

**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

*(Title of proceedings continued on next page)*

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**FACTUM OF THE INTERVENER,  
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(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada, S.O.R./2002-156*)

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## PART I – OVERVIEW

1. The constitutional issues raised in this Reference are critically important to the Canadian Constitution Foundation (the “CCF”) and the broad cross-section of Canadian citizens that it represents. The laudable environmental policy aims of the *Impact Assessment Act*<sup>1</sup> (“IAA”) and *Physical Activities Regulations*<sup>2</sup> (“**Regulations**”) must not be achieved at the cost of disrupting the balance of legislative authority under the *Constitution Act, 1867*.<sup>3</sup>

2. The plain text of the *Constitution Act, 1867* grants the provinces *exclusive* jurisdiction over matters falling within s 92. While flexible federalism permits incidental effects, significant incursions into another government’s legislative jurisdiction undermine the exclusivity principle at the heart of Canada’s federal structure. Doing so, in turn, disrupts key functions of federalism, including its ability to accommodate regional interests, foster government accountability and democratic participation, and promote stability and liberty.

3. The CCF advances three arguments in its factum. First, exclusive powers are drained of substantive meaning when the effects of a law cross the dividing line between “merely incidental” and “impermissible regulation”. Regulating projects merely because they have effects outside of provincial boundaries (“**Extraprovincial Effects**”) crosses this dividing line and eviscerates provincial jurisdiction. Second, this Court’s decision in *References re Greenhouse Gas Pollution Pricing Act*,<sup>4</sup> and its emphasis on the *GGPPA*’s “distinctly federal” legislative choice of means, confirm that regulating projects on the basis of Extraprovincial Effects cannot qualify as a matter of national concern. Finally, and in the alternative, if this Court finds the *IAA* valid as a whole, severance related jurisprudence provides a useful framework for assessing invalid parts of the *IAA*.

## PART II – POSITION ON THE QUESTIONS IN ISSUE

4. The questions in this Reference, set out in the Order in Council, are whether (1) the *IAA* is *ultra vires* in whole or in part, and (2) the *Regulations* are *ultra vires* in whole or in part. The CCF submits that this Court should answer both questions in the affirmative.

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<sup>1</sup> [Impact Assessment Act, SC 2019, c 28 s 1 \[IAA\]](#).

<sup>2</sup> [Physical Activities Regulations, SOR/2019-285 \[Regulations\]](#).

<sup>3</sup> [Constitution Act, 1867, 30 & 31 Vict, c 3](#).

<sup>4</sup> [References re Greenhouse Gas Pollution Pricing Act](#), 2021 SCC 11 [*GGPPA Reference*].

### PART III – STATEMENT OF ARGUMENT

#### A. The Incidental Effects Doctrine Must Not Undermine Exclusive Jurisdiction

5. *Limits of the incidental effects doctrine.* Sections 91 and 92 of the *Constitution Act* enumerate “exclusive” heads of power. While courts no longer view heads of power as “watertight compartments”, the written text of the *Constitution Act* demands that ss 91 and 92 have exclusive and substantive content that ought to be protected against encroachments.<sup>5</sup> The preservation of constitutional exclusivity thus requires careful attention to the “dividing line” between merely incidental effects and those that impermissibly regulate another head of power.

6. The incidental effects doctrine permits a legislature to enact laws “incidentally” infringing on another head of power, so long as the “main thrust” of that law is “within the jurisdiction of the enacting body.”<sup>6</sup> Merely incidental effects which are “collateral and secondary” to the mandate of the impugned statute will not disturb its constitutionality.<sup>7</sup> Conversely, courts have cautioned against applying the incidental effects doctrine too liberally, lest the dominant tide of flexible federalism “erode the constitutional balance inherent to the Canadian federal state”.<sup>8</sup> This is why, in some cases, the “scale” or “severity” of incidental effects “may indeed put a law in a different light so as to place it in another constitutional head of power.”<sup>9</sup>

7. In *Reference re Environmental Management Act*,<sup>10</sup> the British Columbia Court of Appeal undertook a comprehensive review of incidental effects jurisprudence. In so doing, the Court provided helpful guidance with respect to when an otherwise valid law “cross[es] the line” between “incidentally affecting” and “impermissibly regulating” another head of power. Effects cease to be incidental when they: (1) amount to a “usurpation” or “significant restriction” of another

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<sup>5</sup> [Reference re Environmental Management Act \(British Columbia\)](#), 2019 BCCA 181 at para 105 [*EMA Reference (BCCA)*].

<sup>6</sup> [Quebec \(Attorney General\) v Lacombe](#), 2010 SCC 38 at para 38.

<sup>7</sup> [Canadian Western Bank v Alberta](#), 2007 SCC 22 at para 28 [*CWB*].

<sup>8</sup> [Reference re Securities Act](#), 2011 SCC 66 at para 62.

<sup>9</sup> *CWB* at para 31. For severity of effects, see [Alberta \(Attorney General\) v Canada \(Attorney General\)](#), [1938] 4 DLR 433 at 440-442; [Texada Mines Ltd v Attorney-General of British Columbia](#), [1960] SCR 713 at 725.

<sup>10</sup> [EMA Reference \(BCCA\)](#).

government's power;<sup>11</sup> (2) subject an undertaking to “the largely discretionary control” of another government;<sup>12</sup> (3) contain a “default” prohibition on an undertaking;<sup>13</sup> (4) invade “directly and massively” into the “management and operation” of an undertaking;<sup>14</sup> or (5) regulate an undertaking “under some primary” constitutional aspect.<sup>15</sup>

8. While the *EMA Reference*, and the cases cited therein, related to provincial intrusions into federal heads of power, the Court affirmed and considered examples of impermissible effects at the pith and substance stage, without resort to the doctrine of interjurisdictional immunity. The CCF submits that there is no principled reason why these cases should not be applied to guide this Court's assessment of the *IAA*'s intrusion into areas of exclusive provincial jurisdiction. Failure to do so would “effectively lead to a situation of concurrent jurisdiction, contrary to the *exclusive* authority contemplated by the *Constitution Act*”.<sup>16</sup> For the purposes of characterizing the *IAA*, therefore, it is crucial to ascertain the scale and severity of its effects.

9. As stated by the Alberta Court of Appeal, the corollary of the incidental effects doctrine is that one level of government is not entitled to *assume* constitutional jurisdiction on the basis of incidental effects related to its own head a power.<sup>17</sup> For example, in *Reference re Exported Natural Gas Tax*,<sup>18</sup> this Court held the *Federal Excise Tax Act* did not relate to exportation simply because it “incidentally taxed exports” or “exhibit[ed] ancillary regulatory characteristics”.<sup>19</sup> This is why, as Alberta has suggested,<sup>20</sup> Canada should not be entitled to assert jurisdiction over a project on

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<sup>11</sup> *EMA Reference (BCCA)* at paras 88-89, citing *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23 at paras 35, 46-47.

<sup>12</sup> *EMA Reference (BCCA)* at para 91, citing *Commission de Transport de la Communauté Urbaine de Québec v Canada (National Battlefields Commission)*, [1990] 2 SCR 838 at 859-860 [*National Battlefields*].

<sup>13</sup> *EMA Reference (BCCA)* at para 97.

<sup>14</sup> *EMA Reference (BCCA)* at paras 98-99.

<sup>15</sup> *EMA Reference (BCCA)* at para 100, citing *Consolidated Fastfrate Inc v Western Canada Council of Teamsters*, 2009 SCC 53 at para 36; *National Battlefields* at 853; *Construction Montcalm Inc v Min Wage Com* (1978), [1979] 1 SCR 754 at 774.

<sup>16</sup> *EMA Reference (BCCA)* at para 3; *Reference re Impact Assessment Act*, 2022 ABCA 165 at para 248 [*IAA Reference*].

<sup>17</sup> *IAA Reference* at paras 243-244.

<sup>18</sup> *Re Exported Natural Gas Tax*, [1982] 1 SCR 1004 [*Exported Natural Gas Tax Reference*].

<sup>19</sup> *Exported Natural Gas Tax Reference* at 1073-1074.

<sup>20</sup> *Factum of the Respondent, the Attorney General of Alberta*, Supreme Court No. 40195 at para 149 [*Alberta Factum*].



the basis of *any* incidental effect touching on a federal head of power.

10. ***The scale of the IAA’s effects place its matter under a different head of power.*** Canada states that the dominant purpose of the *IAA* is to “establish a federal environmental assessment process to safeguard against adverse environmental effects in relation to matters within federal jurisdiction.”<sup>21</sup> The CCF submits that the scale and severity of the *IAA*’s effects indicate that the pith and substance of the *IAA* is broader and is aimed at establishing a federal impact assessment regime for the purpose of designating, prohibiting, reviewing, and if necessary, regulating projects and activities on the basis of their effects.

11. The far-reaching application of the *IAA* is best illustrated by its ability to assert jurisdiction over activities and projects on the basis of their Extraprovincial Effects, including GHG emissions. This power is confirmed by the *IAA*’s: (1) broad references to “sustainability”<sup>22</sup> and commitments in respect of climate change;<sup>23</sup> (2) broad definition of “effects within federal jurisdiction”<sup>24</sup> which expressly includes Extraprovincial Effects (a matter not necessarily within federal jurisdiction)<sup>25</sup> and which feeds into provisions prohibiting projects,<sup>26</sup> deciding whether an assessment is required,<sup>27</sup> and imposing conditions;<sup>28</sup> (3) broad factors considered in an impact assessment, including Extraprovincial Effects;<sup>29</sup> and (4) designation of projects under the *Regulations*, including *in situ* oil sands, on the basis of Extraprovincial Effects.<sup>30</sup>

12. The scale of the legal and practical effects which emanate from the Extraprovincial Effects provisions confirm that the pith and substance of the *IAA* is broader than suggested by Canada and includes the regulation of activities that may cause Extraprovincial Effects, regardless of whether they are within federal jurisdiction. The *IAA*’s definition of “effects within federal jurisdiction” is

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<sup>21</sup> Factum of the Appellant the Attorney General of Canada, Supreme Court No. 40195 at para 47 [Canada Factum].

<sup>22</sup> [IAA](#), ss 6(1)(a), 22(h), 63(a), and Preamble.

<sup>23</sup> [IAA](#), s 22(i).

<sup>24</sup> [IAA](#), s 2.

<sup>25</sup> See generally para 22 of this factum.

<sup>26</sup> [IAA](#), s 7(1).

<sup>27</sup> [IAA](#), ss 16(b), 16(g).

<sup>28</sup> [IAA](#), s 64(2).

<sup>29</sup> [IAA](#), s 22(1).

<sup>30</sup> See [Regulations](#), ss 30-38.

problematic because in form it appears to respect the limits of federal power, but in substance it includes Extraprovincial Effects and other broad matters outside of federal jurisdiction.<sup>31</sup>

13. The ripple effect of the “effects within federal jurisdiction” definition results in the *IAA* prohibiting designated projects,<sup>32</sup> some of which are entirely outside of federal jurisdiction, and subjecting them to a preliminary review, impact assessment, public-interest determination, and potentially, ongoing conditions.<sup>33</sup> Since Extraprovincial Effects, including GHG emissions, “follow from virtually every aspect”<sup>34</sup> of provincial industry and natural resource development, the practical and legal effect of the *IAA* and the *Regulations* is a federal veto power over projects that may not engage a federal head of power. These effects are similar in scale and severity to those identified in the *EMA Reference*, which “cross[ed] the line” between merely incidental and the impermissible regulation of another head of power.<sup>35</sup>

#### **B. The *GGPPA Reference* Confirms Extraprovincial Effects Cannot Be Supported Under POGG**

14. An important issue raised in this Reference is whether the national concern branch of POGG can support the *IAA*’s purported authority to designate, prohibit, review, and regulate projects on the basis of their Extraprovincial Effects. The CCF submits that this Court’s reasoning in the *GGPPA Reference* – and its emphasis on the *GGPPA*’s distinctly federal “legislative choice of means” – offers important insights into the validity of the Extraprovincial Effects provisions.

15. In the *GGPPA Reference*, the Majority emphasized that the pith and substance of an impugned law must be described “as precisely as possible” and without regard to any specific head of power, so as to ensure the exercise does not become “overly oriented towards results”.<sup>36</sup> Adhering to these principles, the Majority characterized the *GGPPA*, with careful reference to its “legislative choice of means”, as “establishing minimum national standards of GHG price stringency to reduce GHG emissions”.<sup>37</sup> The “distinctly federal” nature of the *GGPPA*’s pricing

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<sup>31</sup> Alberta Factum at paras 113-133.

<sup>32</sup> *IAA*, s 7(1). This applies to projects that are designated in the *Regulations* or by ministerial order.

<sup>33</sup> *IAA*, ss 10, 16, 36, 60, 64.

<sup>34</sup> *Reference re Greenhouse Gas Pollution Pricing Act*, 2020 ABCA 74 at para 4.

<sup>35</sup> *EMA Reference (BCCA)* at para 101.

<sup>36</sup> *GGPPA Reference* at para 56.

<sup>37</sup> *IAA Reference* at para 80.

mechanism was essential to the Majority's conclusion that the *GGPPA* fell under the national concern branch of POGG.<sup>38</sup> The CCF submits that the Majority's approach to national concern confirms that the *IAA*'s Extraprovincial Effects provisions cannot be supported under the national concern branch of POGG for the following reasons.

16. *The IAA's legislative choice of means is not specific, identifiable, or qualitatively different.* To fall under the national concern branch, a matter must be specific, identifiable, and qualitatively different from matters of provincial concern.<sup>39</sup> Contrary to Canada's factum,<sup>40</sup> this requirement is not satisfied merely because GHG emissions are extraprovincial in nature. While this is a necessary precondition, the *GGPPA Reference* was clear that the "regulatory mechanism" must also be limited to a "national aspect", aimed at genuine national goals, and not duplicative of provincial laws.<sup>41</sup> Federal laws that "overshoot" the regulation of the "national aspect" of GHG emissions, despite emissions being extraprovincial, will not be upheld under POGG.

17. The pricing mechanism at issue in the *GGPPA Reference* met this standard because it was a distinct form of regulation that did not "descend into detailed regulation" of GHG emissions.<sup>42</sup> Its central thrust was "distinctly national", aimed at addressing risks of provincial inaction that "slip through the cracks",<sup>43</sup> and refrained from duplicating existing provincial laws.<sup>44</sup> Importantly, the *GGPPA* only operated where a province's pricing mechanisms were insufficiently stringent.<sup>45</sup> Accordingly, the *GGPPA* was "tightly focused" on a "distinctly federal" aspect of GHG emissions.

18. There is nothing "distinctly national" about the regulatory mechanism in the *IAA*. Canada readily acknowledges that the Extraprovincial Effects provisions merely serve as a "gateway for the application of the *IAA*",<sup>46</sup> which sets out the true regulatory mechanism at issue: a discretionary review process for designating, prohibiting, and regulating projects that *may* have Extraprovincial Effects. If a designated project *might* cause Extraprovincial Effects, the *IAA* allows the federal

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<sup>38</sup> [GGPPA Reference](#) at para 207.

<sup>39</sup> [GGPPA Reference](#) at para 151.

<sup>40</sup> Canada Factum at paras 136-137.

<sup>41</sup> [GGPPA Reference](#) at paras 148, 150-151, 175.

<sup>42</sup> [GGPPA Reference](#) at para 180.

<sup>43</sup> [GGPPA Reference](#) at para 176.

<sup>44</sup> [GGPPA Reference](#) at para 177.

<sup>45</sup> [GGPPA Reference](#) at para 176.

<sup>46</sup> Canada Factum at para 129.

cabinet to stay that project, subject it to an impact assessment, approve or deny it, and impose conditions on its operation. The *IAA* descends deeply into the regulation of projects. Further, unlike the *GGPPA*, the *IAA* does not set out national standards, nor does it offer any meaningful space for provincial policy flexibility. The *IAA*'s regulatory functions are not “tightly focused” on a “distinct federal” aspect designed to address risks that “fall through the cracks”.

19. ***Provinces are constitutionally capable of enacting similar legislation.*** To be recognized under the national concern doctrine, there must also be clear evidence that the provinces are *constitutionally* incapable of enacting similar legislation.<sup>47</sup> In the *GGPPA Reference*, this Court found that the provinces were constitutionally incapable of enacting a binding “national GHG pricing floor”.<sup>48</sup> As a result, the failure of one province to enact sufficiently stringent GHG pricing would jeopardize the broader federal purpose of reducing GHG emissions.

20. Provincial inability is not present in this case. Provinces are *constitutionally* capable of implementing environmental assessment regimes that prohibit, review, and regulate projects that *may* have Extraprovincial Effects. In fact they already do so.<sup>49</sup> Contrary to Canada’s factum, the relevant question is not whether provinces are capable of addressing the extraprovincial nature of GHG emissions, but whether they are capable of enacting *regulatory mechanisms* aimed at a particular aspect of GHG emissions. The *IAA* does not establish any type of “distinctly federal” regulatory mechanism that is outside the *constitutional* capacity of the provinces.

21. ***The IAA’s scale of impact is not reconcilable with the division of powers.*** The *GGPPA*'s scale of impact was reconcilable with the division of powers because it only targeted the “risk of non-cooperation”, granted the provinces freedom to “design and legislate any GHG pricing system” that complied with the federal backstop, and did not grant the federal cabinet “unfettered discretion to determine whether a provincial GHG pricing system is desirable”.<sup>50</sup>

22. The *IAA*'s Extraprovincial Effects are clearly distinguishable from the pricing mechanism

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<sup>47</sup> [GGPPA Reference](#) at para 152, citing [General Motors of Canada Ltd v City National Leasing](#), [1989] 1 SCR 641 at 662.

<sup>48</sup> [GGPPA Reference](#) at para 80.

<sup>49</sup> See for example Affidavit of Corinne Kristensen, sworn December 12, 2019 at paras 33-34 [Record of the Attorney General of Canada Volume II at 36-37].

<sup>50</sup> [GGPPA Reference](#) at paras 195, 200, 202.

at issue in the *GGPPA*, given that they empower Canada to unilaterally: (1) designate and “stay”;<sup>51</sup> projects that *may* have Extraprovincial Effects;<sup>52</sup> (2) refer those projects to an impact assessment if they *may* have Extraprovincial Effects;<sup>53</sup> and (3) approve, deny, or regulate those projects.<sup>54</sup> Given that “virtually everything we do on this planet produces GHG emissions”,<sup>55</sup> the *IAA*’s Extraprovincial Effects provisions leave “almost no aspect of a province’s economy and the daily lives of citizens” free from potential federal intrusion.<sup>56</sup> Upholding the *IAA*, therefore, would render ss 92(13) and 92(A) illusory, and have a scale of impact on provincial powers that cannot be reconciled with the distribution of powers under the *Constitution Act, 1867*.

### C. The Doctrine of Severance Offers a Useful Framework for Complex Statutes

23. The CCF agrees with the Alberta Court of Appeal that the *IAA* is invalid as a whole. In the alternative, if this Court is inclined to find the *IAA* valid as a whole, the CCF submits that severance related jurisprudence provides a useful framework for assessing potentially invalid *parts* of the *IAA* whose effects are more than merely incidental. This analytical framework may be particularly useful since this Court has been asked to consider the validity of the *IAA* “in whole or in part”.<sup>57</sup>

24. Severance is raised “not infrequently” in federalism cases where an impugned law consists of multiple “parts” intertwined under a single enactment; some valid and others invalid.<sup>58</sup> The pith and substance analysis can become strained in these scenarios, as it may be challenging to formulate a unifying, coherent, and precise expression of a scheme’s “dominant purpose”. This raises questions about *how* to approach pith and substance when distinct parts of a law are pulling the validity analysis in opposite directions. Courts have developed two analytical approaches that may be of assistance in this case.

25. *Approach to severance when a scheme has both valid and invalid parts.* In the *Bill of*

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<sup>51</sup> [Ermineskin Cree Nation v Canada \(Environment and Climate Change\)](#), 2021 FC 758 at para 66.

<sup>52</sup> [IAA](#), ss 2, 7(1)(b)(ii).

<sup>53</sup> [IAA](#), s 16.

<sup>54</sup> See generally [IAA](#), s 64(1).

<sup>55</sup> [IAA Reference](#) at para 293.

<sup>56</sup> [IAA Reference](#) at paras 193, 293.

<sup>57</sup> Order in Council, OC 160/2019 dated September 9, 2019 as Amended by Order in Council, OC 159/2020 dated May 13, 2020 [Record of the Attorney General of Canada Volume I at 210].

<sup>58</sup> [R v Morgentaler](#), [1993] 3 SCR 463; [Alberta \(Attorney General\) v Canada \(Attorney General\)](#), [1947] 4 DLR 1 [*Alberta Banks*].

*Rights Act Reference*,<sup>59</sup> the Court was tasked with assessing the validity of the Alberta *Bill of Rights Act* “in whole or in part”. It examined the pith and substance of each part independently *at the outset*, and concluded that Part I was *intra vires* and Part II was *ultra vires*. This raised the question of “whether when Part II has been struck, what is left should be regarded as surviving” or whether the valid part “is so inextricably bound up” with the invalid part that it “cannot independently survive”.<sup>60</sup> The Court concluded that “because the whole thing hangs together” the remaining valid part could not “independently survive”. The entire scheme fell as a result.

26. ***Approach to severance when a scheme is valid as whole.*** In the *Assisted Human Reproduction Act Reference*,<sup>61</sup> McLachlin CJ (as she then was) articulated a slightly modified framework for instances where the court finds *at the outset* “the statutory scheme, viewed as a whole” is valid.<sup>62</sup> The analysis does not end here: if “some of [the statute’s] provisions [are] invalid, the invalid provisions are severed”,<sup>63</sup> given that an invalid provision will not be “saved by being put into an otherwise valid statute.”<sup>64</sup> Citing the *Bill of Rights Act Reference*, McLachlin CJ affirmed that severance may not be possible if the invalid provisions are “inextricably bound up with [the] good provisions”, in which case the scheme must fall as a whole.<sup>65</sup>

27. The authorities above indicate that, even if this Court finds that the *IAA* as a whole is a valid exercise of federal power, it must nevertheless consider whether certain parts or provisions of the *IAA* are *ultra vires* Parliament. Alternatively, the Court may also begin by assessing the pith and substance of different parts of the *IAA*, as Brown J suggested in the *GGPPA Reference*.<sup>66</sup> In either scenario, the *IAA* may fall in its entirety if invalid provisions are “inextricably bound” with the remaining valid parts. If invalid provisions are not inextricably bound, then those provisions are severed and the broader *IAA* survives.

28. For the reasons outlined in paragraphs 11 and 13 above, the CCF submits that the following

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<sup>59</sup> [Alberta Banks](#).

<sup>60</sup> [Alberta Banks](#) at 518.

<sup>61</sup> [Reference re Assisted Human Reproduction Act, 2010 SCC 61](#) [*Assisted Human Reproduction Act Reference*].

<sup>62</sup> [Assisted Human Reproduction Act Reference](#) at para 18.

<sup>63</sup> [Assisted Human Reproduction Act Reference](#) at para 18.

<sup>64</sup> [Assisted Human Reproduction Act Reference](#) at para 18.

<sup>65</sup> [Assisted Human Reproduction Act Reference](#) at para 18, citing [Alberta Banks](#) at 518.

<sup>66</sup> [GGPPA Reference](#) at paras 336-340.

Extrajurisdictional Effects provisions, at a minimum, are invalid: (1) ss (b)(ii) and (iii) and (d) of the definition of “effects within federal jurisdiction”; (2) ss 7(1)(b)(ii) and (iii) and 7(1)(d) of the *IAA*, which prohibit work on designated projects pending a pre-assessment screening; and (3) ss 32 and 33 of Schedule 2 of the *Regulations*, which designate *in situ* oil sands projects on the basis of their GHG emissions.<sup>67</sup>

29. If this Court determines that the Extrajurisdictional Effects provisions, or other provisions, are invalid, the CCF submits they are “inextricably bound” to both the purpose and operation of the broader *IAA*, such that the remaining valid parts of the scheme must fall. This is a function of the fact that the Extrajurisdictional Effects provisions are essential to defining the scope and operation of the *IAA*, and as a result, their severance would cause significant and unforeseen ripple effects throughout the remainder of the *IAA* and *Regulations*.

#### **PART IV – SUBMISSIONS ON COSTS**

30. The CCF seeks no costs on this Reference and requests that no costs be ordered against it.

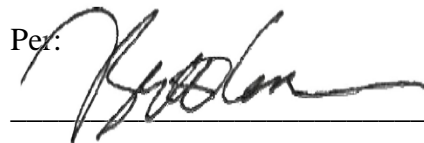
#### **PART V – PERMISSION TO PRESENT ORAL ARGUMENT**

31. The CCF requests leave to make oral submissions at the hearing of this Reference.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of December 2022.

#### **BORDEN LADNER GERVAIS LLP**

Per:



**Brett R. Carlson, Aidan N. Paul**

**Peter Banks**

Counsel for the Intervener,

Canadian Constitution Foundation

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<sup>67</sup> [“Discussion Paper on the Proposed Project List: A Proposed Impact Assessment System” \(May 2019\), online \(pdf\): Government of Canada.](#)

## PART VII – AUTHORITIES

## Caselaw

No.	Authority	Paragraph Reference
1.	<a href="#"><i>Alberta (Attorney General) v Canada (Attorney General)</i>, [1938] 4 DLR 433</a>	6
2.	<a href="#"><i>Alberta (Attorney General) v Canada (Attorney General)</i>, [1947] 4 DLR 1</a>	24, 25, 26
3.	<a href="#"><i>Canadian Western Bank v Alberta</i>, 2007 SCC 22</a>	6
4.	<a href="#"><i>Commission de Transport de la Communauté Urbaine de Québec v Canada (National Battlefields Commission)</i>, [1990] 2 SCR 838</a>	7
5.	<a href="#"><i>Consolidated Fastfrate Inc v Western Canada Council of Teamsters</i>, 2009 SCC 53</a>	7
6.	<a href="#"><i>Construction Montcalm Inc v Min Wage Com</i> (1978), [1979] 1 SCR 754</a>	7
7.	<a href="#"><i>Ermineskin Cree Nation v Canada (Environment and Climate Change)</i>, 2021 FC 758</a>	22
8.	<a href="#"><i>General Motors of Canada Ltd v City National Leasing</i>, [1989] 1 SCR 641</a>	19
9.	<a href="#"><i>Quebec (Attorney General) v Lacombe</i>, 2010 SCC 38</a>	6
10.	<a href="#"><i>R v Morgentaler</i>, [1993] 3 SCR 463</a>	24
11.	<a href="#"><i>Re Exported Natural Gas Tax</i>, [1982] 1 SCR 1004</a>	9
12.	<a href="#"><i>Reference re Assisted Human Reproduction Act</i>, 2010 SCC 61</a>	26
13.	<a href="#"><i>Reference re Environmental Management Act (British Columbia)</i>, 2019 BCCA 181</a>	5, 7, 8, 13
14.	<a href="#"><i>Reference re Greenhouse Gas Pollution Pricing Act</i>, 2020 ABCA 74</a>	13



No.	Authority	Paragraph Reference
15.	<a href="#">Reference re Impact Assessment Act, 2022 ABCA 165</a>	8, 9, 15, 22
16.	<a href="#">Reference re Securities Act, 2011 SCC 66</a>	6
17.	<a href="#">References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11</a>	3, 15, 16, 17, 19, 21, 27
18.	<a href="#">Rogers Communications Inc v Châteauguay (City), 2016 SCC 23</a>	7
19.	<a href="#">Texada Mines Ltd v Attorney-General of British Columbia, [1960] SCR 713</a>	6

### Secondary Sources

No.	Secondary Source	Paragraph Reference
1.	<a href="#">“Discussion Paper on the Proposed Project List: A Proposed Impact Assessment System” (May 2019), online (pdf): Government of Canada</a>	28

### Statutes, Regulations, Rules, etc.

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	<a href="#">Constitution Act, 1867, 30 &amp; 31 Vict, c 3</a>	ss. <a href="#">91</a> , <a href="#">92</a> , <a href="#">92(13)</a> , and <a href="#">92(A)</a>
	<a href="#">Loi constitutionnelle de 1867, 30 &amp; 31 Victoria, c 3</a>	art. <a href="#">91</a> , <a href="#">92</a> , <a href="#">92(13)</a> , et <a href="#">92(A)</a>
2.	<a href="#">Impact Assessment Act, SC 2019, c 28 s 1</a>	ss. <a href="#">2</a> , <a href="#">6(1)(a)</a> , <a href="#">7(1)</a> , <a href="#">7(1)(b)(ii)</a> , <a href="#">9(1)</a> , <a href="#">10</a> , <a href="#">16</a> , <a href="#">16(b)</a> , <a href="#">16(g)</a> , <a href="#">22(h)</a> , <a href="#">22(i)</a> , <a href="#">22(1)</a> , <a href="#">36</a> , <a href="#">60</a> , <a href="#">63(a)</a> , <a href="#">64</a> , <a href="#">64(1)</a> , <a href="#">64(2)</a> , and <a href="#">Preamble</a>

	<a href="#"><i>Loi sur l'Évaluation d'impact, LC 2019, c 28</i></a>	art. <a href="#">2</a> , <a href="#">6(1)(a)</a> , <a href="#">7(1)</a> , <a href="#">7(1)(b)(ii)</a> , <a href="#">9(1)</a> , <a href="#">10</a> , <a href="#">16</a> , <a href="#">16(b)</a> , <a href="#">16(g)</a> , <a href="#">22(h)</a> , <a href="#">22(i)</a> , <a href="#">22(1)</a> , <a href="#">36</a> , <a href="#">60</a> , <a href="#">63(a)</a> , <a href="#">64</a> , <a href="#">64(1)</a> , <a href="#">64(2)</a> , et <a href="#">Préambule</a>
3.	<a href="#"><i>Physical Activities Regulations, SOR/2019-285</i></a>	ss. <a href="#">30-38</a>
	<a href="#"><i>Règlement sur les Activités concrètes, DORS/2019-285</i></a>	art. <a href="#">30-38</a>