SCC File Number: 40195

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

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 INTERVENERS CANADIAN ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL DEFENCE, MININGWATCH CANADA

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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PART I - OVERVIEW AND STATEMENT OF FACTS

1. This appeal asks whether sections 92, 92A, and 109 of the *Constitution Act, 1867* preclude Parliament from enacting legislation aimed at gathering information and making decisions about the effects of major projects upon matters within federal jurisdiction. This question was answered by this Honourable Court in *Oldman*.[1] The *ratio decidendi* in *Oldman* is dispositive of the constitutional issues that arise in this appeal and confirms that the *Impact Assessment Act* ("*IAA*") and the *Physical Activities Regulations* ("the *Regulations*") are *intra vires* Parliament.

2. The *IAA* and the *Regulations* are constitutionally sound from a division-of-powers perspective. The pith and substance of the *IAA* regime is the establishment of an evidence-based, participatory, and precautionary assessment process that anticipates and prevents adverse effects from certain major projects upon one or more defined areas of federal jurisdiction. Accordingly, the *IAA* regime can be upheld under various functional heads of power or, in the alternative, broader conceptual powers under section 91 of the *Constitution Act, 1867*.

3. The majority opinion of the Alberta Court of Appeal determined that the *IAA* regime is constitutionally invalid due to alleged "federal jurisdictional overreach" into matters of exclusive provincial authority.[2] However, the majority opinion misapplied the two-stage analytical framework – characterization and classification – to the *IAA* regime and failed to consider the key role of the precautionary principle when addressing the constitutional issues in dispute.

4. The Interveners accept the facts in the factum of the Attorney General of Canada ("AGC").[3]

PART II - QUESTION IN ISSUE ON APPEAL

5. Are the *IAA* and the *Regulations intra vires* the legislative authority of Parliament under the *Constitution Act, 1867*?

PART III - STATEMENT OF ARGUMENT

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[1] *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, 84 Alta LR (2d) 129 ("*Oldman*").

[2] Record of the Appellant ("AR") , Vol. I, Tab 1: Reasons for Opinion of the Court of Appeal of Alberta (Reference *re Impact Assessment Act*, 2022 ABCA 165), paras 15, 18, 226, 255, 260, 301, 334, 373, 382, 390, 421.

[3] AGC Factum (dated August 30, 2022), paras 6-44.

6. To determine the constitutionality of a federal environmental assessment ("EA") statute such as the *IAA*, it is necessary to conduct a two-step analysis: (a) characterization of the pith and substance of the legislation; and (b) determination of whether the legislation falls within one or more "Classes of Subjects" assigned to the federal government.[4]

7. It is constitutionally permissible for legislation enacted by one level of government to have "significant practical effects" upon matters otherwise within the jurisdiction of the other level of government, provided that such effects are "incidental" and "collateral or secondary to the mandate of the enacting legislature."[5] As stated in *Oldman*, if a challenged federal law is, in pith and substance, in relation to classes of subjects within Parliament's exclusive jurisdiction, "that would be the end of the matter" and it is "immaterial" that the law may "also affect provincial subjects such as property and civil rights."[6] *Oldman*, *National Energy Board*,[7] *Moses*[8] and *MiningWatch*[9] each demonstrate that there is no constitutional barrier preventing federal review of a natural resource project in its entirety if the project may impact areas of federal responsibility.[10]

(a) Characterization of the *IAA*

8. Proper characterization of the *IAA* requires analysis of the dominant purpose and legal effect of the law.[11] *Oldman* described the pith and substance of the *Environmental Assessment and Review Process Guidelines Order* ("*EARPGO*") as "nothing more than an instrument that regulates the manner in which federal institutions must administer their multifarious duties and functions," and is "essentially an information gathering process in furtherance of a decision-making function within

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[4] *Oldman*, *supra*, at 62.
[5] *Canadian Western Bank v Alberta*, 2007 SCC 22, [2007] 2 SCR 3, paras 24, 28-29, 34-37 ["*Canadian Western Bank*"]; *Oldman*, *supra*, at 75.
[6] *Oldman*, *supra*, at 62.
[7] *Quebec (Attorney General) v Canada (National Energy Board)*, 1994 CanLII 113, [1994] 1 SCR 159, para 66 ("*National Energy Board*").
[8] *Quebec (Attorney General) v Moses*, 2010 SCC 17, [2010] 1 SCR 557, para 36 ["*Moses"*].
[9] *MiningWatch Canada v Canada*, 2010 SCC 2, [2010] 1 SCR 6, paras 40-42 ("*MiningWatch*").
[10] M. Olszynski and M.-A. Bowden, "Old Puzzle, New Pieces: Red Chris and Vanadium and the Future of Federal Environmental Assessment" (2011), 89 Can Bar Rev 445 at 447 ("Olszynski and Bowden"). See also *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153, [2019] 2 FCR 3, paras 393-404; R. Northey, *Guide to Canada's Impact Assessment Act* (Toronto: LexisNexis Canada Inc., 2020), at 18-23 ("Northey").
[11] *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 SCR 783, paras 15-18.

federal jurisdiction, and the recommendations made at the conclusion of the information gathering stage are not binding on the decision maker."[12]

9. However, in enacting the *IAA*, Parliament undertook a new approach by utilizing a different type of assessment trigger (e.g., projects list) than was used in *EARPGO*. In addition, Parliament opted to directly embed decision-making into the assessment regime itself, rather than simply use the assessment process to inform decisions made under other statutes, as occurred under *EARPGO*. Thus, the *IAA* regime is no longer an "adjunct of the federal legislative powers affected."[13] Instead, the pith and substance of the *IAA* is to establish a federal process that, *inter alia*, broadly assesses the impacts of designated projects, prevents significant adverse effects within federal jurisdiction, and ensures transparent and timely decision-making by the Minister or Cabinet.

10. The *IAA* also imposes an overarching duty upon all federal officials to exercise their powers in a manner that "applies the precautionary principle."[14] Though not defined in the *IAA*, this concept is a vital tenet of international law endorsed by this Court,[15] and in *Castonguay*, was described as follows:

> This emerging international law principle recognizes that since there are inherent limits in being able to determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation.[16]

11. The *IAA* applies this principle by entrenching a "look before you leap" approach. The principle is set out in the *IAA* purposes[17] and reflected throughout the *IAA* by applying key assessment considerations[18] to proposed major projects as early as possible in the planning stage. Notably, the designated projects listed in the *Regulations* only prescribe projects that have the greatest potential to impact "one or more" areas of federal interest.[19] This focused regulation-making approach under the *IAA* is analogous to the federal process that was endorsed by this Court

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[12] *Oldman, supra*, at 75.
[13] *Oldman*, *supra*, at 75.
[14] *IAA*, s 6(1)(d).
[15] *114957 Canada v Hudson (Ville)*, 2001 SCC 40, [2001] 2 SCR 241, paras 30-32.
[16] *Castonguay Blasting Ltd. v Ontario*, 2013 SCC 52 (CanLII), [2013] 3 SCR 323, para 20.
[17] *IAA*, s 6(1)(d).
[18] *IAA*, s 22(1).
[19] *Regulatory Impact Analysis Statement* SOR/2019-285 at 5663, 5678.

for identifying, consulting upon, and assessing toxic substances before they become subject to federal regulations under the *Canadian Environmental Protection Act*.[20]

12. The *IAA* generally prohibits proponents from proceeding with designated projects that may cause effects within federal jurisdiction[21] (and prevents federal authorities from issuing permits, performing functions, or providing funds for such projects[22]) until the *IAA*-required information on the project's environmental, socio-economic and health effects is gathered, and the Minister or Cabinet determines whether any adverse effects within federal jurisdiction (including adverse "direct or incidental effects") are in the public interest.[23] If, or how, a project affects matters of federal jurisdiction may not be known until the *IAA* process is underway, underscoring the importance of the precautionary approach to designating projects and assessing potential effects. However, after the early "planning phase" of the *IAA* process, the legal requirement to conduct the impact assessment may be waived by the Impact Assessment Agency of Canada.[24] This screening mechanism helps to "secure" the constitutionality of the *IAA* by focusing the impact assessment process only on designated projects that potentially affect matters of federal jurisdiction.[25]

13. The *IAA* also contains provisions that facilitate coordination and cooperation among federal, provincial and Indigenous levels of government, including: (a) delegation of effects assessment to other jurisdictions; (b) substitution of other jurisdictions' assessment processes for the *IAA* process; and (c) establishment of joint review panels.[26] These mechanisms for achieving cooperative federalism have been present in *CEAA 1992*, *CEAA 2012* and provincial EA laws[27] for many years so as to avoid duplication in assessment processes that apply to the same project.

(b) Classification of the *IAA*

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[20] *R v Hydro-Quebec*, 1997 CanLII 318, [1997] 3 SCR 213, paras 142-145 per La Forest J.
[21] *IAA*, s 7.
[22] *IAA*, s 8.
[23] *IAA*, s 2 and s 64.
[24] *IAA*, s 16.
[25] N. Bankes and M. Olszynski, "Setting the Record Straight on Federal and Provincial Jurisdiction of Resource Projects in the Provinces" (May 24, 2019).
[26] *IAA*, ss 29, 31, 39; *MiningWatch*, *supra*, para 41.
[27] *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 2(h), 57; *Environmental Assessment Act*, RSO 1990, c E.18, s 3.1.

14. In *Oldman*, this Court held that *EARPGO* was constitutionally valid based on certain functional heads of power as well as the Peace, Order and Good Government ("POGG") residual power under section 91 of the *Constitution Act, 1867,* and that any intrusion into provincial matters was merely incidental to the pith and substance of the legislation.[28] As noted by Professor Hogg, "the effect of the *Oldman River* decision is to confer upon the federal Parliament the power to provide for environmental assessment of any project that has any effect on any matter within federal jurisdiction" (emphasis added).[29]

(i) Functional Heads of Federal Power

15. The *IAA* defines "effects within federal jurisdiction"[30] in the same focused manner as did *CEAA 2012*.[31] In several instances, this statutory definition cross-references the relevant federal legislation (e.g., *Fisheries Act*). This approach codifies the legal nexus between the *IAA* process and specific areas of federal jurisdiction, but is considerably narrower than the *EARPGO* upheld in *Oldman,* as this Court confirmed that federal EAs can be triggered as a result of Parliament's legislative authority either over the activity in question (e.g., railways), or over a potential impact of the activity (e.g., navigable waters).[32] Thus, the Interveners submit Canada has taken a cautious approach to defining "effects within federal jurisdiction" and designating only some – not all – projects that may affect areas of federal responsibility.

16. *Oldman* also affirms there are no constitutional limits on the types of information to be gathered in the federal EA process, and the scope of the assessment may be broader than the specific trigger that prompted it in the first place.[33] If the assessment identifies potential adverse effects within federal jurisdiction, this provides a solid basis for federal decision-making under the *IAA*. However, the *IAA* only enables the Minister or Cabinet to impose conditions (e.g. mitigation, monitoring, reporting, etc.) in relation to "adverse effects within federal jurisdiction," or to adverse effects that are directly linked or necessarily incidental to the exercise of a federal duty or function

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[28] *Oldman, supra*, at 72, 73, 75.
[29] Peter Hogg & Wade Wright, *Constitutional Law of Canada, 5th ed* (Toronto: Carswell, 2007) (loose-leaf updated 2022), ch. 30.32.
[30] *IAA*, s 2; Northey, *supra,* at 14, 20-21.
[31] *CEAA 2012*, s 5; M. Doelle, "*CEAA 2012*: The End of Federal EA as We Know It?" (2012), 24 J. of Env. L. and Prac. 1, at 4, 11-13.
[32] *Oldman*, *supra*, at 65-67, 69.
[33] *Oldman*, *supra*, at 66.

that would permit the project to proceed.[34] This provides a further safeguard against unwarranted federal intrusions into matters of provincial legislative competence once the Minister or Cabinet decides under the *IAA* that a project's effects on matters of federal responsibility are in the public interest after duly considering the project's impacts, benefits, risks and uncertainties.

17. The AGC factum[35] identifies several functional heads of power in section 91 under which the *IAA* can be upheld. The Interveners adopt the AGC review of these specific section 91 heads and concur with the AGC submission that section 92A of the *Constitution Act, 1867* does not override Parliament's exclusive jurisdiction over the classes of subjects enumerated in section 91.[36]

18. The majority opinion places undue reliance on the observation of La Forest J. in *Oldman* that *EARPGO* was only triggered when Parliament had an "affirmative regulatory duty" in relation to a proposed project.[37] This vague concept was unique to the self-assessment model entrenched in *EARPGO*, and was later jettisoned by Parliament in favour of new specific triggers for "greater legal certainty" when *CEAA 1992* was enacted.[38] *Oldman's* judicial creation of this *EARPGO* concept did not establish a constitutional limit on Parliament's jurisdiction to pass EA legislation that is triggered by a designated project's potential impacts on areas of federal interest.[39]

(ii) Conceptual Head of Federal Power

19. If this Court concludes that functional heads of federal power cannot support the full extent of the *IAA* as enacted by Parliament, then, in the alternative, the Interveners submit the *IAA* regime can be upheld, in part, under the interprovincial and international trade and commerce branch of the trade and commerce power.[40] The majority opinion found that projects designated by *IAA* regulations included intra-provincial activities otherwise within provincial jurisdiction such as

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[34] *IAA,* s 64.
[35] AGC Factum (dated August 30, 2022), paras 120-125, 130-142.
[36] *Ibid*, paras 143-148.
[37] AR, Vol. I, Tab 1: Reasons for Opinion of the Court of Appeal of Alberta (Reference *re Impact Assessment Act*, 2022 ABCA 165), paras 85, 219, 223, 224.
[38] *Regulatory Impact Analysis Statement* SOR/94-636 at 3388.
[39] *Moses c Canada*, 2008 QCCA 741 (CanLII), [2008] RJQ 944, paras 93-115; affd. *Quebec (Attorney General) v Moses*, 2010 SCC 17, [2010] 1 SCR 557; Olszynski and Bowden, *supra*, at 472-474.
[40] *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (U.K.), s 91(2); Peter Hogg & Wade Wright, *Constitutional Law of Canada, 5th ed* (Toronto: Carswell, 2007) (loose-leaf updated 2022), ch. 20:1, 20:2 and 20:3.

mining, renewable energy, transportation, and oil and gas (e.g. *in situ* oil sands projects),[41] and that "when applied to intra-provincial designated projects, this subject matter does not fall under any heads of power assigned to Parliament but rather intrudes impermissibly into heads of power assigned to provincial Legislatures by the *Constitution Act, 1867*".[42] Furthermore, the majority opinion (paragraph 401) concluded that the subject matter of the *IAA* does not fall within Parliament's trade and commerce power under s. 91(2). However, the majority opinion (paragraph 400) relies on cases like the *Second Securities Reference* as the basis for this conclusion. That line of cases focuses on the branch of the s. 91(2) power respecting general trade and commerce affecting the whole country. It does not address the branch of the trade and commerce power that the Interveners rely upon; namely, interprovincial and international trade and commerce. Accordingly, these interveners submit that the majority conclusion at paragraph 401 is not persuasive and should not be upheld or adopted by this Court. The Interveners submit that designated projects with potential interprovincial or international effects can be validly addressed under this second branch of trade and commerce.

20. **First**, the *IAA's* purpose is to assess and prevent significant environmental effects of such projects, but "effects" are defined to include changes to economic conditions within federal jurisdiction (extra-provincial or international) and those incidental thereto.[43]

21. **Second**, greenhouse gases ("GHG") arise from, or are the products of, coal and oil sands operations. The *Canadian Environmental Protection Act* ("*CEPA*") designates and regulates GHG as toxic substances, including emissions from electricity production and the oil and gas sector.[44]

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[41] AR, Vol. I, Tab 1: Reasons for Opinion of the Court of Appeal of Alberta (Reference *re Impact Assessment Act*, 2022 ABCA 165), paras 110, 204. See also *Physical Activities Regulations*, SOR/2019-285, ss 18-19, 24-25, 30-34, 37-38.
[42] *Ibid*., para 31.
[43] *IAA*, Declaration; s 2 ("effects").
[44] *CEPA, 1999*, SC 1999, c 33, Sch. 1 (List of Toxic Substances, items 74-79 (greenhouse gases); *Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity Regulations*, SOR/2012-167; *Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity*, SOR/2018-261; and *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector*, SOR/2018-66. See also *Order Declaring that the Provisions of the Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector) do not Apply in Alberta*, SOR/2020-233.

GHG emissions have economic as well as environmental effects recognized by the federal *Greenhouse Gas Pollution Pricing Act* ("*GGPPA*") which declares that they constitute an "unprecedented risk" to Canada's "economic prosperity," as well as the environment.[45]

22. **Third**, the effects of such operations include in-province GHG and other emissions that will also be felt beyond the borders of the provinces producing them. There is little incentive for company A to clean up in one province if company B in another province can continue to pollute and thereby obtain an economic advantage over company A. By not responding with effective legislation, or by imposing lower environmental standards, it is possible for provinces to subsidize existing, and attract new, businesses to their jurisdictions, creating competitive, commercial, and trade imbalances across the country. Without the *IAA*, "pollution havens" across the country could well result, with economic, as well as environmental, effects.[46]

23. **Fourth**, oil sands mining in Alberta (or coal mining in other provinces) does not supply exclusively local needs but is intended for export to other provinces and countries.[47] Consequently, export and use of the products of coal or oil sands mining operations will have significant interprovincial and international economic and environmental effects. Federal export laws control toxic substances,[48] and if expanded to cover GHG, could benefit from information derived from, and measures imposed by, the *IAA*, which requires consideration of Canada's climate change commitments.[49] This approach was used in *Murphyores*, cited below.

24. These characteristics of the *IAA* support classification under the trade and commerce power. In *Klassen*,[50] federal legislation regulating interprovincial and export trade in wheat was

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[45] *GGPPA*, being Part 5 of the *Budget Implementation Act, 2018, No. 1*, SC 2018, c 12, Preamble (para 2). See also *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, paras 8-12.
[46] P. Emond, "The Case for a Greater Federal Role in the Environmental Protection Field: An Examination of the Pollution Problem and the Constitution" (1972), 10 Osgoode Hall L.J. 647, at 648-649; and J. Hanebury, "Environmental Impact Assessment in the Canadian Federal System" (1991), 36 McGill L.J. 962, at 984-98; *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, paras 24, 183-187 (carbon leakage).
[47] *Reference re Environmental Management Act (British Columbia)*, 2019 BCCA 181 (CanLII), 434 DLR (4th) 213, paras 32-33, 41; appeal dismissed, 2020 SCC 1.
[48] *CEPA,* ss 100-103 and Sch. 3.
[49] *IAA*, preamble, s 22(1)(i), s 63(e).
[50] *R v Klassen*, 1959 Can LII 418, 20 DLR (2d) 406, at 412-415 (Man CA), leave to appeal denied, [1959] SCR ix.

held as validly applicable to a purely local work (a feed mill processing locally produced wheat sold as feed to local farmers) because regulation of such intra-provincial transactions was incidental to the main purpose of the law, which was to regulate interprovincial and export trade in that commodity. In *Caloil*,[51] a federal prohibition on the transportation or sale of imported oil west of the Ottawa Valley caught many intra-provincial transactions but was upheld as incidental in the administration of an extra-provincial marketing scheme designed to control imports. The existence and extent of provincial regulatory authority over specific trades within the province is not the sole criterion in deciding whether a federal regulation affecting trade is invalid. The observation of Justice Pigeon in *Interprovincial Cooperatives* is also pertinent where he indicated that notwithstanding *Parsons*, "where business contracts affect interprovincial trade, it is no longer a question within provincial jurisdiction. The matter becomes one of federal jurisdiction." Justice Pigeon goes on to say that in his opinion, "the same view ought to be taken in respect of pollution of interprovincial waters as with respect to interprovincial trade".[52] While this Court did not end up relying on this head of power in coming to its decision, the Interveners submit Justice Pigeon's observation is also applicable to interprovincial or international air pollution that is facilitated by interprovincial or international business contracts arising from a designated project under the *IAA*.

25. In upholding the constitutionality of *EARPGO* in *Oldman,* this Court referred with approval to *Murphyores*, an Australian High Court ("AHC") decision.[53] The AHC held that a federal Minister was not restricted to considering matters relevant to "trading policy" within the scope of Australia's trade and commerce power ("ATCP"). In that case, a company extracted mineral sands from which it produced mineral concentrates, the export of which could be regulated/prohibited by the Minister under the ATCP. The AHC held the Minister could, under a federal law related to the environmental impact of proposals, consider the impact of the mineral extraction from the area in which the company had its state mining leases, before allowing any further export of concentrates.

26. In *Hodel,* the US Supreme Court held a federal surface mining and reclamation law did not violate the commerce clause ("CC") of the US Constitution by regulating the use of private lands.

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[51] *Caloil Inc. v Canada (Attorney General)*, 1970 CanLII 194, [1971] SCR 543, at 550-551.
[52] *Interprovincial Co-operatives Ltd. et al v R.*, [1976] 1 SCR 477 at 513-514.
[53] *Oldman, supra,* at 69-70, referring to *Murphyores Inc. Pty. Ltd. v Commonwealth of Australia*, [1976] HCA 20, (1976), 136 CLR 1, para 12 per Mason J (Aust. H.C).

Congressional findings adopted by the Court showed surface coal mining has substantial effects on interstate commerce ("ISC"). Even purely intrastate activity may be federally regulated where the activity, combined with like conduct by others similarly situated, affects commerce among the states or foreign nations. In *Hodel*, coal was found to be a commodity that moves in ISC and the surface mining law ensured that competition in ISC among sellers of coal produced in different states could not be used to undermine the ability of states to improve and maintain adequate standards on coal mining operations within their borders. Prevention of this sort of "destructive" interstate competition is a traditional role justifying Congressional action under the CC. The power conferred by the CC is broad enough to permit congressional regulation of activities causing air or water pollution, or other environmental hazards impacting more than one state.[54]

27. The *IAA* bridges the *ratios* in these cases by merging consideration of economic and environmental effects (including transboundary effects), and the *IAA* can be upheld, at least in part, as valid federal law under the trade and commerce power. In short, intraprovincial activity capable of causing extraprovincial and international environmental and economic effects, may validly be addressed under Canada's trade and commerce power.[55] Moreover, the above-noted comparative analysis highlights the need to avoid "falling into the conceptual trap of thinking of the environment as an extraneous matter in making legislative choices or administrative decisions."[56]

PART IV - COSTS

28. The Interveners request no costs be awarded to or against them in respect of this appeal.

PART V – ORDER SOUGHT

29. The Interveners respectfully request permission to present oral argument at the hearing of the appeal, and otherwise make no statement on the outcome of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of December, 2022.

For: Richard D. Lindgren and Joseph F. Castrilli
Counsel for the Interveners

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[54] *Hodel v Virginia Surface Mining & Reclamation Assoc.*, 452 US 264 (1981), at 277, 281-283.
[55] Emond, *supra*, at 668-672; Hanebury, *supra*, at 1008.
[56] *Oldman, supra*, at 70.

PART VII - TABLE OF AUTHORITIES

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29	M. Doelle, "*CEAA 2012*: The End of Federal EA as We Know It?" (2012), 24 J. of Env. L. and Prac. 1	15
30	M. Olszynski and M.-A. Bowden, "Old Puzzle, New Pieces: Red Chris and the Future of Federal Environmental Assessment" (2011), 89 Can Bar Rev 445	7, 18
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34	R. Northey et al, *Guide to Canada's Impact Assessment Act* (Toronto: LexisNexis Canada Inc., 2020)	7, 15