The Continuing Evolution of Maritime Law Jurisdiction in Canada

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Introduction

Like several other contributors to this book, the author was a student of Professor Edgar Gold in the 1980s and eventually became a close working colleague. He worked with Professor Gold on activities in support of the World Maritime University in Sweden and co-authored with him and Professor Hugh Kindred the leading textbook on Canadian maritime law. During this period Canadian maritime law practitioners, scholars and students had to grapple with a long period of uncertainty in maritime law jurisdiction in this country. The full extent of the Federal Court of Canada’s (Federal Court) jurisdiction in maritime law was at issue. The absence of specific federal statutes on particular maritime subjects raised questions as to whether the Federal Court was able to administer ‘laws of Canada’ in a maritime case. There was no complete understanding of the full scope of Canadian maritime law and in turn this blurred understanding of the full scope of maritime jurisdiction. The methodology for determining how particular causes of action could be characterized as maritime so as to fall under navigation and shipping was unclear. In this regard, it was also unclear whether maritime law could be applied to torts that occurred on land. The extent, if at all, to which provincial statutes could be applied to dispose of maritime claims was unclear. The jurisdiction that could be exercised by provincial superior and inferior courts was also questioned.

Maritime or admiralty jurisdiction concerns the judicial power to administer laws related to navigation and shipping. In Canada it has had a complex historical development. Originally received as admiralty jurisdiction from English law and administered by Vice-Admiralty Courts, it was eventually

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administered by the Exchequer Court after the *Admiralty Act, 1891*\(^2\) was passed by the Parliament of Canada. This was followed by the *Admiralty Act, 1934*\(^3\), which established District Admiralty Courts with judges enjoying the powers of Exchequer Court judges, until the establishment of the Federal Court in 1971 as a unitary court.\(^4\) Since then the Federal Court has been effectively the admiralty court for Canada, although maritime law jurisdiction continues to be enjoyed concurrently with provincial courts.

Contemporary Canadian maritime law jurisdiction has a wider scope than that received from English law. Jurisdiction has evolved over decades to be defined dominantly in functional terms as well as in spatial extent. The *Statute of Westminster, 1931*\(^5\) enabled the Parliament in Canada to legislate over extraterritorial matters, thus increasing the potential scope of application of Canadian statutory law concerning navigation and shipping. The eventual establishment of the Federal Court as the substitute of the Exchequer Court modernized the federal judicial institutional capacity to administer a broader maritime law jurisdiction. A series of Supreme Court of Canada cases in the late 1970s and throughout the 1980s significantly expanded jurisdictional doctrine to enable the Federal Court to exercise broad maritime jurisdiction within the terms of its constitutive act. An active federal maritime legislative programme commenced in the early 1990s gave greater statutory content to Canadian maritime law. Throughout this period, and most especially since the 1970s, the development of Canadian maritime law has reflected ongoing and emerging tensions and complementarities in Canadian constitutional law.

Today the limits of Canadian maritime law jurisdiction are less uncertain than they were in the 1970s through the 1990s, but there remain ongoing issues. This contribution argues that these issues do not relate to the nature of maritime law as a body of law under constant pressure from commercial and technological drivers as much as to the dynamic nature of Canadian Confederation and the need for continued accommodation in the pursuit of cooperative federalism. This essay discusses the evolution of Canadian maritime law and jurisdiction since Confederation, highlights milestones along the way, the uncertainties that arose over time and how they were addressed judicially and legislatively in a pragmatic and functional manner, and finally undertakes a discussion of more recent developments that attempt to fine tune the balance between federal and provincial regulation of activities at sea.

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\(^2\) *Admiralty Act, 1891*, S.C. 1891, c. 29.

\(^3\) *Admiralty Act, 1934*, S.C. 1934, c. 31.

\(^4\) Gold et al., *supra* note 1, 107–110.

\(^5\) *Statute of Westminster, 1931* (U.K.), 22 Geo. V., c. 4.