

## A CANADIAN MARITIME LAW UPDATE

November 2009



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## 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.



## DESERTERS AND STOWAWAYS

Pursuant to the *Immigration and Refugee Protection Act* and the Immigration and Refugee Protection Regulations, when a desertion or a stowaway is reported, cash security must be deposited with the immigration authorities. The amount is discretionary but the informal policy of the Department of Immigration is to require between \$15,000 and \$25,000 (Cdn) per deserter depending on various factors such as the ship's past record, the cost of repatriation, medical costs.

From the cash deposit, a standard administration fee of \$3,200 is deducted. When the deserter's or stowaway's case has been concluded, either by way of deportation or the granting of landed status, the unused portion, if any, of the remaining funds is reimbursed to the transportation company. If the repatriation and/or medical costs exceed the amount of the deposit, the authorities will seek to recover the balance from the transportation company.

Under the Act and Regulations, the range of responsible persons includes anyone who "owns, operates, charters or manages" the vessel and "the agent for that person". The "agent" includes "any person in Canada who provides services" as a representative of a shipowner, a ship operator or charterer. As a consequence, a time or voyage charterer has a statutory liability and perhaps an insurable interest.

## FOREIGN LIENS AND LIEN CLAUSES IN CANADA

Canadian and US courts follow a connecting factors analysis in deciding the law that governs contracts and liens and will give effect to a foreign lien once it is properly proved as fact according to the rules of evidence. Neither Canada nor the US are signatories nor bound by any international conventions governing arrest of ships and applicable liens. As well, neither country considers the question whether or not a lien is available to the claimant as being only a question of procedure of the court seized with the case.

The Supreme Court of Canada in *Holt Cargo Systems v. ABC Containerlines*, confirmed the rights of secured creditors, including claimants of maritime lien status by virtue of foreign law, to realize on their security wherever the ship might be found in Canada. The Court held that this could be done notwithstanding bankruptcy jurisdiction on the part of a foreign court of the domicile of the debtor who was seeking the turnover of funds from a judicial sale for the purpose of distribution in accordance with the applicable law of the forum, including the right to determine the identity of lien-holders. Needless to say, the Supreme Court was well aware that the Belgian courts would not recognize US liens in favour of goods and services providers.

The Court confirmed its position that notwithstanding the UK decision in *The Halcyon Isle*, in Canada, the determination whether or not a claim is secured by a maritime lien is a question of the substantive law with which the cause of action was closely connected (and not a question of procedure of the court under whose custody the ship is arrested). Unless there are public policy issues militating against the recognition of the foreign lien right, it will be recognized and enforced in Canada. In *Holt Cargo*, US

claimants were able to exercise maritime liens granted under US law for stevedoring services and supply of fuel.

As well, the Federal Court of Appeal has issued three decisions closely connected with the issue of recognition and enforcement of foreign lien rights. These decisions deal with the enforcement of supply contract "lien clauses" against vessels owned by third parties who are totally unaware of these contracts. In *Imperial Oil Ltd. v. Petromar Inc.* 2001 F.C.A. 391, (2001) 209 D.L.R. (4<sup>th</sup>) 158, a ship manager, purportedly acting on behalf of a demise charterer, entered into a supply agreement with an American bunker broker for the supply of goods in Canada. The Court was not satisfied with the evidence that had been led as to whether the ship manager was acting on behalf of the demise charterer or on its own account.

Notwithstanding the US lien clause in the contract, the Court found that the determination of the law governing the lien is not the same as the governing law of the contract itself because the intent of parties to a contract cannot bind the rights of third parties (the shipowner!). As this was the first case in Canada to pose the problem of characterization of the governing law of the lien, the Court made express reference to US caselaw, and most notably the connecting factors test to be found in the judgment of the Supreme Court of the United States in *Lauritzen v. Larsen* (1953) 345 U.S. 571.

The Court found that one of the factors having greater weight than the others was the law governing the place of delivery of the goods. As, in this case, the bunkers were being delivered in Canada (where no lien attaches) and to, incidentally, a Canadian registered ship, the Court found that the factors con-



necting the lien to the United States were not strong enough to override the shipowner's rights and dismissed the action.

In a second decision, purportedly following *Imperial Oil*, a differently constituted panel of the Federal Court of Appeal in *Richardson International v. The Mys Chikhacheva* upheld the US lien clause in a contract between the demise charterer and the US supplier on the ground that the procurement of supplies originated in the United States, that demise charterers under US law can create liens against the vessels they demise, and because the contract of supply was included in a series of transactions involving a loan of monies with the US supplier acting as lender.

Recently, the Federal Court of Appeal in *Kent Trade and Finance Inc. v. JP Morgan Chase Bank*, upheld yet again a US lien clause and gave priority to the maritime lien holder over a mortgagee bank.

Kent Trade and Finance Inc., which supplied fuel to the vessel in Cartagena, Spain, and in Halifax, Praxis Energy Agents S.A. which supplied fuel to the vessel in Trinidad, as well as CP3500 International Limited which supplied combustion catalysts to the vessel, appealed the decision.

They argued that under their contracts of sale, which included choices of law clauses and in the case of CP3500 an arbitration clause, U.S. law applied and entitled them to maritime liens which ranked before the Canadian mortgages with respect to the vessel's judicial sale proceeds. None of the appellants were based in the U.S.

The Court applied the choice of law analysis using Canadian conflict of law rules and acknowledged that

while the contractual choice of law clause in the contract should dictate the proper law of the maritime transaction, maritime liens are extra-contractual rights. It did not foreclose the possibility that, where a maritime transaction is so strongly connected to a jurisdiction, this jurisdiction's substantive law, rather than the choice of law clause in the contract, should govern the transaction.

The Court however found there was evidence of a contractual link between the vessel's owner and the suppliers and that the choice of law clauses applied to the contracts of fuel sale, the proper law of these contracts thus being American law.

The Court also found the arbitration clause in the CP3500 contract to be indicative of the choice of law under Canadian law.

Based on new expert evidence filed before it, the Court was satisfied that U.S. law would recognize a maritime lien for necessities where, under a supply contract governed by U.S. law, a foreign supplier provides goods or services to foreign vessels in a foreign port. The Court found the three appellants had proven to its satisfaction they each had a maritime lien against the «Lanner» and allowed the appeal.

In summary, cases involving foreign liens are decided according to the facts in each case and particular attention must be paid to the relationships between the various parties. As the *Imperial Oil* case shows, it is very dangerous (for a supplier) to simply rely on a US lien clause without further information concerning the identity of the party, the law governing their capacity to contract liens and the connecting factors that may not justify enforcement of the US lien clause.



## MARINE LIABILITY ACT

The *Marine Liability Act* is largely a consolidation statute, collecting together statutory liability issues such as apportionment of liability, limitation of liability, civil liability for pollution, and liability for carriage of passengers. The various liability regimes under the act, and which incorporate international conventions by reference, are as follows:

1. Canadian provisions governing the identification of "dependants" in personal injuries and fatalities, provisions governing the apportionment of liability in tort claims and the two year time limitation with respect to causes of action arising from collision.

2. Limitation of Liability – 1976 Convention and 1996 Protocol

The Convention and the Protocol have formally been incorporated into legislation with one reservation. On May 9, 2008, Canada ratified the Convention and the Protocol which came into force on August 7, 2008, thus allowing shipowners and claimants to rely on the Convention and Protocol in limitation proceedings in other party states. In its ratification, Canada's sole reservation was with respect to claims for "raising, removal, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned."

3. Passengers – Athens Convention, 1974, and 1990 Protocol

The 1974 Convention and 1990 Protocol have been

incorporated into Canadian legislation. Parliament has restricted the meaning of "ship" to exclude air cushion vehicles and vessels propelled manually by paddles or oars. In addition, the statute has been amended to exclude certain adventure tourism activities that meet the following conditions: participants are exposed to the aquatic environment, existence of safety procedures and equipment beyond the norms used otherwise in the carriage of passengers, and participants are exposed to greater risks which have been explained and accepted in writing. However, these adventure tourism operators would nevertheless retain their entitlement to limit their liability under other parts of the act.

The Canadian Department of Transport still has the intention of proceeding with a regulatory plan under the *Marine Liability Act* to implement the compulsory insurance requirement of the Athens Protocol 2002, now that the concerns of adventure tourism operators who are not able to obtain adequate insurance cover have been addressed.

4. Carriage of Goods by Water – forum conveniens, waybills and rail carriers' issues

Canada has long since adopted and incorporated the Hague-Visby Rules. The Canadian government as of September 10, 2009, has not announced whether Canada will sign on to the Rotterdam Rules.

Canada has given a statutory right to claimants, whether carriers or shippers, to sue in Canada on

contracts of carriage of goods, regardless of whether they had agreed to litigate or arbitrate in another forum. The Federal Court of Appeal in the **Cougar Ace** decision has decided that the court still retains jurisdiction to decide whether the Canadian court is the convenient forum for the dispute in question.

Canada has not yet amended its bills of lading legislation which is still modeled on the British 1855 Bills of Lading Act. The Federal Court in **Cami Automotive v Westward Shipping** has recently decided that the House of Lords' decision in the **Raffaela S** is the law in Canada and that waybills are not subject to the Hague-Visby Rules unless the carrier voluntarily incorporates those Rules into the contract.

The Federal Court of Appeal in **Canadian Pacific Railway v Boutique Jacob** has decided that a rail carrier has the option of either setting up a limitation of liability clause under the Confidential Rate Agreement it has with container lines, or invoking a limitation of liability contained in a bill of lading under the Himalaya Clause. In Canada, the rights of rail carriers in multi-modal transport are considered to have been settled as opposed to the diverse range opinion in the US, although the US Supreme Court has just agreed to hear a case on point.

5. Pollution regimes (civil liability) – see above section on Pollution – Criminal Sanctions

Parliament has recently incorporated into legislation the implementation of the Protocol of 2003 to the

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, as well as the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. The legislation comes into force on January 2<sup>nd</sup>, 2010.

6. Maritime Lien – a new maritime lien has been created in favour of ship suppliers, **who carry on business in Canada**, for goods, materials and services to vessels which are not Canadian vessels. The Act imposes the requirement that goods, materials and services must be shown to have been provided at the request of owner of the foreign vessel or someone acting on its behalf. With respect to ship repairs, this is not required. The Act does not impose any condition that the goods, services, and materials or the repairs actually have to be performed in Canada, however.

7. General Limitation Period – Under the **Marine Liability Act**, unless it or another statute provides otherwise, for example, the one year time for suit under the Hague-Visby Rules or the two-years in collision cases, there is a general suit-time period of three years if the subject matter of the action is maritime in nature.

## THE "PAY TO BE PAID" RULE

The position in Canada that contracts are to be enforced in accordance with their terms was reinforced by the Federal Court of Appeal in *Conohan et al v. The Cooperators*, in which the court upheld the insurer's right to refuse to pay under the policy because its assured had failed to pay compensation to a victim of its wrongdoing.

Conohan, suffered the loss of his vessel and lost revenues arising out of a collision between his fishing vessel and the fishing vessel operated by the Defendant's assured, who not only admitted liability but also assigned his policy to the Plaintiff!

The sole issue before the appeal court was whether the Defendant insurance company was justified in refusing to indemnify its assured under the policy because the assured failed to comply with the "pay to be paid" requirement stipulated in the policy.

The reason the rule was being challenged was that the marine risk policy at issue did not involve mutual insurance and it was argued the considerations in the House of Lords decision in *The Fanti and Padre Island* did not apply.

The court dismissed the argument that a distinction was to be drawn between mutual and non-mutual insurance contracts, as the distinction did not as a matter of construction of the proper meaning of the contract "dictate a different result". In the court's view, interpretation of the clause at issue was a question of construction of the language appearing in the clause, and it was clear that the clause containing the "pay to be paid" rule set up a condition precedent to indemnification.

Consequently, it was held that the ordinary meaning of the clause imposed an obligation on the assured to pay the damages incurred by the Plaintiff by reason of the collision before the assured could collect under the policy. The Court noted that once it was determined that the provision admitted only one construction, then that was effective to displace any rules or remedies in equity.

The fact that the insurer participated in the trial on the merits of the claim itself did not prevent the insurer, when all else failed, to rely on the enforcement of the "pay to be paid" clause stipulated in its favour.



## POLLUTION – CRIMINAL SANCTIONS AND OVERLAPPING

In Canada there has been an apparent overlapping of federal legislation relating to penal sanctions for ship-source pollution. This has been due to inter-departmental rivalry, as there are three federal government departments involved: the Department of Transport (Transport Canada), the Department of Fisheries and Oceans (DFO) and the Department of the Environment (Environment Canada). Unfortunately, the problem is compounded by recent general environmental legislation, which gives greater powers and increased fines and will be under the administration of Environment Canada. This legislation only awaits to be proclaimed in force, which as at mid-November 2009 is expected to be in the spring of 2010 for all amendments except for new Administrative Monetary Penalty (AMP) aspects, and in the spring of 2011 for the AMP aspects.

Transport Canada administers the *Canada Shipping Act (2001)*. Parts 8 and 9 of the Act, constitute a ship-specific regulatory regime for pollution prevention and response and criminalizing overboard discharges of pollutants. Sections 183 and 184 create a variety of offences with respect to failures to have an arrangement, equipment and resources available for immediate use, to have an oil pollution prevention plan and a response plan and / or to properly implement any one of these, to comply with directions of an oil pollution prevention officer and exposes offenders to fines up to \$1 million dollars and in the case of misconduct of lesser gravity to fines of up to \$100,000. Section 191 creates offences with respect to discharge of a "pollutant", failure to activate the emergency response plan, failure to comply with a direction to unload the "pollutant" at a specified place or contravention of the Prevention of Pollution from Ships and for Dangerous Chemicals Regulations.

These offence provisions make offenders subject to fines of up to \$1 million per day the offence(s) are committed.

"Pollutant" for the purpose of these offences is broadly defined as meaning:

(a) a substance that, if added to any waters, would degrade or alter or form part of a process of degradation or alteration of the quality of the waters to an extent that is detrimental to their use by humans or by an animal or a plant that is useful to humans; and

(b) any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state, that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of the waters to an extent that is detrimental to their use by humans or by an animal or a plant that is useful to humans.

The definition includes oil and any substance or class of substances that is prescribed for the purpose of Part 8 (Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans) to be a pollutant.

The scope of the definition is in reality limited since both Parts 8 and 9 prohibit a discharge "in contravention of any regulation" and the Regulations circumscribe the kinds of pollutants against which the prohibition operates. Thus, and without being exhaustive, the Regulations target oil and oily mixtures, garbage pollution prevention and target solid galley

waste, food waste, paper, rags, plastics, glass, metal, bottles, crockery, junk or similar refuse, and specified chemical substances.

DFO administers the *Fisheries Act* and has not infrequently taken the position that prohibitions set out in the *Fisheries Act* also apply to ship-source pollution. Sections 35 and 36 of the *Fisheries Act* set out general prohibitions as follows:

35. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.
36. (1) No one shall
- (a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;
  - (b) leave or deposit or cause to be thrown, left or deposited, on the shore, beach or bank of any water or on the beach between high and low water mark, remains or offal of fish or of marine animals; or
  - (c) leave decayed or decaying fish in any net or other fishing apparatus.
- (3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

The *Fisheries Act's* definition, at section 34(1), of "deleterious substance" is broad:

- (a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or
- (b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, and without limiting the generality of the foregoing includes
- (c) any substance or class of substances prescribed pursuant to paragraph (2)(a),
- (d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and
- (e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c);

The *Fisheries Act* creates offences, providing for fines in a range similar to the *Canada Shipping Act*, based on the section 35 and 36 prohibitions. The definition of "deleterious substance" is not circumscribed or limited by regulation.

Thus, in general terms, the *Fisheries Act* contains provisions which on their face could apply to ship-source pollution, although so far there has been only one decided case in which the *Fisheries Act* was used against a ship with respect to a discharge of oil, with that case however going off merely on the failure to prove that the ship had polluted, without considering the issue of statutory "overlap". We have had experiences of *Fisheries Act* charges being laid, but none that have proceeded to the extent of the "overlap" issue being raised and determined.

Environment Canada, through its Fish and Wildlife service, administers the *Migratory Birds Convention Act* and the *Canadian Environmental Protection Act (CEPA)*. Both the Migratory Birds Convention Act and the CEPA have recently been toughened up with respect to expansion of penal sanctions, civil liability provisions and investigation/enforcement tools.

The main features of the amendments (see in-force note on page 1) are as follows:

#### **MIGRATORY BIRDS CONVENTION ACT**

- extended to apply in the economic zone, thus 200 miles.
- deposits of substances harmful to migratory birds or habitat prohibited.
- prohibitions on destroying records, making false records, impeding investigations
- obligation on every master, chief engineer, owner and operator, as well as every director and officer of the corporation in a position to direct or influence related policies or activities, to take reasonable care to ensure compliance.
- provision for arrest of persons without warrant

- detailed provisions regarding inspections and investigations
- search and seizure without warrant in exigent circumstances, otherwise with warrant
- powers of direction and detention of vessels
- provision for release of vessels on provision of security in form determined by Attorney General for payment of maximum fine resulting from conviction of every accused, or such lesser amount approved by Attorney General
- any contravention of Act or regulations gives rise to fines and/or imprisonment, which are increased dramatically - on indictment max Cdn\$1 million, on summary conviction max Cdn\$300,000, up to three years' imprisonment on indictment, up to six months' imprisonment on summary conviction
- due diligence a defence, except where falsified record or interference with investigation
- subsequent offences can give rise to double maximum fine
- forfeiture of property, including vessel, can be ordered on conviction
- conviction/sentencing may include prohibition or direction type orders, including remedial, environmental audit, publication, payment of costs of remedial or preventive action, payment for research, educational funds, community service, continuing statements re activities, posting of performance bond, etc
- court can also order payment of compensation to third parties and civil remedies unaffected, but with provision that no claim for damage to be made under Act insofar as claim may be made under Marine Liability Act (civil liability for oil pollution and CLC/



Fund Convention regime) and similar Arctic Waters regime

- provisions re disclosure and publication of information obtained during inspections/investigations

### CANADIAN ENVIRONMENTAL PROTECTION ACT

- prohibition added (with exceptions/ qualifications) on importation or exportation of substances for disposal at sea, and without permit
- provision for recovery of remedial or mitigation steps reasonably taken
- enhanced powers of boarding, investigation
- inspection/investigation without warrant in exigent circumstances
- arrest without warrant of persons/ships
- provision for security in form determined by Attorney General for payment of maximum fine or such lesser amounts
- power to direct ships
- ships deemed persons for all provisions of Act/ regulations
- master or chief engineer of ship who directed, authorized, assented to etc is party to and guilty of offence
- directors and officers of corporations who are in a position to direct or influence corporation's relevant policies or activities in relation to compliance shall take all reasonable care to ensure compliance, all such officers and directors guilty of offence where corporation commits offence unless establish due diligence

- master and chief engineer to take reasonable care to ensure compliance

- if ship commits offence, master and chief engineer are party to and guilty of offence unless establish due diligence

This apparent overlap or duplication of statutory/ regulatory regimes has not, to date, been resolved judicially. And the issue has now been compounded by the recent amendments. As at this writing, it is not known precisely when the amendments will come into force, although they only await proclamation which is an essentially administrative matter and could in principle happen at any time.

We have had experience in a few cases of multiple charges being brought initially. *The Fisheries Act* charges (or *Migratory Birds Convention Act* charges) were in those cases eventually dropped or the cases otherwise resolved prior to determination. Were multiple charges to be prosecuted to trial, the issue would likely end up being tested on a "double jeopardy" question.

A Memorandum of Understanding between Transport Canada and Environment Canada was signed some time ago which outlines the co-operation of both parties in enforcing pollution prevention and wildlife legislation for the protection of the marine environment from ship source pollution, but it does not bar the possibility of multiple charges.



## SECURITY FOR CLAIMS AND POINTS ON ARREST AND RELEASE FROM ARREST

Security for claims is generally agreed informally. Club letters of undertaking are generally, but not always, accepted. Security is normally granted for 150% of the value of the claim to cover uplift for interest and costs, subject to the value of the arrested property as a maximum.

Security, known formally as "bail", recognized by the Court is limited to bank guarantees, which must be on a Canadian Schedule 1 or 2 bank, a bond of surety company licensed to do business in Canada or a bailbond in the Court-approved Form 486A. Cash in the amount of the claim or up to the appraised value of the property arrested paid into court will also obtain release of the ship from an arrest.

A Club letter of undertaking is acceptable only with the agreement of the claimant. A claimant has an absolute right to insist on formal bail if it wishes. Once bail (or security) has been given and the ship has been released from arrest, the seizing party may under certain circumstances re-arrest the ship for additional bail if it is established to the satisfaction of the Court that the original bail was insufficient.

A ship can be arrested to provide security for a claim in arbitration.

The effect of an arrest of a ship remains even if the owner of the ship subsequently goes into bankruptcy.

An affidavit to lead warrant filed to support a request for a Warrant of Arrest may include statements based on information and belief. However, there is no threshold "hearing" to determine whether or not a Warrant should be issued. As long as the affidavit sets out the technical requirements, a Warrant is issued. The requirements are assertions as to:

- Name and address of claimant.
- Nature of claim as qualifying for arrest jurisdiction.
- The claim not having been satisfied.
- The nature of the property to be arrested.
- In the case of sister-ship arrest, justification for same.



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## SISTER-SHIP ARREST - A SHORT PRIMER

There is a right to sister-ship arrest under section 43(8) of the Federal Courts Act against any ship that, at the time the action is brought, is beneficially owned by the person who is the owner of the ship that is the subject of the action.

Under section 43(8), the fact that the companies' vessels are in the hands of a common trustee in bankruptcy does not make them sister ships. Moreover, the "owner" means only the "registered owner" and does not include a beneficial owner. A common thread of fractional minority ownership is not sufficient to meet the requirement of section 34(8).

The arrest of a sister ship in Canada is different from an arrest of a vessel under the 1952 or 1999 Arrest Conventions which Canada has not ratified. Under Article 3(2) of the 1999 convention, any other ship

owned by a person liable may be arrested if it is so owned when the arrest is effected and the owner was, when the claim arose, owner, demise or voyage charterer of the ship in respect of which the claim arose. Section 43(8) does not embrace demise or voyage charter relationships.

Section 43(8) is also different from the U.K. Supreme Court Act of 1981 (sections 20 and 21), where a sister ship can be arrested when that other ship is beneficially owned as respects all its shares at the time when the action is brought by the party who, when the cause of action arose, was personally liable in the claim and was either (1) the owner or charterer of the offending ship, or (2) the person in possession or control of the offending ship.



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