FEDERAL COURT AND FEDERAL COURT OF APPEAL
EDUCATION SEMINAR, MARITIME LAW

SPONSORED BY THE NATIONAL JUDICIAL COUNCIL
AND CANADIAN MARITIME LAW ASSOCIATION

FRIDAY, MAY 23, 2014, CHATEAU LAURIER, OTTAWA

THE ACTION *IN REM* AND ARREST

Douglas G. Schmitt*
Alexander Holburn Beaudin + Lang LLP
Barristers & Solicitors
#2700 – 700 West Georgia Street
Vancouver, BC V7Y 1B8, Canada
Telephone: (604) 484-1754
Facsimile: (604) 484-9754
Email: dschmitt@ahbl.ca
website: www.ahbl.ca

1. Introduction

This paper is a basic introduction to maritime arrest. It discusses the *in rem* powers under *Federal Courts Act* ("FCA") s.43 including what types of property can be arrested; for what types of claim; the beneficial ownership requirement; sistership arrest; and, motions to release the arrested property by striking out the *in rem* action or posting security. At the end is a schedule listing issues that often arise urgently in an arrest.

2. Why Arrest Exists

Ships are unique because they can quickly arrive; do great damage by accident, delivering damaged cargo or using services without payment; then, leave the jurisdiction forever.

Unless security for the claim is provided, there is a great risk that a judgment eventually obtained will not be paid. To reduce this risk, security is often obtained by arresting, or threatening to arrest the ship, cargo or freight, and receiving a bail bond, guarantee, or P&I Club letter of undertaking to pay the judgment. Then everyone can relax and deal with the merits of the claim, sometimes in a foreign court or arbitration.

Maritime arrest has long existed in many legal systems. The practice of fast, efficient arrest and release of a ship or cargo by posting security reflects the fact that ships are chattels which must be mobile to earn income, while at the same time protecting the ships' creditors.

The substantive importance of an *in rem* action is described by Harrington, J. in *Quin-Sea Fisheries Limited v. Broadbill I (ship)*[1], as follows:

[1] 2013 FC 575 (CanLII), paragraph 15

*** The writer thanks Jason Lattanzio of this firm for great assistance writing this paper.**

> [15] ... the action *in rem* is not a mere matter of procedure, but rather is a matter of substance which goes to the very essence of admiralty law. Distinctions among claimants to the proceeds of the sale of a ship in an admiralty court, such as ranking based on maritime liens, possessory liens, mortgages and ordinary rights *in rem* are at the very essence of admiralty law. A fundamental distinction between the sale of maritime property by an admiralty court, and a sale in a common law court is that an admiralty sale gives title free and clear while the sale in a common law court is only a sale of the defendant's interest in the *res*.

To arrest, the claimant must invoke the *in rem* jurisdiction of the Court.

3. Urgent Motion after Arrest

In Canada, the only direct legal effect of arrest is that the arrested property cannot be moved without the consent of all parties or a Court order. There is no change in possession except when the unusual, extra step is taken of the Court ordering the Marshal to take possession of the property. Arrest puts great commercial pressure on the owner of the arrested property, and on innocent bystanders such as the dock operator, or other ships waiting to use the same dock or moorage where the property is arrested. This pressure may trigger an urgent motion challenging the arrest, or to fix the amount and form of security to release the property.

A motion to strike out the *in rem* action goes to the jurisdiction of the Court and is often heard summarily. If the arrest is vacated, the ship or cargo leaves and the claim is unsecured. If the arrest is maintained, the property does not move except as allowed by the Court or agreed by the parties, or security is posted and the arrested property released. In the most complicated situation, when no security is posted, the ship or cargo stays here until its judicial sale, then creditors worldwide appear in Canada to present their claims against that fund at a priorities hearing.

If the arrest is maintained, the next urgent issues are often the amount and form of security to release the property; and, moving the property temporarily to a safe place where it will interfere less with other business.

4. Basic Law of Maritime Arrest in Canada

The burden on a plaintiff seeking to arrest is low. Arrest is almost a matter of right if the minimal statutory requirements are met. In stark contrast, an applicant for a *Mareva* injunction must show a strong *prima facie* case, irreparable harm, make full and frank disclosure and give an undertaking to pay damages.

In practice, an applicant for an arrest warrant files an affidavit to lead warrant, briefly stating the facts required by Rule 481(2) including the nature of the claim; the basis for invoking the *in rem* jurisdiction of the Court; the nature of the property to be arrested; and, in sistership arrest, the beneficial ownership link of the ship to be arrested and the wrongdoing ship. On receiving this information, the Registry usually issues an arrest warrant immediately.

Canada's maritime arrest law is unique among countries, but has roots in English admiralty practice. Canada has not adopted any international arrest convention. Many countries, including the U.K. ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952 (the "1952 Arrest Convention"). Therefore, in Canada modern UK decisions should be considered, but cautiously.

5. What Types of Property May be Arrested?

For maritime arrest the property must be a ship, cargo, freight or another property described in FCA s.43(2). It must be within the territorial jurisdiction of the Court; have a maritime claim against it under FCA ss.22 and 43; and, meet any beneficial ownership test for that type of claim.

S.43(2) provides that the *in personam* jurisdiction of the Federal Court set out in s.22 "may be exercised *in rem* against a ship, aircraft or other property that is the subject of the action". Rule 479 provides ways to serve a statement of claim *in rem*. This rule refers to "a ship or cargo or other property on board a ship", "cargo or other property that is not on board a ship", "freight" and "proceeds paid into court in another proceeding".

The definition of a "ship" in FCA s.2 is very broad:

> 'Ship' means any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion ...

For the purpose of Federal Court *in rem* jurisdiction a "ship" includes what most people think of as a ship, and also unpropelled barges, hovercraft[2], offshore oil rigs[3], and remotely operated submersibles.[4]

6. For What Types of Claim?

Arrest is allowed only when the statutory requirements are met. In general terms the arresting party must have either a maritime lien or a statutory right *in rem* for a claim in a category listed in FCA s.22(2). For some types of claim, the right to arrest depends on nuances of ownership of the arrested property at specified times.

As pointed out by Marceau, J.A. in a leading Canadian decision on *in rem* claims, *Mount Royal/Walsh Inc. v. Jensen Star (The)*[5] (the "*Jensen Star*") the right to arrest for a maritime lien arises from the commission of the act giving rise to the lien (for example salvage, damage or personal injury or death caused by a ship, or wages) and subsequent changes of ownership are irrelevant.

---

[2] *Imperial Oil Limited v. The Expo Spiirit*, (1986), 6 F.T.R. 156 (C.A.)

[3] *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, (1997), 153 D.L.R. (4th) 385 (S.C.C.)

[4] *Cyber Sea Technologies Inc. v. Underwater Harvester Remotely Operated*, [2003] 1 FC 569; 2002 FCT 794

[5] (C.A.), [1990] 1 F.C. 199, 99 N.R. 42 (F.C.A.)

In contrast to a maritime lien, the statutory right *in rem* is sustainable only if the property owner is personally liable, and the beneficial owner of the property was the same at two times: when the cause of action arose and also when the action was commenced. This requirement for continuous beneficial ownership arises from FCA s.43(3) which creates the statutory right *in rem* as follows:

> 43(3) ... the jurisdiction conferred on the Federal Court by section 22 shall not be exercised *in rem* with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p), (r) [i.e., the statutory rights *in rem*] unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.
>
> (Emphasis added)

Some commonly encountered statutory *in rem* claims include cargo damage, charterparty debts, towage, and necessaries including ship repairs.

In the *Jensen Star* (at paragraph 28), Marceau, J.A. also pointed out that an *in rem* judgment can be rendered without being accompanied by a judgment *in personam* against the owner.

One issue in the *Jensen Star* was that the ship was sold, but neither the previous owner nor the new owner gave notice of the change to the plaintiff ship repairer who worked on the ship before, and after, that sale. The new owner immediately demise chartered the ship back to the previous owner, also without notice to the repairer. Marceau, J.A. (at paragraph 29) found that the act of the new owner, in continuing business without notifying the repairer of the change, was sufficient to tacitly authorize the previous owner to contract on the credit of the vessel and to engage the new owner's personal liability and, thus, the liability of the ship *in rem*. There is a rebuttable presumption that necessaries supplied to a ship are supplied on the credit of the ship and its owner (*Jensen Star*, at paragraph 30).

Marceau, J. A. also ruled in the *Jensen Star* that a demise charterer is not a "beneficial owner" for the purpose of engaging the ship's liability. At paragraph 13, Marceau, J.A. reasoned that Parliament's intention in using the word "beneficially" to modify ownership was an instruction to look beyond the registered owner in searching for the relevant person. It was held that a demise charterer was not a beneficial owner because a demise charterer has no equitable or proprietary interest in the ship and could not burden the ship with any *in rem* claim.

This ruling has great practical significance because commercial ships often operate under demise charter. A court would generally take the practical approach used by the Federal Court of Appeal in the *Jensen Star*, and presume that a demise charterer who was operating the ship was impliedly contracting on the credit of the registered owner for the purpose of binding the credit of the ship, unless notice was given by the ship's owner to potential claimants that the owner will not be liable for claims against the ship.

However, the issue often arises in practice of whether that notice was reasonably given by the owner to potential claimants. This is a trap for unwary suppliers to ships, who may find

that their assumed *in rem* claims are unenforceable, and therefore unpaid. See *World Fuel Services Corp. v. "Nordems" (The).* [6]

The requirement for *in personam* liability of the owner to justify arrest tempts ship operators (who are not owners) to allow arms-length parties to mistakenly believe that they are contracting with the owner. When claims arise, the true owner surfaces to dispute the *in rem* claims. See *Dragage Verreault Inc. v. "Atchafalaya" (The)*[7].

7. Lien for Necessaries under *Marine Liability Act*, S. 139

Canadian maritime law looks to the law of the place where the claim originated to determine whether it has maritime lien status. This created a disadvantage to Canadian necessaries suppliers who did not have a maritime lien under Canadian law. By contrast, similar suppliers in the USA who did have a maritime lien under USA law would rank ahead of the Canadian suppliers in priority hearings involving foreign ships. To address this unfairness, in 2009 Canadian law was changed to grant Canadian necessaries suppliers a maritime lien for necessaries supplied to a foreign ship (i.e. not a pleasure craft), by MLA s.139 which states in part:

> 139. ...
>
> Maritime lien
>
> (2) A person, carrying on business in Canada, has a maritime lien against a foreign vessel for claims that arise
>
> (a) in respect of goods, materials or services wherever supplied to the foreign vessel for its operation or maintenance, including, without restricting the generality of the foregoing, stevedoring and lighterage; or
>
> (b) out of a contract relating to the repair or equipping of the foreign vessel.
>
> Services requested by owner
>
> (2.1) Subject to section 251 of the Canada Shipping Act, 2001, ("CSA") for the purposes of paragraph (2)(a), with respect to stevedoring or lighterage, the services must have been provided at the request of the owner of the foreign vessel or a person acting on the owner's behalf. ...
>
> Federal Courts Act
>
> (4) Subsection 43(3) of the Federal Courts Act does not apply to a claim secured by a maritime lien under this section.

---

[6] 2011 FCA 73

[7] 2009 FC 273

The reference to CSA, 2001 s.251 in MLA, s.139(2.1) would allow a demise (bare boat) charterer to create *in rem* liability, if the charterer is also the charterer at the time the action is started and is joined as a defendant. The reference to FCA, s.43(3) in MLA s.139(4) would allow the maritime lien in s.139, once created, to survive a change in beneficial ownership under FCA s.43(3) which ownership change would otherwise terminate that right.

Some of the above issues were considered by Harrington J. in *Comfact Corporation v. Hull 717*[8], but not decided because deciding another issue was enough to determine the result in that case. The plaintiff's claim, for welding services to a ship under construction, supplied under a contract with the builder, not the ship owner, did not fall within the types of claims for which a maritime lien is granted in s.139(2). The claim did not relate to the operation or maintenance, or repair or equipping of a ship.

8. What Physical Involvement Must Property Have to Create Liability *In Rem* for Damage "Caused by a Ship"?

In *Wells Fargo v. The Mercury XII*[9] Hughes, J. said:

> [65] ... the phrase "damage caused by a ship" is a term of art in maritime law. The damage must be a direct result or natural consequence of something done by those engaged in the navigation of the ship but the ship itself must be the actual instrument by which the damage was done.

Hughes, J. held that the defendant barge was not liable *in rem* for damage caused by employees of the tug that was handling the barge. That line of reasoning was recently considered in *0871768 B.C. Ltd. v. Aestival* (Sailing Vessel)[10] ("*Aestival*"). In *Aestival* the plaintiff's vessel suffered damage when the defendant's vessel, nearby, underwent grinding work which caused debris to settle on the plaintiff's vessel. The arrest was upheld on the basis that the dust was "damage caused by a ship", relying on similar facts in *Newterm Ltd. v. Mys Budyonnogo (The)*[11].

In *Aestival*, Prothonotary Lafrenière said:

> [23] Justice Hughes did not purport in *Wells Fargo* to circumscribe, limit or restrict the scope of *in rem* claims that can be brought in this Court. He simply concluded, in the particular circumstances of the case before him, that no action in rem arose against the barge *MLT-3*.
>
> [24] Section 22(2) of the Act sets out certain heads of maritime law falling under the maritime law jurisdiction of the Federal Court. The Plaintiff's claim in this instance appears to fall under

---

[8] 2012 FC 1161

[9] 2012 FC 738

[10] 2013 FC 899

[11] [1992] 3 FC 255

> section 22(2)(d) – any claim for damages or for loss of life or personal injury caused by a ship either in collision or otherwise. The word "otherwise" lends to a broader interpretation of when and how damage is caused, rather than solely while the ship is moving.

9. What Property May be Arrested? What is the "Subject of the Action" in FCA s.43? The Swift Fortune

Canadian law on the arrest of cargo was clarified by the Supreme Court of Canada in *Phoenix Bulk Carriers Ltd. v. M/V Swift Fortune (The)*[12] (the "*Swift Fortune*").

The issue before the Court was whether failure to deliver cargo to a nominated vessel justified the arrest of the intended cargo by the owner of the nominated vessel. A cargo of coal was arrested on board the defendant ship, with the plaintiff alleging that the plaintiff was contractually entitled to carry that same cargo on the plaintiff's ship.

The arrest of a ship, cargo, freight or other property, for a maritime lien or statutory *in rem* claim is allowed if the requirements of FCA s.43(2) and (3) are met:

> (2) Subject to subsection (3), the jurisdiction conferred on the Federal Court by section 22 may be exercised in rem against the ship, aircraft or other property that is the subject of the action, or against any proceeds from its sale that have been paid into court.
> ...
>
> (3) Despite subsection (2), the jurisdiction conferred on the Federal Court by section 22 shall not be exercised in rem with respect to a claim mentioned in paragraph 22(2) ...unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.
>
> (emphasis added)

In *Paramount Enterprises International Inc. v. An Xin Jiang (The)*[13], the Federal Court of Appeal gave a very narrow interpretation to the words "subject of the action" in ss. 43(2) - the property must be the "cause of" the action - and set aside the arrest. In 2007, *Paramount* was overruled by the Supreme Court of Canada in the *Swift Fortune*.

In the *Swift Fortune*, the Supreme Court of Canada adopted the reasons for judgment of Nadon, J.A. in the *Swift Fortune* decision of the Federal Court of Appeal, 2007 FCA 1, at paragraph 47, as follows:

> [47] ... subsection 43(2) does not require a physical nexus between the cargo and the vessel in order to give rise to in rem

[12] [2007] SCC 13

[13] 2000 F.C.J. No. 2066 (F.C.A.)

> rights. Rather, subsection 43(2) proposes identifiability of the property as the controlling factor so as to ensure that the scope of the in rem proceedings is not unduly enlarged. In other words, the action in rem must relate to the specific property contemplated in the contract at issue. To the extent that the cargo can be clearly identified as being the one contemplated under the contract, the breach of which is alleged by Phoenix in its Statement of Claim (as was alleged by Paramount in Paramount, supra), the cargo under arrest is the "subject of the action".
>
> (Emphasis added)

The *Swift Fortune* decision is a welcome simplification of the law. The principle in the *Swift Fortune* applies to any maritime arrest, not just the arrest of cargo.

10. Continuous Beneficial Ownership Required by FCA s.43(3)

The Maersk Defender – Can a Prospective Owner Create In Rem Liability?

The narrow scope of Canadian maritime arrest rights under FCA s.43(3), requiring continuous beneficial ownership (when there is no maritime lien) was illustrated by the Federal Court of Appeal's decision in *Maritima de Ecologia, S.A. de C.V. v. The Maersk Defender*[14] (the "*Maersk Defender*"). The issue was whether a ship could be arrested to secure a claim for breach of a charterparty involving that ship, when the ship was never owned by any defendant shipowner.

The plaintiff had a charter agreement under which the defendant ship was to be purchased by the defendant prospective shipowner for the purpose of performing the charterparty. In breach of that agreement, the prospective owner arranged for the ship to be sold to a different company and chartered by that company to someone other than the plaintiff. Nadon, J. A. of the Federal Court of Appeal set aside the arrest on two grounds:

(a) The sale of the ship to a shipowner different from the intended owner under the charterparty, was a change in beneficial owner which defeated the claimant's right to arrest under section 43(3). That very sale was the wrongful act causing the inevitable breach of the charterparty. Ironically, the wrongful act of the defendant simultaneously made it impossible for the plaintiff to arrest in order to obtain security for the claim arising from the wrongful act. (*Maersk Defender*, paragraph 31); and

(b) Even if there was a similar beneficial ownership at relevant times, the prospective shipowner who was now breaching the charterparty had never become the owner of the ship. Therefore, the requirement for the owner's personal liability to justify an *in rem* claim and arrest had not been met (*Maersk Defender*, paragraph 36).

---

[14] 2007 FCA 194

F.C. Yachts - Can a Mortgagee and Prospective Owner Create In Rem Liability?

Continuous beneficial ownership is a necessary condition for asserting a statutory right *in rem*. However, it is not, by itself, a sufficient condition.

An interesting permutation of the usual ship arrest situation arose in *F.C. Yachts Ltd. v. Splash Holdings Ltd.*[15], where Harrington , J. held that a shipowner could not arrest its own ship in order to secure its claim against a recorded mortgage holder. In that case, the plaintiff shipyard was the owner of a ship under construction. The ultimate purchaser had a mortgage against the ship to protect its interest, such as construction progress payments. If the payments had all been made as planned, the purchaser / mortgagee would have become the owner. Payment was in default. Following the principle in the *Jensen Star* that a statutory right *in rem*, unaccompanied by a maritime lien, does not lie unless the personal liability of the shipowner is engaged, Harrington, J. vacated the arrest because the mortgagee in default was not the beneficial owner of the ship.

11. Sistership Arrest - Similar Beneficial Ownership

Sistership arrest is allowed if the requirements of FCA s.43(8) are met:

> **(8) Arrest** - The jurisdiction conferred on the Federal Court by section 22 may be exercised *in rem* against any ship that, at the time the action is brought, is owned by the beneficial owner of the ship that is the subject of the action.

In order to arrest under FCA s.43(8), the time to determine ownership of the ship to be arrested is when the action is brought. A sistership may not be arrested if it is sold to a non-liable beneficial owner after the claim arose but before the action is started. However, if the action is started against a named sistership, it may be arrested after such a sale.

Regarding the link between the ship to be arrested and the wrongdoing ship, the terms "owner" and "beneficial owner" were distinguished by Rothstein, J. in *Hollandsche Aannaming Maatschappij v. Ryan Leet (The)*[16]; however, at that time of that decision, FCA s.43(8) was differently worded. In the English version the terms "owner" and "beneficial owner" were reversed from the present words. Later, in *Norcan Electrical Systems v. FB XIX (The)*[17], Prothonotary Hargrave said about what is now the English version:

> 23 ... This, if one looks at history of the sistership concept, is what was intended. In addition to extending the rights of claimants to claim against ships under common beneficial ownership, another purpose of the legislation is to allow those with claims against a wrongdoing ship to attach the assets of the de facto economic power behind that ship.

---

[15] 2007 FC 1275; 289 D.L.R. 4th 167

[16] 135 FTR 67 (1997)

[17] [2003] 4 FC 938

A ship may only be arrested once for a particular claim. However, the question of whether multiple sistership arrest is possible is before the courts. The International Convention on Arrest of Ships, 1999 allows arrest under different circumstances than the 1952 Arrest Convention including multiple ship arrest, but Canada has not adopted either convention. In *Norcan, supra* Prothonotary Hargrave commented that multiple sistership arrest is allowed. The opposite conclusion was reached by Heneghan, J. in *Westshore v. The Cape Apricot*[18], which is now under appeal.

12. Motions to Vacate Arrest

When property is arrested, there is often a motion to vacate the arrest on the basis that some of the requirements described above have not been met.

If the arrest is maintained, the owner often seeks to have the amount of security determined, to allow the property to move; or, an order that the property be moved to safe temporary storage.

13. Fixing the Amount of Bail

Generally, the amount of bail should be the highest reasonably arguable best case plus interest and costs. Typically, this adds about 50% to the principal damages claim. As Prothonatary Hargrave said in *Norcan, supra* at paragraph 10:

> As to setting bail, the general rule is that a plaintiff is entitled to bail in an amount sufficient to cover his or her reasonably arguable best case, together with interest and costs, limited by the value of the wrongdoing vessel.

Regarding the amount of interest on the payment, if the cash is paid into Court or an interest bearing account (sometimes a lawyer's trust account) then interest earned on that money will accrue to the security and the amount of cash paid as security may be reduced accordingly. If the security is in the form of a fixed amount bank guarantee, or another specific amount, then interest should be taken into account in determining the amount. See *Taiyo Gyogyo K.K. v. Tuo Hai (The)*[19].

14. Form of Security

Rule 486(1) provides that unless the parties agree otherwise, the bail shall consist of a bank guarantee or a bond from a surety licensed in Canada, or a bail bond in a specified form.

The Rules do not specifically authorize the Court to accept a guarantee from a Protection and Indemnity Club ("P&I Club"). However, a common commercial practice is to accept a P&I Club letter of guarantee by agreement between the parties, despite the theoretical right of the claimant to insist on a bail bond from a Canadian surety company or domestic bank guarantee under Rule 486(1). The members of the International Group of P&I Clubs are well known,

---

[18] 2014 FC 136, at para. 92

[19] (1991), 48 F.T.R. 59 (FCA)

and generally considered to be reliable security. However, there are other P&I Clubs, and occasionally, one becomes insolvent, and its letters of undertaking unpaid.

15. Wrongful Arrest

In Canada, damages for wrongful arrest are only awarded if the arrest was done maliciously. The fact that the claim later fails on the merits is irrelevant.

In *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.* [20]*("Armada Lines")*, the Supreme Court of Canada made it quite clear that damages for wrongful arrest are only awarded if bad faith or gross negligence is shown on the part of the arresting party. The Honorable Justice Iacobucci, writing for the court, cited at paragraph 20 the Privy Council decision The *Evangelismos*[21], wherein the following was held at page 359:

> Undoubtedly there may be cases in which there is either mala fides, or that crassa negligentia, which implies malice, which would justify a Court of Admiralty giving damages . . . .
>
> The real question . . . comes to this: is there or is there not, reason to say, that the action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the Plaintiff, or that gross negligence which is equivalent to it?

16. Conclusion

Maritime arrest in Canada is simple, effective and by world standards, an economical and efficient way to get security for a maritime claim.

---

[20] [1997] 2 SCR 617

[21] (1858), 12 Moo. P.C. 352, 14 E.R. 945

SCHEDULE 1

Common Issues in Maritime Arrest

1. What type of property may be arrested under FCA s.43(2)? Is it a ship, cargo, freight, or proceeds paid into court for it in another action?

2. Is the property the "subject of the action" under FCA s.43(2)?

3. Is there a maritime claim under FCA s.22?

4. Is there a maritime lien or similar claim, upon the creation of which ownership of the property is irrelevant?

5. Is *in personam* liability of the owner needed to arrest for this type of claim?

6. If there is no maritime lien or similar claim, then does the property meet the continuous beneficial ownership requirement in FCA s.43(3)?

7. For sistership arrest under FCA s.43(8), when the action was started, who was the beneficial owner of the ship to be arrested and the ship that is the subject of the action?

8. If the arrest is maintained, what is the appropriate amount of bail and form of security?