

Publisher's Note

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CANADA ENERGY LAW SERVICE (Federal) Hunt and Lucas December 2024

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*.