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

FACTUM OF THE INTERVENERS
NATURE CANADA and **WEST COAST ENVIRONMENTAL LAW ASSOCIATION**
Rule 42 of the *Rules of the Supreme Court of Canada*

WEST COAST ENVIRONMENTAL LAW
#700 – 509 Richards Street
Vancouver, BC V6B 2Z6
xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish) & sə̓lilwətaʔɬ (Tsleil-Waututh) Territories

Anna Johnston

Tel: 604-601-2508
Fax: 604-684-1312
Email: ajohnston@wcel.org

Counsel for the Interveners Nature Canada and West Coast Environmental Law Association

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 Canada
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
E-mail: 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

Bruce Mellett, Bradley Gilmour and Sean Assie, Adam Williams
Tel: (403) 298-3319
Fax: (403) 265-7219
Email: mellettb@bennettjones.com

and

Justice and Solicitor General of Alberta
11th Floor Oxford Tower 10025 – 102 A Ave
Edmonton, Alberta T5J 2Z2

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
Suite 2600, 160 Elgin Street
Ottawa, Ontario 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 ONTARIO
4th Floor, McMurty-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

Yashoda Ranganathan and Joshua Hunter
Tel: (647) 637-0883
Fax: (416) 326-4015
Email: yashoda.ranganathan@ontario.ca

Counsel for the Attorney General of Ontario

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

Thomson Irvine and Noah Wernikowski
Tel: (306) 787-6307
Email: tom.irvine@gov.sk.ca

Gowling WLG (Canada) LLP
Suite 2600, 160 Elgin Street
Ottawa, Ontario K1P 1C3

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

Counsel for the Attorney General of Saskatchewan

Agent for the Attorney General of Saskatchewan

MINISTÈRE DE LA JUSTICE DU QUÉBEC
Direction du droit constitutionnel et autochtone
1200, route de l'Église, 4e étage
Québec, Quebec G1V 4M1

Frédéric Perreault
Tel: (418) 643-1477 Ext: 20785
Fax: (418) 633-7030
Email: frederic.perreault@justice.gouv.qc.ca

Noël et Associés, s.e.n.c.r.l.
225, montée Paiement, 2e étage
Gatineau, Quebec J8P 6M7

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

Counsel for the Attorney General of Quebec

Agent for the Attorney General of Quebec

ATTORNEY GENERAL OF MANITOBA
Department of Justice
Constitutional Law
1230 - 405 Broadway
Winnipeg, Manitoba R3C 3L6

Charles Murray
Tel: (204) 945-2852
Fax: (203) 945-0054
Email: charles.murray@gov.mb.ca

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario 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

Agent for the Attorney General Manitoba

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

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

Borden Ladner Gervais LLP
World Exchange Plaza 100 Queen Street, suite 1300
Ottawa, Ontario K1P 1J9

Nadia Effendi
Tel: (613) 787-3562
Fax: (613) 230-8842
Email**:** neffendi@blg.com

Counsel for the Attorney General of British Columbia

Agent for the Attorney General of British Columbia

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

Isabel Lavoie-Daigle
Tel: (506) 453-2222
Fax: (506) 453-3275
Email: isabell.lavoiedaigle@gnb.ca

Counsel for the Attorney General of New Brunswick

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario 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

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

Edward A. Gores, Q.C.
Tel: (902) 424-4024
Fax: (902) 424-1730
Email: Edward.gores@novascotia.ca

Counsel for the Attorney General Nova Scotia

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario 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

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 & Labrador

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario 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

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND
Shaw Building, 4th Floor South
95 Rochford Street, P.O. Box 2000
Charlottetown, Prince Edward Island
C1A 7N8

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

Counsel for the Attorney General of Prince Edward Island

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario 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

RAE AND COMPANY
900 - 1000 5th Avenue S.W.
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, Ontario 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, Geneviève Boulay
Tel: (403) 266-1201 Ext: 236
Fax: (403) 266-2701
Email: rlake@mauricelaw.com

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

NANDA & COMPANY
10007 - 80 Avenue NW
Edmonton, AB T6E 1T4

Martin Olszynski, Avnish Nanda
Tel: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

Counsel for the Intervener, World Wildlife Fund Canada

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 Taxpayer Federation

WOODWARD & 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
Telephone: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Interveners, Canadian Taxpayers Federation

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

Marie-France Major
Tel: (613) 695-8855 Ext: 102
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 S.W.
Calgary, AB T2P 1N2

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

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

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 Ext: 700
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
Suite 2600, 160 Elgin Street
Ottawa, Ontario K1P 1C3

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

Agent for the Intervener, Woodland Cree First Nation

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

Mae Price, Aria Laskin, Hasleen Sanghera
Tel: (604) 687-0549
Fax: (607) 687-2696
Email: mprice@jfklaw.ca

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

Marie-France Major
Telephone: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Counsel for the Intervener, Mikisew Cree First Nation

McCARTHY TÉTRAULT, s.e.n.c.r.l., s.r.l.
1000 rue de la Gauchetière Ouest,
Bureau 2500
Montréal, QC H3B 0A2

Dominique Amyot-Bilodeau, Jean Lortie, Mathieu Bernier-Trudeau, Simon Bouthillier
Tel: (514) 397-4100
Fax: (514) 875-6246
Email: damyotbilodeau@mccarthy.ca

Counsel for the Intervener, Hydro-Québec

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 Intervener, 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

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

Agent for Counsel for the Intervener, Mikisew Cree First Nation

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

Albert Brunet
Tel: (613) 565-2292 Ext: 214
Fax: (613) 565-2087
Email: abrunet@plaideurs.ca

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

Shaun Fluker, David V. Wright
Tel: (403) 220-4939
Fax: (403) 282-8325
Email: sfluker@ucalgary.ca

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

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

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

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

McCARTHY TÉTRAULT 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

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

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

Ottawa Agent for 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

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

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 563-9869

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

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

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

Kylan Kidd
Tel: (403) 260-0109
Email: kkidd@bdplaw.com

Counsel for the Intervener, Explorers and Producers Association of Canada

JURISTES POWER
401 West Georgia Street
Suite1660
Vancouver, BC V6B 5A1

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

Counsel for the Intervener, First Nations Major Projects Coalition

CENTRE QUÉBÉCOIS DU DROIT DE L'ENVIRONNEMENT
454, avenue Laurier Est
Montréal, QC H2J 1E7

David Robitaille, Marc Bishai
Tel: (514) 991-9005
Fax: (514) 844-7009
Email: david.robitaille@uottawa.ca

Counsel for the Intervener, Centre québécois du droit de l'environnement

Email: jeff.beedell@gowlingwlg.com

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

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

Jonathan Laxer
Telephone: (613) 907-5652
Fax: (613) 907-5652
Email: jlaxer@powerlaw.ca

Ottawa Agent for Counsel for the Intervener, First Nations Major Projects 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

Ottawa Agent for Counsel for the Intervener, Centre québécois du droit de l'environnement

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

John W. Gailus, Courtenay Jacklin
Telephone: (250) 361-9469
Fax: (250) 361-9429
Email: john@dgwlaw.ca

Counsel for the Intervener, Lummi Nation

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

Marie-France Major
Telephone: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Intervener, Lummi Nation

TABLE OF CONTENTS

PART I: OVERVIEW AND STATEMENT OF FACTS

1. Impact assessment ("IA") has long been a tenet of sound environmental decision making.[1] Similarly, Parliament's constitutional authority to subject undertakings to IA was settled by this Court thirty years ago in the *Oldman* case.[2] However, the regulatory instrument upheld in that case, the *Environmental Assessment and Review Process Guidelines Order* (EARPGO),[3] differs from the *Impact Assessment Act* ("IAA")[4] and *Physical Activities Regulations* ("Regulations")[5] in two ways that are relevant to this appeal: when federal authorities may require projects and activities to undergo IA, and when and on what basis federal authorities may refuse to allow impacts on areas of federal jurisdiction.

2. The Interveners submit that the IAA and Regulations are squarely *intra vires* Parliament's authority to enact. As a majority of this Court found in *Oldman*, IA is simply an information-gathering and sound decision-making tool.[6] As an information-gathering tool, it must of necessity apply early, before it may be known whether an undertaking will impact areas of federal jurisdiction. As a sound decision-making tool, it must allow consideration of all relevant effects, including effects that are incidental to the permitting of a federal effect. Decisions about whether to allow federal effects must not be colourable or lack *bona fides*, but those constraints pertain to the administration of the law, not Parliament's authority to enact it. Finally, the Interveners submit that section 92A of *The Constitution Act, 1867* does not trump federal powers under section 91, and in light of the "superordinate importance" of federal and provincial legislative measures to protect the environment,[7] cooperative federalism must operate to accommodate any overlap.

PART II: OVERVIEW OF THE INTERVENERS' POSITION

3. It is the Interveners' position that the IAA and Regulations are *intra vires* the legislative authority of the Parliament of Canada under *The Constitution Act, 1867*.

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[1] Meinhard Doelle & A. John Sinclair, "The Evolution of Canadian Environmental Assessment Practice and Literature," in *The Next Generation of Impact Assessment: A Critical Review of the Canadian* Impact Assessment Act (Toronto: Irwin Law, 2021) at 11.
[2] *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, 84 Alta LR (2d) 129 ("*Oldman*").
[3] SOR/84-467.
[4] SC 2019, c 28 ("IAA").
[5] SOR/2019-285.
[6] *Oldman*, supra note 2 at 71.
[7] *R v Hydro-Québec,* [1997] 3 SCR 213, 151 DLR (4th) 32 at 85.

PART III: STATEMENT OF ARGUMENT

A. Impact Assessment as Information Gathering to Further Sound Decision Making

4. For decades, IA has been a tenet of sound environmental decision making, a "look before you leap" tool for gathering and evaluating information about the potential consequences of undertakings before they proceed.[8] Fundamentally, IA is about understanding the implications of actions that may affect areas of federal jurisdiction in order to enable a precautionary approach about whether to allow those effects to occur.[9]

5. A majority of this Court recognized that fact in *Oldman*. As Justice La Forest held:

> Environmental impact assessment is, in its simplest form, a planning tool that is now generally regarded as an integral component of sound decision-making. Its fundamental purpose is summarized by R. Cotton and D. P. Emond in "Environmental Impact Assessment", in J. Swaigen, ed., *Environmental Rights in Canada* (1981), 245, at p. 247:
>
> > The basic concepts behind environmental assessment are simply stated: (1) early identification and evaluation of all potential environmental consequences of a proposed undertaking; (2) decision making that both guarantees the adequacy of this process and reconciles, to the greatest extent possible, the proponent's development desires with environmental protection and preservation.
>
> As a planning tool it has both an information-gathering and a decision-making component which provide the decision maker with an objective basis for granting or denying approval for a proposed development… In short, environmental impact assessment is simply descriptive of a process of decision-making."[10]

i) Early application, before information is gathered and effects are fully known

6. As an information-gathering tool for predicting potential effects before they occur,[11] it is only logical that IAs commence before their full impacts are known – including whether undertakings will affect areas of federal jurisdiction. Indeed, requiring federal authorities to have

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[8] Jocelyn Stacey, "The Environmental, Democratic, and Rule-of-Law Implications of Harper's Environmental Assessment Legacy" (2016) 21 *Rev Const Stud* 1 at 169; Doelle & Sinclair, *supra* note 1 at 22.
[9] Doelle & Sinclair, *ibid* at 30; Stacey, *ibid* at 169.
[10] *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, 84 Alta LR (2d) 129 ("Oldman") at 71.
[11] Stacey, *supra* note 8 at 169; Doelle & Sinclair, *supra* note 1 at 20.

proof of federal effects prior to an assessment would be to put the jurisdictional cart before the horse and undermine the objectives of precaution and protection of the environment.[12]

7. Case law supports, and the Interveners assert, that the jurisdictional "threshold" for requiring an undertaking to undergo an IA is reasonable potential for impacts on areas of federal jurisdiction. In *Canadian Wildlife Federation Inc. v Canada*,[13] the Federal Court of Appeal found that effects on areas within federal jurisdiction need not be established when an IA is triggered. In that case, the Court held that the EARPGO applied to the Rafferty and Alameda dams on the Souris River System despite the fact that at the time when an assessment should have been triggered, the responsible minister was not aware of the potential impacts on areas within federal authority.[14]

8. Additionally, while requiring designated projects to enter into the IA process has implications for proponents, the case law suggests that their rights are not affected until the decision-making phase,[15] at which point the Minister or Governor-in-Council (as the case may be) will know whether and to what extent the designated project will affect federal matters. Thus, as Alberta argues,[16] while the potential for federal effects may be a springboard to a federal decision respecting whether federal effects are in the public interest, the springboard and the landing should not be conflated: it is at the decision stage that federal jurisdiction becomes relevant, not before.

9. That reasonable potential for impacts on areas of federal jurisdiction be the jurisdictional threshold for requiring an IA aligns with the precautionary principle, which a majority of this Court has suggested is a principle of customary international law[17] and the Federal Court of Appeal has held is an important tool "for maintaining ecological integrity,"[18] including in its application in federal IA. Initiating IAs early, before proof of federal effects may exist, enhances opportunities

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[12] *IAA*, supra note 4, ss 6(a), (d).
[13] [1989] 3 FC 309, [1989] 4 WWR 526 (TD), aff'd [1990] 2 WWR 69, 99 NR 72 (FCA).
[14] *Ibid* at 325-26.
[15] *Gitxaala Nation v Canada*, 2016 FCA 187 (CanLII), [2016] 4 FCR 418 at para 125; *Alberta Wilderness Association v Canada (Minister of Fisheries and Oceans)*, [1997 CanLII 5861 (FC) at paras 4-5.
[16] Factum of the Attorney General of Alberta at para 163.
[17] *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, 2001 SCC 40 at para 32.
[18] *Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage)*, 2003 FCA 197 (CanLII), [2003] 4 FC 672 at para 24.

to design projects so as to minimize adverse federal effects and enhance the benefits, thereby improving chances that residual federal effects be found to be in the public interest.[19]

ii) Broad information-gathering

10. The jurisprudence also suggests that once an IA is triggered, it is appropriate and constitutional to apply a broad scope.[20] In *Quebec (Attorney General) v Canada (National Energy Board)*,[21] this Court rejected an argument that the scope of the assessment was limited to those project components subject to federal regulation and found that the National Energy Board is authorized to consider the future effects of provincially-regulated energy generation facilities when deciding whether to grant licenses to export electrical power to the United States.[22]

11. The Federal Court of Appeal has held that when assessing the cumulative effects of forestry bridges over navigable waters, the responsible authority should consider effects of related activities and effects "outside federal jurisdiction," and that once an assessment has been triggered, "the federal responsible authority is to exercise its cumulative effects discretion unrestrained by its perception of constitutional jurisdiction."[23] In *MiningWatch Canada v Canada,* the Supreme Court of Canada confirmed that the scope of the project to be assessed federally must include all proposed components and activities.[24] These cases demonstrate that the federal government has the authority to scope assessments broadly to include all related activities and relevant effects.

iii) Sound decision making

12. The section 22 and 63 factors are rational and proper to consider when deciding whether a federal, direct or incidental effect is in the public interest. Indeed, in *Oldman*, the majority held that it would defy reason to bar federal authorities from considering the broad environmental and socio-economic repercussions of projects that impact on areas within federal jurisdiction.[25] For

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[19] Anna Johnston, Federal Jurisdiction and the Impact Assessment Act: Trojan Horse or Rational Ecological Accounting?" in Meinhard Doelle & A. John Sinclair, *supra* note 1 at 106.
[20] In the impact assessment context, "scope" refers both to the scope of project (i.e., components and related activities) that will be assessed, and to the scope of factors that will be considered.
[21] *Quebec (Attorney General) v Canada (National Energy Board)*, 1994 CanLII 113 (SCC), [1994] 1 SCR 159 at 193-94.
[22] *Ibid* at 193-94.
[23] *Friends of the West Country Assn. v Canada (Minister of Fisheries and Oceans)*, [2000] 2 FC 263, [1999] FCJ No 1515 at paras 33-34.
[24] 2010 SCC 2, [2010] 1 SCR 6 at paras 40-41.
[25] *Oldman*, *supra* note 2 at 66.

example, many projects requiring a permit to impede navigation do not improve navigation, meaning decision makers must "weigh the advantages and disadvantages resulting from interference with navigation," such as air pollution or economic benefits.[26] As La Forest J. held:

> In legislating regarding a subject, it is sufficient that the legislative body legislate on that subject. The practical purpose that inspires the legislation and the implications that body must consider in making its decision are another thing. Absent a colourable purpose or a lack of bona fides, these considerations will not detract from the fundamental nature of the legislation.[27]

13. In other words, there is a distinction between legislating on a matter and making decisions under that legislation.[28] As a majority of this Court in *Vavilov* held, the constitutionality of administrative decision makers' actions may be judicially reviewed by applying a correctness standard.[29] The Interveners submit that is correct for decision makers to consider all relevant information when deciding whether federal effects are in the public interest. So long as a statute is *intra vires*, the considerations that may inform decision making under it are not restricted to federal jurisdiction. Relevant considerations extend beyond direct and incidental effects, and may include matters within provincial jurisdiction. As Justice La Forest recognized, a project's socio-economic benefits may justify its adverse impacts, regardless of whether those benefits are "federal" in nature.[30] Accordingly, federal decision-makers must be able to consider all of a designated project's benefits when determining whether federal, direct or incidental effects are justified.

14. It is likewise appropriate for decision-makers to consider all of a project's adverse impacts when determining whether federal, direct or incidental effects are in the public interest. The Minister may decide, for example, that a mine's adverse impacts on fish, when considered together with the mine's air pollution and health effects, are not outweighed by the project's benefits. Similarly, she or he may impose conditions under s. 64(2) that enhance the mine's benefits – for example, to ensure longer-lasting jobs for the local community – in order to find that the impacts

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[26] *Ibid* at 67.
[27] *Ibid* at 69.
[28] *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 SCR 1120 at paras 71, 82, 85.
[29] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at paras 57, 63-64.
[30] *Oldman*, *supra* note 2 at 39, 67; Martin Z. Olszynski, "Chapter 16: Reconsidering Red Chris: Federal Environmental Decision-Making after *MiningWatch Canada v. Canada (Fisheries and Oceans)*" in William A. Tilleman and Alistair Lucas, eds, *Litigating Canada's Environment: Leading Canadian Environmental Law Cases by the Lawyers Involved*, 2017 (Thomson Reuters Canada Ltd: Toronto, ON) at para 19.

on fish are in the public interest. These powers are valid and rational exercises of federal authority under s. 91, and it is immaterial that the decision affects property or civil rights, the management of natural resources, or other matters of provincial authority.[31]

15. Viewed another way, the determination of whether a federal, direct or incidental effect is in the public interest is a form of cost-benefit analysis that cannot be bifurcated along jurisdictional lines, whether it be economic benefits or environmental, social or health impacts. Indeed, in *British Columbia v. Canadian Forest Products Ltd*., a majority of this Court recognized the value of ecosystem services, or "the services provided by the ecosystem to human beings, including food sources, water quality and recreational opportunities."[32] Federal matters like fisheries, navigation and migratory birds are such examples. When projects impact those matters, proponents are in effect seeking permission to use up ecosystem services. The ss. 60(1) and 62 determinations under the *IAA*, then, may appropriately be viewed as deciding whether it is in the public interest to allocate or even forsake the various federal ecosystem services to the project in question. Accordingly, it is not only appropriate, but indeed necessary to consider all a project's impacts, benefits, risks and uncertainties in order to make an informed decision as to whether federal, direct or incidental effects are in the public interest. To find otherwise would be to "artificially split projects under the pretext of some static characterization of the federal power at play" [33] and fall into the "conceptual trap of thinking of the environment as an extraneous matter in making legislative choices or administrative decisions."[34]

16. Further, just as Justice La Forest in *Oldman* found that it is not helpful to characterize projects as "provincial projects" or projects "primarily subject to provincial regulation,"[35] it is unhelpful to characterize a federal decision about effects on matters within its jurisdiction a "veto." Suggesting that it is *ultra vires* Parliament to enact legislation allowing federal authorities to refuse to permit impacts on areas of federal jurisdiction is contrary to established case law,[36] and would

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[31] *Oldman, supra* note 2 at 66; Olszynski, *ibid* at paras 33-35.
[32] *British Columbia v. Canadian Forest Products Ltd*., 2004 SCC 38 (CanLII), [2004] 2 SCR 74 at paras 138, 141.
[33] Marie-Ann Bowden & Martin Z. P. Olszynski, "Old Puzzle, New Pieces: *Red Chris* and *Vanadium* and the Future of Federal Environmental Assessment" (2010) 89 Can Bar Rev 445 at 484.
[34] *Oldman*, *supra* note 2 at 70.
[35] *Ibid* at 68.
[36] E.g., *R v Northwest Falling Contractors Ltd*, 1980 CanLII 210 (SCC), [1980] 2 SCR 292 ["*Northwest Falling*"], in which the Supreme Court of Canada upheld a *Fisheries Act* prohibition against depositing deleterious substances into fish habitat (at 301);

mean either that all statutory provisions requiring a federal authorization in order to impact matters within federal jurisdiction (such as those under the *Fisheries Act*) are *ultra vires*, or that it is somehow constitutional to allow authorities to deny impacts on matters within federal jurisdiction under some legislation, but not, arbitrarily, the IAA. Both of these are untenable positions.

17. The issue is not whether Parliament can legislate a decision-making function respecting matters within its constitutional authority. That authority has been confirmed by such cases as *R v Fowler, Northwest Falling* and *Moses.*[37] Nor, as the majority in *Oldman* found and as described above, is the issue the scope of considerations that a federal assessment body or decision maker may consider when making such a decision. Instead, the issue is whether the decision is colourable or lacks *bona fides*.[38] In other words, the decision-making provisions under the IAA are valid, and the Minister and Governor-in-Council may decide federal effects are not in the public interest in light of all relevant factors, so long as the decision is not colourable and is made in good faith.

18. This principle applies equally to the imposition of conditions on approvals. If it is within federal authority to consider all relevant effects when deciding whether federal effects are in the public interest (which the Interveners submit is true), it flows that it is also within Parliament's authority to impose conditions of approval regarding a designated project's effects, even incidental ones. For example, in *Oldman*, Justice La Forest noted that a study of the hydroelectric dam in question found that the dam could result in "increased dust storms, increased mercury levels in fish and the extinction of flood plain cottonwood forests;"[39] air pollution, the health effects of mercury in fish and extinction of forests are incidental effects that do not directly fall within matters prescribed under section 91. In that scenario, if the Minister concluded that the impacts on fisheries and navigation were not justified in light of the unmitigated incidental effects, but that with mitigation the air pollution could be reduce to a level that would allow the Minister to determine that the fisheries impacts are in the public interest, it is only logical that the Minister be able to impose

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and *Quebec (Attorney General) v Moses*, 2010 SCC 17 (CanLII), [2010] 1 SCR 557 ["*Moses*"], in which the Supreme Court of Canada held that "no doubt that ordinarily a mining project anywhere in Canada that puts at risk fish habitat could not proceed without a permit from the federal Fisheries Minister" (at para 36).

[37] *Fowler v The Queen*, [1980] 2 SCR 213, [1980] 113 DLR (3d) 513; *Northwest Falling, ibid*; *Moses*, *ibid*.
[38] *Oldman, supra* note 2 at 69.
[39] *Oldman, supra* note 2 at 22.

conditions respecting those incidental effects. Doing so would have a lesser incidental effect on the exercise of provincial jurisdiction than refusing to allow the federal effects.

iv) Section 92A does not nullify or erode Parliament's jurisdiction

19. In 1981, when the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada debated the proposed section 92A of *The Constitution Act, 1867,* then-Justice Minister Jean Chretien and Assistant Deputy Minister of Public Law Dr. B. L. Strayer clarified to Committee members that section 92A would not derogate from federal jurisdiction under section 91. Following these opinions and stated concerns respecting the need to retain federal powers under section 91, Committee members passed section 92A on the basis of their understanding that the amendment did not interfere with federal authority.[40]

20. Section 92A gives the provinces *authority* over the exploration, development and management of their natural resources, but it does not confer a *right* to do so at the expense of federal exercise of its powers. Just as "[f]ederal power cannot be used in a manner that effectively eviscerates provincial power,"[41] provincial power cannot be interpreted in such a way as to effectively eviscerate federal powers. In *General Motors of Canada Ltd. v City National Leasing*, the SCC held that "in pursuing valid objectives, the legislation of each level of government will impact occasionally on the sphere of power of the other level of government; overlap of legislation is to be expected and accommodated in a federal state."[42] Secondary or incidental effects do not impact a law's constitutionality if in pith and substance it falls within the legislating jurisdiction's authority.[43] To the degree that project proponents are unable or unwilling to redesign projects such that the Minister or Governor in Council may deem federal effects to be in the public interest, any effect on provincial authority is incidental to the pith and substance of the IAA.[44]

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[40] Record of the Attorney General of the Appellant, the Attorney General of Canada, Volume XI, Tab 19 at pages 164-65.
[41] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 49.
[42] [1989] SCJ No 28, [1989] 1 SCR 641 at para 45.
[43] *Canadian Western Bank,* 2007 SCC 22, [2007] 2 SCR 3 at paras 27-28.
[44] For clarity, in division of powers cases, "incidental" refers to secondary effects or objectives: *Canadian Western Bank, ibid* at paras 27-28. Under the *IAA*, "direct or incidental effects" are effects that are connected to or flow from an exercise of a duty or provision of funding: *IAA*, *supra* note 6, s 2.

v) Cooperative federalism must operate in this case to accommodate overlap

21. Alberta implies that the federalism principle in this case applies to shield undertakings on provincial Crown lands from informed federal decisions about those projects' effects on areas of federal jurisdiction.[45] Should Alberta's version of federalism apply, Parliament's inability to enact laws aimed at making informed and sound decisions respecting impacts on federal matters would become so eroded as to undermine the goals of "reconcil[ing] unity with diversity, promot[ing] democratic participation by reserving meaningful powers to the local or regional level and… foster[ing] co-operation among governments and legislatures for the common good."[46]

22. In recent decades, courts in Canada have increasingly looked to the principle of cooperative federalism to guide their analysis on jurisdictional questions. In *R v Hydro-Québec*, a majority of the Supreme Court of Canada recognized the "superordinate importance" of both federal and provincial legislative measures to protect the environment,[47] and held that care must be taken not only to respect the division of powers, but also to preserve the ability of both orders of government to "exercise leadership" in environmental protection.[48]

23. The "dominant tide" of modern federalism "accommodates overlapping jurisdiction and encourages intergovernmental cooperation,"[49] and courts "should avoid blocking the application of measures which are taken to be enacted in furtherance of the public interest."[50] Given that environmental protection is still one of the "major challenges of our time,"[51] cooperative federalism should be applied in this case to accommodate overlap between both orders' of government ability to make informed decisions respecting environmental effects within their respective jurisdictions, including under the IAA.

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[45] Factum of the Attorney General of Alberta at paras 147-49, 164.
[46] *Canadian Western Bank*, *supra* note 44 at para 22.
[47] *R v Hydro-Québec,* [1997] 3 SCR 213, 151 DLR (4th) 32 at 85.
[48] *Ibid* at para 154.
[49] *Reference re Securities Act (Canada)*, 2011 SCC 66 (CanLII), [2011] 3 SCR 837 at para 57; *Reference re Pan-Canadian Securities Regulation,* 2018 SCC 48 (CanLII), [2018] 3 SCR 189 at para 18.
[50] *Canadian Western Bank, supra* note 17 at para 37.
[51] *Oldman*, *supra* note 2 at 16.

B. The IAA is *Intra Vires* Parliament's Legislative Authority

24. As Justice Greckol's dissent found, the IAA and *Physical Activities Regulations* maintain the basic approach and function of the EARPGO that this Court upheld: an information-gathering and planning tool to inform decision making about adverse effects within federal jurisdiction.[52]

25. Select among the preambular and purpose provisions of the IAA do not determine the dominant purpose of the Act and Regulations alone. Instead, those provisions, the general scheme of the Act and the case law and literature point to the dominant thrust of the IAA as being the establishment of a process for making informed,[53] transparent[54] and cooperative[55] decisions about effects on areas within federal jurisdiction[56] in order to foster sustainability,[57] protect the components of the environment within federal jurisdiction[58] and respect Indigenous rights.[59]

26. The Interveners agree with Canada that the IAA falls under several heads of power under s 91 of the *Constitution Act, 1867*.[60]

PART IV: COSTS

27. The Interveners request that no costs be awarded for or against them.

PART V: REQUEST TO PRESENT ORAL ARGUMENT

28. The Interveners request leave to present oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th DAY OF DECEMBER 2022

Anna Johnston
Counsel for the Interveners
Nature Canada and West Coast Environmental Law Association

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[52] *Reference re* Impact Assessment Act, 2022 ABCA 165 at paras 592-93.
[53] *IAA, supra* note 2, Preamble, ss 6(c), (d), (h), (j), (k), (l), (m), (n).
[54] *Ibid*, Preamble, ss 6(h), 60(2).
[55] *Ibid*, Preamble, ss 6 (e), (f).
[56] *Ibid*, Preamble, ss 6(b), (d), (e), (l), 60(1), 62, 65(2).
[57] *Ibid*, Preamble, s 6 (a).
[58] *Ibid*, Preamble, ss 6(b), (d).
[59] *Ibid*, Preamble, ss 6 (f)-(g).
[60] Factum of the Attorney General of Canada at para 120.

PART VI: TABLE OF AUTHORITIES

	Jurisprudence	**Paragraph Reference**
1.	*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, 2001 SCC 40.	9
2.	*Alberta Wilderness Association v Canada (Minister of Fisheries and Oceans)*, 1997 CanLII 5861 (FC).	8
3.	*British Columbia v. Canadian Forest Products Ltd.*, [2004] 2 SCR 74.	15
4.	*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653.	13
5.	*Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage)*, 2003 FCA 197 (CanLII), [2003] 4 FC 672.	9
6.	*Canadian Western Bank*, 2007 SCC 22, [2007] 2 SCR 3.	Paras 20-21, 23, fn 44
7.	*Canadian Wildlife Federation Inc. v Canada (Minister of the Environment)*, [1989] 3 FC 309, [1989] 4 WWR 526 (TD), aff'd [1990] 2 WWR 69, 99 NR 72 (FCA).	7
8.	*Fowler v The Queen*, [1980] 2 SCR 213, [1980] 113 DLR (3d) 513.	17
9.	*Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, 84 Alta LR (2d) 129.	1-2, 5, 12-18, 23
10.	*Friends of the West Country Assn. v Canada (Minister of Fisheries and Oceans)*, [2000] 2 FC 263, [1999] FCJ No 1515.	11
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13.	*Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 SCR 1120.	13
14.	*MiningWatch Canada v Canada*, 2010 SCC 2, [2010] 1 SCR 6.	11
15.	*Quebec (Attorney General) v Canada (National Energy Board)*, 1994 CanLII 113 (SCC), [1994] 1 SCR 159.	10

16.	*Quebec (Attorney General) v Moses*, 2010 SCC 17 (CanLII), [2010] 1 SCR 557.	Para 17, fn 36
17.	*Reference re* Impact Assessment Act, 2022 ABCA 165.	24
18.	*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 (CanLII), [2018] 3 SCR 189.	23
19.	*Reference re Securities Act (Canada)*, 2011 SCC 66 (CanLII), [2011] 3 SCR 837.	23
20.	*References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.	20
21.	*R v Hydro-Québec*, [1997] 3 SCR 213, 151 DLR (4th) 32.	2, 22
22.	*R v Northwest Falling Contractors Ltd*, 1980 CanLII 210 (SCC), [1980] 2 SCR 292.	Para 17, fn 36

	Legislative Authorities			**Paragraph Reference**
23.	*Environmental Assessment and Review Process Guidelines Order*, SOR/84-467.			1, 7, 24
24.	*Impact Assessment Act*, SC 2019 c 28. a) s 2 b) s 6 c) ss 22(1), (a)(i)-(iii), (1)(h), (s), (t) d) s 60(1) e) s 62 f) s 65(2)	English English English English English English English	Français Français Français Français Français Français Français	Paras 1-3, 6, 12, 15-17, 20, 23-26
25.	*The Constitution Act, 1867*, 30 & 31 Vict, c 3 a) s 91 b) s 92A	English English English	Français Français Français	2-3, 19-20, 26

	Secondary Sources	**Paragraph Reference**
26.	Marie-Ann Bowden & Martin Z. P. Olszynski, "Old Puzzle, New Pieces: *Red Chris* and *Vanadium* and the Future of Federal Environmental Assessment" (2010) 89 Can Bar Rev 445.	15
27.	Meinhard Doelle & A. John Sinclair, "The Evolution of Canadian Environmental Assessment Practice and Literature," in *The Next Generation of Impact Assessment: A Critical Review of the Canadian* Impact Assessment Act (Toronto: Irwin Law, 2021).	1, 4, 6
28.	Anna Johnston, Federal Jurisdiction and the Impact Assessment Act: Trojan Horse or Rational Ecological Accounting?" in Meinhard Doelle and A. John Sinclair, "The Evolution of Canadian Environmental Assessment Practice and Literature," in *The Next Generation of Impact Assessment: A Critical Review of the Canadian* Impact Assessment Act (Toronto: Irwin Law, 2021).	9
29.	Martin Z. Olszynski, "Chapter 16: Reconsidering Red Chris: Federal Environmental Decision-Making after *MiningWatch Canada v. Canada (Fisheries and Oceans)*" in William A. Tilleman and Alistair Lucas, eds, *Litigating Canada's Environment: Leading Canadian Environmental Law Cases by the Lawyers Involved*, 2017 (Thomson Reuters Canada Ltd: Toronto, ON).	13-14
30.	Jocelyn Stacey, "The Environmental, Democratic, and Rule-of-Law Implications of Harper's Environmental Assessment Legacy" (2016) 21 *Rev Const Stud* 1.	4, 6