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Locating the Constitutional Guardrails on Federal Environmental Decision Making after *Reference re: Impact Assessment Act*

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Decision Commented On: *Reference re Impact Assessment Act*, [2023 SCC 23 \(CanLII\)](#)

This post is the seventh ABlawg commentary on the Supreme Court of Canada’s *Reference re: Impact Assessment Act*, [2023 SCC 23 \(CanLII\)](#) (*IAA Reference*) decision from October 2023. In [the most recent of those posts](#), one of us briefly noted the majority’s preoccupation with the concept of “adverseness” when delineating the scope of federal environmental jurisdiction under the *Impact Assessment Act*, [SC 2019, c 28, s 1](#) (*IAA*). The majority’s preoccupation with that concept actually pervades the *IAA Reference* decision. Here, we focus squarely on the majority’s treatment of the concept of “adverseness” and its role in the public interest decision-making stage of federal impact assessment.

In our view and as further set out below, the most constitutionally coherent interpretation of the majority’s approach to decision-making in the public interest draws a line around federal jurisdiction generally. In other words, when determining whether not-trivial *adverse* environmental, social, and economic effects within federal jurisdiction are in the public interest, the federal government should only consider non-trivial environmental, social, and economic *benefits* that similarly fall under federal jurisdiction. We conclude by proposing corresponding amendments to the relevant decision-making provisions of the *IAA*.

Relevant Provisions

For convenience, the most relevant provisions of the *IAA* for the purposes of our discussion are as follows (our emphasis added):

2. Interpretation

effects means, unless the context requires otherwise, changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes.

effects within federal jurisdiction means, with respect to a physical activity or a designated project,

(a) a change to the following components of the environment that are within the legislative authority of Parliament:

(i) *fish* and *fish habitat*, as defined in subsection 2(1) of the [Fisheries Act](#),

- (ii) *aquatic species*, as defined in subsection 2(1) of the [Species at Risk Act](#),
- (iii) *migratory birds*, as defined in subsection 2(1) of the [Migratory Birds Convention Act, 1994](#), an
- (iv) any other component of the environment that is set out in Schedule 3;
- (b) a change to the environment that would occur
 - (i) on federal lands,
 - (ii) in a province other than the one where the physical activity or the designated project is being carried out, or
 - (iii) outside Canada;
- (c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on
 - (i) physical and cultural heritage,
 - (ii) the current use of lands and resources for traditional purposes, or
 - (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
- (d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and
- (e) any change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3.

sustainability means the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations.

...

63 The Minister’s [or] the Governor in Council’s determination [as to whether adverse effects within federal jurisdiction are in the public interest] must be based on the report with respect to the impact assessment and a consideration of the following factors:

- (a) the extent to which the designated project contributes to *sustainability*;
- (b) the *extent to which the adverse effects within federal jurisdiction* and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project *are significant*;
- (c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;
- (d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by [section 35](#) of the [Constitution Act, 1982](#); and
- (e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.

In the analysis that follows, and in relation to the definition of “*effects within federal jurisdiction*” in particular, we accept that the Supreme Court majority has demanded the explicit exclusion of

*trivial, or de minimis, effects (as further discussed [here](#)). Additionally, we accept that for greenhouse gas emissions the majority has demanded that the federal government at least attempt to apply the clarified “national concern” framework (as set out in the *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11 \(CanLII\)](#)) to establish an impact assessment-relevant matter of national concern (*IAA Reference* at para 189). Importantly, however, the majority did not express any concerns with, and indeed endorsed the basic definition of “effects” as including not just environmental effects but also social and economic ones – the important thing is to ensure a parsing between adverse federal and provincial effects (see e.g. para 167, below). The same is true with respect to the definition of “sustainability”, which incorporates environmental, social, and economic considerations (see e.g. para 172: “This is not to say that sustainability must never be considered in impact assessment. To the contrary, sustainability is a general guiding principle under this scheme...”).*

The Majority’s Approach to Federal Decision-Making in the Public Interest

The majority’s analysis of decision-making in the public interest begins at para 166 and concludes at para 178. We have included it here in essentially its entirety in order to facilitate the analysis that follows, italicizing those excerpts that we find particularly relevant.

[166] In my view, [s. 63](#) of the [IAA](#) represents an unconstitutional arrogation of power by Parliament. Even if this Court were to accept Canada’s submission that the defined “effects within federal jurisdiction” are aligned with federal legislative competence... the public interest decision is constitutionally vulnerable. This decision-making process transforms what is *prima facie* a determination of whether adverse federal effects are in the public interest into a determination of whether the project as a whole is in the public interest.

[167] Two features of the mandatory public interest factors warrant attention. *First, these factors are not all confined to federal legislative competence.* For example, [s. 63\(a\)](#) requires a consideration of “sustainability”, a term defined as meaning “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations” (s. 2). This encompasses all environmental, social and economic effects, not only those that the federal government has jurisdiction to regulate.

[168] *Second, some factors are framed in relation to the assessment of the project as a whole rather than to the adverse “effects within federal jurisdiction”.* To use the same example, [s. 63\(a\)](#) requires a consideration of “the extent to which the designated project contributes to sustainability”. Similarly, [s. 63\(e\)](#) requires a consideration of “the extent to which the effects of the designated project” — in other words, not only its federal effects — “hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change”.

[169] The central problem with the public interest decision is not the [s. 63](#) factors themselves but rather the manner in which these factors drive decision making. The public interest decision must reflect a focus on the project’s federal effects. As I will

explain, however, s. 63 permits the decision maker to blend their assessment of adverse federal effects with other adverse effects that are not federal, such as the project's anticipated greenhouse gas emissions (under s. 63(e)). Put another way, the adverse non-federal effects can amplify the perceived severity of the adverse federal effects and, effectively, become the underlying basis for the conclusion that the latter are not in the public interest. The mandatory cumulation of adverse non-federal effects shifts the focus of the decision from the adverse effects within federal jurisdiction to the overall adverse effects of the project.

[170] Two hypothetical scenarios illustrate this point. Consider a proposed mining project that, following an impact assessment, is understood to pose a potential risk to fish habitat and aquatic species. The mining aspect of the project is provincial, but the fisheries aspect is federal (*Moses*). Accordingly, the scheme requires the federal executive to decide whether the project's cumulative adverse impact on fish habitat and aquatic species is in the public interest.

[171] In the first hypothetical scenario, the decision maker considers the mandatory public interest factors listed in s. 63 and determines, under s. 63(a), that the overall effects of the designated project would contribute to sustainability. "[I]n light of" this contribution, the decision maker would conclude, under s. 60(1)(a) or 61(1), that the cumulative impact on the fisheries is in the public interest, and would impose conditions to mitigate the adverse impact. *The thrust of the decision and the force of federal regulation would clearly be aimed at protecting the fisheries through mitigation measures, follow-up programs, and any other conditions that the Minister considers appropriate under s. 64(1) and (4).*

[172] In the second scenario, the decision maker determines, under s. 63(a), that the overall effects of the designated project would hinder sustainability. "[I]n light of" this adverse impact, the decision maker would conclude, under s. 60(1)(a) or 61(1), that the cumulative impact on the fisheries would not be in the public interest. *The thrust of the decision and the force of federal regulation would no longer be driven by the fisheries aspect of the mine; rather, the fisheries aspect would have been subsumed into consideration of the project's overall sustainability, an abstract concept that, much like the "environment", is "constitutionally abstruse". This is not to say that sustainability must never be considered in impact assessment. To the contrary, sustainability is a general guiding principle under this scheme that infuses the impact assessment process with a longer-term view for the benefit of both "present and future generations" (s. 2 "sustainability"). The concern in this second hypothetical scenario is that the presence of potential harm to the fisheries serves as the gateway to making a decision about the public interest in the project as a whole. Thus, rather than focusing on the fisheries, the Minister's decision is predominantly focused on the regulation of the project qua project on the basis of its overall sustainability.*

[173] This concern is less salient when the s. 63 factors are used to assess an activity that itself falls under federal jurisdiction... The federal decision maker could make an integrated decision that considers both adverse federal and non-federal effects, because

the decision would ultimately be about an interprovincial railway under [ss. 92\(10\)\(a\)](#) and [91\(29\)](#) of the [Constitution Act, 1867](#). This is the context in which Justice La Forest asserted that it “defies reason” for Parliament to be constitutionally barred from weighing broad environmental repercussions (p. 66). However, as I have explained, *the IAA makes no distinction between the assessment of activities that fall under federal jurisdiction and the assessment of impacts of activities that are primarily regulated by the provinces.*

[174] The hypothetical scenarios set out above demonstrate how the dominant thrust of the public interest decision-making process veers away from federal heads of power *because there are so few constraints on how the s. 63 factors may be used. It is self-evident that adverse federal effects, considered in isolation, would rarely (if ever) be in the public interest (see Oldman River, at p. 39). My colleagues, in dissent, agree that “[t]o be in the public interest, adverse federal effects need to be outweighed by other positive benefits of the project” (para. 333 (emphasis in original)). In other words, adverse federal effects “must be outweighed on the other side of the ledger by public interest factors in s. 63” (para. 293 (emphasis added)). But s. 63 expressly permits non-federal concerns to stack up on the “adverse” side of the ledger — regardless of whether the activity itself falls under federal jurisdiction — and thereby alter the fundamental character of the public interest decision. This shifts the dominant thrust of the decision away from the acceptability of adverse federal effects and directs it, instead, at the wisdom of proceeding with the project as a whole.*

[175] I note that, under the CEAA 2012, the central question for the decision maker was not whether the adverse federal effects were in the public interest but rather whether they were “justified in the circumstances” (s. 52(2) and (4)). *This language made it clear that the circumstances could be used to justify the adverse federal effects and thus render a positive decision; they could not be used to magnify the adverse federal effects and thus render a negative decision. This assurance is absent from the impugned statute’s decision-making provisions.*

[176] In *Oldman River*, at p. 69, Justice La Forest explained that “[t]he practical purpose that inspires the legislation and the implications [the legislative body] must consider in making its decision . . . will not detract from the fundamental nature of the legislation”. But Justice La Forest was also mindful of the concern that a federal assessment scheme might function as a “constitutional Trojan horse enabling the federal government, on the pretext of some narrow ground of federal jurisdiction, to conduct a far-ranging inquiry into matters that are exclusively within provincial jurisdiction” (pp. 71-72).

[177] For this scheme to be *intra vires*, *it must be consistently focused on federal matters. As I have explained, it is both inevitable and permissible for the scheme’s focus to broaden at the assessment stage. It would be artificial and ineffective to restrict the collection of information at the assessment phase to those components of the environment that are within federal jurisdiction. Nevertheless, at the ultimate decision-making juncture, the focus on federal impacts must be restored. Parliament*

can validly regulate only the impacts that fall within its jurisdiction or that arise from activities within its jurisdiction.

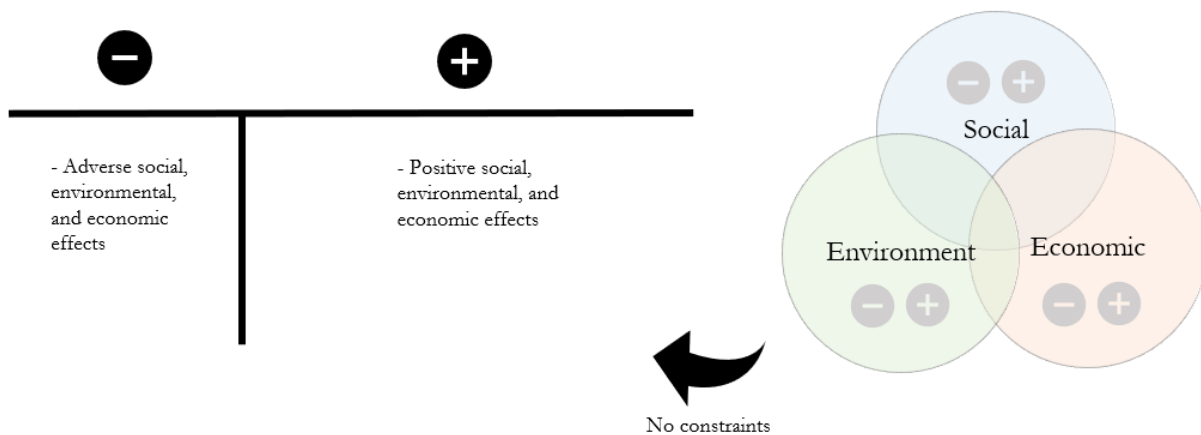
[178] ... The scheme requires the decision maker to consider a host of factors but does not specify how those factors are to drive the ultimate conclusion. As a result, the project’s overall adverse effects, such as hindering sustainability broadly or Canada’s climate change commitments, can substantiate a negative public interest decision. The scheme’s decision-making mechanism thereby loses its focus on regulating federal impacts. Instead, it grants the decision maker a practically untrammelled power to regulate projects qua projects, regardless of whether Parliament has jurisdiction to regulate a given physical activity in its entirety.

In what follows, we attempt to explain what we think are now, or now should be, the constitutional guardrails on federal public interest decision-making following an impact assessment of a designated project.

Analysis

To facilitate the discussion, it is useful to consider what public interest decision-making would look like in a hypothetical *unitary* state (Figure 1). As both the majority and dissent recognized, such decision-making is essentially an exercise in cost-benefit analysis (at para 174, above), with an “adverse” or negative ledger on one side, and a “benefits” or positive ledger on the other. Further, in accordance with the principle of sustainability (essentially, sustainable development), such decision-making involves a consideration of not just the economic but also social and environmental effects of projects (*IAA* at s 2 “effects” and “sustainability,” as excerpted above), with a view towards preserving the potential benefits of development for future generations. Once all relevant adverse and positive effects are identified and tabulated, the decision-maker then has “an objective basis for granting or denying approval for a proposed development” (*Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992 CanLII 110 \(SCC\)](#), [1992] 1 SCR 3 at 71).

Figure 1: Decision making matrix under unitary state conditions



In our view, Figure 1 also effectively describes the permissible scope of federal decision-making post-*IAA Reference* where *federal activities*, such as railways or interprovincial pipelines, are concerned (see *IAA Reference* at paras 124 – 127 for the distinction between activities and resources). The federal government can make an “integrated decision” considering federal and non-federal adverse effects (at para 173). Where the situation becomes more complicated, under a federal state like Canada, is with respect to so-called provincial activities (*i.e.*, activities primarily regulated by the provinces: *IAA Reference* at para 128).

Below, we set out three different approaches to the scope of federal decision-making. In all cases, and as reflected in sections 60 – 63 of the *IAA*, the starting point is the identification of adverse federal effects (column 1 in Figures 2, 3 and 4), which, consistent with the *IAA*’s definition of “effects” – but also reflective of the nature of the various relevant federal heads of power – includes not just adverse environmental effects, but also social and economic effects. For example, non-trivial adverse effects on fish habitat have an obvious environmental dimension, but they may also have social and economic ones. They may adversely affect recreational fishing opportunities, which in turn may affect local outfitters. Those effects may also have an impact on Indigenous peoples, including but not limited to their constitutionally protected Aboriginal and treaty rights. All of these adverse effects undoubtedly fall within the scope of the federal fisheries power (“The fisheries resource ... also embraces commercial and economic interests, aboriginal [*sic*] rights and interests, and the public interest in sport and recreation”: *Ward v Canada (Attorney General)*, [2002 SCC 17 \(CanLII\)](#) at para 41) and would therefore properly be included in the adverse side of the federal public interest ledger. Parliament’s jurisdiction over navigation and shipping (part resource, part activity: *IAA Reference*, at paras 124 – 127), Indigenous peoples and lands reserved for them (neither resource nor activity), marine pollution by ocean dumping (activity), and interprovincial river pollution (resource) can all be expected to have environmental, social, and economic dimensions, albeit to varying extents.

Figure 2, below is intended to reflect the public interest determination (cost-benefit analysis) that, in our view, the *IAA* intended in its current, now deemed unconstitutional, form. Under this approach, federal jurisdiction is triggered and sustained by adverse federal effects, but the federal government is subsequently constitutionally unconstrained in drawing up its public interest ledger. The excerpts from the *IAA Reference* above explain why the majority held that this interpretation is unconstitutional. We pause to note, however, that the majority’s interpretation of the current scheme may not align entirely with the decision-making framework that we present in Figure 2. The majority impugns the *IAA* because “s. 63 expressly permits non-federal concerns to stack up on the ‘adverse’ side of the ledger” (at para 174) and because that would allow the federal decision maker to “magnify” the adverse federal effects (at para 175). Figure 2 suggests no stacking upon or magnification of adverse federal effects. Section 63 (in its current form) simply permitted the federal decision maker to draw up the public interest ledger in a constitutionally unconstrained manner, and then apply the net result of that assessment, and the impact assessment report more broadly, to determine whether the adverse federal effects are in the public interest. The practical outcome, however, is the same: this treatment of non-federal effects is now unconstitutional either way.

Figure 2: No jurisdictional limits on public interest determination

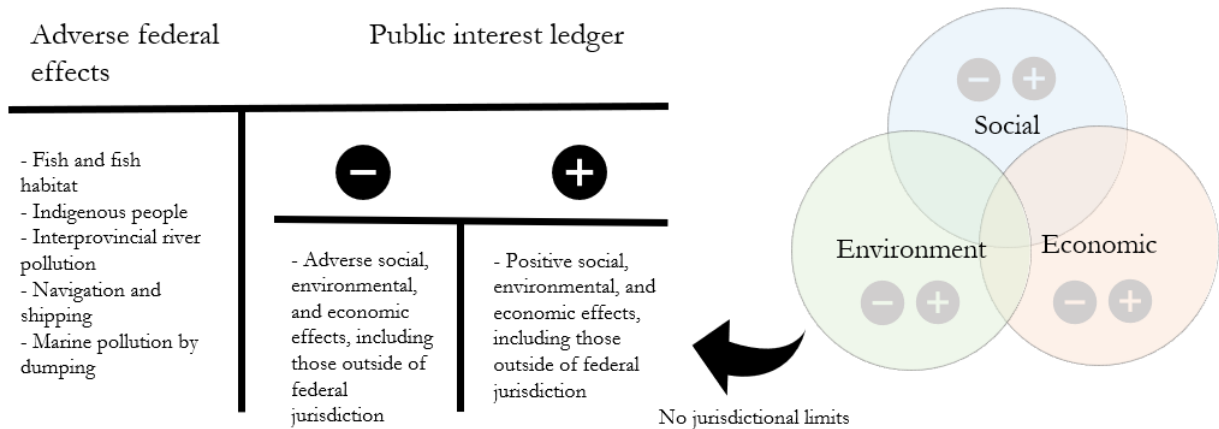
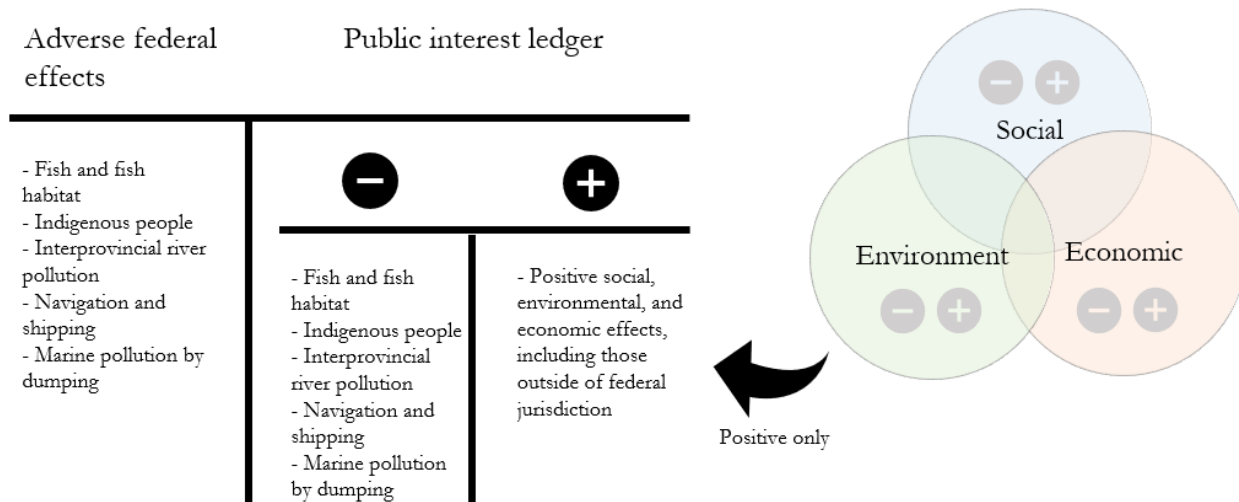


Figure 3, below, is intended to reflect one of two possible interpretations of the permissible cost-benefit analysis that the majority envisioned in the *IAA Reference*. Here, the adverse side of the public interest ledger is populated only by effects (environmental, social, and economic) that fall within federal jurisdiction, but the benefits side of the ledger is constitutionally unconstrained. Under this interpretation, if the effects outside of federal jurisdiction weigh positively in favour of a project, federal consideration of those factors appears constitutionally permissible. If the effects outside federal jurisdiction would not weigh in favour of the project, any effort to contemplate that effect is beyond the constitutional authority of the federal decision maker.

Figure 3: No jurisdictional limits on public interest determination but positive “justifications” only



As is probably apparent by now, we find this asymmetry in the treatment of different types of effects unsatisfactory. Prior to the *IAA Reference* decision, we can think of no precedent that explains why the federal government should be constitutionally encumbered when considering the adverse effects of a project but not when considering its benefits. If we replace the term “adverse”

with “benefits,” the result appears the same as that which was impugned by the majority at para 174, above:

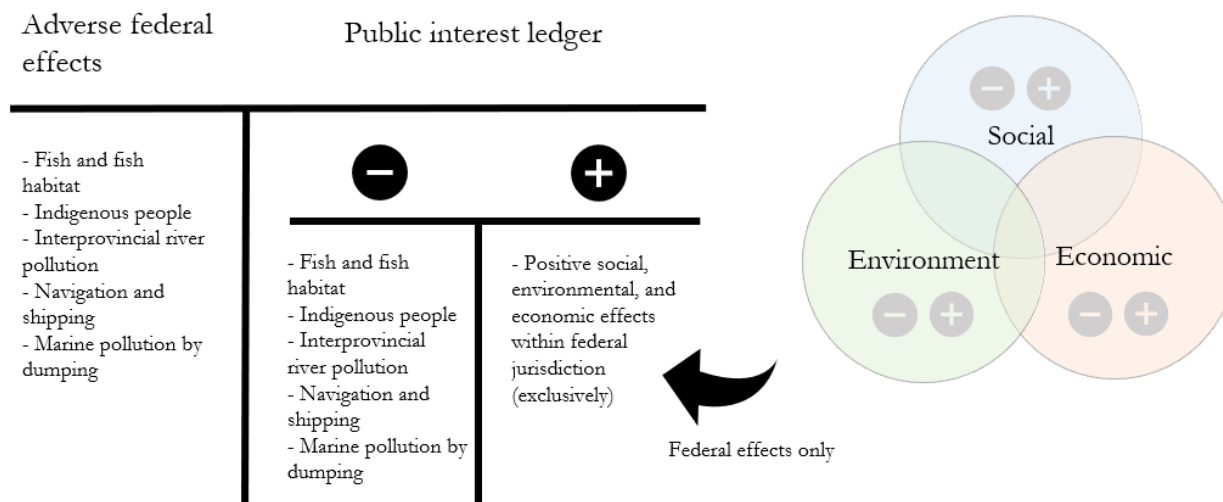
But s. 63 expressly permits non-federal concerns to stack up on the [“benefits”] side of the ledger — regardless of whether the activity itself falls under federal jurisdiction — and thereby alter the fundamental character of the public interest decision. *This shifts the dominant thrust of the decision away from the acceptability of adverse federal effects and directs it, instead, at the wisdom of proceeding with the project as a whole.* [emphasis added]

Relying on benefits that do not fall under federal jurisdiction (e.g., provincial revenues) at the public interest decision-making stage may itself amount to an unlawful delegation of powers from the province to the federal government (*Attorney General of Nova Scotia v Attorney General of Canada*, [1950 CanLII 26 \(SCC\)](#), [1951] SCR 31 at 34). An analogy from another area of constitutional law helps to illustrate this point. The federal government’s use of the criminal law power under [91\(27\)](#) of the [Constitution Act, 1867](#) to prohibit illicit activities with respect to cannabis includes certain “exemptions,” including for the cultivation, propagation, or harvesting of four or fewer cannabis plants at home (*Cannabis Act*, [SC 2018, c 16](#) at ss 8(1)(e), 12(4)(b)). However, those exceptions to the criminal prohibition do not confer positive rights to engage in home production of cannabis (*Murray-Hall v Quebec (Attorney General)*, [2023 SCC 10](#) at para 97). Authorizing certain types of cannabis production is not a constitutionally valid exercise of the federal government’s jurisdiction over cannabis under the criminal law power (*ibid* at paras 83 and 95), and whatever “benefits” are associated with that activity are available for provincial regulation under ss [92\(13\)](#) and [92\(16\)](#) of the [Constitution Act, 1867](#). Similarly, allowing *positive* non-federal concerns (that is to say, benefits within provincial jurisdiction) into the public interest decision-making stage under the *IAA* would mean that the scheme would risk continuing to exceed the bounds of federal jurisdiction described by the majority in the *IAA Reference* (at para 204). In our view, the public interest decision-making scheme outlined in Figure 3, above, is constitutionally problematic because it permits the federal decision-maker to “veer towards regulating the project *qua* project or evaluating the wisdom of proceeding with the project as a whole” (at para 206).

Finally, Figure 4, below, reflects an alternative interpretation of the majority’s approach that, in our view, is both consistent with the passages excerpted above *and* addresses the constitutional asymmetry inherent to Figure 3. It suggests that when drawing up the *positive effects*, or the *benefits* side of the public interest ledger, the federal government should be equally constrained to consider only those environmental, social, and economic effects that fall within federal jurisdiction. In relation to a designated project, this would include future federal revenues, such as federal income tax by the proponent (i.e., a corporation) and its employees, but it would not include provincial revenues or general local economic benefits, which fall under provincial jurisdiction. It might also include financial or other commitments made to Indigenous peoples, such as improved community services or investments in their health. Whatever the case, the basic idea reflected here is that, to the extent possible, the two sides of the federal public interest ledger should be constitutionally symmetrical. Adverse federal effects (social, economic, and environmental) should only be weighed against – and potentially outweighed by – positive federal effects (social, economic, and environmental). This is consistent with the majority’s conclusions that the “public interest decision must reflect a focus on the project’s federal effects” (at para 169), that for “this

scheme to be *intra vires*, it must be consistently focused on federal matters” (at para 177), and that while the assessment stage may be broad and is not constitutionally constrained, “at the ultimate decision-making juncture, the focus on federal impacts must be restored” (*ibid*).

Figure 4: Jurisdictional limits on public interest determination



Summary and Proposed Amendments

To summarize, and as reflected above in Figure 3 in particular, the majority decision sometimes appears to rely on the concept of “adverseness” to determine whether public interest factors outside of federal jurisdiction are constitutionally permissible at the decision-making stage of a federal impact assessment. When those effects are “adverse,” they are very clearly outside the scope of the constitutional limits of federal decision-making authority. When they are not adverse (in other words, when they are “positive”), there is some ambiguity as to whether they are within that permissible scope – regardless of whether they attach to a federal head of power or not. This appears to be why the majority describes the public interest decision making framework in the former *Canadian Environmental Assessment Act*, [2012, SC 2012, c 19 \(CEAA 2012\)](#) in favourable terms:

[175] I note that, under the CEAA 2012, the central question for the decision maker was not whether the adverse federal effects were in the public interest but rather whether they were “justified in the circumstances” (s. 52(2) and (4)). This language made it clear that the circumstances could be used to justify the adverse federal effects and thus render a positive decision; they could not be used to magnify the adverse federal effects and thus render a negative decision. This assurance is absent from the impugned statute’s decision-making provisions.

Leaving aside whether the term “justified in the circumstances” requires that a decision maker consider only positive inputs when constructing a would-be “justification” for federal effects, we see no logic or principle as to why the federal decision maker should not be constitutionally encumbered, in a symmetrical way, on both sides of the public interest ledger (Figure 4). Most

importantly, we see no part of the *IAA Reference* that closes off this interpretation and several passages that support it.

The result – essentially the filtering of all of a designated project’s social, economic, and environmental effects, both negative (“adverse”) and positive, through the legislative division of powers – also strikes us as the most workable from a practical perspective. Table 1, below, represents an attempt to reflect this approach in the form of potential amendments to section 63 for projects primarily regulated by the provinces (amendments underlined):

Table 1: Proposed Amendments to s 63 of the IAA for Projects Primarily Regulated by the Provinces

Current IAA	Proposed Amendments
<p>63 The Minister’s [or] the Governor in Council’s determination [as to whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are in the public interest] must be based on the report with respect to the impact assessment and a consideration of the following factors:</p> <p>(a) the extent to which the designated project contributes to sustainability;</p> <p>(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;</p> <p>(c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;</p> <p>(d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by</p>	<p>63 The Minister’s [or] the Governor in Council’s determination [as to whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are in the public interest] must be based on the report with respect to the impact assessment and a consideration of the following factors:</p> <p>(a) the extent to which the designated project’s <u>effects within federal jurisdiction</u> contribute to sustainability;</p> <p>(b) the extent to which the <u>effects within federal jurisdiction and the direct or incidental effects</u> that are indicated in the impact assessment report in respect of the designated project are significant;</p> <p>(c) the implementation of the mitigation measures in relation to <u>effects within federal jurisdiction</u> that the Minister or the Governor in Council, as the case may be, considers appropriate;</p> <p>(d) the impact that <u>the effects within federal jurisdiction and the direct or incidental effects</u> may have on any Indigenous group, and any adverse impact that <u>the effects within federal jurisdiction and the direct or incidental effects</u> may have on the rights of the Indigenous peoples of Canada recognized</p>

<p>section 35 of the Constitution Act, 1982; and</p> <p>(e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.</p>	<p>and affirmed by section 35 of the Constitution Act, 1982</p> <p>(e) the extent to which <u>the effects within federal jurisdiction and the direct or incidental effects</u> hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.</p>
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