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Finders Keepers? - Salvage Law for the Non-Professional Salvor

A mariner's rights and responsibilities relating to salvage are often misunderstood. Finding an abandoned vessel at sea or along the shoreline, for example, does not give the mariner the automatic right to salvage the vessel, nor does it give them an ownership interest in the property if they recover it. More than a few would-be salvors have come to me in some form of hot water because they have tried to salvage something they thought was free for the taking when it was not. Marine law does not recognize the concept of "finders keepers". Mariners who approach potential salvage opportunities correctly, however, can be reasonably rewarded, thus it is wise for mariners to understand the following brief summary of Canadian salvage law.

The Absent Owner & The Receiver of Wrecks:

When a mariner discovers property that appears to be lost and the owner is absent there is no automatic right to claim salvage. The *Canada Shipping Act 2001* ("CSA 2001") provides that when a person claims possession of a "wreck" (which includes a vessel and an aircraft, but also flotsam, jetsam, and any other items that were part of, or on, a vessel or aircraft) they must report it to the Receiver of Wrecks, which is an office of the Department of Transport. The Receiver has no obligation to do anything once notified, however, they must be notified before any action is taken in respect of the wreck. While the law now requires every wreck be "delivered" to the Receiver upon demand, the reality is that many wrecks cannot be easily delivered, and the Receiver does not like to act as a "lost and found" for smaller wrecks. The Receiver will generally only insist on being involved after they are notified if the wreck poses a risk to the environment or navigation, or there is significant value to it.

Once reported, the Receiver may make efforts to find the owner of the wreck. If the owner cannot be located within 90 days the Receiver may release the wreck to the would-be salvor. If the value of the wreck is less than \$5,000, the storage costs would exceed the value, or the wreck is perishable or poses a threat to public safety, the Receiver does not have to wait the 90 days before releasing it. Except in emergency situations where it is not practicable to give notice to the Receiver, the salvor will be denied salvage unless they have notified the Receiver and received permission to proceed. Once salvaged, the salvor is entitled to a salvage reward, which is typically part of the sale proceeds of the wreck (if there are proceeds). The balance of any sale proceeds are kept by the Federal government, if not claimed by the owner. The Receiver will not pay a salvage reward if the wreck cannot be sold for value. Therefore, if the wreck appears to be of minimal value, think twice before commencing salvage work - you may end up with a wreck you can do nothing with, and have no way to recover your expenses.

The Interested Owner - Salvage Contract versus No Contract:

Where the owner of a wreck is identifiable, and shows an interest into the property, salvage may proceed with their permission in one of two ways: with a contract or without a contract. Salvage without a contract is referred to as "pure salvage". Whether there is a contract will often depend on how the property comes in jeopardy. For example, where a vessel washes ashore and is in no immediate peril the owner will often have the opportunity to negotiate a contract with a salvor. These contracts are often for a fixed price, on a time and expenses basis, or the parties agree that the salvage

reward will be decided by an adjudicator after the work is complete. Property owners and salvors are free to contract on whatever terms they feel are appropriate, provided one of the parties (typically the property owner) is not under undue influence, the influence of danger or the salvage fee is not excessively small or large for the actual work completed. An agreement made under these circumstances will often not be binding.

When there is no contract to provide for a salvage reward the salvor can rely on two sources of law that provide for a right to a reward. These are the *Canada Shipping Act 2001* ("CSA 2001"), and the *common law* (which is the law developed by decisions of the courts, as opposed to legislation written by the government). Each of these sources of law provide a mariner with separate rights to claim a salvage reward if certain criteria are met.

The Common Law Requirements: *Peril, Voluntariness and Success*

The *common law* of salvage has developed over more than 500 years by various courts hearing salvage claims. From these cases the law has distilled three criteria that must be met for a salvor to receive a reward. Firstly, the property being salvaged must be in *peril*. The requirement that the property be in peril does not mean that the item need be in immediate harm, such as by sinking, but the property must be in some jeopardy.

Secondly, the salvor must be acting *voluntarily* in order to be entitled to a reward. In other words, the salvor cannot be under any obligation to save the property. Government agencies, such as the Coast Guard, would logically be excluded from claiming salvage because in many circumstances their roles require them to assist in saving life at sea (which often requires the saving of property). However, legislation such as the *CSA 2001* can override the common law, and this has been done where the *CSA 2001* provides that Canadian government ships and crew can claim salvage where the government vessel used in the salvage is a tug or fitted with equipment intended to be used for salvage.

Thirdly, the common law demands the efforts of a salvor be successful. While the efforts of the salvor do not have to produce a complete success in saving the property, their role in the salvage must materially benefit the assistance given to the property.

The International Convention Requirement: *"Useful Result"*

The second independent source of salvage reward is the *International Salvage Convention 1989*, which forms part of the *CSA 2001*. The purpose of this international agreement is to encourage the salvage of property, and the avoidance of environmental harm that wrecks often entail, by setting criteria for when a salvor can expect a reward. The *International Salvage Convention 1989* provides that "any act or activity undertaken to assist a vessel or any other property in danger in navigable waters" that provides a "useful result" entitles the salvor to a reward. The Courts have held that the "useful result" test should be given a plain meaning. In a later article we will discuss examples of when efforts were held to give a "useful result".

The Booty: Valuing the Salvage Reward

The *International Salvage Convention 1989* and the common law of salvage have similar criteria that will be considered in setting the amount of a salvage reward. The criteria considered are: the value of the property after it is salvaged, the skill and effort of the salvors in minimizing damage to the property and the environment, the measure of success in the salvage operation, the degree and nature of danger involved, the time and expense in the salvage operation, the value of the salvage equipment used, and the promptness of the salvage services. Generally, the greater the risk, skill, expense and success, the larger the salvage reward. As a rule though, a salvage reward will never exceed the value of the salvaged property, and rarely exceeds 50% of the salvaged property unless the value of the property is relatively small.

Salvage is a vast and colourful area of marine law. Readers are encouraged to provide their comments or stories in response to this brief discussion on salvage law.

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