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LETTER OF DISALLOWANCE

Ottawa, 4 August 2021
SOPF File: 120-822-C1

VIA EMAIL

Haida Tourism Limited Partnership
c/o Bernard LLP
1500-570 Granville Street
Vancouver, British Columbia
V6C 3P1

RE: *West Island 395* — Lina Island, British Columbia
Incident date: 2018-09-08

SUMMARY AND DISALLOWANCE

[1] This letter responds to a submission in the name of Haida Tourism Limited Partnership ("Haico"), through counsel, with respect to the accommodation barge *West Island 395*. The *West Island 395* is identified as the "*Tasu 1*" in parts of the submission, and will be referred to as the "Vessel" in this decision letter. The Vessel grounded on 8 September 2018, on Lina Island, British Columbia, causing an oil pollution incident (the "Incident").

[2] On 14 January 2019, the office of the Administrator of the Ship-source Oil Pollution Fund received the submission, which cites paragraph 101(1)(b) of the *Marine Liability Act*, SC 2001, c 6 (the "MLA"). The submission includes claims totalling $1,857,314.06 for costs and expenses arising from measures taken by Haico to respond to the Incident, plus certain additional costs that have not been quantified as of the date of this letter.

[3] Notwithstanding that Haico's initial claim materials and later correspondence with the office of the Administrator referred to sections 101 and 109 of the MLA, Haico later indicated that its claim should be assessed as one submitted under subsection 103(1). It was determined that retroactively re-categorizing Haico's claim was appropriate for the reasons set out in the body of this decision.

[4] That Haico is seeking compensation under the auspices of the MLA is unconventional. Haico is the owner of a polluting ship. The primary purpose of Parts 6 and 7 of the MLA, and of the international conventions implemented by the MLA, is to provide

Canada

compensation for those affected by ship-source oil pollution through a polluter pays model. To effect this, owners of polluting ships face strict liability, subject only to limited and narrow defences. In the great majority of ship-source oil pollution incidents, the only effective defence available to the owner of a polluting ship is the ability to limit liability based on the tonnage of the subject ship under Part 3 of the MLA.

[5] Haico says that it can meet one of the narrow defences to liability. It says the Incident was entirely caused by an intentional act of sabotage by a third party. If Haico establishes that defence, it will not be liable to third parties under the MLA. However, even if that defence is established, nothing in the MLA, on its face, creates a right for a shipowner to recover compensation from the Ship-source Oil Pollution Fund (the "SOPF").

[6] To this, Haico says that subsection 103(1), in Part 7 of the MLA, does not explicitly bar claims by owners of polluting ships. Rather, subsection 103(1) refers to loss, damage, costs, and expenses referred to under Part 6, and more specifically in section 77—loss, damage, costs, and expenses for which a shipowner is ordinarily held strictly liable. Haico submits that the damages described at section 77 should—for the purposes of subsection 103(1) claims—be read apart from their direct association with shipowner liability. This would mean that a shipowner could incur costs and expenses described at section 77 which could then be recovered from the SOPF by way of a claim to the Administrator under subsection 103(1). Further, Haico says that Part 7 of the MLA should follow the model set up under an international convention that expressly allows shipowners to obtain compensation in certain narrow, enumerated circumstances.

[7] Haico's interpretation is not accepted. Its proposed treatment of the text of the MLA requires arbitrarily selective reading. To the extent any ambiguity exists, Haico's proposed interpretation, if implemented, would impair core functions of Parts 6 and 7 of the MLA.

[8] In the result, Haico's claim submission to the Administrator under subsection 103(1) of the MLA is disallowed. Detailed reasons for the disallowance are set forth below, following a description of the relevant procedural history.

PROCEDURAL HISTORY OF THE HAICO SUBMISSION

[9] Haico's claim submission has an unusual and lengthy procedural history. Because of the possible intervention of a limitation period, that history and the determinations made about how the file should proceed are described below.

Haico's claim submission of 14 January 2019

[10] A submission from Haico was received by the office of the Administrator on 14 January 2019. The submission included a cover letter and an executive summary that briefly describes events relating to the Incident. The submission also included summaries of the claimed costs and expenses, corroborating documents, and marine surveyor reports.

[11] Haico's cover letter, advanced by counsel, states:

> Our client claims against the Ship Source Oil Pollution Fund ("SOPF") pursuant to section 101(l)(b) of the [MLA] for its costs and expenses in

relation to the mitigative steps taken at Haida Gwaii, British Columbia on and after September 8, 2018, the date when the barge grounded in Bearskin Bay on Lina Island (the "Grounding").

As for the Grounding, all evidence points to an intentional and willful tampering of the barge's mooring lines by a third party, clearly with an intent to cause damage, providing the owner a defence under section 77(3)(b) of the MLA. Supporting reports are included in our claim materials.

We also note we have factored out costs related to salvage as opposed to pollution mitigation. We enclose a binder containing our documentation for Haico's SOPF claim, which is subject to adjustment. While we have included the invoices from Western Canada Marine Response Corporation […], we note that the WCMRC account is being disputed on the basis that expended manpower and equipment were either not warranted or disproportionate. We would seek the SOPF's views on reasonableness of this account before it is settled to ensure we are in agreement on the issue.

[12] The executive summary reads in part as follows:[1]

The Tasu 1 barge is a sportfishing lodge, owned and operated by Haida Tourism Limited Partnership ("Haico"), which came loose from her mooring buoy in Alliford Bay, Haida Gwaii, and drifted to a grounding point in Bearskin Bay on Lina Island. This grounding incident occurred on the evening of September 8, 2018 and the watchman of the Tasu 1 […] contacted the Canadian Coast Guard ("CCG") at 2230 on September 8, 2018 to inform them of the grounding incident. The type of oil with the potential to be released from the barge as a result of the grounding incident was a mixture of gasoline and/or diesel.

On September 9, 2018 at 0630, the CCG contacted [Haico's operations manager] and [Haico] immediately made various efforts to prevent, contain and mitigate potential oil pollution along with various other agencies. In addition, Haico hired two marine surveyors to conduct an investigation [into] causation and to assess the damage and review invoicing. The reports of [name omitted] in particular separate pollution mitigation from sue and labour.

All evidence points to an intentional and willful tampering of the barge's main lines by a third party, clearly with an intent to cause damage. As such, section 77(3)(b) of [the MLA] offers Haico a complete defence for pollution liability and the related costs and expenses associated with the mitigation and cleanup. As an innocent party, Haico has a right to claim against the Ship-source Oil Pollution Fund […].

[1] Original footnote references to other supporting documentation are omitted.

Haico's follow-up letter of 21 March 2019

[13] On 21 March 2019, Haico's counsel sent a follow up letter to the Administrator, which asked whether action was being taken with respect to section 109 of the MLA:

> Further to your email dated January 15, 2019, we note that it has been over 60 days since the Administrator for the Ship-source Oil Pollution Fund ("SOPF") acknowledged receipt of our client's claim.
>
> Please advise what, if any, action has been taken under section 109 under the *Marine Liability Act*. In the interim, we would ask that you kindly provide us with the Administrator's assessment of the Western Canadian Marine Response Corporation ("WCMRC") account. As you know, we take issue with the time spent by the WCMRC and dispute the account on the basis that expended manpower and equipment were either not warranted or disproportionate.
>
> While the Administrator may reserve all rights in respect of liability, we ask that the Administrator expedite the assessment of the WCMRC account solely in respect of the quantum. We would like to settle their account as soon as possible and do not want to be in a position of paying the WCMRC an amount that is deemed not recoverable by the Administrator.
>
> Finally, we are currently putting together a supplemental claim against the SOPF for late expenses that have recently been received and will provide you with this material in short order.

Haico's claim citing section 101 and 109 was instead processed under subsection 103(1)

[14] This decision letter deals with Haico's submission as a claim under subsection 103(1) of the MLA, notwithstanding that Haico's early submissions cited sections 101—more specifically paragraph 101(1)(b)—and section 109. The Administrator accepted that the claim should be retroactively re-categorized for the reasons set out below.

[15] Initially, there were confusing and somewhat contradictory communications between Haico and the office of the Administrator. On 18 October 2019, the office of the Administrator advised Haico that its submission would be treated as indicated in the original letters, namely as a potential claim under sections 101 and 109 of the MLA. The office of the Administrator's letter further advised that settlement discussions and investigations to support settlement could take place in anticipation of the commencement of litigated proceedings. Because there had been confusion as to how Haico's claim should be treated, the same communication confirmed that Haico's claim would not be treated as one made under subsection 103(1) and advised of the Administrator's preliminary view that a shipowner cannot recover from the SOPF under that provision.

[16] Thereafter, as part of what the Administrator understood were settlement discussions, the office of the Administrator inspected evidence, consulted with an expert, and exchanged documents with Haico on a without prejudice basis. The discussions continued until 8 January 2021. At that time, the Administrator ended the settlement discussions.

[17] Haico responded by commencing proceedings in the Federal Court that challenged the Administrator's decision not to settle its potential claim. This led to further discussion between counsel for Haico and the office of the Administrator. Counsel for Haico advised that Haico and its insurers had always wanted a formal decision from the Administrator. Haico was advised that no mechanism exists under the MLA by which the Administrator can issue an administrative decision with respect to a claim (prospective or otherwise) based on sections 101 and 109.

[18] At this point, counsel for Haico took the position that the initial claim submission had in fact been made under subsection 103(1). As explained by counsel for Haico, the explicit reference to section 101 had been made because of a belief on the part of Haico that it was necessary for a claimant to establish one of the criteria listed under section 101 in order to succeed with a claim made directly to the Administrator under subsection 103(1).

[19] For reasons that are detailed later in this decision, the view that a claimant under subsection 103(1) is held to any of the section 101 criteria is incorrect. However, Haico's explanation as to its original intent was accepted, notwithstanding the fact that over two years—the applicable limitation period for subsection 103(1) claims where a discharge of oil occurs—had elapsed since the Incident. Haico was invited to make submissions on the issue of admissibility of an owner's claim under the process established by subsection 103(1).

[20] On 16 March 2021, counsel for Haico provided those submissions. Counsel sought to draw an analogy between the International Oil Pollution Compensation Funds and the SOPF, noting that the former can, in certain limited situations, indemnify a shipowner who undertakes voluntary response measures following an oil pollution incident caused by its ship. In addition, counsel made the following submissions:

> Under section 103, a "person" (clearly Haico is a "person" at law) who has incurred "costs and expenses referred to in section 77 (that being, inter alia, measures taken in anticipation of a discharge to the extent reasonable), can recover against the SOPF.
>
> One must not confuse liability of the shipowner under s.77 with reference to "costs and expenses" under s.77. They are 2 separate things.
>
> It would be inconsistent to suggest a ship owner/operator can recover under s.77(5) which would allow a shipowner to share in the security, even if they were liable, but not have access to the SOPF if they are not liable.

[21] Having confirmed that the claim would retroactively be considered as one made under subsection 103(1), and having received submissions on behalf of Haico on the issue of admissibility, the Administrator was able to proceed with assessing the eligibility of Haico's claim.

THE MLA AND THE APPENDED INTERNATIONAL CONVENTIONS

[22] Through its submission, Haico seeks to have the Administrator pay it compensation, from the SOPF, for expenses it incurred during its response to the Incident. Haico says the MLA requires the Administrator to pay compensation to claimant shipowners in certain circumstances.

[23] An examination of the history and current structure of the MLA and the appended international conventions reveals that Haico's interpretation is counter-intuitive and, ultimately, problematic.

History of Canada's ship-source oil pollution liability regime

[24] The current legal regime governing shipowner liability was shaped by an international reconsideration of responsibility for ship-source oil spills following the 1967 incident that saw a supertanker, the *Torrey Canyon*, ground off the English Coast and spill much of its cargo of crude oil. The spill caused a high-profile and costly environmental disaster that affected populated coastal areas of both the United Kingdom and France.

[25] In the aftermath of the *Torrey Canyon* incident, the legal regime then applicable to such incidents turned out to be less than satisfactory. First, it was not possible to force the American owners of the Liberian-flagged vessel to the bargaining table until a sister vessel was arrested in Singapore. Second, the owners were ultimately able to limit their liability to roughly $4 million, despite claims exceeding $22 million. Recognition of these shortcomings spurred an international effort to establish a new approach for addressing the costs of ship-source oil pollution incidents.

[26] By 1971, a pair of international conventions were established which substantially altered responsibility in the event of a spill of persistent oil from a tanker:

a. The International Convention on Civil Liability for Oil Pollution Damage, 1969 (the "CLC 1969"); and

b. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the "Fund Convention 1971").

[27] The structures of the CLC 1969 and the Fund Convention 1971 reflected their purpose. The CLC 1969 made shipowners liable for oil pollution damages irrespective of fault or negligence, subject only to limited, narrow defences. The scheme was intended to channel claims to owners and allocate actual losses, rather than to impose any punitive sanctions. To this end, the CLC 1969 established compulsory minimum insurance requirements as well as rights of direct action against insurers. While owners and their insurers were obligated to pay first, even if they were not at fault, they were permitted to limit their liability under a tonnage-based scheme specially developed for tankers.

[28] Once an owner's limit of liability was reached, or if an owner established a defence to liability, the Fund Convention 1971 became available to provide further compensation. Compensation paid under the Fund Convention 1971 was financed by levies imposed on receivers of contributing oil in member states importing oil by sea.

[29] Canada, which suffered a pair of oil tanker incidents during this timeframe,[2] did not wait for the international regime to come into force. It established a national fund, the Maritime Pollution Claims Fund (the "MPCF") at Part XX of the *Canada Shipping Act*, in 1971. Funded by a levy on every tonne of oil imported to or exported from Canada, the MPCF was available to claimants who had exhausted their legal remedies against a shipowner.

[30] Ultimately, in 1989, Canada adopted and implemented the CLC 1969 and the Fund Convention 1971, bolstering its domestic regime.

The current ship-source oil liability scheme, and where Haico's claim fits within it

[31] The principles first established in the CLC 1969 and the Fund Convention 1971 have since been refined into the current international scheme, which now includes:

a. The Convention on Civil Liability for Oil Pollution Damage, 1992, as amended by the Resolution of 2000 (the "CLC 1992"), a successor to the CLC 1969, which raises the limits on tanker owner liability and minimum insurance requirements;

b. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 as Amended by the Resolution of 2000, and its Protocol of 2003 (the "Fund Convention 1992") the successor to the Fund Convention 1971, raising the total amount of compensation available to claimants;

c. The Convention on Civil Liability for Bunker Oil Pollution Damage, 1992 (The "Bunkers Convention"), which imposes liability on the owners of all seagoing and seaborne ships (not just tankers, and not just for persistent oil), as well as mandatory liability insurance on ships exceeding 1,000 gross tonnage; and

d. The Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996 (the "LLMC"), which establishes a scheme by which the owners of non-tankers can limit their liability for incidents, including by establishing a limitation fund in a court to which all claims must be directed.

[32] All four conventions are implemented in Canada through the MLA (the *Marine Liability Act*). The LLMC is implemented at Part 3, while the CLC 1992, the Fund Convention 1992, and the Bunkers Convention are implemented at Part 6.

[33] Part 6 of the MLA also enacts, at Division 2, a backstop for ships which are not subject to either the CLC 1992 or the Bunkers Convention.[3] It imposes a liability scheme

[2] The *Arrow* struck a rock in Chedabucto Bay, Nova Scotia on 4 February 1970, resulting in a spill of over 10,000 tonnes of heavy fuel oil into Canadian waters. Then, on 20 September 1970, the *Irving Whale*, a barge laden with 4,200 tonnes of heavy fuel oil sank in the Gulf of St. Lawrence, off Prince Edward Island.

[3] Section 77 of the MLA creates liability for shipowners generally, while section 76 functions to limit its application to ships not covered by the CLC 1992 or the Bunkers Convention 1992.

similar to those established by the international conventions that applies to all ships not captured by those schemes.

[34] The ways in which the various schemes impose liability on shipowners are similar. The CLC provides, at Article III.1:

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.

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.

[35] The Bunkers Convention provides, at Article 3(1):

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.

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.

[36] Subsection 77(1) of MLA provides:[4]

Liability for pollution and related costs

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

(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.

Responsabilité en matière de pollution et frais connexes

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.

[4] Unless otherwise specified, all references to the MLA herein are to the version in force at the time of the Incident.

[37] Under all three liability schemes, shipowners are strictly liable for ship-source oil pollution incidents, and benefit only from prescribed, narrow defences to that liability.

[38] Whereas Part 6 of the MLA both enacts and parallels the CLC 1992 and the Bunkers Convention, Part 7 of the MLA parallels the Fund Convention 1992, establishing the successor to the MPCF, namely the SOPF (the Ship-source Oil Pollution Fund). Part 7 provides two primary mechanisms by which claimants may obtain compensation from the SOPF rather than—or in addition to—compensation paid by a shipowner.

[39] First, the SOPF retains the "last recourse" functionality which was originally provided by the MPCF. The last recourse regime stipulates that where a claimant sues a shipowner or its guarantor, the Administrator becomes a party to that litigation by virtue of section 109 of the MLA. The Administrator must then appear and participate in that litigation to address the liability of the SOPF under subsection 101(1). Subsection 101(1) makes the SOPF liable for ship-source oil pollution incidents in the same manner as a shipowner, provided any of a selection of criteria contained in the various paragraphs of that provision are met. Haico cites paragraph 101(1)(b), which reads as follows:

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

[…]

(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;

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 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) 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;

[40] Section 109, which was also cited by Haico, applies to proceedings commenced against shipowners and their guarantors:

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.

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.

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.

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.

[41] Alternatively, a claimant may submit a claim directly to the Administrator under subsection 103(1), which is sometimes referred to as the "first recourse" claim mechanism:[5]

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 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.

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 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.

[42] Haico's claim was originally understood as an attempt at settlement discussions in anticipation of a claim under the "last recourse" process, relying on sections 101 and 109. It is now considered a direct claim to the Administrator under subsection 103(1).

Subsection 103(1) does not rely on subsection 101(1) to function

[43] Haico's explanation for why its claim materials cited section 101, when it intended to claim under subsection 103(1), was that it believed that claimants under subsection 103(1) must meet one of the criteria established at section 101. The issue of whether subsection 103(1) relies on subsection 101(1) is an important one with respect to the broader functioning of Part 7 of the MLA, as well as with respect to understanding Haico's position. While Haico's explanation is accepted so as to allow its submission to be re-categorized retroactively, the suggestion that the function of subsection 103(1) depends on section 101 is rejected as incorrect, for the reasons set out below.

[44] Subsection 103(1) of the MLA expressly provides claimants with a route to accessing compensation that stands "**in addition to** any right against the [SOPF] under section 101" [emphasis added]. On its face, subsection 103(1) would seem to stand on its own, separate and in addition to the rights established at section 101. There are also reasons beyond the words "in addition to" which suggest subsection 103(1) does not depend on section 101.

[45] First, subsections 103(1) and 101(1) have parallel structures in a way that would not be expected if subsection 103(1) depended on subsection 101(1). Each refers to sections 51, 71, 77 of the MLA, Article III of the CLC 1992, and Article 3 of the Bunkers Convention.[6] If subsection 103(1) were intended to be dependent upon subsection 101(1),

[5] Where the claimant is compensated, the Administrator then becomes subrogated and obligated to pursue recovery from the shipowner, including through litigation if appropriate.

[6] I.e., the sections all labelled as imposing liability and whose dominant function is to establish the liability of shipowners for oil pollution incidents.

there would be no reason to repeat those citations. The repetition of the citation structure in each section suggests the two provisions are independent.

[46] Further, the version of the MLA in force at the time of this decision includes an example of a new claims scheme that is expressly dependent on one of the two pre-existing mechanisms. In 2018, Parliament added the Expedited Process for Small Claims to the MLA. That scheme allows certain claims valued at $35,000 or less and being made within one year of an incident to be made directly to the Administrator, who is then required to pay the claim within 60 days prior to conducting a full investigation and assessment thereof. Subsection 106.1(1) implements the new scheme as follows:

Expedited claims — small amounts

106.1 (1) A person may file a claim with the Administrator under this section if the claim meets the following conditions:

(a) the claim is for loss, damage, costs or expenses referred to in subsection 103(1) — other than economic loss referred to in that subsection — or (1.1) suffered or incurred by the claimant;

Processus accéléré — petites réclamations

106.1 (1) Toute personne peut présenter à l'administrateur, au titre du présent article, une demande en recouvrement de créance qui remplit les conditions suivantes :

a) la demande vise des frais, pertes ou dommages visés aux paragraphes 103(1) — à l'exception du préjudice économique visé à ce paragraphe — ou (1.1), engagés ou subis par le demandeur;

[47] Subsection 106.1(1) does not refer to the liability provisions of Part 6 of the MLA and the international conventions as subsections 103(1) and 101(1) do. Instead, it refers back to subsection 103(1). As a result, for a claim to be admissible under subsection 106.1(1) it must also qualify as a claim under subsection 103(1) in addition to meeting the criteria at subsection 106.1(1).

[48] Given that Parliament demonstrated an intention to make one claims mechanism dependent on another in such a fashion, and that it did so with plain, direct language, it is not appropriate to infer dependence where such language is not employed. For that reason, even if there is some ambiguity respecting the independence of subsection 103(1), Haico's interpretation should be rejected.

[49] Aside from the unambiguous language of Part 7 of the MLA, Haico's interpretation is problematic in other ways.

[50] If a claimant were required to establish one of the criteria under subsection 101(1) in order to make a claim under subsection 103(1), this requirement would greatly reduce the circumstances in which the subsection 103(1) scheme is available to those affected by oil pollution, thereby reducing access to justice.

[51] By way of an explanation of the access to justice issue, section 101 makes the SOPF liable in the way that a shipowner is liable (which is relevant when litigation is commenced and section 109 is triggered), but only provided that certain criteria are met. Those criteria are that:

a. All reasonable steps to recover compensation from the shipowner have been taken;

b. The shipowner is not liable because it has established a defence;

c. The claim exceeds the limits of a shipowner's liability;

d. The claim exceeds the shipowner's ability to pay; or

e. The identity of the polluting ship is not known.

[52] All of the above criteria impose some burden on claimants, which inevitably reduces access to justice. For (a) through (c), litigation is likely required to establish that a criterion is met. For (d) and (e), some level of investigation will be required, which can be arduous and costly.

[53] Litigation before a claim can be made to the Administrator is particularly problematic given that claims under subsection 103(1) are subject to a shorter limitation period (two to five years) than claims against a shipowner (three to six years). Under Haico's interpretation of the interplay between sections 101 and 103, a claimant who wishes to make a subsection 103(1) claim may not be able to commence and progress litigation quickly enough to make such a claim to the Administrator before the shorter limitation period expires.

[54] On the same point, if litigation is required before many subsection 103(1) claims can be made to the Administrator, then many such claims will never be made at all. By virtue of commencing litigation against a polluting shipowner, a claimant also makes the Administrator a party to that litigation by way of section 109, thereby allowing the claimant potential access to compensation from the SOPF via subsection 101(1). The utility of afterwards allowing a second claim, made directly to the Administrator, over the same subject matter is not obvious. This significantly reduced purpose for subsection 103(1) also militates against accepting the interpretation for which Haico advocates.

[55] To summarize, Haico's interpretation of the interplay between subsections 101(1) and 103(1) is rejected, both based on the text of those provisions and the purpose and function of Parts 6 and 7 of the MLA as a whole.

RIGHTS UNDER SUBSECTION 103(1) MUST ARISE FROM PART 6 OF THE MLA

[56] Subsection 103(1) permits claims where persons affected by a spill have suffered loss, damage, costs, or expenses as described in certain provisions of Part 6 of the MLA, the CLC 1992, or the Bunkers Convention. In all cases, the provisions referenced by subsection 103(1) are focused on the liability of a shipowner. This makes it conceptually challenging to understand how a shipowner might be entitled to make a subsection 103(1) claim.

[57] Apparently in answer to this difficulty, Haico submits that "one must not confuse liability of the shipowner under section 77 with reference to 'costs and expenses' under s 77. They are 2 separate things". This proposed interpretation is problematic.

[58] First, there is a preliminary issue in whether or not section 77 of the MLA applies to the Vessel. When in use, the Vessel (a barge with an accommodation structure for hunting or fishing built atop) was deployed on the ocean, after having been towed into place across the ocean. At the time of the incident, it was moored in a bay, on the ocean, in the midst of being transported. This suggests that the Vessel was seaborne and/or seagoing. It is also understood that the Vessel used some of the oils which spilled or were at risk of

spilling for its operations, i.e., power generation for the accommodation spaces and refuelling smaller craft. Putting these facts together, the result suggests that the Bunkers Convention could apply to the Vessel. If the Bunkers Convention applies, section 77 does not. It is therefore not a given that the sections cited by counsel for Haico even apply to the Vessel.

[59] Second, irrespective of which liability scheme applies to the Vessel, the suggestion that "a person who has suffered loss or damage or incurred costs or expenses", as identified at subsection 103(1), should be read in isolation from reference to shipowner liability is an unnatural reading that is likely inconsistent with the principles of statutory interpretation.

[60] In addressing Haico's position on shipowner claims under subsection 103(1), claims submitted via the Bunkers Convention will be reviewed first, followed by a similar analysis of section 77 of the MLA. Given the ultimate determination that shipowners cannot claim to the Administrator under either regime, the issue of which regime applies to the Vessel does not need to be resolved.

Analysis of the loss, damage, costs, and expenses "referred to in" the Bunkers Convention

[61] Article 3 of the Bunkers Convention reads as follows:

Liability of the Shipowner	Responsabilité du propriétaire du navire
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.	**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 Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.	**2** Lorsque plus d'une personne sont responsables en vertu du paragraphe 1, leur responsabilité est conjointe et solidaire.
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.	**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.

[62] The above does not refer to loss, damage (*simpliciter*), costs or expenses. However, in its definition of "pollution damage", at Article 1(9), the Bunkers Convention includes

the costs of preventive measures. Also included in that definition are most kinds of loss, damage, costs, and expenses that might be suffered by those affected by a qualifying oil pollution incident referred to at Article 3.

[63] The Haico argument, to the extent that the Bunkers Convention applies to the Vessel and the Incident, cannot be accepted. Article 3 cannot appropriately be parsed in the way Haico's argument requires. Divorcing "the shipowner at the time of an incident shall be liable for" from "pollution damage", as used in Article 3(1), is arbitrary. Why would that portion of the Article be excised but the second part of the same sentence, "caused by any bunker oil on board or originating from the ship […]" be left in place? No reason is evident. And if both portions are excised (i.e., "damage" or "pollution damage" is read on its own) then the phrase "pollution damage" is without context, and there is no apparent reason for subsection 103(1) to point to Article 3 rather than just using that word––or referring directly to the definitions section of the Bunkers Convention.

[64] It is therefore not accepted that Parliament, in directing subsection 103(1) to Article 3 of the Bunkers Convention, intended loss, damage, costs, and expenses to be severable from a shipowner's liability. And, because a shipowner cannot be liable to itself, and therefore cannot incur costs and expenses as referred to in Article 3 of the Bunkers Convention, Article 3 does not provide a shipowner with a pathway to make a claim to the Administrator under subsection 103(1).

[65] It is noted that section 71 of the MLA includes additional provisions which add liability to that established by the Bunkers Convention, and section 71 is also referenced by subsection 103(1). Section 71 is substantially similar to subsection 77(1), which is discussed in detail below, and therefore a separate analysis of section 71 is not needed.

Analysis of the loss, damage, costs, and expenses "referred to in" section 77 of the MLA

[66] Section 77 of the MLA reads as follows:

Liability for pollution and related costs

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

Responsabilité en matière de pollution et frais connexes

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;

(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.

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.

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

Droits du propriétaire envers les tiers

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

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,

(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.

2001, c. 6, s. 77; 2009, c. 21, s. 11.

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.

2001, ch. 6, art. 77; 2009, ch. 21, art. 11.

[67] Section 77 is a substantial provision. It consists of six subsections, only two of which directly refer to both "costs and expenses". The first direct reference comes in the primary liability provision, subsection 77(1), which uses the phrase "costs and expenses" multiple times. The second direct reference appears in subsection 77(5), which deals with the ranking of response costs and expenses voluntarily incurred by an owner as against any financial security posted by that owner.[7] Finally, "costs" alone are referred to in subsection 77(2), which imposes liability for environmental reinstatement costs.

[68] The explicit references to costs and expenses in section 77 are, when read in their entire context, and taking into account all of the characteristics of those costs and expenses, generally unhelpful to a shipowner advancing a claim before the Administrator under subsection 103(1). In order for a shipowner to benefit from subsections 77(1), (2), and (5) in this context, an arbitrarily selective reading is required.

[69] With respect to subsection 77(1), an interpretation helpful to Haico would require omission of the words, "The owner of a ship is liable", instead focusing only on the kind of legal damages enumerated in paragraphs (a) through (c)—damages resulting from the discharge or threatened discharge of oil from a ship.

[70] As with the analysis of a similar term in the Bunkers Convention context, the words "loss, damage, costs, and expenses" must have been intended to be understood in the context of section 77. Accepting that some qualification of the words must have been intended, the matter to be decided is what qualifications should be applied. On that point, there seems to be no more reason to exclude as qualifiers the words "The owner of a ship is liable for" than the words "from a ship".

[71] While a shipowner can suffer oil pollution damage and incur response-related costs and expenses stemming from an incident caused by its own vessel, an owner cannot suffer the loss, damage, costs, and expenses referred to in paragraphs 77(1)(a) through (c) because those are damages for which an owner would presumptively be liable,[8] and no entity can be liable to itself.

[72] To summarize, subsection 77(1), on its own, cannot reasonably be understood to refer to an owner's costs and expenses under any circumstances, and the same would apply

[7] Notably, subsection 77(5) allows an owner to claim against security posted on behalf of the ship (i.e., the owner's own money), but it does not establish a right for an owner to secure compensation from other parties.
[8] Even where an owner can escape liability by establishing a defence, or where the owner or polluting vessel is not known, this remains true, allowing non-owner claimants unfettered access to compensation under subsection 103(1).

to the "costs" referred to in subsection 77(2). There is no justification to employ a vastly different reading where a valid defence is available to section 77 liability.

[73] Section 77 includes one other section which requires consideration. Subsection 77(5) is notable in that it explicitly refers to costs and expenses incurred by an owner. Subsection 77(5) typically applies where a liable shipowner has established a limitation fund, and only to the extent that its costs and expenses are reasonable and voluntary.[9] The liable shipowner is then permitted to claim against its own limitation fund, and its claims rank equally with those of other claimants. Where the limitation fund is insufficient to pay all claims, claims are paid *pro rata*. Again, the extent to which "costs and expenses" should be read in context is the key issue.

[74] In considering how subsection 77(5) interacts with subsection 103(1), some remarks on how subsection 77(5) functions in practice help to add context. Subsection 77(5) allows an owner, who has established a limitation fund, to set off some of its own response costs against its maximum liability to others. At least by itself, subsection 77(5) does nothing to give an owner a right to recover from other parties.

[75] What subsection 77(5) does for shipowners, even those who have established a limitation fund (which Haico has not) is variable. At best, where the claims in aggregate (including the shipowner's) exceed the limitation fund, claimants receive a *pro rata* share of their respective claims and the owner's own costs are included to reduce the amount distributed to others. This still means that an owner is left out-of-pocket for more than its maximum liability. In cases where the total claims do not exceed the limitation fund, subsection 77(5) offers no benefit to a shipowner. The unused portion of the limitation fund returns to the owner, irrespective of any claim it may have made against that fund.

[76] Precisely how subsection 77(5), which is at best a defensive, cost-limiting mechanism for shipowners, and which is not engaged in the present case, should interact with subsection 103(1) is not entirely clear. Arguably, an ambiguity arises, and statutory interpretation is required to determine whether subsection 77(5) provides shipowners a path to make claims to the Administrator.

[9] An example of a potential voluntariness problem on the present facts is section 91.2 of British Columbia's *Environmental Management Act*, SBC 2003, c 53 (the "EMA"), which requires that a person having "possession, charge or control" of "a substance or thing that has the potential to cause adverse effects to the environment, human health or infrastructure" to mount a response, whether that substance or thing has actually entered the environment or poses an imminent risk of doing so (see EMA, s 91 for the definitions cited in this note). Many other provinces have enacted similar legislation. Another commonly occurring voluntariness problem (though not on the present facts) emerges out of directions issued by the Minister of Fisheries and Oceans under paragraph 180(1)(c) of the *Canada Shipping Act, 2001*, SC 2001, c 26. Determining whether Haico "voluntarily" incurred expenses would require careful consideration.

APPLYING THE PRINCIPLES OF STATUTORY INTERPRETATION

The principles of statutory interpretation and the need to apply them

[77] For the most part, shipowners appear unable to incur qualifying costs and expenses under the provisions identified by subsection 103(1) by virtue of the fact that compensable loss, damage, costs, and expenses must be those for which an owner is at least *prima facie* liable. An entity cannot be liable to itself, and therefore owners for the most part have no right to claim for compensation. However, some ambiguity arises because of the unclear interaction between subsection 103(1) and subsection 77(5).

[78] To the extent that the text of the MLA does not provide a clear answer to the question of whether the owner of a polluting ship might be entitled to recover from the SOPF under subsection 103(1), it is necessary to apply the principles of statutory interpretation.

[79] The goal of statutory interpretation is to establish a meaning of the words in a statute. This involves coming to an understanding of the statute's intent. With respect to how to arrive at that intent, the Supreme Court of Canada has long endorsed the approach suggested by Elmer Driedger, namely: "[that] the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[10]

[80] In its legislating capacity, Parliament does not intend to produce absurd consequences. An interpretation of a statute is absurd if it would "defeat the purpose of a statute or render some aspect of it pointless or futile."[11]

[81] Of further assistance is section 12 of the *Interpretation Act*, RSC, 1985, c I-21 (the "IA"), which states that "Every [Act or any portion thereof] is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

[82] It is therefore not enough to arrive at the plain meaning of the words used. The object and intention of Parliament in passing the MLA must be considered, and recognition must be given to the entire context in which the words at issue are employed.

[83] It is important to consider the overall construction of the MLA, including the interaction between its liability provisions, at Part 6, and Part 7. Per the principles of statutory interpretation, the function of the two Parts should be harmonious, with neither frustrating the purpose or function of the other. Further to that, the statutory context of how subsection 103(1) claims are addressed is helpful to consider.

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[10] *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21, citing Elmer A. Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87.
[11] *Ibid*, at para 27.

Subsection 103(1) claims and the adjudication and payment thereof

[84] Sections 103 and 104 of the MLA both speak to the eligibility criteria for subsection 103(1) claims:

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 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.

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.

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.

2001, c. 6, s. 103, c. 26, s. 324; 2009, c. 21, s. 11.

Liability — exception

104 Sections 101 and 103 do not apply in respect of actual or anticipated oil pollution damage

(a) on the territory or in the territorial sea or internal waters of a state, other than Canada, that is a party to the Civil Liability Convention or the Bunkers Convention; or

(b) in the exclusive economic zone of a state referred to in paragraph (a) or, if the state has not established an exclusive economic zone, in an area beyond and adjacent to the territorial sea of that state and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2001, c. 6, s. 104; 2009, c. 21, s. 11.

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 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.

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.

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.

2001, ch. 6, art. 103, ch. 26, art. 324; 2009, ch. 21, art. 11.

Responsabilité — exception

104 Les articles 101 et 103 ne s'appliquent pas aux dommages — réels ou prévus — dus à la pollution par les hydrocarbures qui se produisent dans les endroits suivants :

a) le territoire, la mer territoriale ou les eaux intérieures d'un État étranger partie à la Convention sur la responsabilité civile ou la Convention sur les hydrocarbures de soute;

b) la zone économique exclusive d'un tel État ou, s'il n'a pas établi une telle zone, une zone située au-delà de sa mer territoriale mais adjacente à celle-ci, et ne s'étendant pas au-delà de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de sa mer territoriale.

2001, ch. 6, art. 104; 2009, ch. 21, art. 11.

[85] Section 105 covers the handling of subsection 103(1) claims, setting out the Administrator's adjudicative obligations, powers, and constraints during the process:

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.

Administrator's powers

(2) For the purpose of investigating and assessing a claim, the Administrator has the powers of a commissioner under Part I of the *Inquiries Act*.

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.

Pouvoirs de l'administrateur

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

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.

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.

2001, c. 6, s. 105; 2009, c. 21, s. 11.

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 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.

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.

2001, ch. 6, art. 105; 2009, ch. 21, art. 11.

[86] In light of Haico's assertion that it is an "innocent" shipowner, and that is appropriate to allow innocent shipowners to claim under subsection 103(1), the restrictions imposed by subsection 105(3) on what the Administrator may consider in the course of investigating and assessing a subsection 103(1) claim are important.

<u>If Haico is correct, it is not only "innocent" shipowners who are entitled to recover from the SOPF</u>

[87] While the Administrator is of the view that a shipowner cannot claim at all via subsection 103(1), for the reasons set out above, there exists further reason to doubt that the MLA allows such claims to be made to the Administrator. The further reason arises from explicit constraints as to what the Administrator may consider when investigating and assessing a claim.

[88] The factors that the Administrator may consider in the course of investigating and assessing a subsection 103(1) claim are limited by subsection 105(3):

> […] the Administrator may consider only
>
> **(a)** whether [the claim] 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.

[89] When coupled with the previous determination that subsection 103(1) does not depend on subsection 101(1), a substantial difficulty with Haico's interpretation emerges: the Administrator is not permitted to consider whether a shipowner might be entitled to a defence to liability (i.e., whether it is "innocent").

[90] If a shipowner in Canada is allowed to claim under subsection 103(1), the Administrator's only mechanisms by which to reduce compensation paid to it would be to find that:

- The owner's response measures were not reasonably taken with respect to oil pollution;
- The costs of the owner's measures were unreasonable;
- The owner acted or omitted to act with intent to cause damage; or
- The owner's negligence caused the underlying incident, whether wholly or in part.

[91] The above factors, including the Administrator's power to find that a claimant shipowner intended to cause damage or was negligent and thereby reduce compensation paid to it, do not rectify the disharmony. The MLA, at Part 6, establishes a regime of strict liability for owners of polluting ships, irrespective of the owner's fault or negligence. Haico's interpretation of how Part 7 of the MLA should operate is badly misaligned with that central feature of Part 6. The proposed interpretation would, on the one hand, render non-negligent shipowners strictly liable for oil pollution damages, while on the other it would allow the same shipowners to claim reimbursement from public funds. Beyond substantially undermining the primary purpose of Part 6 of the MLA, this creates a litany of unfortunate results.

[92] Larger vessels calling at Canadian ports are required under section 167 of the *Canada Shipping Act, 2001*, SC 2001, c 26 to have a standing oil pollution response arrangement with a Transport Canada-certified response organization.[12] This means that the owners of such vessels are very likely to incur response costs following an incident, which costs are typically insured.[13] In many cases, shipowners would then be able to claim to the Administrator for costs which are required to be insured.

[93] Related to that, the treatment of response organizations under Part 7 of the MLA presents a further incongruity for the interpretation which allows shipowners to claim under subsection 103(1). Subsection 103(3) prohibits response organizations from claiming under subsection 103(1). When activated, response organizations incur costs and expenses to take measures in response to ship-source oil pollution incidents. Those costs and expenses are explicitly captured at section 77, meaning that absent the express prohibition, response organizations would be able to claim under subsection 103(1). By itself this

[12] See *Environmental Response Regulations*, SOR/2019-252, s 2. With limited exceptions, oil tankers of 150 gross tonnage or more, oil-laden vessels towing at least one other oil-laden vessel where aggregate gross tonnage is 150 or more, and all other vessels of 400 gross tonnage or more carrying oil as cargo or fuel are required to have a standing arrangement with a response organization. The Vessel exceeded this minimum threshold and presumably was subject to such an agreement.

[13] As previously noted, liability insurance is mandatory for vessels exceeding 1,000 gross tonnage, and many smaller commercial vessels voluntarily carry such coverage.

causes no issue. Coupled with an interpretation of subsections 77(5) and 103(1) where owners are eligible to claim to the Administrator, however, the result is that almost any shipowner who pays a response organization's expenses would be able to claim reimbursement for them under subsection 103(1), whereas the response organization itself would not. Preferring the interests of a polluting shipowner (even an innocent one) over those of a response organization is at odds with the purpose and objectives of the MLA. So much so that this is a strong factor towards a conclusion that shipowners are not mentioned in subsection 103(3) not because Parliament intended for them to be able to claim to the Administrator, but rather because Parliament did not consider that they were capable of incurring qualifying costs and expenses in the first place.

[94] As has been discussed, subsection 77(5) of the MLA allows shipowners who post security to offset qualifying costs and expenses against those of other claimants in circumstances where the limit of security posted by an owner has been reached (i.e., effectively the vessel's statutory limit of liability). If shipowners can claim under subsection 103(1), then shipowners and their insurers would have a far better option, allowing them to recover their own costs outright from the SOPF, subject only the criteria set out in the above bullet points. Such an eclipse of subsection 77(5) cannot have been Parliament's intention in implementing subsection 103(1), especially given that subsection 77(5) appears to be the only possible point of entry for shipowners under subsection 103(1).

[95] A further and even more incongruous result emerges in considering a hypothetical oil pollution incident to which the shipowner responds, fully indemnifying other affected parties thereafter. In these circumstances—assuming the interpretation that shipowners can claim is accepted—it appears that nothing would stop that shipowner (or its oil liability insurer) from agreeing to pay claims and taking an assignment of the rights of the indemnified parties, then presenting a claim to the Administrator under subsection 103(1) for the entirety of its own response costs as well as the aggregate amount of its assignments (i.e., claims for which it was liable under Part 6 of the MLA). To the extent that Parts 3 and 6 of the MLA are designed to make shipowners pay to the limit of their liability, irrespective of their negligence, that objective would fail in cases of non-negligence.

[96] In the result, allowing shipowner claimants would upend the polluter-pays principle upon which Part 6 of the MLA and the international conventions are founded, transferring much of the burden of liability from shipowners and their insurers to the public funds of the SOPF. It is unlikely that this would have been Parliament's intention,[14] particularly considering that the Administrator's subrogated rights on paying a claim would be no cure to situations where a liable owner might be able to recover from the SOPF. Subrogated rights under subsection 106(3) mirror the original rights of the claimant, and no claimant can hold rights against itself.

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[14] The "polluter pays" principle is cited repeatedly in Parliamentary debates leading up to the passage of the last major amendments to the relevant portions of the MLA implemented prior to the Incident. See *House of Commons Debates*, 40th Parl, 2nd Sess, No 018 (25 February 2009) at 974–978, 983–985: "Our government believes in holding polluters absolutely accountable for their actions. With the help of this legislation, we will hold them accountable" (Brian Jean, at 976). See also, *House of Commons Debates*, 40th Parl, 2nd Sess, No 036 (30 March 2009) at 2108–2115.

Comparison between the SOPF and the International Oil Pollution Compensation Funds

[97] Looking beyond Part 6 of the MLA, an instructive but inherently limited comparison can be made between the SOPF and the International Oil Pollution Compensation Funds (the "International Funds"),[15] which are empowered under the Fund Convention 1992 to pay compensation in certain circumstances following a tanker incident.

[98] Article 4(1) of the Fund Convention 1992, which sets out the circumstances under which the International Funds can pay compensation,[16] reads as follows:

ARTICLE 4

1 For the purpose of fulfilling its function under Article 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,

(a) because no liability for the damage arises under the 1992 Liability Convention;

(b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

ARTICLE 4

1 Pour s'acquitter des fonctions prévues à l'article 2, paragraphe 1a), le Fonds est tenu d'indemniser toute personne ayant subi un dommage par pollution si cette personne n'a pas été en mesure d'obtenir une réparation équitable des dommages sur la base de la Convention de 1992 sur la responsabilité pour l'une des raisons suivantes :

a) la Convention de 1992 sur la responsabilité ne prévoit aucune responsabilité pour les dommages en question;

b) le propriétaire responsable aux termes de la Convention de 1992 sur la responsabilité est incapable, pour des raisons financières, de s'acquitter pleinement de ses obligations et toute garantie financière qui a pu être souscrite en application de l'article VII de ladite Convention ne couvre pas les dommages en question ou ne suffit pas pour satisfaire les demandes de réparation de ces dommages. Le propriétaire est considéré comme incapable, pour des raisons financières, de s'acquitter de ses obligations et la garantie est considérée comme insuffisante, si la victime du dommage par pollution, après avoir pris toutes les mesures raisonnables en vue d'exercer les recours qui lui sont ouverts, n'a pu obtenir intégralement le montant des indemnités qui lui sont dues aux termes de la Convention de 1992 sur la responsabilité;

c) les dommages excèdent la responsabilité du propriétaire telle qu'elle est limitée aux termes de l'article V, paragraphe 1, de la Convention de 1992 sur la responsabilité ou aux termes de toute autre convention ouverte à la signature, ratification ou adhésion, à la date de la présente Convention.

Aux fins du présent article, les dépenses encourues et les sacrifices consentis volontairement par le propriétaire pour éviter ou réduire une pollution sont considérés, pour autant qu'ils soient raisonnables, comme des dommages par pollution.

[99] The Fund Convention 1992 explicitly states that costs reasonably and voluntarily incurred by a tanker owner can be compensated by the International Funds to the extent that the owner is not liable under the CLC 1992, meaning that a defence to liability under that Convention has been established.[17]

[100] Though, broadly speaking, the relationship between Part 7 and Part 6 of the MLA is analogous to the relationship between the Fund Convention 1992 and the CLC 1992, it is important to recall that the Administrator lacks the power to consider whether a shipowner may be entitled to a defence when assessing and investigating a subsection 103(1) claim, regardless of the liability scheme upon which such a claim is

[15] These are comprised of the International Oil Pollution Compensation Fund 1992 and the International Supplementary Fund, established under the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. The latter covers the same kinds of damages as the former, to the extent that the former's limit of compensation is exceeded.
[16] Certain limitations not relevant for the purposes of this decision letter are set out in other provisions.
[17] The defences in Article III.2 of the CLC 1992 mirror those of subsection 77(3) of the MLA.

founded. In contrast, the International Funds have a clear mandate to consider shipowner "innocence", under Article 4(1)(a) of the Fund Convention 1992.

[101] The omission of a mechanism for the Administrator to determine shipowner "innocence" leads to the same problem discussed at length in the preceding section of this letter: if owners entitled to a defence are allowed to recover from the SOPF under subsection 103(1), then liable owners must be allowed to recover as well, to the extent that they are not negligent and did not intend to cause damage. This goes a great deal further than does the Fund Convention 1992, and, as has already been noted, it severely undermines the clear legislative purpose of Part 6 of the MLA and the conventions.

[102] Finally, it must be noted that owners can claim under the Fund Convention 1992 thanks to a clause which explicitly allows such claims,[18] suggesting that such a right is not implicitly found within the CLC 1992. In turn, this raises doubts that such a right should be found implicit within Article 3 of the Bunkers Convention, which has a very similar construction to its analogue in the CLC 1992, or within section 77 of the MLA.

[103] In the result, it must be concluded that Part 7 of the MLA is not entirely analogous to the Fund Convention 1992, specifically with respect to shipowner claims. Notwithstanding any policy arguments, the mechanical structure needed to address claims by innocent shipowners is not present in Part 7 of the MLA.

The potential for disparate outcomes depending on the kind of ship involved

[104] Of final note is the general organizing principle that claimants under subsection 103(1) should expect the same result regardless of which of the liability schemes they rely upon in order to establish a right to compensation from the Administrator. This principle is suggested by the structure of subsection 103(1), which refers to the liability provisions of all three liability schemes enacted by the MLA in establishing the right to claim to the Administrator. Allowing shipowners to claim, as described in this decision, would lead to differing results depending on which liability scheme is engaged.

[105] This potential interpretation of subsection 103(1) would allow claimant shipowners relying upon section 77 to recover from the SOPF, whereas comparable claims from comparably situated owners whose ships are captured by sections 51 and 71 of the MLA and Article III of the CLC 1992 or Article 3 of the Bunkers Convention would be ineligible. The reason being, to the extent that subsection 77(5) might allow claimant shipowners, section 76 stipulates that section 77 does not apply to pollution damage covered by Part 6, Division 1 (i.e., sections 51 and 71 of the MLA and Article III of the CLC 1992 and Article 3 of the Bunkers Convention). The CLC 1992 (and likely section 51) includes a provision which is analogous to subsection 77(5),[19] at Article V.8, which allows owners to claim against their own limitation fund for expenses reasonably and voluntarily incurred in response to an incident. Notwithstanding that, because subsection 103(1) does not point to Article V.8 of the CLC 1992, it cannot serve as a basis for shipowner

[18] There is no analogous explicit provision in Part 7 of the MLA.

[19] It is plausible that subsection 77(5) of the MLA was inspired by Article V.8 of the CLC 1992 or a predecessor convention.

compensation from the SOPF. The owners of ships governed by Part 6, Division 2 would therefore end up being treated in a substantially different way than the owners of ships governed by Part 6, Division 1 with respect to rights to recover from the SOPF under Part 7.

[106] Coupled with the lack of a provision allowing the Administrator to consider shipowner "innocence" (i.e., whether a shipowner can establish any of the limited and narrow defences), determining that subsection 77(5) allows shipowner claimants would result in seemingly arbitrary outcomes. Non-negligent shipowners who are clearly liable under Part 6, Division 2 would be eligible to claim to the Administrator for expenses they incur, including potentially receiving indemnity from the public funds of the SOPF for payments made to affected parties, while at the same time even innocent shipowners whose ships are subject to the CLC 1992 or the Bunkers Convention would be ineligible. The explicit text of the MLA does not support such divergent treatment.

[107] Allowing claims by some claimant shipowners but not others is further surprising when it is considered what kind of ship would be excluded. Owners of ships governed by the CLC 1992 (i.e., tankers carrying persistent oil) would not be able to claim, as they have no access to subsection 77(5). The balance of the SOPF derives from levies paid for the carriage of persistent oil by oil tankers during the 1970s, and from interest accrued on those levies. If any class of shipowner were permitted to obtain compensation from the SOPF, it ought to be ships subject to the CLC 1992. Instead, if any shipowners could claim, it would be a class other than CLC shipowners.

[108] It is not accepted that Parliament intended such disparate results amongst claimants to subsection 103(1). It is considered more probable that no shipowners are intended to be eligible to make claims to the Administrator for expenses incurred in responding to an incident solely involving their own ship.

CONCLUSION

[109] Haico asserts that it is not liable for the Incident, and therefore that it is entitled under the MLA to claim to the Administrator for compensation for the costs and expenses it incurred.

[110] Haico's interpretation of the MLA is conceptually challenging. Part 6 and the international conventions it puts into force make shipowners liable to pay compensation to those affected by ship-source oil pollution incidents caused by their ships. Part 7 provides a scheme to ensure that those affected receive compensation—from public funds—without relieving shipowners of their underlying liability. Even if it is accepted that Haico might establish a defence to its strict liability for the Incident, it is counterintuitive that Part 7 implicitly establishes an entitlement to shipowners to receive compensation from the SOPF.

[111] In asserting its right to recover from the SOPF, Haico cites subsection 103(1) of the MLA, which allows for claims to arise from several provisions under three distinct liability schemes. Notwithstanding Haico's submission on the point, it is determined that no non-arbitrary reading of the provisions allows a shipowner to claim. Put concisely, provisions

which establish a shipowner's liability do not in this case also establish a shipowner's right to claim, even where a given shipowner might be entitled to a defence to liability.

[112] An argument can be made that the interplay between subsections 77(5) and 103(1) is unclear. However, because subsection 77(5) refers only to an owner's claim against its own limitation fund, it is not considered that it also provides shipowners with a right to recover from the SOPF. In many cases, including this one, no limitation fund has been established, and it seems improbable that an owner should be able to create a right to claim for itself by establishing a fund to which others may claim. All that said, it might be argued that the interaction between subsection 77(5) and 103(1) results in an ambiguity.

[113] Applying the principles of statutory interpretation, Haico's interpretation causes a host of difficulties, including substantially stripping Part 6, Division 2 of the MLA of purpose. This is particularly problematic given that subsection 77(5) itself is located in Part 6, Division 2. That interpretation would also lead to vastly different results for shipowners depending on which liability scheme applies. It is not accepted that Parliament intended such a result, or that such a result is consistent with the overall purpose of Parts 6 and 7 of the MLA.

[114] In light of the foregoing, it is determined that shipowners may not claim to the Administrator under subsection 103(1) of the MLA. The claim submission is disallowed without consideration of the applicable liability regime for the Vessel, whether the claim was made by a person in a state other than Canada,[20] the merits of Haico's alleged defence to liability, or whether Haico's claimed costs and expenses arise from measures reasonably taken with respect to oil pollution.

CLOSING

[115] In considering this Letter of Disallowance, please observe the following options and time limits that arise from section 106 of the MLA.

[116] Pursuant to subsection 106(2) of the MLA, an appeal may be taken from a disallowance of a claim to an Admiralty Court within 60 days of receipt of the disallowance. If you wish to appeal the disallowance, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal in Form 337. You must serve it upon the Administrator, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B.
Deputy Administrator, Ship-source Oil Pollution Fund

[20] Shortly before this decision letter was completed, Haico sent a letter which suggested that some or all of its claims are advanced by an insurer or insurers based in London, England. There is therefore an issue of whether subsection 103(3) might bar those portions of Haico's claim as being made by "a person in a state other than Canada".