

CONTINENTAL SHELF OFF NEWFOUNDLAND — WHETHER BELONGING TO CANADA OR NEWFOUNDLAND

In re Newfoundland Continental Shelf (Supreme Court of Canada, unreported, 8 March 1984).

The Canadian Supreme Court has unanimously held that property in and legislative jurisdiction over the seabed and subsoil of the continental shelf offshore Newfoundland is vested in Canada and not in the Province of Newfoundland. The case involved essentially three issues:

- (i) whether international law recognized the right to explore and exploit the continental shelf prior to Newfoundland's entry into Confederation on March 31, 1949;
- (ii) whether the Crown in right of Newfoundland was, by virtue of its constitutional status before 1949, in a position to acquire those rights;
- (iii) whether the Crown in right of Newfoundland lost those rights under the Terms of Union with Canada.

To win Newfoundland had to succeed on all 3 points. In fact the Court decided for Canada on all three. It held

- (i) that the status of the continental shelf doctrine in 1949 was not so clearly defined or established as to attribute to coastal states a continental shelf by operation of law (as distinct from as a result of a claim);
- (ii) that Newfoundland's status between 1934 and 1949 (notwithstanding that it was formally a Dominion) was of a special character because of the resumption of UK control under the Newfoundland Act 1933 (and the consequent loss of responsible government); thus any continental shelf rights acquired after 1934 would have accrued to the Crown in the right of the U.K., not of Newfoundland.
- (iii) Even if such rights had existed before 1949 they would have then accrued to Canada by virtue of the Terms of Union, given that these rights were extra-territorial rights and incidents of external sovereignty.

The Court rejected an argument based on the 'retrospectivity' of continental shelf rights, citing with approval Gibbs J (dissenting on other grounds) in NSW v Commonwealth (1975) 135 CLR 337, 416.

J.R.C.

FOREIGN STATE IMMUNITY — IMMUNITY FROM EXECUTION — GARNISHEE OF FUNDS IN 'EMBASSY ACCOUNT' ALCOM v. REPUBLIC OF COLOMBIA

The decision of the English Court of Appeal in Alcom v. Republic of Colombia [1983] 3 WLR 906 was briefly noted at [1984] Australian I.L. News 77. The case has now gone to the House of Lords, although the Republic of Colombia had previously obtained the setting aside of the default judgment against it. In the meantime several other embassy accounts have apparently been garnisheed in reliance on the Court of Appeal's decision. The result in the House of Lords is awaited with interest.

J R C.