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Regulatory Affairs - Focus on Infrastructure

Jeremy Barretto, Mackenzie Hayden

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Regulatory Affairs – a quarterly round-up of recent items of interest along with new and timely updates – is brought to you by our Regulatory Group and is edited by Jeremy Barretto and Mac Hayden.

In this edition: This edition of Regulatory Affairs looks at key developments related to infrastructure including, sustainable financing, interest rates, environmental assessments, and more.

Cassels in the News

Cassels Acts for McLeod Lake Indian Band on Agreement for \$7 Billion Clean Energy Project >

On October 25, 2023, the McLeod Lake Indian Band and the Province of British Columbia signed a memorandum of understanding that lays the foundation for a proposed Tse'khene energy transition hub. The MOU creates the framework for the development of multiple, Indigenous-owned, on-reserve, low-carbon energy projects including a hydrogen production facility and straddle plant capable of skimming high-value liquids such as ethylene from natural gas in four pipelines running across McLeod Lake traditional lands.

Collectively, the projects are worth approximately \$7 billion and could create as many as 2,000 construction jobs and 500 permanent, full-time jobs.

[Gibson Energy, Capstone Infrastructure and Sawridge First Nation Enter into Renewable Energy Power Purchase Agreement >](#)

On September 14, 2023, Gibson Energy Inc. announced its 15-year renewable power purchase agreement with Capstone Infrastructure Corporation and Sawridge First Nation's Buffalo Atlee 2 and 4 wind farms. The Buffalo Atlee projects are being built and operated by Capstone in partnership with the Sawridge First Nation, who have an equity interest in the projects.

These projects are expected to meet over 50% of Gibson's annual electricity needs offsetting approximately 300,000 tonnes of carbon emissions over the term of the agreement. This is a critical step towards

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achieving Gibson's 2025 target to reduce Scope 2 emissions by 50% and 2030 target to completely eliminate its Scope 2 footprint. The agreement will also support Gibson's low-carbon transition goal to become Net Zero by 2050.

[Electra Completes \\$21.5 Million Private Placements >](#)

On August 11, 2023, Electra Battery Materials Corp. completed a brokered private placement of 15,000,000 units at a price of \$1.10 per unit for gross proceeds of \$16.5 million.

[Westbridge Secures US\\$30 Million Financing for Solar Projects >](#)

On May 30, 2023, Westbridge Renewable Energy Corporation completed two separate financings with Leyline Renewable Capital, LLC., in an aggregate amount of approximately US\$30 million.

The loan facilities will be used to continue development of Westbridge's solar and battery energy storage projects in Alberta and Texas.

Rankings Roundup

[Cassels Regulatory Lawyers Recognized Among the Best in the Country by Best Lawyers 2024 >](#)

80+ of Cassels lawyers across 30 practice areas - including members of our Regulatory team Sandra Gogal, Joe Hoher, Thomas Isaac, and Jennifer McKenzie - have been named to the 2024 edition of *Best Lawyers in Canada*.

[Cassels Lawyers Ranked Among Canada's Best by Lexpert's 2023 Directory >](#)

75+ of Cassels lawyers - including members of our Regulatory team Sandra Gogal, Thomas Isaac, Jennifer McKenzie, and Brenda Swick - have been recognized as leaders in their field in the 2023 edition of the *Canadian Legal Lexpert Directory*.

In Case You Missed It

[Supreme Court of Canada Finds Federal Impact Assessment Act Largely Unconstitutional >](#)

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Thomas Isaac | Raivo Uukkivi | Jeremy Barretto | Dana Poscente | Aaron Cressman

Jurisdiction over the environment is shared between the federal and provincial governments under the Canadian constitution. In recent decades, the federal government has attempted to promote environmental protection, while expanding its overview of environmental assessments in a manner it believed was consistent with the constitutional division of powers. On October 13, 2023, the Supreme Court of Canada released its judgment on the *Reference re Impact Assessment Act*. The Decision of the majority confirms that the federal government's new impact assessment regime is largely unconstitutional and goes beyond Parliament's constitutional authority.

It remains to be seen whether amendments to the *Impact Assessment Act* will reduce or eliminate federal review of categories of projects that are subject to provincial assessments and may pave the way for projects such as Ontario's proposed Highway 413, which was designated by the Federal Environment Minister under the Act, to be constructed without a federal review.

On November 2, 2023, experts from our Environmental, Regulatory, and Aboriginal Law Groups provided an overview of the Supreme Court's decision. This webinar builds on our [earlier analysis](#) published shortly after the SCC decision was released.

[Court Orders Province to Pay \\$10.125 Million for Blocking Project Opposed by First Nation >](#)

Arend Hoekstra | David How

On October 10, 2023, a British Columbia court ordered that the BC government pay a developer \$10.125 million as compensation for unlawfully deciding not to issue permits for a hydro-electric project that had been opposed by the Squamish Nation. *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)* appears to be the first case of a proponent successfully establishing the tort of "misfeasance in public office" for a project that was rejected due to Indigenous opposition.

[Recent Changes to First Nations Land Management in Canada >](#)

Mac Hayden | Thomas Isaac | Rayna Middleton

With the passage of the *Fall Economic Statement Implementation Act, 2022*, the Government of Canada repealed and replaced the *First Nations Land Management Act*.

This legal update provides an overview of the land management regime for First Nation lands and the impacts on third parties and their interests and assets located on-reserve.

[Primer on Federal Government Contracting >](#)

Brenda C. Swick

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The rules of doing business with the federal government are different from those in the commercial arena, and suppliers should take the time to understand the process, recourses, and contractual provisions to avoid costly mistakes.

[Sustainability-Linked Loans: Growth of the Sustainable Financing Market and Considerations for Borrowers >](#)

Lauren White | Jennifer Wasylyk

The sustainable financing market has seen considerable growth in recent years as environmental, social, and governance (ESG) concerns continue to be a focus for businesses and financial stakeholders. This growth has been driven, in part, by the use of general-purpose sustainability-linked loans (SLLs).

As sustainable financing continues to become more prominent in the market among growing stakeholder demands, borrowers, particularly those who are already engaged in ambitious ESG initiatives and sustainability targets, may consider an SLL structure for their general corporate credit facilities or other debt financing arrangements.

Construction Update Roundup

Our Cassels lawyers provide strategic insights into the major issues affecting the infrastructure development and the construction industry. Learn more below:

- [Protecting Against Procurement Pitfalls >](#)
- [Managing Project Delays and Delay Claims >](#)
- [The Construction Act: Revisiting the Fundamentals >](#)
- [Avoiding In-Project Disasters: Contractual Notices and Limitation Periods >](#)
- [The Impact of Aboriginal Law on Construction Projects and Planning Applications >](#)
- [The Effects of Insolvency on Construction Industry Participants: What Can Go Wrong and How to Protect Yourself >](#)

Regulatory Affairs: Past Editions

Regulatory Affairs is a quarterly round-up of recent items of interest along with new and timely updates brought to you by our Regulatory Group. Find our previous editions below:

- [Regulatory Affairs – Focus on Mining >](#)
 - [Regulatory Affairs – Focus on Food, Drug & Health Products >](#)
 - [Regulatory Affairs – Focus on Energy >](#)
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Team News

Spotlight on: Dana Poscente >

Dana Poscente (she/her/hers) is an associate in the Business Law Group at Cassels and a member of the Regulatory team. She has experience with Federal Court judicial reviews, federal impact assessments, and regulatory and litigation matters across western Canada. Dana provides practical advice to project proponents, governments, and Indigenous groups on project planning, obtaining necessary approvals, drafting, and negotiating agreements for the implementation of projects, as well as meeting regulatory and environmental requirements arising from project execution. Dana is also a guest lecturer at the University of Alberta Faculty of Law. [Learn more about Dana here.](#)

Cassels Lawyers to be Published in the Alberta Law Review

Cassels lawyers Jeremy Barretto, Liv Desaulniers, Viviana Berkman, and Dana Poscente were joined by Marian Yuzda, from the Canada Energy Regulator and Marianne (Chuck) Davies, from Pembina Pipeline Corporation to present a paper they authored titled “Recent Regulatory and Legislative Developments of Interest to Energy Lawyers” at the Canadian Energy Law Foundation Conference that took place from June 14–17, 2023 in Jasper, Alberta.

The paper will be published in the Alberta Law Review and includes an analysis of recent regulatory decisions and related judicial decisions, changes to regulatory and legislative regimes impacting infrastructure, energy law, natural resources, and mining, as well as regulatory and legislative developments to watch for.

The paper highlights opportunities and challenges facing large infrastructure projects including decarbonization and the ongoing energy transition, cumulative effects, Aboriginal law and Indigenous partnerships, and other developments.

Major infrastructure projects across Canada such as roads, railways, and energy infrastructure increasingly require complex regulatory approvals.

[The Cassels Regulatory Group](#) brings expertise in connection with a variety of regulated industries in Canada. Our Regulatory Group advises and advocates for clients in these industries acting as a trusted advisor to ensure timely project approvals. We're here to help.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.