

CAVEATS IN CANADA: WARRANTS, RELEASES AND EVERYTHING IN BETWEEN

15TH ANNUAL SHIPARRESTED MEMBER'S CONFERENCE – MALAGA,
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AVOCATS ET PROCUREURS
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CAVEATS: ORIGIN AND DEFINITION

CAVEAT comes from Latin meaning, literally “let him (or her) beware.”



CAVEATS: ORIGIN AND DEFINITION

**USING
LATIN
PHRASES
TO LOOK
SMART
IS MY
MODUS
OPERANDI**

Refers to a notice or a warning to refrain from a particular action.

AND/OR



In Maritime Law:

A notice that certain actions, namely arresting or releasing a Ship, may not be taken without informing the person who gave the notice.

Primarily protective in nature.

CAVEATS: ORIGIN AND DEFINITION



The **CAVEATOR** designates the person or entity which files the CAVEAT.

TYPES OF CAVEATS

- **CAVEAT WARRANT:**

A notice filed with the Federal Court for the purposes of preventing the arrest of a ship.

- **CAVEAT RELEASE:**

A notice filed with the Federal Court for the purposes of preventing the release of a ship in respect of which an arrest warrant has been issued and served.

- **CAVEAT PAYMENT:**

To be used for a person who desire to prevent the payment of money out of the Federal Court.

APPLICABLE RULES

The Federal Courts' Rules prescribe the requirements and the form for the filing of Caveats:

493. (1) CAVEAT WARRANT – A person who desires to prevent the arrest of property shall serve and file a caveat warrant in Form 493A undertaking to give, within three days after being required to do so, bail in respect of any action that has been, or may be brought against the property.

(2) CAVEAT RELEASE – A person who desires to prevent the release of any property under arrest shall serve and file a caveat release in Form 493B.

APPLICABLE RULES

493. (3) CAVEAT PAYMENT – A person who desires to prevent the payment of money out of court shall serve and file a caveat payment in Form 493C.

(4) SERVICE OF CAVEAT– A caveat under subsection (1) (2) or (3) shall be served on all parties and caveators.

(5) CAVEAT BY A NON-PARTY – Where a person filing a caveat under this rule is not a party to the action, the caveat shall state the person's name and provide an address for service.

APPLICABLE RULES

494. (1) LIABILITY OF PERSON REQUESTING A WARRANT– A person at whose instance a warrant is issued for the arrest of property in respect of which there is a caveat warrant outstanding is liable to payment of all resulting costs and damages, unless the person can satisfy the Court that the person should not be liable therefor.

(2) LIABILITY OF PARTY REQUESTING CAVEAT: A person who files a caveat release or caveat payment is liable to payment of all resulting costs and damages, unless the person can satisfy the Court that the person should not be liable therefor.

APPLICABLE RULES

495. (1) EXPIRATION OF A CAVEAT– A caveat expires one year after the day on which it was filed.

(2) FILING OF A NEW CAVEAT- A new caveat may be served and filed before or after the expiration of an existing caveat.

(3) WITHDRAWAL OF CAVEAT – A person who has filed a caveat may withdraw it at any time by filing a notice in Form 495.

(4) SETTING ASIDE OF CAVEAT – On motion, the Court may order that a caveat be set aside.

APPLICABLE RULES

22. (1) CAVEAT REGISTER – The Administrator shall keep in the Registry a caveat register, in which all caveats, withdrawals of caveats and orders affecting caveats shall be entered.

(2) ENTRY OF CAVEAT – On the filing of a caveat under subsection 493(1), (2) or (3), the Administrator shall enter the caveat in the caveat register.

CAVEAT WARRANT

• WHAT IS A CAVEAT WARRANT?

- A notice filed with the Federal Court of Canada for the purpose of preventing an arrest of property.
- Before the Court will issue a warrant of arrest a nationwide search in the Caveat registry is performed by the Court's Administrator.
- If a caveat warrant is found in the registry, the warrant of arrest will not be issued.
- **HOWEVER**, the entity who signed the caveat warrant must provide bail (or pay into Court) the amount of money set out in the caveat warrant.



CAVEAT WARRANT

• USE OF CAVEAT WARRANTS:

- If a shipowner is aware of any potential claims, a caveat warrant is a useful tool to prevent the vessel from being arrested.
- Useful but rarely used in Canada due to the fact that the party filing the caveat must give bail in respect of a plaintiff's action.



CAVEAT RELEASE

- WHAT IS A CAVEAT RELEASE?

- A procedural tool which prevents the release of a ship in respect of which an arrest warrant has been issued and served.
- Before a release is issued for an arrested Ship, a nationwide search for caveat releases is performed.



CAVEAT RELEASE

• WHAT IS A CAVEAT RELEASE?

If a caveat release is on file, the shipowner will have the following options:

- a) Settle the claim in respect of which the caveat release was filed **OR**
- b) Make a private arrangement with the caveator for security for that claim, in order to obtain the caveator's withdrawal of the caveat release.

EXAMPLE OF CAVEAT RELEASE PROCEEDING

NO: T-X-18

FEDERAL COURT

ACTION IN REM AND IN PERSONAM

BETWEEN:

ABC INC.

Plaintiff

AND:

THE SHIP M/V "OCEAN BULK
CARRIER"

And

THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP M/V
"OCEAN BULK CARRIER"

Defendants

NOTICE FOR CAVEAT RELEASE (Federal Court Rule 493)

TAKE NOTICE that XYZ SHIP REPAIRS INC. hereby applies for a Caveat against the release of the Defendant vessel "OCEAN BULK CARRIER" now under arrest by virtue of a warrant issued out of this Registry.

AND TAKE NOTICE that the address of XYZ SHIP REPAIRS INC. is 12345 Someplace Street, Quebec, Canada A1B 2C3 and its address for service is care of Marc de Man, De Man, Pillet of 2020 Robert-Bourassa Blvd. Suite 1920, Montreal, Quebec, Canada H3A 2A5.

MONTREAL, January 1, 2018

DE MAN, PILLET

Per: _____

Marc de Man
2020 Robert-Bourassa Blvd, Suite 1920
Montreal, Quebec H3A 2A5
Solicitors for XYZ Ship Repairs Inc.



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EXAMPLE OF WITHDRAWAL OF CAVEAT RELEASE PROCEEDING

NO: T-X-18

FEDERAL COURT

ACTION *IN REM* AND *IN PERSONAM*

BETWEEN:

ABC INC.

Plaintiff

AND:

THE SHIP M/V "OCEAN BULK
CARRIER"

And

THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP M/V
"OCEAN BULK CARRIER"

Defendants

NOTICE OF WITHDRAWAL OF CAVEAT RELEASE
(Federal Court Rule 493)

TAKE NOTICE that we, DE MAN, PILLET, solicitors for XYZ Ship Repairs Inc. withdraw the
Caveat Release entered by us in this action.

MONTREAL, January 1, 2018

DE MAN, PILLET

Per: _____

Marc de Man
2020 Robert-Bourassa Blvd, Suite 1920
Montreal, Quebec H3A 2A5
Solicitors for XYZ Ship Repairs Inc.



AVOCATS ET PROCUREURS
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BEWARE...of time bars!



- Filing of a caveat release does not constitute the commencement of an action for the purposes of compliance with applicable statutes of limitation or for the preservation of a right in rem.
- A caveator will still need to detail its claim formally through a Statement of Claim in order to “stop time”.

BEWARE...of the liability of caveators!



- The arrest of a ship for which there is a caveat warrant may render the arresting party liable in all costs and damages unless it can be shown to the satisfaction of the Court that there was good reason for the arrest in spite of the caveat warrant.
- A caveator who lodges a caveat without a caveatable interest may be liable for damages to a person who suffers a loss as a result.

PROCEDURAL SPECIFICITIES

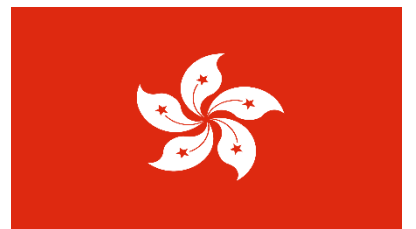
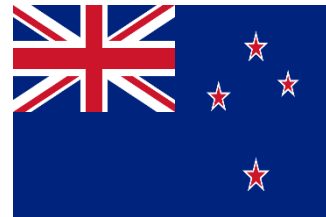
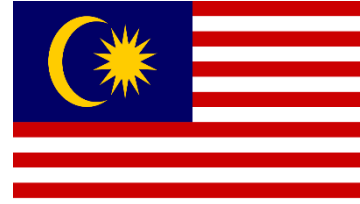
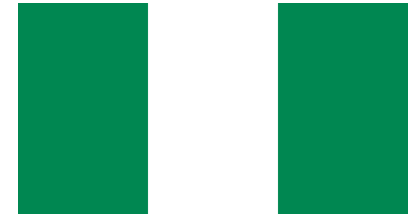
- Where caveat releases are concerned, the prerequisite is that a warrant of arrest must already have been filed and served against the Ship.
- Caveat release piggy-backs on the arrest of the arresting party.
- Pursuant to Rule 495 (1) FCR: No Caveat remains in force for more than a year from the date of its entry.
- HOWEVER, successive caveats may be entered following their expiry by filing a new caveat, pursuant to Rule 495(2) FCR.

CAVEATS: SIMPLE YET POWERFUL!

- Procedure is both extremely expediant and inexpensive.
- Caveats are very simple proceedings: form is simple and does not require extensive drafting.
- Can be filed in Court within an hour from the time we are made aware of the particulars of the claim
- No need to establish any evidence of the claim
- No need to set out the factual basis for the claim

CAVEAT JURISDICTIONS

- United Kingdom
- Australia
- New Zealand
- Ireland
- Bahamas
- Malaysia
- Singapore
- Kenya
- Nigeria
- India
- Hong Kong
- Cyprus



A FEW IMPORTANT JURISDICTIONS WITHOUT CAVEATS

- United States
- France
- Spain
- Italy
- Japan
- China



VARIOUS ISSUES RELATING TO CAVEATS

Issue 1: Submission to Federal Court's jurisdiction?

For instance, a shipowner who intends on contesting the Court's jurisdiction begs the question:

Does the act of lodging a Caveat against arrest amount to the shipowner's submissions to the Court's jurisdiction?



→ This question has yet to be determined by Canadian Courts.

VARIOUS ISSUES RELATING TO CAVEATS

Issue 2: Checking the Court's caveat register

Although the Court is meant to verify the caveat register when tasked with the arrest or release of a Ship, the consequence of not having properly checked the register can be very onerous!

→ As a matter of practice, lawyers should put to task the Court's Administrator to determine whether caveats have or have not been filed.