following, all of which involved no realised risk, to be informative here:

(a) *Worksafe New Zealand v Bryant*,[9] where a starting point of $75,000 was adopted for a significant departure from industry standards by the defendant who was not personally at the site in question, but was classed as the employer.[10]

(b) *Worksafe New Zealand v Vanu*,[11] where a starting point of $90,000 was adopted for the scarfing of a tree contrary to best industry practice, with incorrect and inadequate equipment. Other features included a lack of training, traffic management, signage, permits and relevant entities

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8 *Jones v Worksafe New Zealand* [2015] NZHC 781 at [38].
9 *Worksafe New Zealand v Bryant* [2015] NZDC
10 At [29].
11 *Worksafe New Zealand v Vanu* [2016] NZDC 6046.

were not notified. The risk was obvious, contemplated severe injury or death, and was easily avoided. The degree of departure from standards prevailing in the relevant industry were numerous.[12]

(c) *Worksafe New Zealand v Ministry of Social Development,*[13] where a starting point of $40,000 was adopted where there were no codes of industry standards for the defendant to rely on, making it challenging for them to identify the appropriate means of addressing the hazard.[14]

[48] From my assessment of the six *Hanham & Philp* factors, I consider THL's failings were significantly greater than those described in *Worksafe New Zealand v Ministry of Social Development*. Here, there has been a significant departure from industry standards. I have noted breaches of the CARs concerning weight and balance carry medium to high penalties so far as the rules around small aeroplanes and helicopters are concerned. The risk of harm was serious, obvious, and well known in the industry. It would not have been particularly onerous for THL to have taken steps to avoid the failings in this case. Nevertheless, the operative acts or omissions in this case appear to me to be less egregious than those in *Worksafe New Zealand v Vanu*.

[49] I therefore assess THL's culpability as toward the higher end of the middle band, and adopt a starting point of $85,000.

Aggravating and mitigating factors

[50] Neither the CAA nor THL identify any aggravating factors in this case. I agree with that assessment.

[51] CAA submits that a 25 per cent discount is appropriate for mitigating factors. CAA refers to *Department of Labour v Eziform Roofing Products Limited*,[15] in which Duffy J determined that the overall maximum discount for the mitigating factors of offer of reparation, remedial action, favourable safety record, and cooperation with the

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12 At [10]-[15].
13 *Worksafe New Zealand v Ministry of Social Development* [2016] NZDC 24649.
14 At [36]-[38].
15 *Department of Labour v Eziform Roofing Products Limited* [2013] NZHC 1526.

investigation was between 20 and 30 per cent.[16] CAA also acknowledges THL's participation in restorative justice.

[52] THL submits there is a further mitigating factor arising from procedural delay, which I address below, and proposes that 35 per cent is an appropriate discount for the factors it has identified.

Offer to make amends and reparation

[53] THL has paid $365,000 in voluntary reparation to the victims. CAA notes in its submissions that the Court should be informed whether THL is insured for reparation.

[54] In *Hanham & Philp* it was determined that insurance to cover reparation may be relevant in two ways:[17]

(a) to the assessment of the overall financial capacity of the offender to, in this case, pay the fine; and

(b) to the assessment of the reduction for offer to make amends and reparation, reflecting the responsible approach in securing insurance cover to provide for victims.

[55] No issues have arisen as to THL's financial capacity. Any modest discount for the "responsible approach" is, in accordance with *Hanham & Philp*, "sufficiently allowed for" in the discount I will give in recognition of THL's payment of reparation.[18] Consequently, I need not consider the matter of insurance further because:

(a) financial capacity is not in issue, so insurance has no relevance in that regard; and

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16 At [58].

17 *Department of Labour v Hanham and Philp Contractors Limited* (2008) 6 NZELR 79 (HC), (2009) 9 NZELC 93,095 at [72]-[74].

18 At [74].

(b) the discount I give will not be materially affected by whether THL is insured, as it is a "modest allowance" that the full High Court determined is allowed for in a 10 to 15 per cent discount given for the reparation itself.

[56] I consider a 10 per cent reduction is appropriate in recognition of this voluntary payment.

Cooperation with the CAA

[57] THL fully cooperated with the CAA's investigation and for that they are entitled to a five per cent reduction.

Remorse

[58] THL has taken part in restorative justice with the victims, a process that occurred between January and February of this year. The attendees on behalf of THL were Mark Quickfall, Chairman of Totally Tourism and CEO of THL; Grant Bissett, former THL General Manager and Investigator; and Mr Matthews, the pilot and THL's Quality Assurance Manager. These individuals from the highest echelon of THL have given important recognition to the harm in this case: fronting up, listening to the victims and apologising to them. That recognition entitles THL to a discount for remorse. THL is entitled to a five per cent discount.

Remedial action

[59] THL has taken significant remedial action since the Mount Alta crash. This includes recording the actual weight of passengers prior to heli-ski operations with scales, assessing heli-ski pilots prior to the commencement of each season, and increased training around detection and recovery from vortex ring state, among other things. I assess a further five per cent reduction for this factor.

Favourable safety record

[60] THL has no previous convictions, attracting a five per cent discount.

Procedural delay

[61] THL submits that a further discount is appropriate under s 9(2)(fb) of the Sentencing Act 2002, which provides that "any adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor to comply with a procedural requirement" may be a mitigating factor.

[62] In reliance on *McDonald v Crown Law*,[19] THL proposes that under s 9(2)(fb) a discount may be given owing to delay which "must either reflect some fault on the part of the prosecution and/or reflect some identifiable adverse consequence for the defendant that is not otherwise taken account of." THL appear to have misinterpreted Dunningham J's comments at paragraph [43] of her Honour's judgment, as her references to these factors made in the alternative were in relation to s 9(4), not s 9(2)(fb). As noted in the commentary, relied on by Dunningham J also, s 9(2)(fb) "treats the prosecutor's failure to comply with any such procedural obligation as a mitigating factor to the extent that it causes a delay that has an adverse effect on the defendant."[20]

[63] Delays alleged by THL include what it accepts to be difficulty experienced by the CAA obtaining experts, something Dunningham J – in relation to analogous difficulty acquiring obscure scientific analysis – determined was beyond the control of the prosecution.[21] Other supposed delays include that the originally alleged practicable steps were "deficient" for the purposes of THL entering guilty pleas – a consideration which I address below; lack of clarity by the CAA as to causation; and abandonment of the 20 March 2017 trial date due to the CAA not summonsing a particular witness. THL has not identified any procedural requirement with which the CAA failed to comply in relation to the latter two alleged delays, as required by s 9(2)(fb).

[64] The CAA submits that THL's timeline is incomplete, in that it fails to account for delays for which THL bears responsibility, such as THL's:

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19 *McDonald v Crown Law* [2016] NZHC 339 at [43].
20 *Adams on Criminal Law – Sentencing* at [SA9.22B].
21 *McDonald v Crown Law* [2016] NZHC 339 at [30], [44].

(a) successful application for adjournment of the September 2016 trial date;

(b) attempt between March 2017 and May 2017 to appeal the decision declining its s 147 application;[22] and

(c) unsuccessful application for adjournment of the November 2017 trial date.

[65] The CAA further identifies delays beyond the control of both parties, including law changes arising from the High Court's decision in *Worksafe New Zealand v Talley's Group Limited*.[23]

[66] In any case, I find it to be determinative in this matter that the adverse effects THL claims to have suffered are insufficient for me to regard this as a mitigating factor. THL submits that these effects include its inability to amend its plea to guilty until over two years after charges were laid. This is a consideration properly taken into account when assessing whether THL pleaded guilty at the first reasonable opportunity for the purposes of the discount for its guilty plea. To have regard to that here as well would be double-counting. THL further claim "significant legal and emotional costs of a continued prosecution with no resolution" but has offered no evidence as to the substance of this claim, as noted by the CAA in their submissions on this point.

[67] I therefore do not regard this to be a mitigating factor in this case and THL is entitled to no further discount because of it.

Guilty plea

[68] THL submits that it pleaded guilty at the first reasonable opportunity – once the charges were substantively amended – and is therefore entitled to the full 25 per cent discount for its plea.

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22 *Civil Aviation Authority v The Helicopter Line* [2017] NZDC 4497.
23 *Worksafe New Zealand v Talley's Group Limited* [2017] NZHC 1103.

[69] CAA, on the other hand, emphasises that THL pleaded guilty to amended charges a month prior to the trial, and for this the appropriate discount is in the order of 15 per cent.

[70] The Supreme Court in *Hessell v R* noted:[24]

> Whether the accused pleads guilty at the first reasonable opportunity is always relevant. But when that opportunity arose is a matter for particular inquiry rather than formalistic quantification. A plea can reasonably be seen as early when an accused pleads as soon as he or she has had the opportunity to be informed of all implications of the plea.

[71] THL has helpfully referred me to two cases where the Court of Appeal regarded guilty pleas as being entered at the first opportunity entitling the defendant to the full discount where the pleas came after:

(a) the receipt of expert evidence as to whether a defence remains available;[25] and

(b) after the Crown amended the charging document.[26]

[72] I consider the timing of the pleas in those cases is distinguishable from the timing of THL's guilty plea here. As noted in *Hessell*, the plea is early if made as soon as the accused had the opportunity to be informed of its implications. Hence, in *E (CA689/10) v R* the Court of Appeal gave the full discount where the guilty plea was entered four days after receipt of the relevant expert evidence (a draft report) and on the same day the final report was forthcoming.[27] Likewise, in *Heta v R* the appellant was prepared to plead guilty to the amended indictment immediately upon it being filed by the Crown.[28]

[73] This is in contrast to the timing of THL's guilty plea. THL notes in their submissions the charges were significantly amended on 4 October 2017,[29] and that

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24 *Hessell v R* [2010] NZSC 135 at [75].
25 *E (CA689/10) v R* [2011] NZCA 13 at [101].
26 *Heta v R* [2012] NZCA 267 at [31].
27 *E (CA689/10) v R* [2011] NZCA 13 at [98], [101]-[102].
28 *Heta v R* [2012] NZCA 267 at [31].
29 *Civil Aviation Authority v The Helicopter Line Limited* [2017] NZDC 22210.

"[u]pon reflection of the amendments" it entered its guilty plea to the charges on 8 November 2017. That was less than three weeks out from the scheduled commencement of the trial which would have begun 27 November 2017 and over a month since the pre-trial decision. Further, in the intervening period THL applied for an adjournment of the trial, which I declined on 19 October 2017.[30]

[74] In light of these events, THL cannot be regarded as having pleaded guilty "as soon as [it] had the opportunity to be informed of all the implications of the plea". That being said, THL is still entitled to a reduction, just not that at the upper limit. I therefore assess a 20 per cent discount for its guilty plea.

Conclusion: mitigating factors

[75] I find that THL is entitled to the following reductions:

(a) offers to make amends and reparation – 10 per cent;

(b) cooperation with the CAA – five per cent;

(c) remorse – five per cent;

(d) remedial action – five per cent; and

(e) favourable safety record – five per cent.

[76] That is a total reduction of 30 per cent, reducing the fine from a starting point of $85,000 to $59,500. Applying the further 20 per cent reduction for THL's guilty plea, the final fine is assessed as $47,600.

Overall assessment

[77] Finally, I must make an overall assessment of the proportionality of the fine imposed to the circumstances of THL and its offending. I consider that no further adjustments are necessary.

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30 *Civil Aviation Authority v The Helicopter Line Limited* [2017] NZDC 23694.

Conclusion

[78] THL is convicted and fined $47,600.

Jan-Marie Doogue
Chief District Court Judge