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Top court rules against environmental impact law

Bob Weber The Canadian Press

The Supreme Court of Canada ruled Friday against federal legislation on the environmental effects of major developments, with five out of seven judges finding most of it unconstitutional because it seeks to regulate activities within provincial jurisdiction.

Chief Justice Richard Wagner, writing for the majority, said the law as written could regulate activities that are provincial business, instead of restricting itself to environmental effects that are within Ottawa's power to oversee.

"Even if this court were to accept Canada's submission that the defined 'effects within federal jurisdiction' are within federal jurisdiction, these effects do not drive the scheme's decision-making powers," he wrote in the 204-page opinion released Friday.

Wagner went on to say that the effects considered in the legislation previously known as Bill C-69, which included a range of environmental and social factors as well as climate change, were "overbroad."

"It is difficult to envision a proposed major project in Canada that would not

involve any of the activities that 'may' cause at least one of the enumerated effects," he wrote.

"The scheme invites the federal government to make decisions in respect of projects that it has no jurisdiction to regulate."

Two judges dissented, saying the law was constitutional.

Stewart Elgie, law professor and head of the University of Ottawa's Environment Institute, said the court's opinion doesn't strike down the law, nor will it change much about how environmental assessment is actually done.

"(The court) said this act is too broad in a couple places and has the potential to allow intrusion into provincial jurisdiction - not that it actually has done that."

"(The government) needs to tighten the act up to reflect how the federal government actually does environmental assessment."

Elgie said wording in the act about "public interest" is too broad.

"That would allow the federal government to decide on effects outside its ju-

Canada's top court has called the federal government's environmental assessment legislation "overbroad." Adrian Wyld The Canadian Press

isdiction."

Elgie said the decision doesn't strip Ottawa of its ability to regulate greenhouse gases or a wide variety of other environmental effects from health to habitat - they just have to be linked more closely to federal powers.

"The federal government still has really broad authority to regulate projects through environmental assessment," he said. "It just doesn't have unlimited authority."

Enacted in 2019, the law lists activities that would trigger a federal impact review.

Alberta opposed it, arguing the law gives Ottawa power to stick its nose into provincial matters such as resource development. In 2022, it asked the Alberta Court of Appeal for a legal opinion.

The Appeal Court, in its strongly worded opinion, called the law an "existential threat" to the division of powers in the Constitution and a "wrecking ball" on

the rights of Alberta and Saskatchewan.

Alberta Premier Danielle Smith, whose province challenged the legislation, called it a "massive win" for provincial rights. She said it gives "exclusive provincial jurisdiction" to matters such as building new greenhouse gas-emitting natural gas power plants.

The Canadian Press