

# Supreme Court ruling puts IAA 'in the trash can, where it belongs'

Grant Cameron October 16, 2023

Associations representing the construction industry and petroleum producers lined up in support of a Supreme Court of Canada ruling that deems parts of the controversial federal Impact Assessment Act (IAA), which came into law four years ago, are unconstitutional.

The legislation, referred to as Bill C-69 or the no more pipelines act, has been fodder for debate, especially among Conservative politicians, since it was enacted. The ruling was a setback for the federal government as it will now have to go back to the drawing board and try to improve the legislation.

The Independent Contractors and Businesses Association (ICBA), which represents 4,000 members and companies in Alberta and B.C., called the decision an unequivocal victory for Canada's economy and workers.

"We are thrilled with this decision and what it means for Canadian workers, their families, and everyone who stands to benefit from Canada's responsibly produced natural resources during a global energy crisis," said Mike Martens, president of ICBA Alberta. "The ill-advised and heavy-handed *Impact Assessment Act* damaged Canada's economy, prosperity, and the families that depended on it, driving away investment and creating uncertainty. It has been tossed in the trash can, where it belongs."

The ICBA supported the Province of Alberta as an intervenor in the case during the Supreme Court hearings.

"It was important to add the voice of Alberta's construction and resource workers to the province's case," Martens said. "It would have been irresponsible to simply sit on the sidelines and hope for the best in something as damaging to the economic prosperity of Canada as this act was."

The ICBA maintains the IAA inserted the federal government into environmental assessment processes for major energy projects, even though those powers are assigned to the provinces under the Constitution.

The association noted the IAA replaced the National Energy Board with the bureaucratic Canada Energy Regulator and the Canadian Environmental Assessment Agency with the IAA, and the changes resulted in institutionalized jurisdictional duplication, uncertainty on time limits and expanded discretionary practices, ultimately causing vague and uncertain timelines for projects.

The government's added layers of regulation discouraged investment in major resource and infrastructure projects, to the point that in its own March 2023 federal budget, the government promised \$25 million to "study the problem" and pledged to produce "a concrete plan to improve the efficiency of the impact assessment and permitting processes for major projects" by the end of this year.

According to an analysis from the Canada West Foundation, 25 proponents have submitted projects for review under the new regime since it came into force – and all of the projects remain bogged down in the first two phases of a four-step process, said Martens.

"The speedy review process promised by Ottawa was an illusion. And today, it has been rightly struck down by the courts."

The Progressive Contractors Association of Canada (PCA), whose members are responsible for 40 per cent of energy and natural resource projects, including pipelines, is pleased by the ruling.

"It's a good day for Albertans and all Canadians," said PCA president and CEO Paul de Jong. "Finally, there's recognition that a piece of legislation that has bogged down major projects and driven up costs and uncertainty, is fundamentally wrong."

PCA maintains the IAA creates subjective standards and heightens the risk of political interference.

"At a time when the world needs Canada's resources more than ever, this ruling makes it possible for our resource-based country to do what it does best," said de Jong.

While the association is in full support of environmental protections, it has long complained the IAA is anti-resource development, said a statement by the PCA.

Lisa Baiton, CEO of the Canadian Association of Petroleum Producers (CAPP), applauded the "clear decision" of the courts and said, as an intervenor in the process, the association believes the provinces are best positioned to review and regulate resource development projects.

"We are pleased that this decision affirms the roles of each level of government," she said. "Regulatory certainty and efficiency are key to facilitating natural resources projects that are in the interest of Canada."

In the spirit of the court's call for co-operation, Baiton said CAPP looks forward to collaborating with the federal and provincial governments to ensure projects in the national interest, such as those reinforcing energy security, providing lower emissions energy, and maintaining affordability to Canadians, will proceed in a timely manner.

The Residential and Civil Construction Alliance of Ontario (RCCAO) noted the ruling is a win for building critical infrastructure in Ontario.

“It reaffirms the province’s clear mandate to build and manage critical infrastructure in its own jurisdiction,” said RCCAO executive director Nadia Todorova. “Ontario is a growing province and needs to build new critical infrastructure, including Highway 413, the Bradford Bypass, and transit projects across the province to realize the more prosperous society that renews the promise of Ontario for future generations.

“Removing duplicative regulations and unnecessary impediments provides clarity for labour, industry and investors on the requirements and opportunities to build for our province’s future,” she said.