**MEMBER BULLETIN**

October 20, 2023

**Supreme Court Ruling on the Impact Assessment Act**

On October 13, 2023, the Supreme Court of Canada released its judgment on the constitutional challenges to the federal *Impact Assessment Act* (IAA) raised by the Province of Alberta. The Court concluded that, while the federal government *is permitted*to create a federal impact assessment regime, the current "designated projects" scheme created by the IAA is beyond the legislative authority of the federal government and therefore unconstitutional.

The federal impact assessment is a planning and decision-making tool used to assess the potential positive and negative effects of proposed projects. Impact assessments consider a wide range of factors and propose measures to mitigate projects' adverse effects.

Enacted in 2019, the federal governments Impact Assessment Act created the Impact Assessment Agency, tasking it with evaluating major projects, like the proposed Highway 413 in Ontario, Ring of Fire mining projects, liquified natural gas export terminals, coal mine expansions and other infrastructure and energy projects.

The FIA has been controversial for provincial governments that believe the federal agency was encroaching on areas of provincial jurisdiction.

The Federal Impact Assessment is considered to be a key reason for the delay of Highway 413. Premier Doug says the ruling “the federal impact assessment process needlessly duplicated Ontario’s rigorous and world-leading environmental assessment requirements.”

**Significance**

While the decision does not "strike down" the IAA, it does force the federal government to address the deficiencies identified in the Supreme Court ruling The federal government has indicated that it intends to amend the IAA to align with the majority reasons.

At a minimum, it is reasonable to expect that the screening and final decision-making processes established by the IAA will be refined to ensure they remain focused on federal projects.

The majority confirmed that the federal government can enact an impact assessment scheme provided that the scheme is "consistently focused" on federal matters.

For more information on the decision reach the Case in Brief [here](https://www.scc-csc.ca/case-dossier/cb/2023/40195-eng.aspx)

If you have any questions about the decision, please send an email to: steven.crombie@oswca.org or 416-618-9839