

Canadian Laws Offshore Application Act

[C-18.5]

An Act to apply federal laws and provincial laws to offshore areas and to amend certain Acts in consequence thereof

[Assented to 17th December, 1990]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title

1. This Act may be cited as the Canadian Laws Offshore Application Act.

INTERPRETATION

Definitions

2. (1) In this Act,

"artificial island" «île artificielle»

"artificial island" means any man-made extension of the seabed or a seabed feature, whether or not the extension breaks the surface of the superjacent waters;

"continental shelf" «plateau continental»

"continental shelf" means the seabed and subsoil of those submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as are prescribed pursuant to paragraph (2)(a);

"federal laws" «lois fédérales»

"federal laws" includes Acts of Parliament, regulations as defined in section 2 of the Interpretation Act and any other rules of law within the jurisdiction of Parliament but does not include ordinances within the meaning of the Northwest Territories Act or the Yukon Act;

"internal waters" «eaux intérieures»

"internal waters" means the internal waters of Canada within the meaning of the Territorial Sea and Fishing Zones Act;

"marine installation or structure" «ouvrages en mer»

"marine installation or structure" includes

(a) any ship, offshore drilling unit, production platform, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipelaying or other barge or pipeline and any anchor, anchor cable or rig pad used in connection therewith, and

(b) any other work or work within a class of works prescribed pursuant to paragraph (2)(b);

"offshore area" «zone extracôtière»

"offshore area", with respect to a province, means

(a) any area of the sea that is not within any province, that is on the landward side of the outer limits of the continental shelf and that is nearer to the coast of that province than to the coast of any other province, or

(b) such other area as is prescribed pursuant to paragraph (2)(c),

and includes the seabed and subsoil thereof;

"provincial laws" «lois provinciales»

"provincial laws", in respect of a province, includes the laws and rules of law from time to time in force in the province, other than federal laws, and the provisions of any instrument having effect under any of those laws;

"ship" «navire»

"ship" includes any description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation without regard to method or lack of propulsion;

"territorial sea" «mer territoriale»

"territorial sea" means the territorial sea of Canada as determined in accordance with the Territorial Sea and Fishing Zones Act.

Regulations

(2) The Governor in Council may make regulations

(a) prescribing outer limits of the continental shelf or any portion thereof for the purpose of the definition "continental shelf" in subsection (1), or designating, for greater certainty, a particular area of the sea as being part of the continental shelf;

(b) prescribing a work or a class of works for the purpose of the definition "marine installation or structure" in subsection (1);

(c) prescribing an area of the sea adjacent to a province for the purpose of the definition "offshore area" in subsection (1); and

(d) prescribing, in respect of any area of the sea and for the purpose of the definition "offshore area" in subsection (1), the manner of determining the province that has the coast nearest to that area.

DECLARATORY PROVISIONS

Rights of Her Majesty

3. (1) For greater certainty, it is hereby declared that in any area of the sea not within a province,

(a) the seabed and subsoil below the internal waters and territorial sea, and

(b) any rights of Canada beyond the territorial sea with respect to the seabed and subsoil and their resources are vested in Her Majesty in right of Canada.

Saving

(2) Nothing in this section abrogates or derogates from any legal right or interest held prior to the coming into force of this Act.

Part of Canada and application of federal laws

4. For greater certainty, it is hereby declared that

(a) the internal waters and territorial sea form part of Canada;

(b) unless the context otherwise requires, a reference to the internal waters or the territorial sea includes a reference to the airspace above and the seabed and subsoil below those waters or that sea; and

(c) federal laws apply in the areas referred to in paragraphs (a) and (b) to the extent that such application is consistent with the intent and object of those laws.

APPLICATION OF FEDERAL LAWS

Application - continental shelf installations

5. (1) Subject to any regulations made pursuant to subsection (2) or (3), federal laws apply

(a) on or under any marine installation or structure from the time it is attached or anchored to the continental shelf in connection with the exploration of that shelf or the exploitation of its mineral or other non-living resources until the marine installation or structure is removed from the waters above the continental shelf;

(b) on or under any artificial island constructed, erected or placed on the continental shelf; and

(c) within such safety zone surrounding any marine installation or structure or artificial island referred to in paragraph (a) or (b) as is determined by or pursuant to regulation.

Regulations

(2) The Governor in Council may make regulations

(a) excluding any federal laws or any provisions thereof from the application of subsection (1) in respect of any area in or above the continental shelf or in respect of any specified activity in any such area; and

(b) determining or prescribing the method of determining the safety zone referred to in paragraph (1)(c).

Application generally

(3) The Governor in Council may make regulations making federal laws or any provisions thereof applicable, in such circumstances as are specified in the regulations,

(a) in or above the continental shelf or any portion thereof;

(b) in any exclusive economic zone that may be created by Canada or in any portion thereof; or

(c) in any area beyond the continental shelf where such application is made pursuant to an international agreement or arrangement entered into by Canada.

Interpretation

6. For the purposes of section 5, federal laws shall be applied

(a) as if the places referred to in subsection 5(1) or in any regulations made pursuant to paragraph 5(2)(a) or subsection 5(3) formed part of the territory of Canada;

(b) notwithstanding that by their terms their application is limited to Canada; and

(c) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

APPLICATION OF PROVINCIAL LAWS

7. (1) Subject to this section and to any other Act of Parliament,

(a) provincial laws apply in that part of the offshore area adjacent to a province that forms part of the internal waters or territorial sea; and

(b) provincial laws apply to the same extent as federal laws apply pursuant to section 5 in that part of the offshore area adjacent to a province that is situated on the seaward side of the internal waters and territorial sea.

Limitation

(2) Subject to any regulations made pursuant to subsection (3) or (4), subsection (1) does not apply in respect of any provision of a provincial law that

(a) imposes a tax or royalty; or

(b) relates to mineral or other non-living natural resources.

Exclusion or application

(3) The Governor in Council may make regulations respecting the exclusion or application of provincial laws to the same extent as the Governor in Council may make regulations respecting the exclusion or application of federal laws pursuant to subsection 5(2) or (3).

Regulations

(4) The Governor in Council may make regulations

(a) making any provincial law applicable in respect of any part of the offshore area adjacent to a province, even though the law, by its own terms, is applicable only in respect of a particular area within the province;

(b) restricting the application of subsection (1) to such provincial laws as are specified in the regulations;

(c) making subsection (1) applicable, on the terms and conditions, if any, specified in the regulations, in respect of any provincial laws that impose a tax or royalty or relate to mineral or other non-living natural resources; and

(d) excluding any provincial law from the application of subsection (1).

Restriction

(5) A regulation made under subsection (3) or (4) may be restricted to a specific area or place or to a specific provision of a provincial law.

Interpretation

(6) For the purposes of this section, provincial laws shall be applied as if the offshore area adjacent to the province were within the territory of that province.

Sums due to province

(7) Any sum due under a provincial law that applies in the offshore area pursuant to this section belongs to Her Majesty in right of the province whose legislature enacted the law.

Limitation

8. For greater certainty, the provisions of section 7 shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any offshore area adjacent to the province or the living or non-living resources of that offshore area, or as limiting the application of any federal laws.

COURT JURISDICTION

Jurisdiction extended

9. (1) Subject to subsection (3) and to any regulations made pursuant to subsection (4), a court has jurisdiction in respect of any matter that arises in whole or in part in an offshore area adjacent to a province and to which a law applies pursuant to this Act, if the court would have jurisdiction had the matter arisen in that province.

Orders and powers

(2) A court referred to in subsection (1) may make any order or exercise any power it considers necessary in respect of any matter referred to in that subsection.

Criminal offences

(3) The jurisdiction and powers of courts with respect to offences under any federal law are determined pursuant to sections 477.3 and 477.4 of the Criminal Code.

Regulations

(4) The Governor in Council may make regulations restricting the application of subsections (1) and (2) to courts of a district or territorial division of a province.

Saving

(5) Nothing in this section limits the jurisdiction that a court may exercise apart from this Act.

Definition of "court"

(6) For the purposes of this section, "court" includes a judge thereof and any justice.

GENERAL PROVISIONS

Evidence

10. (1) In any legal or other proceedings, a certificate issued by or under the authority of the Minister of Foreign Affairs containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings,

(a) in the internal waters or territorial sea, or

(b) in or above the continental shelf or in any area created by Canada as an exclusive economic zone,

is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

Idem

(2) In any legal or other proceedings, a certificate issued by or under the authority of the Minister of Natural Resources containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings, within the offshore area adjacent to any province named therein is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

Certificate cannot be compelled

(3) A certificate referred to in subsection (1) or (2) is admissible in evidence in proceedings referred to in that subsection but its production cannot be compelled.

1990, c. 44, s. 10; 1994, c. 41, s. 37; 1995, c. 5, s. 25.

Saving

11. Nothing in sections 1 to 10 limits the operation that any Act, law or instrument has apart from this Act.

Prior notice

12. (1) Subject to subsection (2), a copy of each regulation that the Governor in Council proposes to make under this Act shall be published in the Canada Gazette at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

Single publication required

(2) No regulation need be published more than once under subsection (1), whether or not it is altered after publication as a result of representations referred to in that subsection.

CONSEQUENTIAL AND RELATED AMENDMENTS

13. to 19. [Amendments]

ABORIGINAL RIGHTS

Aboriginal rights

20. Nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

COMING INTO FORCE

Coming into force

*21. (1) Subject to this section, this Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

Application of provincial laws

(2) Subject to subsection (3), section 7 shall come into force with respect to the offshore area adjacent to a province only on a day fixed by order of the Governor in Council declaring it to be in force in that area.

Prior notice

(3) An order under subsection (2) may be issued only after the expiration of sixty days from the publication of a notice thereof in the Canada Gazette, so that a reasonable opportunity may be given to interested persons to make representations with respect thereto.

Single publication required

(4) No notice need be published more than once under subsection (3), whether or not the proposed order is altered after publication as a result of representations referred to in that subsection.

*[Note: Act, except section 7, in force February 4, 1991, see SI/91-18.]

AMENDMENTS NOT IN FORCE

- 1993, c. 28, s. 78 (Sch. III, s. 15):

15. The definition "federal laws" in subsection 2(1) is repealed and the following substituted therefor:

"federal laws" « lois fédérales »

"federal laws" includes Acts of Parliament, regulations as defined in section 2 of the Interpretation Act and any other rules of law within the jurisdiction of Parliament, but does not include ordinances within the meaning of the Northwest Territories Act or the Yukon Act or laws made by the Legislature for Nunavut or continued by section 29 of the Nunavut Act;

- 1996, c. 31, s. 54:

Repeal

54. The Canadian Laws Offshore Application Act, chapter 44 of the Statutes of Canada, 1990, is repealed.