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## PRACTICE

*Related subject: Maritime Law*

Motion and appeal by plaintiff from Federal Court order (2023 FC 1746) of Associate Judge granting defendant's motion to strike plaintiff's action on basis plaintiff failed to plead basis in law for defendant's alleged liability — Associate Judge struck plaintiff's statement of claim without leave to amend — In within action, plaintiff sought recovery from defendant of costs plaintiff incurred to remediate oil spill emanating from its vessel — In underlying motion to strike, plaintiff also sought leave to amend its statement of claim to reflect cause of action it articulated herein — Plaintiff is operator, owner of sports fishing lodge or barge (Vessel) — Ship-Source Oil Pollution Fund (SOPF), defendant are creatures of statute, established under Part 7 of *Marine Liability Act*, S.C. 2001, c. 6 (Act), with mandate to provide statutorily prescribed compensation for costs, losses resulting from ship-source oil pollution — Plaintiff's statement of claim alleged that Vessel came loose from its moorings, drifted to grounding point in Bearskin Bay, British Columbia, leaking mixture of gasoline, diesel — Vessel was only ship involved in incident — Plaintiff contacted authorities notifying them of incident, made efforts to remediate, minimize potential oil pollution damage — Plaintiff alleged that grounding occurred because of intentional, wilful tampering with Vessel's mooring lines by third party(ies) with intent to cause damage — Plaintiff subsequently submitted claim to SOPF for reimbursement of costs incurred to repair, remedy or minimize oil pollution, related preventative measures — Claim initially framed as claim under Act, s. 101(1)(b) but was eventually reframed as claim under s. 103(1) — Defendant denied plaintiff's claims on basis shipowner not eligible to make claim under Act, s. 103(1) for incident involving solely its own ship — Plaintiff brought statutory appeal of defendant's decision — Federal Court, *per* Strickland J., dismissed appeal (2022 FC 1249) (Strickland Decision), concluding that defendant had correctly interpreted Act, s. 103(1) — Present action asserting claim under Act, s. 101(1), i.e. a different statutory provision — Defendant filed motion to strike plaintiff's statement of claim in present proceeding on basis claim not disclosing reasonable cause of action — Associate Judge's resulting order striking plaintiff's statement of claim without leave to amend formed basis of present appeal, brought pursuant to *Federal Courts Rules*, SOR/98-106, r. 51 — Although recognizing that Strickland Decision focused on whether defendant had correctly disallowed plaintiff's claim for compensation under Act, s. 103(1), Associate Judge found that Strickland decision contained comprehensive review of Act, Parts 6, 7, purpose of Act as whole — Main issues here whether Associate Judge erred in applying *obiter dicta* from Strickland Decision; whether Associate Judge erred in application of plain, obvious test; whether Associate Judge erred in applying doctrine of issue estoppel; if reviewable error identified in order, how should defendant's motion to strike be adjudicated? — Plaintiff argued that Associate Judge incorrectly applied legal principles of *ratio decidendi*, *obiter dicta* in concluding that discussion in Strickland Decision of Act, s. 101(1) was binding — However, order not demonstrating that Associate Judge concluded that Strickland Decision's s. 101 analysis was binding on her jurisprudentially — Rather, Associate Judge stated that Strickland Decision was binding on current proceeding, that issue estoppel arose — That finding made by Associate Judge after applying principles of issue estoppel — Similarities existing between analysis of whether particular point forming part of *ratio* of decision, analysis whether particular point was decided in — This is fundamental to a decision for purposes of issue estoppel analysis — *Obiter dicta* not supporting finding of issue estoppel — *Ratio* analysis is jurisprudential while issue estoppel analysis representing application of species of *res judicata* —

Portion of order upon which plaintiff's argument relied, in which Associate Judge referred to Strickland Decision as binding represented latter analysis — Regarding application of plain, obvious test, plaintiff argued that Associate Judge applied plain, obvious test in part in finding that its pleading was bereft of particulars that supported claim against defendant — But argument having no merit since Associate Judge explained there was no need to consider whether lack of particulars in statement of claim might be cured by amendment given her conclusion that plaintiff's action was *res judicata* — Associate Judge's analysis not demonstrating incomplete application of applicable test, not representing reviewable error — Also, plain, obvious test applicable to motion to strike not representing additional or higher threshold that must be met in conducting issue estoppel analysis — Associate Judge made determination that issue estoppel applied — Such determination was definitive; thus, additional analysis that determination was also plain, obvious not needed — No errors made therein — With respect to application of doctrine of issue estoppel defendant agreed with plaintiff's position that analysis of Strickland Decision of Act, s. 101 was *obiter*, not answering question fundamental to that decision, was thus not capable of providing basis for issue estoppel in present action — Plaintiff established that palpable, overriding error occurred in application of principle of issue estoppel — Order clearly demonstrating misinterpretation of defendant's position on whether issue estoppel applied — Associate Judge noted defendant's acknowledgement that Strickland Decision represented *obiter dicta* (in that it had dealt with Act, s. 103 while current action purported to be taken under s. 101) — However, Associate Judge then noted defendant's submission that Strickland Decision should be applied, resulting in dismissal of action, interpreted this submission as inviting Court to apply principle of issue estoppel — This was error — Defendant agreed with plaintiff that issue estoppel not applying in this case; of the view that *obiter dicta* analysis surrounding s. 101 in Strickland Decision was jurisprudentially persuasive, should be adopted, applied on motion to strike — Moreover, Act, s. 101 analysis in Strickland Decision was *obiter*, not giving rise to issue estoppel in present action — Strickland decision determining that Act, ss. 101, 103 were separate, discrete avenues for assertion of claims; thus, plaintiff not having defence under s. 101(1)(b) as asserted in claim brought under s. 103(1) — Interpretation of s. 101 was not question before Court in Strickland Decision — Dismissal of statutory appeal resulted in particular from conclusion that there was no mechanism for adjudication of s. 103(1) claim to consider s. 101(1)(b) defence — However, that result not turning on analysis or conclusions as to whether shipowner can claim against SOPF under s. 101 — Therefore, s. 101 analysis was not fundamental to that decision — Associate Judge made palpable, overriding error in concluding that Justice Strickland's s. 101 analysis was fundamental to her decision, gave rise to issue estoppel — Paragraphs of Strickland Decision that Associate Judge adopted represented general explanation of content of Act, Parts 6, 7 — Associate Judge's decision granting motion based on application of principle of issue estoppel — Was not based on adoption of reasoning in Strickland Decision as jurisprudentially persuasive — As to adjudication of defendant's motion to strike, question of statutory interpretation at issue in present action clearly both complex, contentious — Strickland Decision demonstrated that defendant advanced its position that SOPF not having legal capacity to be sued under s. 101; conclusions in *obiter* were consistent with acceptance of that position — However, was not clear from decision whether Justice Strickland had benefit of comprehensive submissions on how provisions of Act should inform analysis, determination as to whether SOPF having capacity to be sued as public organization — Therefore, was not plain, obvious that, with benefit of amendments to better articulate plaintiff's claim under Act, s. 101, plaintiff's cause of action would fail — Therefore, plaintiff granted leave to amend its Statement of Claim to articulate claim under s. 101 — Motion and appeal allowed.

HAIDA TOURISM PARTNERSHIP (WEST COAST RESORTS) V. CANADA (SHIP-SOURCE OIL POLLUTION FUND), T-1374-21, 2024 FC 439, Southcott J., reasons for order dated March 19, 2024, 41 + 20 pp.)