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<b>Canada Energy Law Service (Alberta)</b> <b>Constance D. Hunt and Alastair R. Lucas</b> <b>May 2024</b>
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This edition features updates to the commentary and case law in Chapter 2 — Energy Resources Conservation Board (ERCB): Background and General Issues and Chapter 6 — Practice and Procedure.

**FORMAT CHANGE** — With this release, the Service has been converted from a looseleaf format into a more user-friendly single soft-bound volume. Future releases will also consist of a new complete volume rather than replacement pages that, in the past, needed to be filed within a binder system. The former binders and looseleaf contents, and future volumes of the soft-bound text that have been updated in a subsequent release may be recycled or repurposed as customers wish. The publication of the text in this new format will allow the work to easily expand as the discussion of the law dictates and should greatly improve readers' experience and the utility of the text.

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## Highlights:

- **APPENDIX A — LEGISLATION AND APPENDIX B — HISTORICAL LEGISLATION** — With the publication of the Service in its new softbound format, the editors and publishers have removed Appendix A. Legislation and Appendix B. Historical Legislation and its collected legislation from the text. This change recognizes the way practitioners most commonly access the most current versions of legislation and is consistent with the publisher’s goal of providing a streamlined resource. Two of the most commonly cited pieces of legislation in the text are the *Responsible Energy Development Act*, S.A. 2012, c R 17.3 and the *Oil and Gas Conservation Act*, R.S.A. 2000, c O-6. The current version of the Responsible Energy Development Act can be found online at the Government of Alberta’s website at: <https://open.alberta.ca/publications/r17p3>. Likewise, the current version of the Oil and Gas Conservation Act can be found online at the Government of Alberta’s website at <https://open.alberta.ca/publications/o06>. Both Acts can also be accessed in Westlaw’s Statutes and Regulations database with full access to citing references and related regulations.
- **CHAPTER 2 — ENERGY RESOURCES CONSERVATION BOARD (ERCB): BACKGROUND AND GENERAL ISSUES — PROVINCIAL JURISDICTION OVER NATURAL RESOURCES** — On October 13, 2023, in *Reference Re Impact Assessment Act*, 2023 CarswellAlta 2576 the Supreme Court of Canada (SCC) released an advisory opinion on the constitutionality of the *Impact Assessment Act* (IAA) and *Physical Activities Regulations*. In this release, the author provides a detailed analysis of the Supreme Court’s decisions on the *Reference*.  
In allowing the Government of Canada’s appeal in part, Chief Justice Wagner, on behalf of the 5-2 majority, described the “designated projects” scheme under the IAA as assessing and regulating designated projects to mitigate or prevent their potential adverse environmental, health, social and economic impacts. The majority held that the portion of the IAA relating to the assessment of those “designated projects” was *ultra vires* Parliament for two main reasons; the defined federal effects did not drive the decision-making functions (where only a few of an open-ended list of factors mandated in the IAA related to adverse federal effects); and the term “effects within federal jurisdiction” was not aligned with federal constitutional jurisdiction because it encroached into provincial heads of power, including property and civil rights matters, local concerns, local works and undertakings, and non-renewable natural resources, forestry, and electrical energy.

However, the SCC unanimously held that the part of the *IAA* dealing with projects conducted or funded by federal authorities on federal lands or outside Canada is a constitutionally valid exercise of federal jurisdiction. The majority concluded that the pith and substance of those provisions of the *IAA* (ss. 81 to 91) was to direct the manner in which federal authorities carry out or finance a project on federal lands or outside Canada to assess the significant adverse environmental effects that the project may have.



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<b>CANADA ENERGY LAW SERVICE (Federal) Hunt and Lucas December 2024</b>
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This edition features updates to the commentary throughout the service.

### WHAT'S NEW IN THIS RELEASE:

This release features updates to the case law and commentary in Chapters 2 (Constitutional Aspects of Energy Regulation in Canada), 3 (The Canadian Energy Regulator), 6 (Statutory Mandate of the CER), 7 (Statutory Interpretation and Jurisdiction over Questions of Constitutional Law), 8 (Policy Considerations), 10 (Oil and Gas), and 13 (Practice and Procedure).

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## HIGHLIGHTS:

**§ 2:2 Jurisdiction over Energy Production** — While the national concern doctrine may be broad, the federal government must still establish that a new matter is one of national concern by complying with the test set out in *References re Greenhouse Gas Pollution Pricing Act*. This three-step test requires that it first be established that the matter is of sufficient concern to the country as a whole. Second, the matter must be qualitatively different from matters of provincial concern and there must be provincial inability to deal with the matter. This is known as the singleness, distinctiveness, and indivisibility test. If the first two steps are satisfied, then the third step is to determine whether the scale of impact of the proposed matter of national concern is reconcilable with the division of powers in the Constitution. If all three steps are met, then the matter is one of national concern. In 2023, the Supreme Court of Canada (SCC) reiterated the importance of this test to establish a matter of national concern in its decision regarding the *Impact Assessment Act* (IAA).

**§ 6:1 General** — Section 80 of the CER Act requires the CER to study and review matters relating to sources of energy and the safety and security of regulated and abandoned facilities. With respect to these matters, the CER may recommend to the Minister any measures within Parliament's jurisdiction that the CER considers to be necessary, in the public interest, or appropriate for cooperation with governmental or other agencies in or outside Canada. If requested by the Minister, the CER must provide any advice, study, or report the Minister requests, including advice relating to the export pricing of oil and gas. CER powers also arise under other Acts. Under Parts I and IV of the *Energy Administration Act*, the CER administers the powers of the federal government with respect to the imposition and collection of a charge on the export of oil and the pricing of natural gas in interprovincial and international trade. The CER may also be designated powers and duties to remove shortages in supplies of any particular kind of petroleum in any area of Canada pursuant to sections 87 and 88 of the *Energy Administration Act*.