



March 20, 2017

Via email: andrew.baumberg@cas-satj.gc.ca; gillian.grant@tc.gc.ca

Andrew Baumberg
Acting Secretary
Federal Court of Appeal and Federal Court Rules Committee
Thomas D'Arcy McGee Building
90 Sparks Street
Ottawa, ON K1A 0H9

Gillian Grant
Senior Counsel, Legal Services
Transport Canada DLSU
Place de Ville, Tower C
330 Sparks Street, 17th Floor
Ottawa, ON K1A 0N5

Dear Mr. Baumberg and Ms. Grant:

Re: Federal Courts Rule 481(2)(e) – Arrest of Sister Ships

I am writing on behalf of the Maritime Law Section of the Canadian Bar Association (the CBA Section) to bring our concerns with the sister ship arrest provisions of the *Federal Court Rules* to your attention to. In particular, our concern over the inconsistency of Rule 481(2)(e) with Section 43(8) of the *Federal Courts Act* (the Act).

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section comprises lawyers with an in-depth knowledge of domestic and international law and practice affecting shipping and navigation.

A party seeking to arrest a sister ship must state the information referred to in Rule 481(2)(e) in an Affidavit to Lead Warrant. Rule 481(2)(e) reads:

481 (2) *A party seeking a warrant under subsection (1) shall file an affidavit, entitled "Affidavit to Lead Warrant", stating...*

(e) where, pursuant to subsection 43(8) of the Act, the warrant is sought against a ship that is not the subject of the action, that the deponent has reasonable grounds to believe that the ship against which the warrant is sought is beneficially owned by the person who is the owner of the ship that is the subject of the action.

This suggests that this information will lead to the issuance of a warrant, but when compared with subsection 43(8) of the FCA, which gives the authority for sister ship arrest, the language is just the reverse:

43 (8) *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.*

While subsection 43(8) is likely to have precedence over Rule 481(2)(e) when determining the availability of sister ship arrest, the availability could differ depending on which provision is applied.¹

The problems associated with sister ship arrest extend beyond Rule 481(2)(e), however the CBA Section recommends that, as a first step, the Rule should be amended to be consistent with the current section 43(8) of the Act.

Thank you for your interest in this issue, we welcome the opportunity to discuss our comments with you, and appreciate anything that can be done to have this rule amended.

Yours truly,

(original letter signed by Kate Terroux for M. Robert Jette)

M. Robert Jette, Q.C.
Chair, CBA Maritime Law Section

¹ See Chris Giaschi, *Sistership Arrest in the Federal Court of Canada: A Wreck in Need of Salvage* (November 23, 2016), available [online](http://ow.ly/fgoh30a5vd9) (<http://ow.ly/fgoh30a5vd9>).