

## Enserva Briefing Note: Supreme Court Decision on Impact Assessment Act

### Introduction

Earlier today in a 5-2 decision, the Supreme Court of Canada found that the federal government's Impact Assessment Act (IAA) runs contrary to jurisdictional boundaries within the Canadian Constitution. From the introduction of the original legislation (Bill C-69) to today, the IAA has long been controversial, with many believing it to be a thinly veiled attempt to prevent the construction of new pipelines and large-scale energy projects. It is important to note that today's ruling does not automatically strike the IAA down as it was an advisory opinion not a binding one. Nevertheless, legal convention dictates that the federal government will now move to amend the act to ensure it conforms with today's majority ruling.

### Taking a closer look

The Supreme Court looked at the constitutionality of the IAA and was asked to consider whether the Act and one of its regulations went beyond Parliament's legislative authority under the Constitution. Today's ruling states:

*"The Act and the regulations establish a complex information gathering and regulatory scheme in two parts. One part, which is set out in sections 81 to 91 of the Act, establishes an impact assessment process for projects carried out or financed by federal authorities on federal lands or outside Canada. It requires the federal authority, in such cases, to decide if the project is likely to cause significant adverse environmental effects. If so, it must then be determined whether these effects are justified in the circumstances.*

*The other part, which includes the remaining provisions in the Act and the regulations, outlines what projects are considered "designated projects" under the Act and makes them subject to federal review automatically."*

The Court ruled that while the process set forth in sections 81 to 91 of the Act is constitutional, the balance of the scheme is "*ultra vires Parliament and thus unconstitutional.*" Specifically, the Court is stating that the "designated projects" portion exceeds the jurisdiction of the federal government. The Court recommends that all levels of government work collaboratively "to exercise their respective powers over the environment harmoniously, in the spirit of cooperative federalism" to provide the environmental protections the Act purports to seek.

### **Federal government reaction**

In a joint media availability, Steven Guilbeault, federal Minister of Environment and Climate Change reiterated that today's ruling was "not a decision by the Supreme Court, it's an opinion" and that "the Act remains in effect." He also blamed the previous Conservative government for failing to provide the clarity and certainty in Canadian energy projects which he said was the entire point of the Act. Jonathan Wilkinson, Minister of Energy and Natural Resources, stated unequivocally that an amended bill would respect the Court's ruling and that there was no plan to repeal it entirely.

### **Reaction from provinces**

Alberta Premier Danielle Smith welcomed the ruling saying it is a clear win for "provincial jurisdiction" while Ontario Premier Doug Ford said the federal process "needlessly duplicated Ontario's rigorous and world-leading environmental assessment requirements."

### **What's next**

The federal government will now have to amend the Act to respect today's ruling – which it has committed to doing. While there is no immediate timeline for the changes, we'll continue to watch closely and provide further updates as they become available.

### **For further reading**

[Supreme Court of Canada - 40195 \(scc-csc.ca\)](https://www.scc-csc.ca/40195)

[Supreme Court of Canada rules environmental impact law unconstitutional | Globalnews.ca](https://www.globalnews.ca/news/supreme-court-of-canada-rules-environmental-impact-law-unconstitutional/)