Court File No. 40195

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

IN THE MATTER of An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, SC 2019, c 28 and the Physical Activities Regulations, SOR/2019-285

AND IN THE MATTER of a Reference by the Lieutenant Governor in Council to the Court of Appeal of Alberta under the Judicature Act, RSA 2000, c J-2, s 26

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

-and-

ATTORNEY GENERAL OF ALBERTA

Respondent

-and-

(Title of proceedings continued on next page)

FACTUM OF THE INTERVENER
WORLD WILDLIFE FUND CANADA
Rule 42 of the *Rules of the Supreme Court of Canada*

NANDA & COMPANY
10007 – 80 Avenue NW
Edmonton, Alberta T6E 1T4

Martin Z. Olszynski
Avnish Nanda

Tel: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

Counsel for World Wildlife Fund Canada

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF PRINCE EDWARD ISLAND, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR, INDIAN RESOURCE COUNCIL, FILE HILLS QU'APPELLE TRIBAL COUNCIL AND PASQUA FIRST NATION, WORLD WILDLIFE FUND CANADA, NATURE CANADA AND WEST COAST ENVIRONMENTAL LAW ASSOCIATION, CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, CANADAIAN TAXPAYERS FEDERATION, ATHABASCA CHIPEWYAN FIRST NATION, BUSINESS COUNCIL OF ALBERTA, ECOJUSTICE CANADA SOCIETY, WOODLAND CREE FIRST NATION, MIKISEW CREE FIRST NATION, HYDRO-QUÉBEC, CANADIAN CONSTITUTION FOUNDATION, INDEPENDENT CONTRACTORS AND BUSINESSES ASSOCIATION, AND ALBERTA ENTERPRISE GROUP, CANADIAN ASSOCIATION OF PHYSICIANS FOR THE ENVIRONMENT, ADVOCATES FOR THE RULE OF LAW, OCEANS NORTH CONSERVATION SOCIETY, CANADIAN ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL DEFENCE CANADA INC., AND MININGWATCH CANADA INC., EXPLORERS AND PRODUCERS ASSOCIATION OF CANADA, FIRST NATIONS MAJOR PROJECTS COALITION, CENTRE QUÉBÉCOIS DU DROIT DE L'ENVIRONNEMENT, LUMMI NATION

Interveners

ORIGINAL TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

COPIES TO:

ATTORNEY GENERAL OF CANADA
Department of Justice
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Christopher Rupar, Dayna Anderson, Bruce Hughson, Kerry Boyd and James Elford

Tel: (613) 670-6290
Fax: (613) 954-1920
Email: christopher.rupar@justice.gc.ca

Counsel for the Attorney General of Canada

ATTORNEY GENERAL OF ALBERTA
Bennett Jones LLP
4500, 855 – 2nd Street SW
Calgary, AB T2P 4K7

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

E. Bruce Mellett, Bradley Gilmour, Sean Assie, Adam Williams

Tel: (403) 298-3319
Fax: (403) 265-7219
Email: MellettB@bennettjones.com

-and-

JUSTICE AND SOLICTOR GENERAL OF ALBERTA
11th Floor Oxford Tower
10025 – 102A Avenue
Edmonton, AB

Christine Enns, K.C., Randy Steele

Tel: (780) 422-9703
Fax: (780) 643-0852
Email: christine.enns@gov.ab.ca

Counsel for the Attorney General of Alberta

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of Alberta

ATTORNEY GENERAL OF SASKATCHEWAN
820 – 1874 Scarth St.
Constitutional Law Branch
Regina, SK S4P 4B3

Thomson Irvine, K.C., Noah Wernikowski

Tel: (306) 787- 6307
Fax: (306) 787-9111
Email: tom.irvine@gov.sk.ca

Counsel for the Attorney General of Saskatchewan

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of Saskatchewan

ATTORNEY GENERAL OF MANITOBA
Constitutional Law
1230 - 405 Broadway
Winnipeg, MB R3C 3L6

Charles Murray
Tel: (204) 945-2852
Fax: (204) 945-0054
Email: charles.murray@gov.mb.ca

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Counsel for the Attorney General of Manitoba

ATTORNEY GENERAL OF NEW BRUNSWICK
Constitutional Unit, Legal Services Branch
P.O. Box 6000, Stn. A
Fredericton, NB E3B 5H1

Isabel Lavoie-Daigle

Tel: (506) 453-2222
Fax: (506) 453-3275
Email: isabel.lavoiedaigle@gnb.ca

Counsel for the Attorney General of New Brunswick

ATTORNEY GENERAL OF NOVA SCOTIA
Department of Justice (NS)
1690 Hollis Street, 8th Floor
Halifax, NS B3J 2L6

Edward A. Gores, K.C.

Tel: (902) 424-4024
Fax: (902) 424-1730
Email: edward.gores@novascotia.ca

Counsel for the Attorney General of Nova Scotia

ATTORNEY GENERAL OF BRITISH COLUMBIA
1001 Douglas Street, 6th Floor
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

J. Gareth Morley

Tel: (250) 952-7644
Fax: (250) 356-9154
Email: gareth.morley@gov.bc.ca

Counsel for the Attorney General of British Columbia

ATTORNEY GENERAL OF QUEBEC

Agent for the Attorney General of Manitoba

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of New Brunswick

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of Nova Scotia

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: (613) 787-3562
Fax: (613) 230-8824
Email: neffendi@blg.com

Agent for the Attorney General of British Columbia

NOËL & ASSOCIÉS
225, montée Paiement
2e étage

Ministère de la justice du Québec
1200 Route de l'Église, 4e étage
Québec, QC G1V 4M1

Frédéric Perreault

Tel: (418) 643-1477 Ext: 20785
Fax: (418) 644-7030
Email: frederic.perreault@justice.gouv.qc.ca

Counsel for the Attorney General of Quebec

ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR
Attorney General of Newfoundland and Labrador
4th Floor, East Block
Confederation Bldg. P.O. Box 8700
St. John's, Newfoundland & Labrador A1B 4J6

Justin S.C. Mellor

Tel: (709) 729-0163
Fax: (709) 729-2129
Email: jmellor@gov.nl.ca

Counsel for the Attorney General of Newfoundland and Labrador

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND
4th Floor South, Shaw Building
95 Rochford Street, PO Box 2000
Charlottetown, PEI C1A 7N8

Jessica Gillis

Tel: (902) 368-5064
Fax: (902) 368-4563
Email: jessicagillis@gov.pe.ca

Counsel for the Attorney General of Prince Edward Island

Gatineau, QC J8P 6M7

Pierre Landry

Tel: (819) 503-2178
Fax: (819) 771-5397
Email: p.landry@noelassocies.com

Agent for the Attorney General of Quebec

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of Newfoundland and Labrador

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Attorney General of Prince Edward Island

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Joshua Hunter, Yashoda Ranganathan

Tel: (416) 908-7465
Fax: (416) 326-4015
Email: joshua.hunter@ontario.ca

Counsel for the Attorney General of Ontario

RAE AND COMPANY
900 – 1000 5th Avenue SW
Calgary, AB T2P 4V1

L. Douglas Rae, Brooke Barrett

Tel: (403) 264-8389
Fax: (403) 264-8399
Email: lorddoug@raeandcompany.com

Counsel for the Intervener, Indian Resource Council

GOWLING WLG (Canada) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Matthew Estabrooks
Tel: (613) 786-0211
Fax: (613) 788.3573
Email: matthew.estabrooks@gowlingwlg.com

Agent for the Intervener, Indian Resource Council

MAURICE LAW
602 12th Avenue SW, Suite 100
Calgary, AB T2R 1J3

Ryan Lake
Genevieve Boulay

Tel: (403) 266-1201
Fax: (403) 266-2701
Email: rlake@mauricelaw.com

Counsel for the Intervenor, File Hills Qu'Appelle Tribal Council and Pasqua First Nation

WEST COAST ENVIRONMENTAL LAW
700 – 509 Richards Street
Vancouver, BC V6B 2Z6

Anna Johnston

Tel: (604) 601-2508
Fax: (604) 684-1312

Email: ajohnston@weel.org

Counsel for the Intervener, Nature Canada and East Coast Environmental Law Association

BURNET, DUCKWORTH & PALMER
2400, 525 - 8 Avenue SW
Calgary, AB T2P 1G1

Robert L. Martz

Tel: (403) 260-0393
Fax: (403) 260-0332
Email: rmartz@bdplaw.com

Counsel for the Intervener, Canadian Association of Petroleum Producers

CREASE HARMAN LLP
1070 Douglas Street, Unit 800
Victoria, BC V8W 2C4

R. Bruce E. Hallsor, Josh A. Bloomenthal

Tel: (250) 388-5421
Fax: (250) 388-4294
Email: bhallsor@crease.com

Counsel for the Intervener, Canadian Taxpayers Federation

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Canadian Taxpayers Federation

WOODWAR & COMPANY LAWYERS LLP
200 – 1022 Government Street
Victoria, BC V8W 1X7

Eamon Murphy, Tara McDonald

Tel: (250) 383-2356
Fax: (250) 380-6560
Email: eamon@woodwardandcompany.com

Counsel for the Intervener, Athabasca Chipewyan First Nation

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Athabasca Chipewyan First Nation

OSLER, HOSKIN & HARCOURT LLP
Suite 2700, Brookfield Place
225 - 6th Avenue SW
Calgary, AB T2P 1N2

OSLER, HOSKIN & HARCOURT LLP
Suite 1900, 340 Albert Street
Ottawa, ON K1R 7Y6

Maureen E. Killoran, K.C., Sean Sutherland, Brodie Noga

Tel: (403) 260-7000
Fax: (403) 260-7024
Email: mkilloran@osler.com

Counsel for the Intervener, Business Council of Alberta

Geoffrey Langen

Tel: (613) 787-1015
Fax: (613) 235-2867
Email: glangen@osler.com

Agent for Counsel for the Intervener, Business Council of Alberta

ECOJUSTICE CANADA SOCIETY
216 – 1 Stewart Street
Ottawa, ON K1N 7M9

Joshua Ginsberg, Anna McIntosh

Tel: (613) 903-5898
Fax: (613) 916-6150
Email: jginsberg@ecojustice.ca

Counsel for the Intervener, Ecojustice Canada Society

ALBERTA COUNSEL
800, 9707-110 Street NW
Edmonton, AB T5K 2L9

Robert Reynolds, K.C.

Tel: (780) 652-1282
Fax: (780) 652-1312
Email: r.reynolds@albertacounsel.com

Counsel for the Intervener, Woodland Cree First Nation

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for Counsel for the Intervener, Woodland Cree First Nation

JFK LAW CORPORATION
340-1122 Mainland Street
Vancouver, BC V6B 5L1

Tim Dickson

Tel: (604) 687-0549
Fax: (604) 687-2696
Email: tdickson@jfklaw.ca

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Counsel for the Intervener, Mikisew Cree First Nation

Agent for Counsel for the Intervener, Mikisew Cree First Nation

McCARTHY TETRAULT s.e.n.c.r.l.,s.r.l.
1000 rue de la Gauchetiere Ouest
Bureau 2500
Montreal, QC H3B 0A2

Dominique Amyot-Bilodeau, Jean Lortie, Mathieu Bernier-Trudeau, Simon Bouthiller

Tel: (514) 397-4100
Fax: (514) 875-6246
Email: damyotbilodeau@mccarthy.ca

Counsel for the Intervener, Hydro-Quebec

BORDEN LADNER GERVAIS LLP
Centennial Place, East Tower
1900-520 3rd Ave SW
Calgary, AB T2P 0R3

Brett R. Carlson, Aidan N. Paul, Peter Banks

Tel: (403) 232-9500
Fax: (403) 266-1395
Email: bcarlson@blg.com

Counsel for the Interveners, Canadian Constitution Foundation

GALL LEGGE GRANT ZWACK LLP
1199 West Hastings Street, Suite 1000
Vancouver, BC V6E 3T5

Peter A. Gall, K.C.

Tel: (604) 891-1152
Fax: (604) 669) 5101
Email: pgall@glgzlaw.com

CAZASIKALEY LLP
350-220 Laurier Ave West
Ottawa, ON K1P 5Z9

Albert Brunet

Tel:
Fax:
Email:

Counsel for the Interveners, Independent Contractors and Business Association, and Alberta Enterprise Group

Agent for Counsel for the Interveners, Independent Contractors and Business Association, and Alberta Enterprise Group

UNIVERSITY OF CALGARY
2500 University Drive NW
Calgary, AB T2N 1N4

CHAMP AND ASSOCIATES
43 Florence Street
Ottawa, ON K2P 0W6

Shaun Fluker, David V. Wright

Tel: (403) 220-4939
Fax: (403) 282-8325
Email: sfluker@ucalgary.ca

Counsel for the Interveners, Canadian Association of Physicians for the Environment

McCARTHY TETRAULT LLP
Suite 5300, Toronto Dominion Bank
Toronto, ON M5K 1E6

Brandon Kain, Holly Kallmeyer, Asher Honickman

Tel: (416) 601-7821
Fax: (416) 868-0673
Email: bkain@mccarthy.ca

Counsel for the Intervener, Advocates for the Rule of Law

ARVAY FINLAY LLP
360 – 1070 Douglas Street
Victoria, BC V8W 2C4

David W.L. Wu

Tel: (604) 696-9828
Fax: (888) 575-3281
Email: dwu@arvayfinlay.ca

Counsel for the Intervener, Oceans North Conservation Society

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
130 Spadina, Suite 301
Toronto, ON M5V 2L4

Richard D. Lindgren, Joseph F. Castrilli

Tel: (416) 960-2284
Fax: (416) 960-9392
Email: lindgrer@lao.on.ca

Bijon Roy

Tel: (613) 237-4740
Fax: (613) 232-2680
Email: broy@champlaw.ca

Agent for Counsel for the Interveners, Canadian Association of Physicians for the Environment

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell

Tel: (613) 786-0171
Fax: (613) 563-9869
Email: jeff.beedell@gowlingwlg.com

Agent for Counsel for the Intervener, Oceans North Conservation Society

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell

Tel: (613) 786-0171
Fax: (613) 563-9869
Email: jeff.beedell@gowlingwlg.com

Counsel for the Interveners, Canadian Environmental Law Association, Environmental Defence Canada Inc., and Miningwatch Canada

BURNET, DUCKWORTH & PALMER
2400, 525 - 8 Avenue SW
Calgary, AB T2P 1G1

Kylan Kidd

Tel: (403) 260-0109
Fax: (403) 260-0332
Email: kkidd@bdplaw.com

Agent for Counsel for the Interveners, Canadian Environmental Law Association, Environmental Defence Canada Inc., and Miningwatch Canada

Counsel for the Intervener, Explorers and Producers Association of Canada

JURISTES POWER
401 Georgia Street, Suite 1660
Vancouver, BC V6B 5A1

Ryan Beaton

Tel: (604) 260-4462
Fax: (604) 259-6007
Email: rbeaton@juristespower.ca

POWER LAW
50 rue O'Connor, Bureau 1313
Ottawa, ON K1P 6L2

Jonathan Laxer

Tel: (613) 907-5652
Fax: (613) 907-5652
Email: jlaxer@powerlaw.ca

Counsel for the Intervener, First Nations Major Project Coalition

CENTRE QUEBECIOS DU DROIT DE L'ENVIRONMENT
454, avenue Laurier Est
Montreal, QC H2J 1E7

David Robitaille, Marc Bishai

Tel: (514) 991-9005
Fax: (514) 844-7009
Email: David.robitaille@uottawa.ca

Agent for Counsel for the Intervener, First Nations Major Project Coalition

POWER LAW
50 rue O'Connor, Bureau 1313
Ottawa, ON K1P 6L2

Jonathan Laxer

Tel: (613) 907-5652
Fax: (613) 907-5652
Email: jlaxer@powerlaw.ca

Counsel for the Intervener, Centre Quebecois du droit de l'environment

DGW LAW CORPORATION
201 – 736 Broughton Street
Victoria, BC V8W 1E1

Agent for Counsel for the Intervener, Centre Quebecois du droit de l'environment

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

John W. Gailus, Courtenay Jacklin

Tel: (250) 361-9469
Fax: (250) 361-9429
Email: john@dgwlaw.ca

Counsel for the Intervener, Lummi Nation

Marie-France Major

Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Lummi Nation

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PART I: OVERVIEW

1. The *Impact Assessment Act*[1] and *Physical Activities Regulations*[2] establish a process for assessing and disclosing the impacts of projects that have the greatest potential for adverse effects on federal environmental matters and authorize the federal executive to determine whether such effects are in the public interest.

2. The Attorney General of Canada ("**Canada**") anchors the *IAA*'s *vires* in several federal heads of power previously recognized by Canadian courts as conferring on Parliament its share of environmental jurisdiction: s 91(12) (Sea Coast and Inland Fisheries), s 132 (Imperial Treaties), s 91(24) Indians and Lands Reserved for the Indians, and the residual portion of s 91 (peace, order and good government, or POGG).[3]

3. World Wildlife Fund Canada ("**WWF-Canada**") intervenes in this appeal to emphasize the environment's inherent complexity and the consequent integral role that democratic accountability plays in modern environmental law, and impact assessment law in particular. These features, which are well-established in Canadian jurisprudence, are critical to the proper characterization and classification of the *IAA* regime and to the application of the division of powers framework that has guided the development of Canadian environmental law for over thirty years.[4] Accounting for these features, WWF-Canada submits that the *IAA* regime must be *intra vires* to Parliament's legislative authority; Parliament, and Parliament alone, is accountable to Canadians for matters assigned to it by the *Constitution Act, 1867*.

PART II: POSITION ON THE QUESTION IN ISSUE

4. The question before this Court is whether the *IAA* regime is *intra vires*. A majority of the Alberta Court of Appeal (Greckol J.A. dissenting) opined that it is not. Characterizing its pith and substance as "the establishment of a federal impact assessment and regulatory regime that subjects all activities designated by the federal executive to an assessment of all their effects and federal oversight and approval,"[5] the majority held that the division of powers constrains both the magnitude

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[1] SC 2019, c 28, s 1 ["***IAA***"].
[2] SOR/2019-285.
[3] Factum of the Attorney General of Canada at ¶47.
[4] *Friends of the Oldman River Society v Canada (Minister of Transport)*, 1992 CanLII 110 (SCC) ["***Oldman River***"].
[5] Reference re *Impact Assessment Act*, 2022 ABCA 165 ["***IAA Reference***"] at ¶372.

of environmental effects that Parliament may concern itself with, as well as the scope of its decision-making – even where the effects and decisions fall squarely within federal jurisdiction.[6]

5. While the majority's approach is problematic on numerous fronts,[7] it is largely rooted in a fundamental misunderstanding of modern environmental law and impact assessment law in particular. More specifically, it fails to account for the environment's inherent and long-recognized complexity and impact assessment law's emphasis on process and democratic accountability.

6. As further set out below, these features are directly relevant to the division of powers framework generally, and to the *IAA*'s characterization and classification specifically. With respect to the division of powers framework, the guiding principle of federalism is inextricably tied to the democracy principle. With respect to characterization, the *IAA* regime is essentially a planning and disclosure tool that aims to foster more sustainable decision-making in relation to federal environmental matters through democratic accountability. Such a regime falls comfortably within the various heads of federal power that Canadian courts have long recognized as conferring on Parliament its share of environmental jurisdiction.

PART III: STATEMENT OF ARGUMENT

A. Environmental Law as Decision-Making Process

7. Due to the "extremely complex and evolving moral and scientific nature of environmental problems,"[8] modern environmental law does not generally consist of hard rules or precise substantive limits (environmental "bottom-lines"). It is focused instead on establishing bounded *processes for decision-making*.[9] Differences in ecology and ecological conditions, assimilative capacity, and competing land-uses from one place to another render substantive limits difficult to establish, implement, and justify.

8. In Canada, legislatures generally prohibit certain activities or impacts in one breath, while granting the executive branch varying degrees of discretion to authorize such activities or impacts

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[6] *IAA Reference* at ¶9.
[7] See e.g. Nigel Bankes & Andrew Leach, "The Rhetoric of Property and Immunity in the Majority Opinion in the *Impact Assessment Reference*" ["**Bankes & Leach – 2022**"] (June 8, 2022), WWFC – Book of Authorities, Tab 4.
[8] A. Dan Tarlock, "Is There a There There in Environmental Law?" ["**Tarlock**"] (2004) 19 J Land Use & Envtl L 213 at 219, WWFC – Book of Authorities, Tab 5.
[9] Tarlock at 219, WWFC – Book of Authorities, Tab 5. See also Bruce Pardy, "In Search of the Holy Grail of Environmental Law: A Rule to Solve the Problem" ["**Pardy**"] (2005) 1 MJSDLP 29 at 32-36, WWFC – Book of Authorities, Tab 6.

in the next.[10] For example, subsection 35(1) of the *Fisheries Act* prohibits the "harmful alteration, disruption or destruction of fish habit," but the Minister of Fisheries and Oceans may authorize any such impacts pursuant to subsection 35(2).[11] While the Minister is required to take certain considerations (or guideposts)[12] into account before exercising her discretion, such as impacts on Indigenous rights and the potential for cumulative effects,[13] there is no legislated, *a priori* limit to the amount of harm that she may authorize. Similar schemes are found in the *Canadian Navigable Waters Act*,[14] *Species at Risk Act,*[15] and *Canada National Parks Act*.[16] The same is true at the provincial level. As one example, Alberta's *Water Act* prohibits the taking or diverting of water without a license, but a director under that legislation has broad discretion to grant such licenses.[17]

9. Impact assessment laws represent the high-water mark of the "environmental law as decision-making process" paradigm. In *Oldman River,* which concerned the *Environmental Assessment and Review Process Guidelines Order*, Justice LaForest referred to environmental impact assessment as a planning tool with both an information-gathering and decision-making component, or "simply descriptive of a process of decision-making."[18] This description applied equally to the subsequent *Canadian Environmental Assessment Act*[19] and the *Canadian Environmental Assessment Act*, *2012*,[20] as it does to the current *IAA*. None of these regimes contains any *a priori* substantive limits but rather set out the same basic two-step process: rigorous and objective information-gathering followed by executive decision making.

10. One of the critical assumptions underlying this paradigm is that the mere identification and disclosure of potential environmental impacts will lead to decision-making that better accounts for those impacts, including through the potential for political or democratic accountability for such decisions.[21] In *Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage)*,

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[10] Pardy at 32-36, WWFC – Book of Authorities, Tab 6. See also David R Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003) ["**Boyd**"] at 231 (observing that "[d]iscretion is one of the defining characteristics of Canadian environmental law" pervading "almost every law, regulation and policy"), WWFC – Book of Authorities, Tab 7.
[11] RSC 1985, c F-14 ["***Fisheries Act***"] s 35. See also ss 36(3) – 36(5) (regulation of "deleterious substances").
[12] Tarlock at 219, WWFC – Book of Authorities, Tab 5.
[13] *Fisheries Act*, s 34.1(1).
[14] RSC 1985, c N-22, ss 3 – 7.
[15] SC 2002 c 29, s 73.
[16] SC 2000, c 32, s 8(2).
[17] RSA 2000 c W-3, ss 49(1) and 51(4).
[18] *Oldman River* at ¶103.
[19] SC 1992, c 37 ["***CEAA***"]. See *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 at ¶14.
[20] SC 2012, c 19, s 52 [*"**CEAA, 2012**"*]. See *Peace Valley Landowner Association v. Canada (Attorney General)*, 2015 FC 1027 at ¶59, ¶67.
[21] Bradley Karkkainen, "Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance" (2002) 102:4 Colum L Rev 903 at 904–05, WWFC – Book of Authorities, Tab 8; Martin Olszynski,

for example, Justice Evans observed that "the duty of the Minister to justify her conduct to Parliament is the primary mechanism for holding the Minister accountable for the way that she balances competing interests and claims with respect to the use of [national] park lands."[22]

11. In the context of impact assessment, Justice Tremblay-Lamer in *Pembina Institute for Appropriate Development v Canada (Attorney General)* observed that review panels are "tasked with conducting a science and fact-based assessment" to be followed by "the *political determinations* made by final decision-makers."[23] In *Greenpeace Canada v Canada (Attorney General)*, Justice Russell held that "…Parliament has designed a decision-making process…that is, when it functions properly, *both evidence-based and democratically accountable*."[24]

12. These observations apply *a fortiori* to the *IAA* regime. Under *CEAA* and *CEAA, 2012*, the critical questions for the federal executive were whether a project was or was not likely to result in "significant adverse environmental effects" and if so, whether such effects were "justified in the circumstances."[25] In the latter case, however, there was no clear legal requirement to actually justify its decision and Cabinet often did not do so.[26] In contrast, the critical question under the current *IAA* is whether a project's "adverse effects within federal jurisdiction — and the adverse direct or incidental effects" (as defined by the *IAA*) are "*in the public interest*,"[27] which is a determination still made by the federal executive[28] and still tethered to significance but which now also includes a consideration of several other factors, the consideration of which *must be reflected* in the reasons for the determination.[29]

B. Implications for the Divisions of Powers Analysis

1. The Principle of Federalism and Democratic Accountability

"Environmental Assessment as Planning and Disclosure Tool: *Greenpeace Canada v. Canada (Attorney General)*" (2015) 38(1) Dalhousie L. J. 207 at 222 – 225, WWFC – Book of Authorities, Tab 9.

[22] 2003 FCA 197 at ¶¶73-76. See also *Sandy Pond Alliance to Protect Canadian Waters Inc. v. Canada*, 2013 FC 1112 at ¶88: "The will of the people…can be expressed at the ballot box."

[23] 2008 FC 302 ["***Pembina Institute***"] at ¶¶72-74 [emphasis added].

[24] 2014 FC 463 at ¶237 [emphasis added].

[25] *CEAA*, ss 37(1) and (1.1); *CEAA, 2012*, ss 52(1) – (4).

[26] See *e.g.* Appellant's Certified Record, Vol. XI, Exhibit "C" to the Affidavit of Daniel Cheater, p. 71: "Decision Statement Issued under Section 54 of the *Canadian Environmental Assessment Act, 2012* re: Shell Jackpine Mine Expansion Project."

[27] *IAA*, ss 60(1) (for the Minister) and ss 62 – 63 (for the Governor in Council) [emphasis added].

[28] Hugh J. Benevides, "Chapter 4: The Process of Reform: Real Change?" ["**Benevides**"] in Meinhard Doelle and John Sinclair, eds, *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act,* (Irwin Law: Toronto, 2021) at 82 – 83, WWFC – Book of Authorities, Tab 10.

[29] *IAA*, s. 65(2).

13. As in *Reference re Greenhouse Gas Pollution Pricing Act*,[30] the ABCA majority's analysis appears largely driven by an erroneous endorsement of an unfettered provincial authority — even a right — to develop natural resources.[31] Invoking this Court's decision in *Attorney General of Nova Scotia v Attorney General of Canada*,[32] the majority purports to buttress its analysis by asserting that "the citizens of individual provinces rightly expect – and the Constitution requires" that decisions regarding resource development "will be made by those *directly accountable* to those citizens, and that is the provincial government."[33] The *IAA*, the majority asserts, "would reduce the plainly applicable provisions of s 92A, s 92(5), s 92(10), s 92(13), s 92(16) and s 109 to a subordinate status to federal authority."[34] None of these assertions withstand scrutiny.

14. This Court long-since abandoned the 'watertight compartments' approach to the division of powers.[35] Valid federal legislation can impact provincial legislative authority[36] *and* proprietary rights – "even to the point of rendering [the latter] economically valueless."[37] The environment, of which natural resources are but a subset, is "a constitutionally abstruse matter" which does not fit within the division of powers "without considerable overlap and uncertainty."[38]

15. More fundamentally, and recalling especially the role that democratic accountability is intended to play in impact assessment law, Canadians are members of two, equally legitimate political communities.[39] Federalism is a fundamental guiding principle whose "function…is to enable citizens to participate concurrently in different collectivities and to pursue goals at both a provincial and a federal level."[40] As citizens of any one province, Canadians rightly look to their provincial governments for legislation, policy, and decision-making regarding the development, conservation, and management of their natural resources. Indeed, each province has extensive

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[30] 2020 ABCA 74 at ¶316, ¶328 and ¶330.
[31] Bankes & Leach – 2022, WWFC – Book of Authorities, Tab 4. For a comprehensive treatment of s 92A, see Nigel Bankes & Andrew Leach, "Preparing for a Midlife Crisis: Section 92A at 40" (2022). 60(4) Alta. L. Rev. [*Forthcoming*], WWFC – Book of Authorities, Tab 11.
[32] 1950 CanLII 26 (SCC).
[33] *IAA Reference* at ¶422.
[34] *IAA Reference* at ¶423.
[35] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 ["***References re: GGPPA***"] at ¶50.
[36] *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14 at ¶38 ["***Quebec (Attorney General)***"].
[37] *Reference re Waters and Water-Powers*, 1929 CanLII 72 (SCC) at p. 219 ["***Reference re Waters***"]. For a relatively recent example of this potential, see *British Columbia Hydro & Power Authority v. Canada (Attorney General)* 1998 CarswellNat 1056, [1998] F.C.J. No. 748, WWFC – Book of Authorities, Tab 1.
[38] *Oldman River*, at ¶94.
[39] *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC) ["***Reference re Secession***"] at ¶66.
[40] *Reference re Secession* at ¶66.

regimes dealing with these matters.[41] But as Canadians they are also "entitled to the benefit"[42] of federal legislation intended to safeguard "matters of national importance,"[43] recalling that "[e]ach head of power was assigned to the level of government best placed to exercise the power,"[44] and that, within their legislative spheres, each level is autonomous: "their relationship is one of *coordination* between equal partners, *not subordination*."[45]

16. Finally, the environment's complexity and environmental law's consequent emphasis on democratic accountability raises the issue of competence not only with respect to which level but also which *branch*: legislative, executive, or judicial. In assessing the *vires* of legislation, the courts' role is supposed to be that of an "impartial arbiter."[46] In the specific context of this reference, it is not for the courts "to tell Parliament at what point it is allowed to be concerned about harm to the environment in areas within its constitutional jurisdiction,"[47] or "to second-guess the law reform undertaken by legislators."[48] The "wisdom and value of legislative decisions are subject only to review by the electorate."[49]

2. Characterization: A Planning and Disclosure Tool

17. Canada characterizes the *IAA* as establishing "a federal environmental assessment process to safeguard against adverse environmental effects in relation to matters within federal jurisdiction."[50] The *IAA* itself, however, does not safeguard against anything — it contains no substantive environmental limits but rather depends on democratic accountability to foster more sustainable decision-making. The following characterization best captures the *IAA* regime's "pith and substance": a federal environmental regime that establishes a process for assessing and disclosing the impacts of projects considered to have the greatest potential for adverse effects on federal environmental matters and that authorizes the executive to determine whether such effects are in the public interest.[51]

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[41] See e.g. Nickie Nikolaou, "Mapping the Legal Framework for Oil Sands Development in Alberta" (2022) 60:1 Alberta Law Review 67, WWFC – Book of Authorities, Tab 12; Elaine L. Hughes, Arlene J, Kwasniak and Alistair R. Lucas, *Public Lands and Resources in Canada*, (Toronto: Irwin Law, 2016).
[42] *Ontario (Attorney General) v. G*, 2020 SCC 38 at ¶96.
[43] *Canadian Western Bank v. Alberta*, 2007 SCC 22 ["***Canadian Western Bank***"] at ¶22.
[44] *Canadian Western Bank* at ¶22.
[45] *References re: GGPPA* at ¶464 (Justice Rowe dissenting but not on this point) [emphasis added].
[46] *References re: GGPPA* at ¶50.
[47] *IAA Reference* at ¶709.
[48] *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at ¶52. For an informative account of the law reform process leading to the *IAA*, see Benevides at 76 – 90, WWFC – Book of Authorities, Tab 10.
[49] *Wells v. Newfoundland*, 1999 CanLII 657 (SCC) at ¶59; *Reference re Waters*, p. 212.
[50] Factum of the Attorney General of Canada at ¶47.
[51] This characterization is similar to Justice Greckol's, *IAA Reference* at ¶593.

3. Classification: Federal Environmental Matters, Triggering, and Decision-Making

18. Canada asserts that the *IAA* regime may be classified as being in relation to various heads of power recognized by the courts as conferring on Parliament some jurisdiction over the environment.[52] Relying on the scope of existing federal legislation, the ABCA majority held that the *IAA* was overly broad.[53] It disputed Parliament's authority in relation to transboundary harms, especially greenhouse gas (GHG) emissions,[54] and objected to the breadth of factors informing the federal executive's public interest determination.[55] None of these objections have merit.

a. Federal Environmental Matters

19. Parliament's jurisdiction over fisheries, migratory birds, Indigenous peoples and their lands, and the extra-provincial effects of projects is entirely sufficient to anchor the *IAA* regime.[56] With respect to extra-provincial environmental effects, WWF-Canada agrees that "jurisdiction to consider the extra-provincial environmental effects of a local project must fall to Canada because the province in which the effects are created lacks the jurisdiction to authorize them and the province in which the effects are felt lacks the jurisdiction to protect against them."[57]

20. In addition to provincial inability, this result aligns with the principle of democratic accountability. As Ruth Sullivan explains, when "competing interests are all situate within the same province, no one can object on constitutional grounds if the provincial legislatures decide to sacrifice one for the benefit of the other. This is a political decision…."[58] But when they do not, and a "legislative solution" is desirable, *e.g.* to assess, mitigate, and potentially authorize such effects, "Parliament is the only forum competent to weigh the competing provincial interests and reach a policy decision based on a perception of what will best serve the national welfare,"[59] with a constituency to hold it accountable for any such decisions.

21. Finally, WWF-Canada submits that the matter of national concern established in *International Co-operatives* is best understood as the extra-provincial environmental effects of

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[52] Factum of the Attorney General of Canada at ¶¶130 – 142.
[53] *IAA Reference* at ¶¶386, 390, 394.
[54] *IAA Reference* at ¶¶284, 289, 397.
[55] *IAA Reference* at ¶¶322 – 345.
[56] *IAA Reference* at ¶¶613 – 702 (Greckol J.A. dissenting).
[57] *IAA Reference* at ¶¶634 – 638, citing *Interprovincial Co-operatives Ltd et al v R*, 1975 CanLII 212 (SCC) ["***Interprovincial Cooperatives***"].
[58] Ruth Sullivan, "Interpreting the Territorial Limitations on the Provinces" (1985) 7 *S.C.L.R.* 511 ["***Sullivan***"] at 544, WWFC – Book of Authorities, Tab 13.
[59] Sullivan at 551, citing *Interprovincial Cooperatives* at 512 – 515, WWFC – Book of Authorities, Tab 13.

works and undertakings or, more simply, projects.[60] Such classification is most consistent with the facts and discussion in that case, which concerned the potential liability of two chlor-alkali plants (in Saskatchewan and in Ontario).[61] It is also more consistent with this Court's national concern jurisprudence both before and after *References re: GGPPA*. In *R v. Crown Zellerbach Canada Ltd.*, the matter of national concern was not marine pollution generally but rather marine pollution by ocean dumping.[62] Similarly, in *References re: GGPPA*, the matter was not GHG emissions generally, but rather minimum national standards of GHG pricing.[63]

b. Triggering

22. The *IAA*'s triggering mechanism, *i.e.* the *Physical Activities Regulations* followed by the section 16 screening decision, and temporary prohibitions in section 7 and 8, are entirely consistent with the recognition that "the nature of the environment (its complexity, and the wide range of activities which might cause harm to it) is not conducive to precise codification."[64] Presumptively capturing projects considered to have the greatest potential for impacts on areas of federal jurisdiction[65] and then subjecting them to a screening decision is similar to the regime upheld in *R v Hydro-Quebec*: "it is precisely what one would expect of an environmental statute – a procedure to weed out from the vast number of substances potentially harmful to the environment…those only that pose significant risks… avoid[ing] resort to unnecessarily broad prohibitions and their impact on the exercise of provincial powers."[66] As noted by Justice Greckol, prior to the adoption of the project list approach found in *CEAA, 2012* and the *IAA*, the federal government was assessing *thousands* of projects annually; since the adoption of a project list, that number is closer to *seventy*.[67]

c. Decision-Making in the Federal Public Interest

23. The ABCA majority held that the *IAA* expands the scope of factors considered by the federal government.[68] As noted above, however, under *CEAA* and *CEAA, 2012* there was often no way of knowing what was considered in determining whether significant adverse effects were "justified in

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[60] *IAA Reference* at ¶637.
[61] *Interprovincial Cooperatives* at p 511 – 512 (per Justice Pigeon), and p 505 (per Justice Laskin).
[62] *R. v. Crown Zellerbach Canada Ltd.*, 1988 CanLII 63 (SCC) at ¶37.
[63] *References re: GGPPA* at ¶119.
[64] *Ontario v. Canadian Pacific Ltd.*, 1995 CanLII 112 (SCC) at ¶43.
[65] Regulatory Impact Analysis Statement, 2019: *Canada Gazette*, Part II, Volume 153, Number 17, 5661 at 5663 and 5678, WWFC – Book of Authorities, Tab 14.
[66] *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC) at ¶147.
[67] *IAA Reference* at ¶678.
[68] *IAA Reference* at ¶¶331 – 345.

the circumstances" — except that it included "wider public policy factors."[69] This is consistent with *Oldman River*, where Justice LaForest observed that if the effects on navigation were the Minister of Transport's sole criterion, a project like the Oldman dam would never be approved: "…the Minister must factor several elements into any cost-benefit analysis to determine if a substantial interference with navigation is warranted in the circumstances."[70] The question is whether that broader cost-benefit analysis is constitutionally constrained in some way.

24. The answer lies in *Oldman River* and Justice LaForest's discussion of *Murphyores Incorporated Pty Ltd v Commonwealth of Australia* (1976).[71] In that case, a mining company sought export approval from the Minister of Minerals and Energy, who determined that an inquiry into its operation's environmental impacts would first be required. Justice Stephen rejected the argument that the Minister was restricted to "trading policy" in terms that can be equally applied to the *IAA* regime:

> The administrative decision whether or not [adverse federal effects are in the public interest] will necessarily be made in the light of considerations affecting the mind of the [executive]; but whatever their nature the consequence will necessarily be expressed in terms of [fisheries, migratory birds, Indigenous peoples and their lands, or transboundary effects], consisting of the [positive or negative public interest determination]. It will therefore fall within constitutional power.[72]

The same approach is reflected in *Quebec (Attorney General) v Canada (National Energy Board)*: "if…the Board finds environmental effects within a province relevant to its decision to grant an export licence…, it is entitled to consider those effects. So too may the province have, within its proper contemplation, the environmental effects of the provincially regulated aspects of such a project."[73] As noted by Justice LaForest in *Oldman River*, "[a]bsent a colourable purpose or a lack of *bona fides*, these considerations will not detract from the fundamental nature of the legislation."[74]

25. The doctrine of colourability was recently discussed by this Court in *Quebec (Attorney General) v Canada (Attorney General*), which considered Parliament's authority to order the destruction of long-gun registry data.[75] In arguments that closely mirror Alberta's in this reference, Quebec argued that the legislation "encroaches massively on the ability of a provincial legislature

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[69] *Pembina Institute* at ¶74.
[70] *Oldman River* at ¶51.
[71] 136 C.L.R. 1 (H.C.) ["***Murphyores***"], WWFC – Book of Authorities, Tab 2.
[72] *Murphyores* at ¶8, WWFC – Book of Authorities, Tab 2. See also Shi-Ling Hsu & Robin Elliot, "Regulating Greenhouse Gases in Canada: Constitutional and Policy Dimensions" (2009) 54 McGill L.J. 463 at 498-499, WWFC – Book of Authorities, Tab 15.
[73] *Quebec (Attorney General) v. Canada (National Energy Board)*, 1994 CanLII 113 (SCC), at p 193.
[74] *Oldman River* at ¶100.
[75] *Quebec (Attorney General)*.

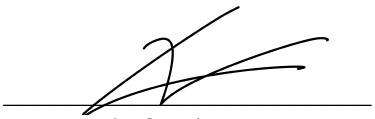
to exercise as it sees fit its powers with respect to the administration of justice, [etc.]" and that "the effect of the destruction of the data will be to make it prohibitively expensive and complicated for the province to create its own long-gun registry."[76] Recognizing the "danger" in a broad application of the colourability doctrine, which "may lead the courts to exceed their role of determining the constitutionality of legislation and, instead, express disapproval of either the policy of the statute or the means by which the legislation seeks to carry it out,"[77] this Court rejected Quebec's arguments. "An intention on the part of one level of government to prevent another from realizing a policy objective it disagrees with does not, on its own, lead to the conclusion that there is an encroachment on the other level of government's sphere of exclusive jurisdiction."[78] If the doctrine of colourability was not applicable in *Quebec (Attorney General),* it is plainly inapplicable here, where Parliament's intention was to align its *own* decision-making authority with its *own* policies and preference.[79]

26. What remains is a polycentric[80] and democratically accountable decision-making process, informed by rigorous science and Indigenous knowledge[81] and constrained first and foremost by the principles of administrative law.[82] In this context, the judiciary's role is not to second guess the wisdom of the *IAA* and *Regulations*, nor the federal executive's substantive determinations as to whether adverse federal effects are in the public interest, but to ensure that the process and duties set out in this regime "are not lost or misdirected in the vast hallways of the federal bureaucracy."[83]

PART IV: REQUEST TO PRESENT ORAL ARGUMENT

27. WWF-Canada requests leave to present oral arguments at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF DECEMBER 2022.



Counsels for the Intervener,
World Wildlife Fund Canada
Martin Z. Olszynski
Avnish Nanda

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[76] *Quebec (Attorney General)* at ¶34
[77] *Quebec (Attorney General)* at ¶31.
[78] *Quebec (Attorney General)* at ¶38.
[79] *IAA Reference* at ¶580.
[80] *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC) at ¶36.
[81] *IAA*, ss 6(1)(j), 6(3), and 22(g).
[82] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
[83] *Calvert Cliffs' Coordinating Committee v United States Atomic Energy Commission*, 449 F (2d) 1109, District of Columbia Circuit, 1971 at 1111, WWFC – Book of Authorities, Tab 3.

PART V: TABLE OF AUTHORITIES

	LEGISLATION	CITED AT
1	*Impact Assessment Act*, S.C. 2019, c. 28, s 1	¶1, ¶12, ¶26
2.	*Physical Activities Regulations*, SOR/2019-285	¶1
3.	*Fisheries Act*, RSC 1985, c F-14	¶8
4.	*Canadian Navigable Waters Act*, RSC 1985, c N-22	¶8
5.	*Species at Risk Act*, SC 2002, c 29	¶8
6.	*Canada National Parks Act*, SC 2000, c 32	¶8
7.	*Water Act*, RSA 2000, c W-3	¶8
8.	*Canadian Environmental Assessment Act*, SC 1992, c 37	¶12
9.	*Canadian Environmental Assessment Act*, SC 2012, c 19, s 52	¶12

	JURISPRUDENCE	CITED AT
10.	*Friends of the Oldman River Society v Canada (Minister of Transport)*, 1992 CanLII 110 (SCC)	¶3, ¶9, ¶14, ¶23, ¶24
11.	*Reference re Impact Assessment Act*, 2022 ABCA 165	¶4, ¶13, ¶¶16-19, ¶¶21-23, ¶25
12.	*MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2	¶9
13.	*Peace Valley Landowner Association v. Canada (Attorney General)*, 2015 FC 1027	¶9
14.	*Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage)*, 2003 FCA 197	¶10
15.	*Sandy Pond Alliance to Protect Canadian Waters Inc. v. Canada*, 2013 FC 1112	¶10
16.	*Pembina Institute for Appropriate Development v. Canada (Attorney General)*, 2008 FC 302	¶11, ¶23
17.	*Greenpeace Canada v Canada (Attorney General)*, 2014 FC 463	¶11
18.	*Reference re Greenhouse Gas Pollution Pricing Act*, 2020 ABCA 74	¶13
19.	*Attorney General of Nova Scotia v Attorney General of Canada*, 1950 CanLII 26 (SCC)	¶13
20.	*References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11	¶¶14-16, ¶21
21.	*Quebec (Attorney General) v Canada (Attorney General)*, 2015 SCC 14	¶14, ¶25
22.	*Reference re Waters and Water-Powers*, 1929 CanLII 72 (SCC)	¶14, ¶16
23.	*British Columbia Hydro & Power Authority v. Canada (Attorney General)*, 1998 CarswellNat 1056, [1998] F.C.J. No. 748	¶14
24.	*Reference re Secession of Quebec*, 1998 CanLII 793 (SCC)	¶15

25.	*Ontario (Attorney General) v. G*, 2020 SCC 38	¶15
26.	*Canadian Western Bank v. Alberta*, 2007 SCC 22	¶15
27.	*British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49	¶16
28.	*Wells v. Newfoundland*, 1999 CanLII 657 (SCC)	¶16
29.	*Interprovincial Co-operatives Ltd et al v R*, 1975 CanLII 212 (SCC)	¶¶19-21
30.	*R. v. Crown Zellerbach Canada Ltd.*, 1988 CanLII 63 (SCC)	¶21
31.	*Ontario v. Canadian Pacific Ltd.*, 1995 CanLII 112 (SCC)	¶22
32.	*R. v. Hydro-Québec*, 1997 CanLII 318 (SCC)	¶22
33.	*Murphyores Incorporated Pty. Ltd. v. Commonwealth of Australia*, 136 C.L.R. 1 (H.C.)	¶24
34.	*Quebec (Attorney General) v. Canada (National Energy Board)*, 1994 CanLII 113 (SCC)	¶24
35.	*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC)	¶26
36.	*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65	¶26
37.	*Calvert Cliffs' Coordinating Committee v United States Atomic Energy Commission*, 449 F (2d) 1109, District of Columbia Circuit, 1971	¶26

	SECONDARY SOURCES	**CITED AT**
38.	Nigel Bankes & Andrew Leach, "The Rhetoric of Property and Immunity in the Majority Opinion in the *Impact Assessment Reference*" ABlawg (June 8, 2022)	¶5, ¶13
39.	A. Dan Tarlock, "Is There a There There in Environmental Law?" (2004) 19 J Land Use & Envtl L 213	¶¶7-8
40.	Bruce Pardy, "In Search of the Holy Grail of Environmental Law: A Rule to Solve the Problem" (2005) 1 MJSDLP 29	¶¶7-8
41.	David R Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003)	¶8
42.	Bradley Karkkainen, "Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance" (2002) 102:4 Colum L Rev 903	¶10
43.	Martin Olszynski, "Environmental Assessment as Planning and Disclosure Tool: Greenpeace Canada v. Canada (Attorney General)" (2015) 38(1) Dalhousie L. J. 207	¶10
44.	Hugh J. Benevides, "Chapter 4: The Process of Reform: Real Change?" n Meinhard Doelle and John Sinclair, eds, *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*, (Irwin Law: Toronto, 2021)	¶12, ¶16

45.	Nigel Bankes & Andrew Leach, "Preparing for a Midlife Crisis: Section 92A at 40" (2022). 60(4) Alta. L. Rev. [*Forthcoming*]	¶13
46.	Nickie Nikolaou, "Mapping the Legal Framework for Oil Sands Development in Alberta" (2022) 60:1 Alberta Law Review 67	¶15
47.	Elaine L. Hughes, Arlene J, Kwasniak and Alistair R. Lucas, *Public Lands and Resources in Canada*, (Toronto: Irwin Law, 2016)	¶15
48.	Ruth Sullivan, "Interpreting the Territorial Limitations on the Provinces" (1985) 7 S.C.L.R. 511	¶20
49.	Regulatory Impact Analysis Statement, 2019: *Canada Gazette*, Part II, Volume 153, Number 17, 5661	¶22
50.	Shi-Ling Hsu & Robin Elliot, "Regulating Greenhouse Gases in Canada: Constitutional and Policy Dimensions" (2009) 54 McGill L.J. 463	¶24