Federal Court Cour fédérale

Date: 20240319

Docket: T-1374-21

Citation: 2024 FC 439

Ottawa, Ontario, March 19, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HAIDA TOURISM PARTNERSHIP D.B.A.
WEST COAST RESORTS

Plaintiff

and

THE ADMINISTRATOR OF THE
SHIP-SOURCE OIL POLLUTION FUND

Defendant

ORDER AND REASONS

I. Overview

[1] This decision addresses an appeal brought by the Plaintiff, Haida Tourism Partnership d.b.a. West Coast Resorts [Haida], under Rule 51 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*], from an Order and Reasons dated December 21, 2023 [the Order] of Associate Judge Coughlan [the Associate Judge].

[2] In the within action, Haida seeks recovery from the Defendant, the Administrator of the Ship-Source Oil Pollution Fund [the Administrator], costs that Haida incurred to remediate an oil spill emanating from its vessel. The Order under appeal granted a motion by the Administrator to strike Haida's action on the basis that Haida had failed to plead a basis in law for the Administrator's alleged liability. The Associate Judge granted the Administrator's motion and struck Haida's Statement of Claim without leave to amend.

[3] As explained in greater detail below, Haida's motion and appeal are allowed and the Order of the Associate Judge is set aside, because I have found a palpable and overriding error in the Associate Judge's conclusion that Haida's action is precluded by the principles of *res judicata* and, in particular, issue estoppel. As requested by the parties, I have therefore decided the underlying motion to strike and, in the result, will grant Haida leave to amend its Statement of Claim to reflect the cause of action that it has articulated in its submissions in this motion, because I am not satisfied that it is plain and obvious that such cause of action will fail.

II. **Background**

[4] Haida is a limited partnership registered under the laws of British Columbia and the operator and owner of a sports fishing lodge or barge known as "Tasu I" [the Vessel].

[5] The Ship-Source Oil Pollution Fund [SOPF] and its Administrator are creatures of statute, established under Part 7 of the *Marine Liability Act*, SC 2001, c 8 [*MLA*], with (broadly speaking) a mandate to provide statutorily prescribed compensation for costs and losses resulting from ship-source oil pollution.

[6] Haida's Statement of Claim alleges that on September 8, 2018, the Vessel came loose from its moorings in Alliford Bay, Haida Gwaii and drifted to a grounding point in Bearskin Bay, British Columbia, leaking a mixture of gasoline and diesel [the Grounding]. The Vessel was the only ship involved in the incident. Haida contacted the Canadian Coast Guard to advise them of the incident and made efforts, along with various other agencies, to remediate and minimize the potential oil pollution damage.

[7] Haida alleges that the grounding occurred because of intentional and wilful tampering with the Vessel's mooring lines by a third party or parties, with intent to cause damage.

[8] On December 27, 2018, Haida submitted a claim to the SOPF for reimbursement of costs incurred in connection with steps taken to repair, remedy or minimize oil pollution and related preventative measures. The claim was initially framed as a claim under paragraph 101(1)(b) of the *MLA* but was eventually reframed as a claim under subsection 103(1) of the *MLA*.

[9] These statutory provisions (contained in Part 7 of the *MLA*) will be identified in somewhat more detail later in these Reasons. For present purposes, I note that subsection 103(1) references other provisions of the *MLA* (contained in Part 6, which addresses liability and compensation for ship-source pollution) and permits a person who has suffered loss or damage or incurred costs or expenses referred to in those provisions to file a claim with the Administrator. Following receipt of such a claim, subsection 105(1) of the *MLA* requires the Administrator to investigate and assess the claim and make an offer of compensation to the claimant for whatever portion of it the Administrator finds to be established.

[10] On August 4, 2021, the Administrator issued a decision denying Haida's claim on the basis that a shipowner is not eligible to make a claim under subsection 103(1) of the *MLA* for its costs and expenses incurred to prevent, repair, remedy or minimize ship-source oil pollution damage resulting from an incident involving solely its own ship. As permitted by subsection 106(2) of the *MLA*, Haida brought a statutory appeal of the Administrator's decision (in Court file no. T-1375-21). Justice Strickland of this Court heard and dismissed that appeal on August 31, 2022, in *Haida Tourism Partnership d.b.a. West Coast Resorts v The Administrator of the Ship-source Oil Pollution Fund*, 2022 FC 1249 [the Strickland Decision]. Justice Strickland concluded that the Administrator had correctly interpreted subsection 103(1) of the *MLA*.

[11] Haida filed a Notice of Appeal of the Strickland Decision on September 28, 2022. On May 29, 2023, Haida discontinued that appeal.

[12] The present action, which also arises from the Grounding, was commenced on September 7, 2021 and therefore pre-dates Haida's statutory appeal, but (along with other litigation not material to the matter now before the Court) it was placed in abeyance pending the outcome of the statutory appeal. Like its claim under subsection 103(1), the present action by Haida against the Administrator claims recovery from the Administrator for the costs Haida incurred to address the pollution that emanated from its Vessel. However, the present action asserts that claim under a different statutory provision, subsection 101(1) of the *MLA*. (As noted later in these Reasons, Haida's Statement of Claim does not expressly plead subsection 101(1), but it is common ground between the parties that this is the statutory provision upon which Haida relies.)

[13] On August 22, 2023, the Administrator filed a motion to strike Haida's Statement of Claim in this proceeding on the basis that it discloses no reasonable cause of action. The Associate Judge's resulting Order, which granted the Administrator's motion and struck the Statement of Claim without leave to amend, forms the basis of this Rule 51 appeal.

III. **Order under Appeal**

[14] In the Order, the Associate Judge canvassed the test applicable to a motion to strike a pleading, requiring that it be plain and obvious that the pleading discloses no reasonable cause of action or, in other words, that the action is certain to fail because it contains a radical defect (*R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17). The Associate Judge observed that, in order to disclose a reasonable cause of action, a claim must: a) allege facts that are capable of giving rise to a cause of action; b) disclose the nature of the action which is to be founded on those facts; and c) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5).

[15] The Associate Judge also recognized that striking a pleading without leave to amend is a power that must be exercised with caution, such that the threshold for striking a pleading is high, and that the pleading must be read in a manner that permits a novel but arguable claim to proceed to trial (*Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19).

[16] The Associate Judge first assessed the Statement of Claim to determine if a cause of action was plead. Haida set out the circumstances alleged to have caused the grounding, as well

as its efforts to address potential pollution damage as a result, and alleged that it has a complete defence for pollution liability and related costs of cleanup and mitigation. In support of that defence, Haida relied on provisions of the *MLA* (Article 3, Schedule 8 and/or section 77(3)(b)) that provide a defence to a shipowner against certain claims under the *MLA*, because the grounding was caused by a third party with intent to cause damage. Haida then alleged that it has a right to claim against the SOPF for reimbursement of all reasonable steps taken to repair, remedy or minimize oil pollution and related preventative measures.

[17] However, the Associate Judge found that Haida had not particularized the material facts or legal foundation for its assertion that it was entitled to reimbursement from the SOPF. The Associate Judge noted that, as explained in the motion, the Administrator understood from discussion between counsel that Haida intends to rely on section 101(1) of the *MLA* for its entitlement to reimbursement. However, the Associate Judge found that such understanding did not assist Haida, because the pleading in its present form was deficient on this issue and was bereft of particulars to support a claim against the Administrator. While observing that such deficiencies might be remedied through an amendment, the Associate Judge then concluded that it was unnecessary for her to consider that possibility, because she found based on the Strickland Decision that the matter had already been decided and was *res judicata*.

[18] The Order then explained the finding that Haida's claim was *res judicata* or, more specifically, subject to issue estoppel. The Associate Judge observed that a pleading may be struck where it raises an issue that has been finally determined in an earlier proceeding (*IMS Incorporated v Toronto Regional Real Estate Board*, 2023 FCA 70 at para 44 [*IMS*

Incorporated]; citing *Apotex Inc v Pfizer Ireland Pharmaceuticals*, 2011 FCA 77; and *Apotex Inc v Laboratories Servier*, 2007 FCA 350).

[19] The Associate Judge set out the test for issue estoppel, being that: (a) the same question has been decided; (b) the judicial decision that created the estoppel was final; (c) the parties to that decision are the same parties to the proceeding in which the estoppel is raised; and (d) the question out of which the estoppel arises was fundamental to the decision (*Hughes Land Co v Manitoba*, 1998 CanLII 17673 (MB CA) [*Hughes Land*], 167 DLR (4th) 652 (Man CA).

[20] The Associate Judge then reviewed the parties' positions. She noted first the Administrator's contention that the Strickland Decision represented *obiter dicta*, in that it dealt with section 103 of the *MLA*, while the present action purported to be brought under section 101. While also observing that the Administrator was not expressly asserting that the action was *res judicata* in the form of issue estoppel, the Associate Judge noted the Administrator's submission: "… the decision in T-1375-21 has not technically decided the issue before this Honourable Court, it is submitted that it can and should be applied, resulting in the dismissal of this action." In the Associate Judge's view, this submission represented an invitation to the Court to apply the doctrine of *res judicata* in the form of issue estoppel.

[21] The Associate Judge noted Haida's contrasting position that the Strickland Decision was *obiter* and should not be considered in the motion to strike. Haida argued that Justice Strickland's analysis of section 101 of the *MLA* should be given little weight, because it was far removed from the *ratio decidendi* concerning section 103 of the *MLA*. Moreover, Haida

challenged many of Justice Strickland's findings regarding section 101, arguing that her interpretation of the overall purpose of section 101 was overly narrow.

[22] The parties also took contrasting positions on the extent to which Justice Strickland had received thorough submissions surrounding section 101, when the claim under appeal before her was based on section 103. As there was no evidence before the Court on the submissions that had been made to Justice Strickland, the Associate Judge explained that the Court was required to assess whether the same issues were determined in the earlier case by comparing what was decided in the earlier case with what is pleaded in the Statement of Claim (*IMS Incorporated* at para 46).

[23] Although recognizing that the Strickland Decision was primarily focused on whether the Administrator had correctly disallowed Haida's claim for compensation under Section 103(1) of the *MLA*, the Associate Judge found that Justice Strickland had undertaken a comprehensive review of Parts 6 and 7 of the *MLA* and the purpose of the *MLA* as a whole. The Associate Judge adopted paragraphs 10-25 of the Strickland Decision and then set out the following findings made by Justice Strickland:

A. The purpose of Parts 6 and 7 of the *MLA* is to establish shipowner liability for ship-source oil pollution and provide compensation to persons who suffer such oil pollution damage based on the polluter pays principles: see paras 61-64, 70.

B. The MLA is not environmental legislation, and the primary purpose of the *MLA* is not anticipatory protection of the environment: see para 78.

C. Subsections 101(1) and 103(1) of the *MLA* operate independently of one another, providing distinct avenues for persons who have incurred ship oil pollution damages to obtain compensation: see paras 79-80, 84-91, 93.

D. Subsection 101(1) of the *MLA* is not a mechanism for a claim against the SOPF but rather a backup to a failed action under section 109, which allows the Administrator of the SOPF to intervene to obtain damages on behalf of claimants. If an initial civil claim is unsuccessful and the shipowner avoids liability, then a section 101(1) claim can be made: see para 82.

E. Subsection 101(1) is aimed at protecting and compensating claimants in the event that a shipowner does not, or is not required to, meet its strict liability obligations with respect to oil pollution: see para 81.

F. Subsection 101(1) does not allow a shipowner to advance an action against the SOPF because they allege they are not liable for one of the reasons outlined at subsection 77(3) of the *MLA:* see para 83.

G. A shipowner cannot advance a claim under section 109 because, as the owner of the polluting vessel, they cannot sue themselves: see para 84.

[24] Recognizing the importance of the doctrine of *res judicata*, being to promote the finality of proceedings and prevent collateral attacks on judgments (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 24), the Associate Judge then explained as follows her conclusion that issue estoppel applied (at para 53):

> 53. The current action represents a collateral attack on Justice Strickland's findings in *Haida #1*. Haida has already had the opportunity to appeal Justice Strickland's decision. As set out above at paragraph 16, Haida alleged that Justice Strickland erred in her interpretation of Parts 6 and 7 and section 101 of the *MLA*. Although not properly pled, these are the very same provisions said to be at play in this proceeding. The Plaintiff's discontinuance of *Haida #1* renders Justice Strickland's decision and findings of

> fact therein final. Further, I am of the view that Justice Strickland's analysis of the claims scheme found at sections 101-103 of the *MLA* was fundamental to her decision. She was required to undertake the extensive review of Parts 6 and 7 of the *MLA* in order to ground her determination of Haida's statutory appeal. In consequence, her decision in *Haida #1* is binding on the current proceeding and issue estoppel arises.

[25] Finally, the Associate Judge observed that nothing turned on the fact that one proceeding was a statutory appeal and the other an action, as ultimately Haida was seeking the same relief: the reimbursement of costs incurred in the remediation of an oil pollution event caused by its Vessel.

[26] In the result, the Order allowed the Administrator's motion and struck the Statement of Claim without leave to amend.

IV. **Issues**

[27] Haida raises several arguments in support of its positon that the Associate Judge erred as a matter of law in striking out the action in reliance on the Strickland Decision. Haida also argues that it was deprived of procedural fairness, as the parties had taken the position that the principles of *res judicata* and issue estoppel did not apply, and the Associate Judge was therefore required to seek submissions on those principles before relying on them to strike the action.

[28] Also, the week before the hearing of this appeal, Haida filed a motion seeking leave to adduce fresh evidence in the appeal. The proposed evidence, which was not before the Associate Judge, relates to communications between counsel, which Haida says is necessary to respond to the Administrator's position, expressed in its Written Representations in response to this appeal,

that the Associate Judge was correct to conclude that Haida's claim was *res judicata*. Haida argues that the Administrator's position is contrary to a prior agreement between the parties as expressed in the evidence it wishes to adduce. The Administrator opposes the fresh evidence motion.

[29] Finally, Haida also takes the position that the Administrator's motion record itself includes fresh evidence that was not before the Associate Judge, being the parties' memoranda of fact and law filed in the appeal before Justice Strickland. Haida also notes that the Administrator has not brought a motion to admit this evidence.

[30] Therefore, in total, the parties' arguments raise the following issues for the Court's determination:

A. Should the Court admit the evidence adduced by Haida that was not before the Associate Judge?

B. Should the Court admit the evidence adduced by the Administrator that was not before the Associate Judge?

C. Did the Associate Judge err in applying *obiter dicta* from the Strickland Decision?

D. Did the Associate Judge err in her application of the plain and obvious test?

E. Did the Associate Judge err in applying the doctrine of issue estoppel?

F. Was Haida deprived of procedural fairness?

G. If the Court identifies a reviewable error in the Order, how should the Administrator's motion to strike be adjudicated?

V. **Standard of Review**

[31] The standard of review applicable to an appeal of a discretionary order of an associate judge is palpable and overriding error for questions of fact and questions of mixed fact and law, and correctness for questions of law and questions of mixed fact and law where there is an extricable legal principle at issue (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64, 66, citing *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] at paras 17-37).

[32] Palpable means an obvious error, while an overriding error is one that affects the decision-maker's conclusion (*Clorox Company of Canada, Ltd v Chloretec SEC*, 2020 FCA 76 [*Clorox*] at para 38). Palpable and overriding error is a highly deferential standard of review, while the correctness standard applies no deference to the underlying decision-maker (*Clorox* at para 23; *Tokai of Canada Ltd v Kingsford Products Company, LLC*, 2021 FC 782 at para 22).

[33] Relying on *Agnico-Eagle Mines Ltd v Canada*, 2016 FCA 130 [*Agnico-Eagle*] at para 40), Haida argues in its written submissions that a Court commits an error of law, reviewable on the correctness standard, when it incorrectly applies a legal principle. Haida accordingly submits that the issues it raises related to the merits of the Order are all subject to the standard of correctness. The Administrator agreed in its written submissions that the standard of review for the present appeal, based solely on questions of law, should be correctness.

[34] However, at the hearing of this motion, I raised with Haida's counsel whether it had misinterpreted *Agnico-Eagle* at paragraph 40. That paragraph does not state that the correctness

standard governs review of the incorrect application of a legal principle, but rather that it governs review of the application of an incorrect legal principle. The distinction may appear subtle, but it is important. *Agnico-Eagle* explains that, where there is an extricable question of law, such as the application of a wrong standard or incorrect legal principle, failure to consider a required element of a legal test or failure to consider a legally relevant factor, the correctness standard applies. However, if the Court is considering the application of a legal principle to a set of facts, this represents a question of mixed fact and law to which the palpable and overriding standard of review applies (*Housen* at para 36).

[35] I understood Haida's counsel to accept this distinction, although Haida maintains that there are elements of the Associate Judge's analysis that represent extricable questions of law that are governed by the correctness standard. In the course of my consideration of Haida's arguments later in these Reasons, I will apply the principles set out above in selecting the standard of review applicable to the adjudication of each argument.

[36] I agree with the parties that the final issue, which surrounds the procedural fairness of the adjudication of the motion to strike, is governed by the standard of correctness or, more accurately, that the Court is required to consider whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

VI. **<u>Legislative Regime</u>**

[37] As previously noted, the statutory provisions relevant to this appeal are found in Parts 6 and 7 of the *MLA*. At the time of the Grounding, the version of the *MLA* that came into effect on June 8, 2015 and remained in effect until December 12, 2018 was in force. That version applies to this appeal, and the statutory provisions referenced in these Reasons are from that version.

A. *Part 6 – Liability and Compensation for Pollution*

[38] Paragraphs 10 to 22 of the Strickland Decision provide a useful and detailed description of Part 6 of the *MLA*, entitled “Liability and Compensation for Pollution”, which description I do not understand to be in dispute between the parties. I will not repeat that description in the same level of detail but will borrow liberally from it in summarizing below the principal provisions of Part 6 that figure in this appeal. The provisions themselves are included in Appendix “A” to this Order and Reasons.

[39] Part 6 of the *MLA* is composed of two Divisions. Division 1 gives the force of law to certain international conventions to which Canada is a contracting state. The three conventions relevant to the present appeal are: (a) the *International Convention on Civil Liability for Oil Pollution Damage, 1992* [*Civil Liability Convention*]; (b) the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* [*Bunkers Convention*]; and (c) the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*, 1992 [*Fund Convention*], plus the Protocol of 2003 to the Fund Convention [*Supplementary Fund Protocol*]. Broadly speaking, these conventions, and related statutory

provisions in Part 6 that supplement the application of the conventions, govern liability and funding for costs, expenses, losses, and damages resulting from ship-source oil pollution.

[40] Division 2 of Part 6 of the *MLA* is concerned with liability for ship source oil pollution that is not addressed by the international conventions referenced in Division 1. For purposes of the present appeal, it is not necessary to delve into the detailed differences in the application of the Division 1 conventions and the provisions of Division 2. What is relevant is the fact that two of the three conventions referenced above (the *Bunkers Convention* and *Civil Liability Convention*) and Division 2 includes provisions that impose on a shipowner strict liability for pollution damage caused by its ship and, in some cases, costs and expenses incurred in respect of measures taken to prevent, repair, remedy or minimize such damage. Also, those conventions and Division 2 provide certain limited exceptions to the shipowner's strict liability.

[41] One of those exceptions is where the occurrence or damage was wholly caused by an act or omission of a third party with intent to cause damage. Haida's position that it is entitled to recovery of its costs and expenses in the within action is based significantly on invoking that exception.

B. *Part 7 – Ship-source Oil Pollution Fund*

[42] Part 7 of the *MLA*, entitled "Ship-source Oil Pollution Fund", continues the SOPF and provides for the appointment, by the Governor in Counsel, of its Administrator and Deputy Administrator. The principal provisions of Part 7 that formed the basis of the parties' arguments in the appeal before Justice Strickland and in the present appeal are included in Appendix "A" to

this Order and Reasons. These provisions include section 101, upon which Haida relies in the present action, and section 103 upon which it relied in the claim against the Administrator that was the subject of the Strickland Decision. Both of these sections will be referenced in more detail later in these Reasons.

VII. **Analysis**

A. *Should the Court admit the evidence adduced by Haida that was not before the Associate Judge?*

[43] As an initial point, I note that the Administrator's response to Haida's evidentiary motion questions whether there is an applicable Rule or other authority under which Haida can bring the motion. At the hearing, Haida's counsel acknowledged that there is no Rule directly applicable to the introduction of new evidence in a Rule 51 appeal. However, counsel relies on *David Suzuki Foundation v Canada (Minister of Health)*, 2018 FC 379 [*Suzuki*] at paragraph 13 to 15, confirming that authority exists by analogy to Rule 351, which governs the admission of new evidence before the Federal Court of Appeal. I accept that authority exists for Haida's motion.

[44] Haida filed its motion to adduce additional evidence that was not before the Associate Judge in response to the Administrator's written representations in this appeal. Haida considers certain of those representations to misstate the history of the litigation between the parties and, in particular, an agreement reached between them leading to Haida's discontinuance of its appeal of the Strickland Decision. Most significantly, Haida wishes to adduce evidence of correspondence between counsel so as to establish that the parties had agreed that the Strickland Decision did not dispose of the present action and that this action is not *res judicata*.

[45] Haida wishes to adduce this evidence because the Administrator's written representations in this appeal submitted that the Associate Judge's finding that Haida's claim was *res judicata* was understandable based on the history of the litigation. Haida argues that, as the Administrator's position in its written representations is inconsistent with the agreement between the parties, Haida should be entitled to adduce evidence of that agreement.

[46] The Administrator responds by explaining that its submission that the Associate Judge's *res judicata* finding was understandable was not intended to represent an argument that the Order should be upheld on that basis. The Administrator clarifies that, to the extent there may have been any ambiguity in its written representations, it is not arguing to have the principle of *res judicata* applied in this appeal. Rather, as was clear from its counsel's submissions at the hearing of this appeal, the Administrator seeks to sustain the Order on the basis that the Associate Judge engaged in an alternative analysis in which she adopted the reasoning in the Strickland Decision as persuasive jurisprudence and granted the motion to strike because Haida's claim asserted a cause of action without legal foundation.

[47] Haida's submissions in support of the evidentiary motion argue that the test the Court should apply, in deciding whether to allow the additional evidence on appeal, is that prescribed by the Supreme Court of Canada in *Palmer v The Queen*, [1980] 1 SCR 759 [*Palmer*], requiring it to show that: (a) the evidence could not, by the exercise of due diligence, have been obtained for the proceeding at first instance; (b) the evidence is relevant in that it bears upon a decisive or potentially decisive issue; (c) the evidence is credible in the sense that it is reasonably capable of

belief; and (d) the evidence is such that, if believed, it could have affected the result at first instance.

[48] Haida argues that the *Palmer* test should be preferred to the usual test for adducing evidence on appeal of an associate judge's order, as set out in *Suzuki* at paragraph 19, which allows new evidence to be admitted exceptionally in circumstances where: (a) it could not have been made available earlier; (b) it will serve the interests of justice; and (c) it will not seriously prejudice the other side.

[49] There are significant similarities between these tests, including the *Palmer* focus on the relevance of the new evidence and its potential effect on the result and the *Suzuki* focus on the interests of justice. It is not necessary for the Court to decide which test to apply, as Haida has failed to satisfy either test. As the Administrator has confirmed that it is not arguing to have the principle of *res judicata* applied in this appeal, the evidence that Haida wishes to adduce is not relevant and would not affect the result, and its admission is not supported by the interests of justice.

[50] As such, Haida's motion to adduce the additional evidence is dismissed.

B. *Should the Court admit the evidence adduced by the Administrator that was not before the Associate Judge?*

[51] The Administrator's motion record in response to this appeal included two documents that were not before the Associate Judge on the motion to strike. These are the parties' respective

memoranda of fact and law filed in the appeal before Justice Strickland. Haida argues that these memoranda are not properly before the Court. The Administrator has not presented a motion in support of the introduction of these documents and did not particularly pursue, or present compelling argument for, their introduction at the hearing of the appeal.

[52] As such, I will not take those memoranda of fact and law into account in my adjudication of this appeal.

C. *Did the Associate Judge err in applying obiter dicta from the Strickland Decision?*

[53] Haida argues that the Associate Judge incorrectly applied the legal principles of *ratio decendi* and *obiter dicta* in concluding that the Strickland Decision's discussion of subsection 101(1) of the *MLA* was binding. Haida relies on authorities explaining the distinction between *ratio* and *obiter*, with only the *ratio* of a prior court decision binding a subsequent court (*Air Canada Pilots Assn v Kelly*, 2012 FCA 209 at paras 54-56). Haida submits that the *ratio* of the Strickland Decision is restricted to whether the Administrator was correct to disallow Haida's claim for compensation under subsection 103(1) of the *MLA*. While Justice Strickland provided analysis of subsection 101(1), Haida argues that this analysis represents *obiter* and emphasizes that both parties' written representations, while not themselves binding on the Associate Judge, also confirmed the parties' joint position that such analysis was *obiter*.

[54] The standard of review applicable to this argument would depend on whether the Court was examining an extricable point of law, such as the Associate Judge's understanding of the distinction between *ratio decendi* and *obiter dicta* (in which case the correctness standard would

apply) or the application of those principles to the particular facts (in which case the Court would be reviewing for a palpable and overriding error).

[55] However, in relation to this argument, it is not necessary (or indeed possible) for the Court to select a standard of review, as the Order does not demonstrate that the Associate Judge arrived at a conclusion that the Strickland Decision's section 101 analysis was binding on her jurisprudentially. That was not the nature of her analysis.

[56] Rather, the Associate Judge stated (at para 53, as quoted above) that the Strickland Decision was binding on the current proceeding and that issue estoppel arose. That finding is made following the Associate Judge's application of the principles of issue estoppel, including the Associate Judge having concluded that Justice Strickland's analysis of the claims scheme found at sections 101-103 of the *MLA* was fundamental to the Strickland Decision. I read that conclusion as part of the Associate Judge's application of the preconditions to a finding of issue estoppel, which include the question out of which the estoppel arises having been fundamental to the decision that answered that question (*Hughes Land*).

[57] As Haida expressed at the hearing, there are similarities to, and potentially a relationship between, an analysis whether a particular point forms part of the *ratio* of a decision and an analysis whether a particular point was decided in and is fundamental to a decision for purposes of an issue estoppel analysis. I agree with this submission, as this Court has held that *obiter dicta* does not support a finding of issue estoppel (*Bell Canada v Canada (Human Rights Commission)*, 2000 CanLII 16451, [2001] 2 FC 392 (TD) [*Bell*] at para 56). However, the former

analysis is jurisprudential, representing consideration of the potential application of a legal authority, while the latter represents application of a species of *res judicata* in considering whether a particular set of parties are precluded from litigating a point based on the history of litigation between them. The portion of the Order upon which Haida's argument relies, in which the Associate Judge referred to the Strickland Decision as binding, represents the latter analysis. The Associate Judge did not conclude that the *ratio* of the Strickland Decision was binding upon her jurisprudentially.

[58] As observed above, no standard of review applies to the Court's consideration of this argument, as the argument is based on what I consider to be a misinterpretation of the Associate Judge's reasoning. This argument therefore raises no reviewable error.

D. *Did the Associate Judge err in her application of the plain and obvious test?*

[59] Next, Haida argues that the Associate Judge erred in failing to apply in full the test applicable to a motion to strike a pleading under that Rule 221(1)(a), which requires that it be plain and obvious, assuming the facts pleaded to be true, that the claim has no reasonable prospect of success (see, e.g., *Mudie v Canada (Attorney General)*, 2021 FC 839 at para 11, citing *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42). Haida submits that the Associate Judge applied the test for a finding of issue estoppel, rather than applying in full the plain and obvious test applicable to striking a pleading, and thereby committed a category of error of law that occurs when a court applies part, but not all, of a legal test (*Housen* at para 27).

[60] On the standard of review, I accept that failure to apply the applicable legal test, or incomplete application the test, would represent an error of law reviewable on the correctness standard. I note that the Associate Judge clearly articulated the plain and obvious test (at para 19), in explaining in the Order the legal principles to be applied on a motion to strike. I understand Haida to be advancing two arguments in support of its position that the Associate Judge nevertheless committed an error of law.

[61] First, in its written submissions, Haida argues that the Associate Judge applied the plain and obvious test in part, in finding that its pleading was bereft of particulars that supported a claim against the Administrator of the Fund, but that she then failed to complete the analysis by considering whether the deficiency might be cured by an amendment (at para 42 of the Order).

[62] I find little merit to this argument. The Associate Judge explained that there was no need for her to consider whether the lack of particulars in the Statement of Claim might be cured by an amendment, because of her conclusion that Haida's action was *res judicata*. The Associate Judge reasoned that, if the action was precluded by the principles of *res judicata*, then no amendment to include better particulars could possibly save it. This analysis does not demonstrate incomplete application of the applicable test and does not represent a reviewable error.

[63] Second, at the hearing of this appeal, Haida argued that the Associate Judge erred by applying only the test applicable to issue estoppel without layering upon it the plain and obvious test applicable to a motion to strike. As I understand counsel's submission, the Associate Judge

should have considered not whether Haida's claim was barred by issue estoppel but rather whether it was plain and obvious that it was barred by that principle.

[64] I agree with the Administrator's response to this argument that the plain and obvious test does not represent any additional or higher threshold that must be met in conducting the issue estoppel analysis. The Associate Judge made a determination that issue estoppel applied. Such a determination is definitive, and it would not be meaningful to expect an additional analysis or articulation that the determination was also plain and obvious. Put otherwise, once the Associate Judge concluded that issue estoppel applied, it was automatically plain and obvious that the claim had no reasonable prospect of success.

[65] I find no error arising from these arguments.

E. *Did the Associate Judge err in applying the doctrine of issue estoppel?*

[66] The outcome of the motion to strike turned on the Associate Judge's conclusion that Justice Strickland's analysis of the claims scheme in sections 101 to 103 of the *MLA* was fundamental to her decision and gave rise to issue estoppel. Haida argues that the Associate Judge erred by misconstruing or incorrectly applying the legal principle of issue estoppel. Haida submits that the Strickland Decision's analysis of section 101 was *obiter*, does not represent answering a question fundamental to that decision and, as such, was not capable of providing the basis for an issue estoppel in the present action.

[67] An unusual feature of this particular issue is the fact that the Administrator does not disagree with Haida's position. As noted earlier in these Reasons, the Administrator submits that the Order should be sustained on appeal based on analysis provided therein as an alternative to the *res judicata* or issue estoppel analysis. I will return to that submission. However, the Administrator is not arguing to have the principle of *res judicata* applied in this appeal. As Haida emphasizes, consistent with Haida's own position, the Administrator's written representations before the Associate Judge on the motion to strike characterized the Strickland Decision's section 101 analysis as *obiter dicta*, in that it was not dispositive of the issue before Justice Strickland, and agreed that Haida was not estopped from bringing the present action based on section 101 due its appeal of the Administrator's section 103 decision having been dismissed by Justice Strickland.

[68] The Court is therefore in the unusual situation of assessing the *res judicata* analysis in the Order for reviewable error, without either litigant arguing in support of that analysis being sound. Of course, this situation does not mean that an error should be found, as I understand the parties to recognize that neither the Associate Judge nor the Court on appeal is bound by their characterization of Justice Strickland's section 101 analysis as *obiter dicta* and as not giving rise to issue estoppel. This situation means only that the Court does not have the benefit of advocacy in favour of the *res judicata* analysis and must exercise care in considering Haida's arguments that the analysis was performed in error.

[69] On the subject of standard of review, I am not convinced by Haida's position that its arguments give rise to a correctness review. Indeed, the Associate Judge correctly states the

principle of issue estoppel as allowing a pleading to be struck where it raises an issue that has been finally determined in an earlier proceeding. The Associate Judge also correctly describes the preconditions to a finding of issue estoppel (as set out earlier in these Reasons), including the need for the question out of which an estoppel arises to have been fundamental to the earlier decision, and I find no compelling argument that any of these preconditions was overlooked.

[70] Haida's submissions do not amount to an argument that the Associate Judge erred based on an extricable question of law. Rather, it asks the Court to conclude that the Associate Judge misapplied the principle of issue estoppel in considering the effect of the Strickland Decision and the parties' submissions thereon. Those considerations are sufficiently factually infused (as the Strickland Decision is factually rather than jurisprudentially relevant to the issue estoppel analysis) that the standard of palpable and overriding error applies.

[71] That said, Haida has convinced me that a palpable and overriding error occurred in the application of the principle of issue estoppel. First, it appears clear that the Order demonstrates a misinterpretation of the Administrator's position on whether issue estoppel applied. The Associate Judge noted the Administrator's acknowledgement that the Strickland Decision represented *obiter dicta*, in that it had dealt with section 103 of the *MLA* while the current action purports to have been taken under section 101. However, the Associate Judge then noted the Administrator's submission that the Strickland Decision should be applied, resulting in a dismissal of the action, and interpreted this submission as inviting the Court to apply the principle of issue estoppel.

[72] This was an error. In the Administrator's written representations on the motion to strike, after acknowledging that Justice Strickland's section 101 analysis was *obiter dicta* in that it was not dispositive of the issue before her, the Administrator also identified its agreement with Haida that the Strickland Decision did not estop Haida from bringing this action. Returning to the distinction explained earlier in these Reasons, between relying upon a judicial decision to assert *res judicata* or issue estoppel principles and relying on the decision for its jurisprudential value, the Administrator's position was clearly the latter. The Administrator expressly agreed with Haida that issue estoppel did not apply. Its position was that the *obiter dicta* analysis surrounding section 101 in the Strickland Decision was jurisprudentially persuasive and should be adopted and applied on the motion to strike.

[73] Moreover, as explained below, I agree with the position taken by both parties, both before the Associate Judge and now on appeal, that the section 101 analysis in the Strickland Decision is *obiter* and does not give rise to issue estoppel in the present action.

[74] Justice Strickland engaged in an analysis of section 101 of the *MLA*, because Haida had argued that there was a linkage between sections 101 and 103. While the Administrator took the position that section 101 had no bearing on the function of section 103 and was irrelevant to the appeal, Justice Strickland addressed Haida's arguments, arriving at the conclusions identified by the Associate Judge in her Order. Justice Strickland conducted her analysis in keeping with the contextual component of statutory construction (see Strickland Decision at paras 57-59) and ultimately agreed with the Administrator that sections 101 and 103 were separate and discrete avenues for the assertion of claims. As such, Haida's assertion that it had a defence under

paragraph 101(1)(b) did not come into play in the assessment of a claim under subsection 103(1) (see Strickland Decision at para 90).

[75] While the parties’ arguments in the statutory appeal resulted in that section 101 analysis, the interpretation of that section was not the question before Justice Strickland. The Strickland Decision states expressly that the issue in that appeal was a discrete one, framed as whether the Administrator erred in its interpretation of subsection 103(1) of the *MLA* (at para 38). As I read Justice Strickland’s analysis, the dismissal of the appeal resulted from that interpretation and in particular the conclusion that there was no mechanism for the adjudication of a subsection 103(1) claim to take into account the paragraph 101(1)(b) defence. However, that result did not turn on analysis or conclusions as to whether a shipowner can claim against the SOPF under section 101.

[76] It therefore cannot be concluded that the section 101 analysis was fundamental to the decision. Haida refers the Court to the explanation in Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 5th ed (Toronto: LexisNexis Canada) at ch 2, 3.A, that whether a court has already decided a question in a proceeding, *i.e.*, the identification of the subject matter fundamental to the question, is a twofold inquiry. First, it comprises the express question that was actually decided. Secondly, it comprises the latent structure supporting the express question by virtue of implied, inferred or assumed recognition of that structure. As an oft-cited example, where a first proceeding has addressed the interpretation of a will, the parties to that proceeding cannot subsequently litigate the validity of the will, as its assumed validity was fundamental to the first proceeding.

[77] Clearly the interpretation of section 101 of the *MLA* was not the question before Justice Strickland. Nor can it be concluded that the interpretation of section 101 represents an implied, inferred or assumed foundation for the litigation of the question that was before the Court, the interpretation of the section 103. Rather, section 101 analysis represents *obiter*, which does not support a finding of issue estoppel (*Bell* at para 56).

[78] In my view, consistent with the misinterpretation of the Administrator's position on whether issue estoppel applied, the Associate Judge made a palpable and overriding error in concluding that Justice Strickland's section 101 analysis was fundamental to her decision and gave rise to issue estoppel.

[79] In arriving at this conclusion, I am conscious of the Administrator's effort to sustain the Order on the basis that the Associate Judge engaged in an alternative analysis, in which she adopted the reasoning in the Strickland Decision as persuasive jurisprudence and granted the motion to strike because Haida's claim asserted a cause of action without legal foundation. In support of this position, the Administrator relies on paragraph 51 of the Order, where the Associate Judge adopted paragraphs 10 to 25 of the Strickland Decision, which the Associate Judge described as having thoroughly reviewed Parts 6 and 7 of the *MLA*. The Associate Judge then set out what she described as several crucial findings made by Justice Strickland, including a finding that subsection 101(1) does not allow a shipowner to advance an action against the SOPF.

[80] I agree with Haida's response to the Administrator's argument. The paragraphs of the Strickland Decision that the Associate Judge adopts represent a general explanation of the content of Parts 6 and 7 of the *MLA*. The Order does not read as an adoption of Justice Strickland's subsequent findings. The Associate Judge's decision to grant the motion to strike without leave to amend was based on application of the principle of issue estoppel. It was not based on an adoption of the reasoning in the Strickland Decision as jurisprudentially persuasive.

F. *Was Haida deprived of procedural fairness?*

[81] As an alternative argument, Haida submits that, before deciding to depart from the parties' joint position that the principle of issue estoppel did not apply, procedural fairness required the Associate Judge to advise the parties of this possibility and afford them an opportunity to make submissions on whether the principle applied.

[82] Having arrived at the conclusion explained above, that the Associate Judge erred in applying the issue estoppel principle, it is not necessary for the Court to address Haida's alternative argument that it was deprived of procedural fairness.

G. *If the Court identifies a reviewable error in the Order, how should the Administrator's motion to strike be adjudicated?*

[83] Having identified a reviewable error in the Order, the remaining question is whether I should decide the motion to strike or return it to the Associate Judge for re-determination. Based at least in part on interest in achieving the earliest resolution of the issue, both parties urge the Court to adjudicate the motion to strike in disposing of this Rule 51 appeal.

[84] I am conscious of the fact that the parties' submissions in this appeal focused principally upon whether there was a reviewable error in the Order, rather than upon the statutory interpretation question that was at the heart of the motion to strike. However, the record before the Court includes the parties' respective written submissions before the Associate Judge, which do focus upon the statutory interpretation question, and the parties ask the Court to rely on those submissions (and whatever relevant argument was advanced orally in this appeal) in adjudicating the motion to strike on its merits.

[85] In my experience, the usual (although not inevitable) result of a successful Rule 51 appeal is that the judge deciding the appeal also adjudicates the underlying motion. In the present circumstances, as it is the joint will of the parties, I am prepared to determine the motion to strike.

[86] Before turning to the statutory interpretation question, I note that, prior to conducting the issue estoppel analysis, the Associate Judge found that Haida's Statement of Claim did not particularize the material facts or the legal foundation for its assertion that it was entitled to reimbursement from the SOPF. The Associate Judge described the pleading as failing to tell the Defendant how and what gave rise to its liability. The fact that, through discussions with counsel, the Administrator understood that Haida intended to rely upon section 101 of the *MLA* did not assist Haida because, in its present form, the pleading was deficient (see Order at paras 40-41).

[87] The Associate Judge therefore concluded that, even if she were to read into the pleading a reliance upon section 101, the pleading would not survive the motion to strike, because it would

remain entirely bereft of particulars that support a claim against the Administrator or the SOPF. The Associate Judge explained that such a deficiency might be remedied through an amendment but, in view of the *res judicata* analysis, there was no need for her to consider an amendment (see Order at paras 42).

[88] In this Rule 51 appeal, Haida has not argued that any reviewable error occurred in this portion of the Associate Judge's analysis. Moreover, I consider this analysis sound, particularly as the Statement of Claim fails to articulate a basis for a cause of action against the named Defendant, the Administrator, as opposed to the SOPF. As such, the pleading in its current form cannot survive the motion to strike. However, the substantive question that remains for the Court to answer is whether the deficiency in the pleading might be remedied through an amendment. This question requires the Court to consider whether the cause of action under section 101, that Haida's submissions explain it wishes to assert, has no reasonable prospect of success or, put otherwise, that it is plain and obvious that such cause of action will fail.

[89] As set out in the Administrator's written representations before the Associate Judge, it takes the position that neither section 101 of the *MLA* nor any other statutory provision allows the Administrator to be named as a defendant and, if Haida were to amend its pleading to name the SOPF as a defendant, the action would still fail because SOPF is not a legal person and therefore cannot be sued.

[90] In support of its position, the Administrator relies on paragraph 84 of the Strickland Decision, in which the Court observed as follows:

> 84. The liability of the SOPF under subsection 101(1) arises when a claimant has brought an action against the polluting shipowner seeking compensation but, for the reasons set out in paragraphs 101(1)(a) to (h), the claimant is precluded from recovery. As such, as the Administrator describes it, this is a claim of Last Recourse as a claimant must first attempt to recover from the shipowner before compensation is available from the SOPF. However, as the Administrator found, Haida, as the owner of the polluting ship, cannot sue itself. Thus, Haida cannot trigger section 109 – which is the entry point for the Administrator – permitting it to participate in the action commenced by the claimant and respond to the SOPF's subsection 101(1) liabilities.

[91] While acknowledging that this portion of the Strickland Decision is *obiter dicta*, the Administrator submits that it is nevertheless a correct analysis of the interaction of sections 101 and 109 of the *MLA*. The Administrator urges the Court to adopt that analysis and to conclude based thereon that Haida has no viable cause of action.

[92] Consistent with the description by Justice Strickland, the Administrator describes sections 101 and 109 of the *MLA* as together implementing what is sometimes referred to as the "Last Recourse" claims regime, so named because it applies where a claimant fails to recover from the owner of a ship from which pollution emanated. Subsection 101(1) makes the SOPF liable for damage caused by ship-source oil pollution, but only to the extent that one of a number

of additional legal criteria is met. On the facts of the case at hand, the most relevant criterion is identified in paragraph 101(1)(b), giving rise to liability on the part of the SOPF as follows:

Liability of Ship-source Oil Pollution Fund	**Responsabilités de la Caisse d'indemnisation**
101 (1) Subject to the other provisions of this Part, the Ship-source Oil Pollution Fund is liable for the matters referred to in sections 51, 71 and 77 in relation to oil, Article III of the Civil Liability Convention and Article 3 of the Bunkers Convention, if	**101 (1)** Sous réserve des autres dispositions de la présente partie, la Caisse d'indemnisation assume les responsabilités prévues aux articles 51, 71 et 77 en rapport avec les hydrocarbures, à l'article III de la Convention sur la responsabilité civile et à l'article 3 de la Convention sur les hydrocarbures de soute dans les cas suivants :
[…]	[…]
(b) the owner of a ship is not liable by reason of any of the defences described in subsection 77(3), Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention and neither the International Fund nor the Supplementary Fund are liable;	**b)** d'une part, le propriétaire du navire n'est pas responsable en raison de l'une des défenses mentionnées au paragraphe 77(3), à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute et, d'autre part, le Fonds international et le Fonds complémentaire ne sont pas responsables non plus;

[93] Significant to the Administrator's position, it argues that subsection 101(1) is not, by itself, a method of claiming compensation, as it lacks an internal mechanism by which compensation can be accessed. The Administrator takes the position that, while subsection 101(1) makes the SOPF liable, the SOPF is nevertheless not a legal person (section 92(1) of the *MLA* describing the SOPF as an "account") and is not, in the *MLA* or elsewhere, given the

capacity to sue or be sued. Rather, recovery against the SOPF pursuant to its liability under subsection 101(1) is achieved through the operation of section 109, which provides as follows:

Proceedings against owner of ship	**Action contre le propriétaire d'un navire**
109 (1) If a claimant commences proceedings against the owner of a ship or the owner's guarantor in respect of a matter referred to in section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention, except in the case of proceedings based on paragraph 77(1)(c) commenced by the Minister of Fisheries and Oceans in respect of a pollutant other than oil,	**109 (1)** À l'exception des actions fondées sur l'alinéa 77(1)c) intentées par le ministre des Pêches et des Océans à l'égard d'un polluant autre que les hydrocarbures, les règles ci-après s'appliquent aux actions en responsabilité fondées sur les articles 51, 71 ou 77, l'article III de la Convention sur la responsabilité civile ou l'article 3 de la Convention sur les hydrocarbures de soute intentées contre le propriétaire d'un navire ou son garant :
(a) the document commencing the proceedings shall be served on the Administrator by delivering a copy of it personally to him or her, or by leaving a copy at his or her last known address, and the Administrator is then a party to the proceedings; and	**a)** l'acte introductif d'instance doit être signifié à l'administrateur — soit par la remise à celui-ci d'une copie en main propre, soit par le dépôt d'une copie au lieu de sa dernière résidence connue — qui devient de ce fait partie à l'instance;
(b) the Administrator shall appear and take any action, including being a party to a settlement either before or after judgment, that he or she considers appropriate for the proper administration of the Ship-source Oil Pollution Fund.	**b)** l'administrateur doit comparaître et prendre les mesures qu'il juge à propos pour la bonne gestion de la Caisse d'indemnisation, notamment conclure une transaction avant ou après jugement.
If Administrator party to settlement	**Règlement d'une affaire**
(2) If the Administrator is a party to a settlement under paragraph (1)(b), he or she shall direct payment to be made to the claimant of the amount that the Administrator has agreed to pay under the settlement.	**(2)** Dans le cas où il conclut une transaction en application de l'alinéa (1)b), l'administrateur ordonne le versement au demandeur, par prélèvement sur la Caisse d'indemnisation, du montant convenu.

[94] The Administrator describes its role in litigation, pursuant to the operation of section 109, as akin to a litigation guardian or other legal representative, acting on behalf of the SOPF.

However, it emphasizes that section 109 applies only in the context of a claim against the owner of a ship. Therefore, it would not apply to Haida's claim and, in the Administrator's submission, the absence of recourse to section 109 precludes Haida having a claim against it under section 101. This submission and supporting analysis are consistent with the Court's *obiter dicta* analysis in the Strickland Decision.

[95] As I understand Haida's position, it agrees with some of the above analysis, in the sense that Haida accepts that it does not have recourse to the mechanism provided in section 109. However, Haida takes the position that it is available to Haida to pursue a suit against the SOPF directly under section 101. Haida notes that subsection 101(1) expressly imposes liability upon the SOPF (in relation to oil for matters referenced elsewhere in the *MLA*) and disagrees with the Administrator's position that neither it nor the SOPF has the capacity to be sued under that subsection.

[96] In support of its position, Haida relies on the explanation in *Westlake v Ontario*, [1971] 3 OR 533 [*Westlake*], a trial decision approved with minimal comment by the Ontario Court of Appeal and Supreme Court of Canada and described as the leading case for determining whether a public organization has its own civil personality. *Westlake* identifies a number of different categories of bodies created by statute, and Haida argues that the Administrator or the SOPF falls within the fifth category, being non-corporate bodies which are not, by the terms of the statute incorporating them, expressly liable to suit but which are by necessary implication liable to be sued in an action for damages.

[97] Haida further relies on the decision of the British Columbia Court of Appeal in *Teal Cedar Products Ltd v British Columbia*, 2019 BCCA 194 [*Teal Cedar*], which considered the fifth *Westlake* category in an appeal by the Crown from an order dismissing its application to remove a party, Haida Gwaii Management Council [HGMC], on the basis that it lacked capacity to be sued. Haida refers the Court to the explanation that the central question is whether the legislature intended the statutory entity to have the capacity to be sued, which requires interpreting the statute creating the entity, without limiting that interpretation to determining whether the statute by necessary implication gives the entity specific commercial powers (at para 29).

[98] Haida invokes a number of provisions of the *MLA* as supporting the capacity of the Administrator or the SOPF to be sued, including the application of credits to the SOPF and charges against it under subsection 92(2) and (3); the Administrator's ability to obtain professional, technical and other advice and assistance under section 100; the SOPF's liability for specified cleanup costs under section 101; the Administrator's empowerment to commence suit against a ship or its proceeds under section 102; the Administrator's ability to make an offer of settlement under section 105; the Administrator's obligation under subsection 106(3) to take all reasonable measures to recover from specified parties the amount of any compensation that it has paid to a claimant; and the Administrator's role under section 109 as a party to any action by a claimant against a shipowner. I note that the list of charges against the SOPF, as identified in subsection 92(3) of the *MLA*, includes the amount of any judgment and any costs awarded against the SOPF in litigation (paragraph 92(3)(f)).

[99] In contrast, the Administrator draws the Court's attention to the provisions of the *MLA* applicable to the *Fund Convention* and the *Supplementary Fund Protocol*, governing the International Fund and the Supplementary Fund, respectively, that are engaged in the context of ship-source oil pollution incidents involving tankers. Sections 61 and 67 of the *MLA* explicitly confer upon those funds the capacity, rights and obligations of a natural person, such that they can sue and be sued. The Administrator emphasizes that there is no analogous provision in the *MLA* applicable to the SOPF.

[100] Beyond the question of the SOPF's and the Administrator's capacity to be sued, each of the parties has also advanced its respective submissions on interpretation of the language in subsection 101(1), which describes the SOPF's liability thereunder as being "… in relation to oil for the matters referred to in sections 51, 71 and 77, Article III of the Civil Liability Convention and Article 3 of the Bunkers Convention in respect of any kind of loss, damage, costs or expenses …". The Administrator canvases those referenced sections and articles and argues that the "matters referred to" therein all involve the liability of the owner of the ship to those affected by a ship-source oil pollution incident involving the ship. The Administrator submits that, as all these provisions are centred upon the liability of the shipowner, subsection 101(1) cannot be interpreted as affording a shipowner a claim against the SOPF.

[101] Haida also focuses upon this language in subsection 101(1) but argues that the syntax of the language precludes the Administrator's interpretation and instead supports the interpretation that the "matters referred to" in the referenced sections and articles are losses, damages, costs or expenses. In Haida's submission, this interpretation allows for any party that has incurred such

expenses, etc., including an innocent shipowner, to claim them against the SOPF. In addition to this textual interpretation, Haida also advances contextual and purposive arguments supporting its interpretation, in keeping with the approach to statutory interpretation prescribed in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 (at para 21).

[102] It would be available to the Court to consider the parties' competing statutory interpretation arguments and arrive at an interpretation of the operation of section 101 of the *MLA*, which may either support or preclude the viability of Haida's cause of action. In conducting such an analysis, the Court would naturally pay respectful attention to the reasoning in the Strickland Decision that, while representing *obiter dicta*, does engage with some of the required analysis and state conclusions relevant to the required statutory interpretation.

[103] However, it must be remembered that this is not a motion, such as might be pursued under Rule 220, intended to adjudicate a question of law. Rather, the Court is adjudicating a motion to strike, requiring a determination whether, following a pleading amendment to reflect the cause of action that Haida has articulated in its submissions in this motion, it is nevertheless plain and obvious that its cause of action will fail.

[104] I am also conscious of jurisprudence that discourages the Court from performing complex and contentious exercises in statutory interpretation on a motion to strike or, at least, recognizes that declining to do so represents an acceptable exercise of discretion (*Apotex Inc v Ely Lilly and Co*, 2001 FCT 636 [*Apotex*] at paras 13-14; *Safilo Canada Inc v Contour Optik Inc*, 2004 FC 1534 at paras 11-12, 17-18; *British Columbia (Director of Civil Forfeiture) v Flynn*, 2013 BCCA

91 [*Flynn*] at paras 13 and 15; *British Columbia v Apotex Inc*, 2022 BCSC 1 at para 126). Put otherwise, if the answer to the question of statutory interpretation is not a plain and obvious one that precludes the plaintiff's success in the action, it should not be addressed by a motions judge in a preliminary proceeding (*Apotex* at para 14).

[105] The question of statutory interpretation at issue in this action (*i.e.*, whether a shipowner can potentially have a cause of action against the SOPF or the Administrator under section 101 of the *MLA*) is, in my view, clearly both complex and contentious. The Strickland Decision demonstrates that the Administrator advanced its position in the statutory appeal that the SOPF does not have the legal capacity to be sued under section 101 (see para 51), and Justice Strickland's conclusions in *obiter* are consistent with acceptance of that position (see paras 82-83). However, it is not clear from the decision whether Justice Strickland had the benefit of comprehensive submissions on how the provisions of the *MLA* should inform an analysis and determination, of the sort contemplated by *Teal Cedar*, as to whether the SOPF has the capacity to be sued as a *Westlake* fifth category entity.

[106] Nor do I have the benefit of comprehensive submissions from both parties that I would consider necessary to perform such an analysis. In *Teal Cedar* itself, the British Columbia Court of Appeal relied on *Flynn* in upholding the decision of the motions judge not to conduct the *Westlake* analysis on a interlocutory motion and determine the question whether HGMC had the capacity to be sued (at para 21). I find myself in a similar position. Applying the high threshold that the Defendant must meet in order to succeed on a motion to strike, I am not satisfied that the statutory analysis, in particular on capacity of the Administrator or the SOPF to be sued, would

necessarily favour the Defendant. Therefore, it is not plain and obvious that, with the benefit of amendments to better articulate its claim under section 101 of the *MLA*, Haida's cause of action will fail.

[107] As such, while my Order will not interfere with the Associate Judge's decision to strike Haida's Statement of Claim, it will grant Haida leave to amend the Statement of Claim, within 30 days of the date of the Order, to articulate the legal foundation for its claim under section 101 of the *MLA*.

VIII. **Costs**

[108] Each of the parties claims costs of this motion in the event of its success in the appeal, quantified as a lump sum figure of $1000.00. As Haida's appeal has succeeded, in that it will have leave to amend its Statement of Claim, my Order will award it costs in the amount of the agreed figure.

<u>ORDER in T-1374-21</u>

THIS COURT ORDERS that:

1. The Plaintiff's motion and appeal are allowed.
2. The Plaintiff is granted leave to amend its Statement of Claim, within 30 days of the date of this Order, to articulate the legal foundation for its claim under section 101 of the *Marine Liability Act*, SC 2001, c 8.
3. The Plaintiff shall have its costs of this motion, set at a lump sum figure of $1000.00 inclusive of taxes and disbursements.

"Richard F. Southcott"
Judge

APPENDIX “A”

Relevant provisions of Parts 6 and 7 of the *Marine Liability Act*, SC 2001 c 6 (and related Schedules)

PART 6

Liability and Compensation for Pollution

[…]

Liability for pollution and related costs

51 The liability of the owner of a ship in relation to preventive measures, for the purposes of the Civil Liability Convention, also includes

> **(a)** the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the meaning of section 165 of the *Canada Shipping Act, 2001*, any other person in Canada or any person in a state, other than Canada, that is a party to that Convention in respect of measures taken to prevent, repair, remedy or minimize pollution damage from the ship, including measures taken in anticipation of a discharge of oil from it, to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures; and
> **(b)** in relation to oil, the costs and expenses incurred by

PARTIE 6

Responsabilité et indemnisation en matière de pollution

[…]

Responsabilité en matière de pollution et frais connexes

51 La responsabilité du propriétaire d’un navire à l’égard des mesures de sauvegarde prévue par la Convention sur la responsabilité civile vise également :

> **a)** les frais supportés par le ministre des Pêches et des Océans, un organisme d’intervention au sens de l’article 165 de la Loi de 2001 sur la marine marchande du Canada, toute autre personne au Canada ou toute personne d’un État étranger partie à cette convention pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution causée par le navire, y compris les mesures en prévision de rejets d’hydrocarbures causés par le navire, pour autant que ces frais et ces mesures soient raisonnables, de même que les pertes ou dommages causés par ces mesures;
> **b)** s’agissant des hydrocarbures, les frais supportés par le ministre des Pêches et des Océans à l’égard des mesures visées à l’alinéa 180(1)a) de la Loi de 2001 sur la marine marchande du Canada, de la surveillance prévue à l’alinéa 180(1)b) de cette loi ou des ordres visés à l’alinéa 180(1)c) de la même loi et les frais supportés par toute autre personne à l’égard des mesures qu’il lui a été ordonné ou interdit de prendre aux

(i) the Minister of Fisheries and Oceans in respect of measures taken under paragraph 180(1)(a) of the *Canada Shipping Act, 2001*, in respect of any monitoring under paragraph 180(1)(b) of that Act or in relation to any direction given under paragraph 180(1)(c) of that Act to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures, or

(ii) any other person in respect of the measures that they were directed to take or refrain from taking under paragraph 180(1)(c) of the *Canada Shipping Act, 2001* to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures.

termes de ce même alinéa, pour autant que ces frais et ces mesures soient raisonnables, de même que les pertes ou dommages causés par ces mesures.

[…]

[…]

Liability for pollution and related costs

71 The liability of the owner of a ship in relation to preventive measures, for the purposes of the Bunkers Convention, also includes

(a) the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the meaning of section 165 of the *Canada Shipping Act, 2001*, any other person in Canada or any person in a state, other than Canada, that is a party to that Convention in respect of measures taken to prevent, repair, remedy or minimize pollution damage from the ship, including measures taken in anticipation of a discharge of bunker oil from it, to

Responsabilité en matière de pollution et frais connexes

71 La responsabilité du propriétaire d’un navire à l’égard des mesures de sauvegarde prévue par la Convention sur les hydrocarbures de soute vise également :

a) les frais supportés par le ministre des Pêches et des Océans, un organisme d’intervention au sens de l’article 165 de la Loi de 2001 sur la marine marchande du Canada, toute autre personne au Canada ou toute personne d’un État étranger partie à cette convention pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution causée par le navire, y compris les mesures en prévision de rejets d’hydrocarbures de

the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures; and

(b) in relation to bunker oil, the costs and expenses incurred by

(i) the Minister of Fisheries and Oceans in respect of measures taken under paragraph 180(1)(a) of the *Canada Shipping Act, 2001*, in respect of any monitoring under paragraph 180(1)(b) of that Act or in relation to any direction given under paragraph 180(1)(c) of that Act to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures, or

(ii) any other person in respect of the measures that they were directed to take or refrain from taking under paragraph 180(1)(c) of the *Canada Shipping Act, 2001* to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures.

[…]

soute causés par le navire, pour autant que ces frais et ces mesures soient raisonnables, de même que les pertes ou dommages causés par ces mesures;

b) s'agissant des hydrocarbures de soute, les frais supportés par le ministre des Pêches et des Océans à l'égard des mesures visées à l'alinéa 180(1)a) de la Loi de 2001 sur la marine marchande du Canada, de la surveillance prévue à l'alinéa 180(1)b) de cette loi ou des ordres visés à l'alinéa 180(1)c) de la même loi et les frais supportés par toute autre personne à l'égard des mesures qu'il lui a été ordonné ou interdit de prendre aux termes de ce même alinéa, pour autant que ces frais et ces mesures soient raisonnables, de même que les pertes ou dommages causés par ces mesures.

[…]

Liability for pollution and related costs

Responsabilité en matière de pollution et frais connexes

77 (1) The owner of a ship is liable

(a) for oil pollution damage from the ship;

(b) for the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the meaning of section 165 of the Canada Shipping Act, 2001 or any other person in Canada in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from the ship, including measures taken in anticipation of a discharge of oil from it, to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures; and

(c) for the costs and expenses incurred by

(i) the Minister of Fisheries and Oceans in respect of measures taken under paragraph 180(1)(a) of the Canada Shipping Act, 2001, in respect of any monitoring under paragraph 180(1)(b) of that Act or in relation to any direction given under paragraph 180(1)(c) of that Act to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures, or

77 (1) Le propriétaire d’un navire est responsable :

a) des dommages dus à la pollution par les hydrocarbures causée par le navire;

b) des frais supportés par le ministre des Pêches et des Océans, un organisme d’intervention au sens de l’article 165 de la Loi de 2001 sur la marine marchande du Canada ou toute autre personne au Canada pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution par les hydrocarbures causée par le navire, y compris des mesures en prévision de rejets d’hydrocarbures causés par le navire, pour autant que ces frais et ces mesures soient raisonnables, de même que des pertes ou dommages causés par ces mesures;

c) des frais supportés par le ministre des Pêches et des Océans à l’égard des mesures visées à l’alinéa 180(1)a) de la Loi de 2001 sur la marine marchande du Canada, de la surveillance prévue à l’alinéa 180(1)b) de cette loi ou des ordres visés à l’alinéa 180(1)c) de la même loi et des frais supportés par toute autre personne à l’égard des mesures qu’il lui a été ordonné ou interdit de prendre aux termes de ce même alinéa, pour autant que ces frais et ces mesures soient raisonnables, de même que des pertes ou dommages causés par ces mesures.

(**ii**) any other person in respect of the measures that they were directed to take or refrain from taking under paragraph 180(1)(c) of the Canada Shipping Act, 2001 to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures.

Liability for environmental damage

(**2**) If oil pollution damage from a ship results in impairment to the environment, the owner of the ship is liable for the costs of reasonable measures of reinstatement undertaken or to be undertaken.

Responsabilité: dommage à l'environnement

(**2**) Lorsque des dommages dus à la pollution par les hydrocarbures causée par un navire ont des conséquences néfastes pour l'environnement, le propriétaire du navire est responsable des frais occasionnés par les mesures raisonnables de remise en état qui sont prises ou qui le seront.

Strict liability subject to certain defences

(**3**) The owner's liability under subsections (1) and (2) does not depend on proof of fault or negligence, but the owner is not liable under those subsections if they establish that the occurrence

(**a**) resulted from an act of war, hostilities, civil war or insurrection or from a natural phenomenon of an exceptional, inevitable and irresistible character;
(**b**) was wholly caused by an act or omission of a third party with intent to cause damage; or
(**c**) was wholly caused by the negligence or other wrongful act of any government or other authority that is responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

Défenses

(**3**) La responsabilité du propriétaire prévue aux paragraphes (1) et (2) n'est pas subordonnée à la preuve d'une faute ou d'une négligence, mais le propriétaire n'est pas tenu pour responsable s'il démontre que l'événement :

a) soit résulte d'un acte de guerre, d'hostilités, de guerre civile ou d'insurrection ou d'un phénomène naturel d'un caractère exceptionnel, inévitable et irrésistible;
b) soit est entièrement imputable à l'acte ou à l'omission d'un tiers qui avait l'intention de causer des dommages;
c) soit est entièrement imputable à la négligence ou à l'action préjudiciable d'un gouvernement ou d'une autre autorité dans le cadre des responsabilités qui lui incombent en ce qui concerne l'entretien des feux et autres aides à la navigation.

Owner's rights against third parties

(**4**) Nothing in this Division shall be construed as limiting or restricting any right

Droits du propriétaire envers les tiers

(**4**) La présente section n'a pas pour effet de porter atteinte aux recours que le propriétaire

of recourse that the owner of a ship who is liable under subsection (1) may have against another person.

d’un navire responsable aux termes du paragraphe (1) peut exercer contre des tiers.

Owner’s own claim for costs and expenses

(5) The costs and expenses incurred by the owner of a ship in respect of measures voluntarily taken by them to prevent, repair, remedy or minimize oil pollution damage from the ship, including measures taken in anticipation of a discharge of oil from it, to the extent that the measures taken and the costs and expenses are reasonable, rank equally with other claims against any security given by that owner in respect of their liability under this section.

Réclamation du propriétaire

(5) Les frais supportés par le propriétaire d’un navire qui prend volontairement les mesures visées à l’alinéa (1)b) sont du même rang que les autres créances vis-à-vis des garanties que le propriétaire a données à l’égard de la responsabilité que lui impose le présent article, pour autant que ces frais et ces mesures soient raisonnables.

Limitation period

(6) No action lies in respect of a matter referred to in subsection (1) unless it is commenced

(a) if pollution damage occurs, within the earlier of

(i) three years after the day on which the pollution damage occurs, and
(ii) six years after the occurrence that causes the pollution damage or, if the pollution damage is caused by more than one occurrence having the same origin, six years after the first of the occurrences; or

(b) if no pollution damage occurs, within six years after the occurrence.

[…]

Prescription

(6) Les actions fondées sur la responsabilité prévue au paragraphe (1) se prescrivent :

a) s’il y a eu dommages dus à la pollution, par trois ans à compter du jour de leur survenance ou par six ans à compter du jour de l’événement qui les a causés ou, si cet événement s’est produit en plusieurs étapes, du jour de la première de ces étapes, selon que l’un ou l’autre délai expire le premier;

b) sinon, par six ans à compter du jour de l’événement.

[…]

PART 7

PARTIE 7

Ship-source Oil Pollution Fund

Definitions

91 (1) The following definitions apply in this Part.

discharge, in relation to oil, means a discharge of oil that directly or indirectly results in the oil entering the water, and includes spilling, leaking, pumping, pouring, emitting, emptying, throwing and dumping. (*rejet*)

in bulk means in a hold or tank that is part of a ship's structure, without any intermediate form of containment. (*en vrac*)

oil means oil of any kind or in any form and includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil. (*hydrocarbures*)

oil pollution damage, in relation to a ship, means loss or damage outside the ship caused by contamination resulting from the discharge of oil from the ship. (*dommages dus à la pollution par les hydrocarbures*)

owner

(a) in relation to a ship subject to the Civil Liability Convention, has the same meaning as in Article I of that Convention;
(b) in relation to a ship subject to the Bunkers Convention, has the same meaning as the definition Shipowner in Article 1 of that Convention; and
(c) in relation to any other ship, means the person who has for the time being, either by law or by contract, the rights of the owner of the ship with respect to its possession and use. (*propriétaire*)

Caisse d'indemnisation des dommages dus à la pollution par les hydrocarbures causée par les navires

Définitions

91 (1) Les définitions qui suivent s'appliquent à la présente partie.

rejet S'agissant d'un hydrocarbure, rejet de celui-ci qui, directement ou indirectement, atteint l'eau, notamment par déversement, fuite, déchargement ou chargement par pompage, rejet liquide, émanation, vidange, rejet solide et immersion. (*discharge*)

en vrac Dans une cale ou une citerne faisant partie de la structure du navire, sans contenant intermédiaire. (*in bulk)*

hydrocarbures Les hydrocarbures de toutes sortes sous toutes leurs formes, notamment le pétrole, le fioul, les boues, les résidus d'hydrocarbures et les hydrocarbures mélangés à des déchets, à l'exclusion des déblais de dragage. (*oil*)

dommages dus à la pollution par les hydrocarbures S'agissant d'un navire, pertes ou dommages extérieurs au navire et causés par une contamination résultant du rejet d'hydrocarbures par ce navire. (*oil pollution damage*)

propriétaire

a) S'agissant d'un navire assujetti à la Convention sur la responsabilité civile, s'entend au sens de l'article premier de cette convention;
b) s'agissant d'un navire assujetti à la Convention sur les hydrocarbures de soute, s'entend au sens de propriétaire du navire à l'article 1 de cette convention;
c) s'agissant de tout autre navire, s'entend de la personne qui a, au moment considéré, en vertu de la loi ou d'un contrat, les droits du propriétaire du navire en ce qui a trait à la possession et à l'usage de celui-ci. (*owner*)

ship means any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to its method of propulsion or lack of propulsion, and includes

(a) a ship in the process of construction from the time that it is capable of floating; and

(b) a ship that has been stranded, wrecked or sunk and any part of a ship that has broken up. (*navire*)

navire Bâtiment ou embarcation conçus, utilisés ou utilisables, exclusivement ou non, pour la navigation, indépendamment de leur mode de propulsion ou de l'absence de propulsion. Y sont assimilés les navires en construction à partir du moment où ils peuvent flotter, les navires échoués ou coulés ainsi que les épaves et toute partie d'un navire qui s'est brisé. (*ship*)

Ship-source Oil Pollution Fund means the Ship-source Oil Pollution Fund continued by section 92. (*Caisse d'indemnisation*)

Caisse d'indemnisation La Caisse d'indemnisation des dommages dus à la pollution par les hydrocarbures causée par les navires prorogée par l'article 92. (*Ship-source Oil Pollution Fund*)

Other definitions

(2) In this Part, Bunkers Convention, Civil Liability Convention, Fund Convention, Hazardous and Noxious Substances Convention, HNS Fund, International Fund, Supplementary Fund and Supplementary Fund Protocol have the same meaning as in subsection 47(1).

Autres définitions

(2) Dans la présente partie, Convention sur la responsabilité civile, Convention sur le Fonds international, Convention sur les hydrocarbures de soute, Convention sur les substances nocives et potentiellement dangereuses, Fonds complémentaire, Fonds international, Fonds SNPD et Protocole portant création d'un Fonds complémentaire s'entendent au sens du paragraphe 47(1).

Ship-source Oil Pollution Fund

Caisse d'indemnisation

Ship-source Oil Pollution Fund continued

92 (1) The account known as the Ship-source Oil Pollution Fund in the accounts of Canada is continued.

Prorogation de la Caisse d'indemnisation

92 (1) Est prorogé le compte ouvert parmi les comptes du Canada intitulé Caisse d'indemnisation des dommages dus à la pollution par les hydrocarbures causée par les navires.

Credits

(2) The following shall be credited to the Ship-source Oil Pollution Fund:

Crédits

(2) Ce compte est crédité des sommes suivantes :

(a) all payments received under sections 112 and 115;
(b) interest computed in accordance with section 93; and
(c) any amounts recovered by the Administrator under paragraph 106(3)(c).

a) les versements reçus en vertu des articles 112 et 115;
b) l'intérêt calculé en conformité avec l'article 93;
c) les sommes qu'obtient l'administrateur en vertu de l'alinéa 106(3)c).

Charges

(3) The following shall be charged to the Ship-source Oil Pollution Fund:

(a) all amounts that are directed by the Administrator to be paid under paragraph 106(3)(a) or 108(1)(a), subsection 108(6) or section 117 or under a settlement;

(b) all amounts for which the Administrator is liable under subsection 117(3);
(c) all interest to be paid under section 116;
(d) all costs and expenses that are directed to be paid under section 98;
(e) the remuneration and expenses of assessors that are directed to be paid under subsection 108(2); and
(f) the amount of any judgment and any costs awarded against that Fund in litigation.

Débits

(3) Il est débité des sommes suivantes :

a) les sommes que l'administrateur verse en application des alinéas 106(3)a) ou 108(1)a), du paragraphe 108(6) ou de l'article 117 ou conformément à une transaction;
b) les sommes que l'administrateur est tenu de payer en application du paragraphe 117(3);
c) les intérêts à verser en conformité avec l'article 116;
d) les frais et honoraires dont le paiement est prévu à l'article 98;
e) la rémunération et les indemnités des évaluateurs dont le versement est prévu au paragraphe 108(2);
f) les sommes qu'un tribunal ordonne à la Caisse d'indemnisation de payer, dans un jugement rendu contre elle, ainsi que les dépens auxquels le tribunal la condamne.

[…]

[…]

Professional and technical assistance

100 The Administrator may, for the purpose of fulfilling his or her functions, including performing his or her duties under this Part, obtain the professional, technical and other advice and assistance that he or she considers necessary.

Assistance

100 Dans l'exercice de ses attributions, notamment de celles que lui confère la présente partie, l'administrateur peut obtenir les avis et l'assistance techniques, professionnels et autres qu'il juge nécessaires.

Liability of Ship-source Oil Pollution Fund

101 (1) Subject to the other provisions of this Part, the Ship-source Oil Pollution Fund is liable for the matters referred to in sections 51, 71 and 77 in relation to oil, Article III of

Responsabilités de la Caisse d'indemnisation

101 (1) Sous réserve des autres dispositions de la présente partie, la Caisse d'indemnisation assume les responsabilités prévues aux articles 51, 71 et 77 en rapport

the Civil Liability Convention and Article 3 of the Bunkers Convention, if

(a) all reasonable steps have been taken to recover payment of compensation from the owner of the ship or, in the case of a ship within the meaning of Article I of the Civil Liability Convention, from the International Fund and the Supplementary Fund, and those steps have been unsuccessful;

(b) the owner of a ship is not liable by reason of any of the defences described in subsection 77(3), Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention and neither the International Fund nor the Supplementary Fund are liable;

(c) the claim exceeds

(i) in the case of a ship within the meaning of Article I of the Civil Liability Convention, the owner's maximum liability under that Convention to the extent that the excess is not recoverable from the International Fund or the Supplementary Fund, and

(ii) in the case of any other ship, the owner's maximum liability under Part 3;

(d) the owner is financially incapable of meeting their obligations under section 51 and Article III of the Civil Liability Convention, to the extent that the obligation is not recoverable from the International Fund or the Supplementary Fund;

(e) the owner is financially incapable of meeting their obligations under section

avec les hydrocarbures, à l'article III de la Convention sur la responsabilité civile et à l'article 3 de la Convention sur les hydrocarbures de soute dans les cas suivants :

a) malgré la prise de toutes les mesures raisonnables dans les circonstances, il a été impossible d'obtenir une indemnité de la part du propriétaire du navire ou, dans le cas d'un navire au sens de l'article premier de la Convention sur la responsabilité civile, de la part du Fonds international et du Fonds complémentaire;

b) d'une part, le propriétaire du navire n'est pas responsable en raison de l'une des défenses mentionnées au paragraphe 77(3), à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute et, d'autre part, le Fonds international et le Fonds complémentaire ne sont pas responsables non plus;

c) la créance excède :

(i) dans le cas d'un navire au sens de l'article premier de la Convention sur la responsabilité civile, la limite fixée à la responsabilité du propriétaire du navire en vertu de cette convention, dans la mesure où l'excédent ne peut être recouvré auprès du Fonds international ni auprès du Fonds complémentaire,

(ii) dans le cas de tout autre navire, la limite fixée à la responsabilité du propriétaire du navire en vertu de la partie 3;

d) le propriétaire du navire est incapable financièrement de remplir les obligations que lui imposent l'article 51 et l'article III de la Convention sur la responsabilité civile, dans la mesure où le Fonds international et le Fonds complémentaire ne sont pas tenus de remplir l'une quelconque de ces obligations;

e) le propriétaire du navire est incapable financièrement de remplir les obligations

71 and Article 3 of the Bunkers Convention;

que lui imposent l'article 71 et l'article 3 de la Convention sur les hydrocarbures de soute;

(f) the owner is financially incapable of meeting their obligations under section 77;

f) le propriétaire du navire est incapable financièrement de remplir les obligations que lui impose l'article 77;

(g) the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship; or

g) la cause des dommages dus à la pollution par les hydrocarbures est inconnue et l'administrateur est incapable d'établir que l'événement qui est à l'origine des dommages n'est pas imputable à un navire;

(h) the Administrator is a party to a settlement under section 109.

h) l'administrateur est partie à la transaction d'une affaire conclue en vertu de l'article 109.

Exception — drilling activities

(2) This Part does not apply to a drilling ship that is on location and engaged in the exploration or exploitation of the seabed or its subsoil in so far as an escape or discharge of oil emanates from those activities.

Exception : opérations de forage

(2) La présente partie ne s'applique pas, eu égard à la fuite ou au rejet d'hydrocarbures, aux navires de forage situés sur un emplacement de forage qui sont utilisés dans le cadre d'activités d'exploration ou d'exploitation du fond ou du sous-sol marin, si le rejet provient de ces activités.

Exception — floating storage units

(3) This Part does not apply to a floating storage unit or floating production, storage and off-loading unit unless it is carrying oil as a cargo on a voyage to or from a port or terminal outside an offshore oil field.

Exception : unité flottante de stockage

(3) La présente partie ne s'applique pas à une unité flottante de stockage ou à une unité flottante de production, de stockage et de déchargement, sauf si elle transporte des hydrocarbures comme cargaison entre ports ou terminaux à l'extérieur des limites d'un champ pétrolifère extracôtier.

Action by Administrator

102 (1) If there is an occurrence that gives rise to the liability of an owner of a ship under section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention,

Action intentée par l'administrateur

102 (1) En cas d'événement dont la responsabilité est imputable au propriétaire d'un navire au titre des articles 51, 71 ou 77, de l'article III de la Convention sur la responsabilité civile ou de l'article 3 de la Convention sur les hydrocarbures de soute, l'administrateur peut, même avant d'avoir reçu la demande visée à l'article 103, intenter une action réelle contre le navire qui fait l'objet de la demande ou à l'égard du produit de la vente de celui-ci déposé au tribunal, et, à

cette occasion, peut, sous réserve du paragraphe (3), demander une garantie d'un montant au moins égal à la responsabilité maximale cumulée du propriétaire calculée conformément aux articles 71 ou 77 ou à l'article V de la Convention sur la responsabilité civile.

(a) the Administrator may, either before or after receiving a claim under section 103, commence an action in rem against the ship that is the subject of the claim, or against any proceeds of sale of the ship that have been paid into court; and
(b) subject to subsection (3), the Administrator is entitled in any such action to claim security in an amount not less than the owner's maximum aggregate liability determined in accordance with section 71 or 77, or Article V of the Civil Liability Convention.

Subrogation

(2) The Administrator may continue the action only if he or she has become subrogated to the rights of the claimant under paragraph 106(3)(c).

Subrogation

(2) L'administrateur ne peut continuer cette action que s'il est subrogé dans les droits du demandeur aux termes de l'alinéa 106(3)c).

Entitlement to claim security

(3) The Administrator is not entitled to claim security under subsection (1) if

(a) in the case of a ship within the meaning of Article I of the Civil Liability Convention, a fund has been constituted under subsection 52(2); and
(b) in the case of any other ship, a fund has been constituted under Article 11 of the Convention as defined in section 24.

Demande de garantie non fondée

(3) L'administrateur ne peut demander la garantie visée au paragraphe (1) si :

a) dans le cas d'un navire au sens de l'article premier de la Convention sur la responsabilité civile, le fonds visé au paragraphe 52(2) a été constitué;
b) dans le cas d'un autre navire, le fonds visé à l'article 11 de la Convention au sens de l'article 24 a été constitué.

Claims filed with Administrator

103 (1) In addition to any right against the Ship-source Oil Pollution Fund under section 101, a person who has suffered loss or damage or incurred costs or expenses referred to in section 51, 71 or 77, Article III of the

Dépôt des demandes auprès de l'administrateur

103 (1) En plus des droits qu'elle peut exercer contre la Caisse d'indemnisation en vertu de l'article 101, toute personne qui a subi des pertes ou des dommages ou qui a engagé des frais mentionnés aux articles 51, 71 ou 77, à

Civil Liability Convention or Article 3 of the Bunkers Convention in respect of actual or anticipated oil pollution damage may file a claim with the Administrator for the loss, damage, costs or expenses.

l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute à cause de dommages — réels ou prévus — dus à la pollution par les hydrocarbures peut présenter à l'administrateur une demande en recouvrement de créance à l'égard de ces dommages, pertes et frais.

Limitation period

(2) Unless the Admiralty Court fixes a shorter period under paragraph 111(a), a claim must be made

> **(a)** within two years after the day on which the oil pollution damage occurs and five years after the occurrence that causes that damage; or
>
> **(b)** if no oil pollution damage occurs, within five years after the occurrence in respect of which oil pollution damage is anticipated.

Délais

(2) Sous réserve du pouvoir donné à la Cour d'amirauté à l'alinéa 111a), la demande en recouvrement de créance doit être faite :

> **a)** s'il y a eu des dommages dus à la pollution par les hydrocarbures, dans les deux ans suivant la date où ces dommages se sont produits et dans les cinq ans suivant l'événement qui les a causés;
>
> **b)** sinon, dans les cinq ans suivant l'événement à l'égard duquel des dommages ont été prévus.

Exception

(3) Subsection (1) does not apply to a response organization referred to in paragraph 51(a), 71(a) or 77(1)(b) or a person in a state other than Canada.

Exceptions

(3) Le paragraphe (1) ne s'applique pas à un organisme d'intervention visé aux alinéas 51a), 71a) ou 77(1)b) ou à une personne dans un État étranger.

[…]

[…]

Administrator's duties

105 (1) On receipt of a claim under section 103, the Administrator shall

> **(a)** investigate and assess it; and
>
> **(b)** make an offer of compensation to the claimant for whatever portion of it that the Administrator finds to be established.

Fonctions de l'administrateur

105 (1) Sur réception d'une demande en recouvrement de créance présentée en vertu de l'article 103, l'administrateur :

> **a)** enquête sur la créance et l'évalue;
>
> **b)** fait une offre d'indemnité pour la partie de la demande qu'il juge recevable.

Administrator's powers

(2) For the purpose of investigating and assessing a claim, the Administrator has the

Pouvoirs de l'administrateur

(2) Aux fins d'enquête et d'évaluation, l'administrateur a les pouvoirs d'un

powers of a commissioner under Part I of the Inquiries Act.

commissaire nommé en vertu de la partie I de la Loi sur les enquêtes.

Factors to be considered

(3) When investigating and assessing a claim, the Administrator may consider only

(a) whether it is for loss, damage, costs or expenses referred to in subsection 103(1); and

(b) whether it resulted wholly or partially from

(i) an act done or omitted to be done by the claimant with intent to cause damage, or

(ii) the claimant's negligence.

Facteurs à considérer

(3) Dans le cadre de l'enquête et de l'évaluation, l'administrateur ne prend en considération que la question de savoir :

a) d'une part, si la créance est visée par le paragraphe 103(1);

b) d'autre part, si la créance résulte, en tout ou en partie :

(i) soit d'une action ou omission du demandeur visant à causer un dommage,

(ii) soit de sa négligence.

Cause of occurrence

(4) A claimant is not required to satisfy the Administrator that the occurrence was caused by a ship, but the Administrator shall dismiss a claim if he or she is satisfied on the evidence that the occurrence was not caused by a ship.

Cause de l'événement

(4) Bien que le demandeur ne soit pas tenu de démontrer que l'événement a été causé par un navire, l'administrateur rejette la demande si la preuve le convainc autrement.

When claimant at fault

(5) The Administrator shall reduce or nullify any amount that he or she would have otherwise assessed in proportion to the degree to which he or she is satisfied that the claim resulted from

(a) an act done or omitted to be done by the claimant with intent to cause damage; or

(b) the claimant's negligence.

Partage de la responsabilité

(5) L'administrateur réduit proportionnellement ou éteint la créance s'il est convaincu que l'événement à l'origine de celle-ci est attribuable :

a) soit à une action ou omission du demandeur visant à causer un dommage;

b) soit à sa négligence.

Offer of compensation

106 (1) If the Administrator makes an offer of compensation to a claimant under paragraph 105(1)(b), the claimant shall, within 60 days after receiving the offer, notify the Administrator whether they accept or refuse it and, if no notification is received by the Administrator at the end of that period, the claimant is deemed to have refused the offer.

Offre d'indemnité

106 (1) Le demandeur a soixante jours, à compter de la réception de l'offre d'indemnité visée à l'alinéa 105(1)b), pour l'accepter ou la refuser; si l'administrateur n'est pas avisé du choix du demandeur dans ce délai, celui-ci est présumé avoir refusé.

Appeal to Admiralty Court

(2) A claimant may, within 60 days after receiving an offer of compensation or a notification that the Administrator has disallowed the claim, appeal the adequacy of the offer or the disallowance of the claim to the Admiralty Court, but in an appeal from the disallowance of a claim, that Court may consider only the matters described in paragraphs 105(3)(a) and (b).

Appel à la Cour d'amirauté

(2) Le demandeur peut, dans les soixante jours suivant la réception de l'offre d'indemnité ou de l'avis de rejet de sa demande, interjeter appel devant la Cour d'amirauté; dans le cas d'un appel du rejet de la demande, la Cour d'amirauté ne prend en considération que les faits mentionnés aux alinéas 105(3)a) et b).

Acceptance of offer by claimant

(3) If a claimant accepts the offer of compensation from the Administrator,

- **(a)** the Administrator shall without delay direct payment to be made to the claimant of the amount of the offer out of the Ship-source Oil Pollution Fund;
- **(b)** the claimant is then precluded from pursuing any rights that they may have had against any person in respect of matters referred to in sections 51, 71 and 77, Article III of the Civil Liability Convention and Article 3 of the Bunkers Convention in relation to the occurrence to which the offer of compensation relates;
- **(c)** the Administrator is, to the extent of the payment to the claimant, subrogated to any rights of the claimant referred to in paragraph (b); and
- **(d)** the Administrator shall take all reasonable measures to recover the amount of the payment from the owner of the ship, the International Fund, the Supplementary Fund or any other person liable and, for that purpose, the Administrator may commence an action in the Administrator's or the claimant's name, including a claim against the fund of the owner of a ship established under the Civil Liability Convention and may enforce any security provided to or enforceable by the claimant.

Acceptation de l'offre

(3) L'acceptation par le demandeur de l'offre d'indemnité entraîne les conséquences suivantes :

- **a)** l'administrateur ordonne sans délai que la somme offerte soit versée au demandeur par prélèvement sur la Caisse d'indemnisation;
- **b)** le demandeur ne peut plus faire valoir les droits qu'il peut avoir contre qui que ce soit à l'égard des questions visées aux articles 51, 71 et 77, à l'article III de la Convention sur la responsabilité civile et à l'article 3 de la Convention sur les hydrocarbures de soute en ce qui concerne l'événement auquel se rapporte l'offre d'indemnité;
- **c)** dans la limite de la somme versée au demandeur, l'administrateur est subrogé dans les droits de celui-ci visés à l'alinéa b);
- **d)** l'administrateur prend toute mesure raisonnable pour recouvrer auprès du propriétaire du navire, du Fonds international, du Fonds complémentaire ou de toute autre personne responsable la somme qu'il a versée et, à cette fin, peut notamment intenter une action en son nom ou au nom du demandeur, réaliser toute garantie donnée à celui-ci ainsi qu'intenter une action contre le fonds du propriétaire constitué aux termes de la Convention sur la responsabilité civile.

[…]

Proceedings against owner of ship

109 (1) If a claimant commences proceedings against the owner of a ship or the owner's guarantor in respect of a matter referred to in section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention, except in the case of proceedings based on paragraph 77(1)(c) commenced by the Minister of Fisheries and Oceans in respect of a pollutant other than oil,

> **(a)** the document commencing the proceedings shall be served on the Administrator by delivering a copy of it personally to him or her, or by leaving a copy at his or her last known address, and the Administrator is then a party to the proceedings; and
>
> **(b)** the Administrator shall appear and take any action, including being a party to a settlement either before or after judgment, that he or she considers appropriate for the proper administration of the Ship-source Oil Pollution Fund.

If Administrator party to settlement

(2) If the Administrator is a party to a settlement under paragraph (1)(b), he or she shall direct payment to be made to the claimant of the amount that the Administrator has agreed to pay under the settlement.

[…]

Action contre le propriétaire d'un navire

109 (1) À l'exception des actions fondées sur l'alinéa 77(1)c) intentées par le ministre des Pêches et des Océans à l'égard d'un polluant autre que les hydrocarbures, les règles ci-après s'appliquent aux actions en responsabilité fondées sur les articles 51, 71 ou 77, l'article III de la Convention sur la responsabilité civile ou l'article 3 de la Convention sur les hydrocarbures de soute intentées contre le propriétaire d'un navire ou son garant :

> **a)** l'acte introductif d'instance doit être signifié à l'administrateur — soit par la remise à celui-ci d'une copie en main propre, soit par le dépôt d'une copie au lieu de sa dernière résidence connue — qui devient de ce fait partie à l'instance;
>
> **b)** l'administrateur doit comparaître et prendre les mesures qu'il juge à propos pour la bonne gestion de la Caisse d'indemnisation, notamment conclure une transaction avant ou après jugement.

Règlement d'une affaire

(2) Dans le cas où il conclut une transaction en application de l'alinéa (1)b), l'administrateur ordonne le versement au demandeur, par prélèvement sur la Caisse d'indemnisation, du montant convenu.

SCHEDULE 5

Text of Articles I to XI, XII bis and 15 of the International Convention on Civil Liability for Oil Pollution Damage, 1992, as Amended by the Resolution of 2000

[…]

ARTICLE III

1 Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

2 No liability for pollution damage shall attach to the owner if he proves that the damage:

(**a**) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

(**b**) was wholly caused by an act or omission done with intent to cause damage by a third party, or

(**c**) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3 If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

ANNEXE 5

Texte des articles I à XI, XII bis et 15 de la Convention internationale de 1992 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures modifiée par la résolution de 2000

[…]

ARTICLE III

1 Le propriétaire du navire au moment d’un événement ou, si l’événement consiste en une succession de faits, au moment du premier de ces faits, est responsable de tout dommage par pollution causé par le navire et résultant de l’événement, sauf dans les cas prévus aux paragraphes 2 et 3 du présent article.

2 Le propriétaire n’est pas responsable s’il prouve que le dommage par pollution :

a) résulte d’un acte de guerre, d’hostilités, d’une guerre civile, d’une insurrection, ou d’un phénomène naturel de caractère exceptionnel, inévitable et irrésistible, ou

b) résulte en totalité du fait qu’un tiers a délibérément agi ou omis d’agir dans l’intention de causer un dommage, ou

c) résulte en totalité de la négligence ou d’une autre action préjudiciable d’un gouvernement ou autre autorité responsable de l’entretien des feux ou autres aides à la navigation dans l’exercice de cette fonction.

3 Si le propriétaire prouve que le dommage par pollution résulte en totalité ou en partie, soit du fait que la personne qui l’a subi a agi ou omis d’agir dans l’intention de causer un dommage, soit de la négligence de cette personne, le propriétaire peut être exonéré de

tout ou partie de sa responsabilité envers ladite personne.

4 No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

4 Aucune demande de réparation de dommage par pollution ne peut être formée contre le propriétaire autrement que sur la base de la présente Convention. Sous réserve du paragraphe 5 du présent article, aucune demande de réparation de dommage par pollution, qu'elle soit ou non fondée sur la présente Convention, ne peut être introduite contre :

> **(a)** the servants or agents of the owner or the members of the crew;
>
> **(b)** the pilot or any other person who, without being a member of the crew, performs services for the ship;
>
> **(c)** any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
>
> **(d)** any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
>
> **(e)** any person taking preventive measures;
>
> **(f)** all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

> **a)** les préposés ou mandataires du propriétaire ou les membres de l'équipage;
>
> **b)** le pilote ou toute autre personne qui, sans être membre de l'équipage, s'acquitte de services pour le navire;
>
> **c)** tout affréteur (sous quelque appellation que ce soit, y compris un affréteur coque nue), armateur ou armateur-gérant du navire;
>
> **d)** toute personne accomplissant des opérations de sauvetage avec l'accord du propriétaire ou sur les instructions d'une autorité publique compétente;
>
> **e)** toute personne prenant des mesures de sauvegarde;
>
> **f)** tous préposés ou mandataires des personnes mentionnées aux alinéas c), d) et e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

à moins que le dommage ne résulte de leur fait ou de leur omission personnels, commis avec l'intention de provoquer un tel dommage, ou commis témérairement et avec conscience qu'un tel dommage en résulterait probablement.

5 Nothing in this Convention shall prejudice any right of recourse of the owner against third parties.

5 Aucune disposition de la présente Convention ne porte atteinte aux droits de recours du propriétaire contre les tiers.

SCHEDULE 8

Text of Articles 1 to 10 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

[…]

ARTICLE 3

Liability of the Shipowner

1 Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

2 Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.

3 No liability for pollution damage shall attach to the shipowner if the shipowner proves that:

(**a**) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(**c**) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

ANNEXE 8

Texte des articles 1 à 10 de la Convention internationale de 2001 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures de soute

[…]

ARTICLE 3

Responsabilité du propriétaire du navire

1 Sauf dans les cas prévus aux paragraphes 3 et 4, le propriétaire du navire au moment d’un événement est responsable de tout dommage par pollution causé par des hydrocarbures de soute se trouvant à bord ou provenant du navire, sous réserve que, si un événement consiste en un ensemble de faits ayant la même origine, la responsabilité repose sur le propriétaire du navire au moment du premier de ces faits.

2 Lorsque plus d’une personne sont responsables en vertu du paragraphe 1, leur responsabilité est conjointe et solidaire.

3 Le propriétaire du navire n’est pas responsable s’il prouve :

a) que le dommage par pollution résulte d’un acte de guerre, d’hostilités, d’une guerre civile, d’une insurrection ou d’un phénomène naturel de caractère exceptionnel, inévitable et irrésistible; ou
b) que le dommage par pollution résulte en totalité du fait qu’un tiers a délibérément agi ou omis d’agir dans l’intention de causer un dommage; ou
c) que le dommage par pollution résulte en totalité de la négligence ou d’une autre action préjudiciable d’un gouvernement ou d’une autre autorité responsable de l’entretien des feux ou

d’autres aides à la navigation dans l’exercice de cette fonction.

4 If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

4 Si le propriétaire du navire prouve que le dommage par pollution résulte en totalité ou en partie soit du fait que la personne qui l’a subi a délibérément agi ou omis d’agir dans l’intention de causer un dommage, soit de la négligence de cette personne, le propriétaire du navire peut être exonéré intégralement ou partiellement de sa responsabilité envers ladite personne.

5 No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.

5 Aucune demande en réparation d’un dommage par pollution ne peut être formée contre le propriétaire du navire autrement que sur la base de la présente Convention.

6 Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

6 Aucune disposition de la présente Convention ne porte atteinte aux droits de recours du propriétaire du navire qui pourraient exister indépendamment de la présente Convention.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1374-21
STYLE OF CAUSE:	HAIDA TOURISM PARTNERSHIP D.B.A. WEST COAST RESORTS v THE ADMINISTRATOR OF THE SHIP-SOURCE OIL POLLUTION FUND
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 21, 2024
ORDER AND REASONS:	SOUTHCOTT J.
DATED:	MARCH 19, 2024

APPEARANCES:

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Ryan Gauvin Cameron Grant	FOR THE DEFENDANT

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