



WEST COAST
Environmental Law

IAA Under Fire

The Alberta reference case and key issues

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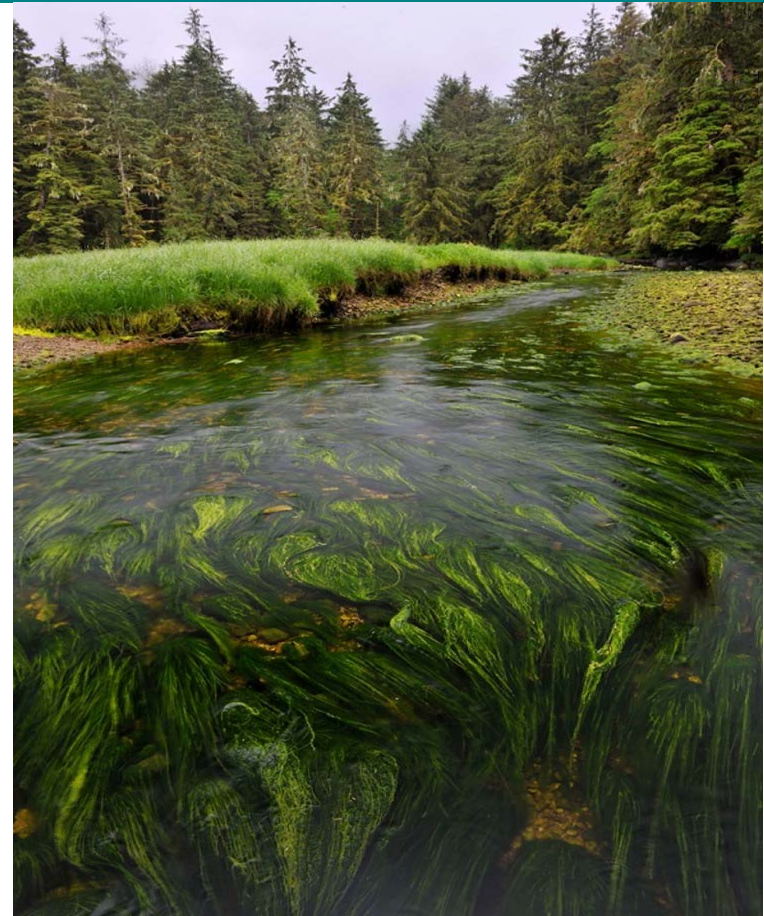
Overview

IAA reference overview

Arguments against

Arguments for

Why a broad scope of factors is appropriate



IAA reference – milestones

September 2019: Alberta refers two constitutional questions to Alberta Court of Appeal:

- Is IAA unconstitutional, in whole or in part?
- Are project list regulations unconstitutional?

Spring/early summer 2020: Parties file written arguments

February 2021: Video hearing of oral arguments

August 2021: Supplemental submissions on relevance of GGPPA decision



IAA reference – parties & intervenors

	For	Against
Parties	Canada	Alberta
Provincial intervenors		Ontario Saskatchewan
First Nations	Athabasca Chippewan First Nation Mikisew Cree First Nation	Woodland Cree First Nation
Indigenous organizations		Indian Resource Council
Business/Industry associations		Canadian Association of Petroleum Producers Canadian Energy Pipeline Association Canadian Taxpayer Federation Explorers and Producers of Canada Independent Contractors and Business Association / Alberta Enterprise Group
ENGOS	Canadian Environmental Law Association / Environmental Defence / MiningWatch Canada Ecojustice Canada Nature Canada	

IAA reference – arguments against

1. IAA is “Trojan horse” enabling the federal government, on the pretext of some narrow grounds of federal jurisdiction, to conduct a far-ranging inquiry into matters that are exclusively within provincial jurisdiction”
2. Decision-making provision amounts to a “veto” over natural resource projects
3. Designated projects have no link to federal head of constitutional power
4. Section 22 factors go beyond federal matters & intrude into provincial jurisdiction
5. Federal IA “duplicates” comprehensive provincial assessment regimes

IAA reference – arguments for

1. IA is about making informed decisions about federal effects and projects
2. Having a broad scope helps inform those decisions
3. Characterizing a valid federal decision as a veto is unhelpful – feds have authority to say no to federal effects
4. Projects can be validly designated before proof of effects is known (that's what IA is for)
5. Duplication does not render a federal law invalid



Nature Canada position: Considering a broad scope of factors is constitutional & appropriate

Public interest determination



Ss 60-62: Minister or GiC must decide whether *federal effects* are in the public interest

S 63: Decision based on IA report & consideration of:

- Sustainability
- Significance of adverse federal effects
- Mitigation measures
- Impacts on Indigenous rights
- Climate & enviro obligations

S 64: Conditions may be issued for federal, direct & incidental effects

Informing the decision



Next Steps



Decision expected fall 2021 or early winter 2022

Likely appeal to Supreme Court of Canada

May be 2+ years before ultimate decision

IAA remains in force



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Thank you!

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More info on the reference case: <https://wcel.org/blog/intervening-uphold-impact-assessment-act>