

## ASPECTS OF ARREST OF VESSELS IN CANADA

The jurisdiction *in rem* of the Federal Court of Canada is outlined in the *Federal Courts Act*. It must be established by the arresting party that at the time of the commencement of the action the ship, aircraft or other property that is "the subject of the action" – a qualification not present in the UK statute – is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose. The Supreme Court in the **Phoenix Bulk Carriers** decision has held that the Court's *in rem* jurisdiction may be exercised with respect to claims for shut out cargo and deadfreight, so long as the cargo to be arrested is the cargo at issue. For this reason, arrests of ship's bunkers are rare unless the bunkers involved are the bunkers in dispute, not merely the property of the personal defendant.

A demise charterer has been held not to be a beneficial owner of a vessel under the meaning of section 43(3). The concept of 'beneficial ownership' has been narrowly interpreted and does not include related or closely associated companies, unless serious reason can be shown why the corporate veil can be lifted.

An action *in rem* is sustainable only if the owner is personally liable for the amount claimed, a requirement which is particularly acute in the case of claims for necessities or the where owner has authorized a person to contract on the credit of the ship. There is an exception to that rule when the court is requested to enforce a foreign maritime lien for necessities or the new Canadian maritime lien against foreign vessels for services, supplies and repairs.