

**ARBITRATION BETWEEN  
NEWFOUNDLAND AND LABRADOR  
AND  
NOVA SCOTIA  
CONCERNING THE DELIMITATION OF  
THEIR OFFSHORE AREAS**

**PHASE ONE**

**COUNTER MEMORIAL  
OF NEWFOUNDLAND AND LABRADOR**

**15 FEBRUARY 2001**



IV.	The Graphic Representations of the Line in the “1964 Agreement”	26
V.	The Map “Presented to the East Coast Premiers in 1972”	27
VI.	The “official, published Nova Scotia map”	30
VII.	Imagining the Intent of the Drafter of the Katy Permit	31
CHAPTER IV	THE APPLICABLE LAW	36
CHAPTER V	THE ALLEGED “1964 AGREEMENT”	46
I.	Introduction	46
II.	There Was No Intent to Enter into a Legally Binding Agreement on September 30, 1964	47
III.	The Events Subsequent to September 30, 1964 Do Not Establish any Intent to Enter into a Legally Binding Agreement	53
A.	The Stanfield Submission	54
B.	The work of the JMRC 1969 - 1972	55
C.	The meeting of the Premiers of the Atlantic Provinces and the Vice-Premier of Quebec on June 17-18, 1972	59
D.	Newfoundland and Labrador’s alleged failure to raise objections at federal-provincial meetings	64
E.	Newfoundland and Labrador’s response to the 1977 MOU	68
F.	Newfoundland and Labrador’s response to the 1982 <i>Nova Scotia Agreement</i>	70
G.	The language of the <i>Atlantic Accord</i>	71
H.	The position of the federal government	72
IV.	Newfoundland and Labrador’s Practice in Issuing Permits Discloses No Intent to Enter into a Legally Binding Agreement	76

A.	The 135° line has no basis as an agreed line	76
B.	Newfoundland and Labrador's practice in issuing permits does not respect an agreed line	79
i)	Background to Newfoundland and Labrador's permitting practice	79
ii)	Newfoundland and Labrador's issuance of permits from 1964 to 1971	80
iii)	Newfoundland and Labrador's issuance of permits from 1972 to 1976	83
iv)	Newfoundland and Labrador's issuance of permits from 1977 to 1985	84
v)	Summary	85
vi)	The 2000 Call for Bids	85
V.	Nova Scotia's Permitting Practice is Irrelevant	87
VI.	The Alleged Practice of New Brunswick, Prince Edward Island and Quebec is Irrelevant	88
CHAPTER VI	ACQUIESCENCE AND ESTOPPEL	90
I.	Introduction	90
II.	Acquiescence	91
A.	Acquiescence plays no role in the formation of a binding agreement	91
B.	Nova Scotia's arguments on acquiescence do not relate to any agreement	94
C.	No acquiescence by Newfoundland and Labrador has been demonstrated in this case	95

	D. The effect of any alleged acquiescence would in any event be presumptive only	100
III.	Estoppel	101
	A. Estoppel, like acquiescence, plays no role in the formation of a binding agreement	101
	B. Nova Scotia's arguments on estoppel do not relate to any agreement	103
	C. No estoppel can be raised in this case	103
CHAPTER VII	THE POSITION OF NEWFOUNDLAND AND LABRADOR: A RECAPITULATION	109
CHAPTER VIII	CONCLUSIONS AND SUBMISSION	118
APPENDIX A	LIST OF AUTHORITIES	

## ILLUSTRATIONS

The abbreviation CM is used to distinguish Figures used in the Counter Memorial from those used in the Memorial.

CM Figure 1	The Missing Compass Roses	After Page 25
CM Figure 2	Misleading Title for Figure 5 in Nova Scotia Memorial	After Page 26
CM Figure 3	Misleading Title for Figure 8 in Nova Scotia Memorial	After Page 26
CM Figure 4	Reproduction of Figure 9 in the Nova Scotia Memorial	After Page 27
CM Figure 5	Reproduction of Figure 16 in the Nova Scotia Memorial	After Page 30
CM Figure 6	Nova Scotia Cannot Have it Both Ways	After Page 32
CM Figure 7	Interim Permit Issued to Mobil on September 15, 1967	After Page 34
CM Figure 8	Interim Permit Issued to Katy on May 19, 1971	After Page 34
CM Figure 9	Replicating Katy Permit Based on Original Map is Straightforward	After Page 35

CM Figure 10	Offshore Area Covered by N&L Interim Permits Issued from 1965 to 1971	After Page 81
CM Figure 11	Interim Permit Issued to Mobil on September 15, 1967	After Page 82
CM Figure 12	Interim Permit Issued to Katy on May 19, 1971	After Page 82
CM Figure 13	Offshore Area Covered by N&L Interim Permits Issued from 1973 to 1975	After Page 84
CM Figure 14	N&L Permits Issued Since 1971 in the Gulf and Cabot Strait Areas	After Page 84

## ANNEXES

- I. SUPPLEMENTARY STATUTES (1 volume)
- II. SUPPLEMENTARY DOCUMENTS (1 volume)
- III. SUPPLEMENTARY AUTHORITIES (1 volume)