

NEWS

Alberta court decision a chance to fix flawed environmental impact assessment regime, says Green MP May

By KEVIN PHILIPUPILLAI (/AUTHOR/KEVIN-PHILIPUPILLAI) MAY 16, 2022

The government says it plans to appeal the May 10 Alberta Court of Appeal decision that found the Impact Assessment Act is unconstitutional because it infringes on provincial jurisdiction.



Green MP Elizabeth May says she was not surprised by a recent Alberta Court of Appeal judgment that said the federal Impact Assessment Act violates the Constitution. *The Hill Times photograph by Andrew Meade*

<https://www.facebook.com/sharer/sharer.php?u=https://www.hilltimes.com/2022/05/16/alberta-court-decision-a-chance-to-fix-flawed-environmental-impact-assessment-regime-says-green-mp-may>

[https://twitter.com/intent/tweet?text=Alberta court-decision-a-chance-to-fix-flawed-environmental-impact-assessment-regime-says-green-mp-may](https://twitter.com/intent/tweet?text=Alberta%20court-decision-a-chance-to-fix-flawed-environmental-impact-assessment-regime-says-green-mp-may)

<https://www.linkedin.com/company/thehilltimes/>

mp-
may/362054)

Green MP Elizabeth May says the Liberals should use the opportunity to fix the legislation by incorporating the expert advice Ottawa cited, and then ignored, the first time around.

May (Saanich-Gulf Islands, B.C.) told *The Hill Times* she was not surprised by a recent Alberta Court of Appeal judgment that said the Impact Assessment Act (<https://laws.justice.gc.ca/eng/acts/I-275/index.html>) violates the Constitution by infringing on provincial jurisdiction, even though she said the ruling itself was overtly political and full of “nonsense sentences” that undermine its constitutional arguments.

May said the law as written “plays fast and loose” with the issue of jurisdiction, despite a recommendation

(https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc010) from an expert panel that federal impact assessments “must respect Canada’s Constitution” by setting clear criteria for determining federal interest in a project.

Get Today's Headlines Newsletter

Canadian politics and policy stories that are shaping the day. Weekdays.

You are already subscribed!



By entering your email address you consent to receive email from The Hill Times containing news, analysis, updates and offers. [You may unsubscribe at any time.](#) See our [privacy policy \(/privacy-policy/\)](#).

Josh Ginsberg, a lawyer with Ecojustice, Canada’s largest environmental law charity (<https://ecojustice.ca/about-us/>) said while there are things he would change about the act he does not agree with May’s call to amend it in response to the Alberta Court of Appeal judgment.

“It is hard to imagine any legislative tinkering that could satisfy Alberta,” said Ginsberg. “Instead, we should focus on confirming Canada’s basic ability to assess environmental effects in its jurisdiction, including all impacts and benefits arising from them.”

Ecojustice intervened in the Alberta case to defend the 2019 federal legislation from the challenge by the Alberta government.



Natural Resources Minister Jonathan Wilkinson’s office says the Impact Assessment Act ‘delivered on an important promise’ Liberals made ‘to reform a flawed process from the previous government.’ The Hill Times photograph by Andrew Meade

Keean Nembhard, press secretary to Natural Resources Minister Jonathan Wilkinson (North Vancouver, B.C.) called the Alberta judgement “advisory in nature” and reiterated the government’s plans to appeal the decision in the Supreme Court.

“The Impact Assessment Act delivered on an important promise we made to Canadians to reform a flawed process from the previous government,” Nembhard said by email, adding the government is “confident” the 2019 law is constitutional.

Liberals promised to ‘reform and restore environmental assessment law,’ says May

The Impact Assessment Act (IAA), which received royal assent in June 2019, (<https://www.parl.ca/LegisInfo/en/bill/42-1/C-69>) is the Liberals’ replacement for the previous government’s 2012 Canadian Environmental Assessment Act. The law, which created the Impact Assessment Agency of Canada, has taken heat from different directions. Jason Kenney’s Alberta government has branded it the “No More Pipelines Act,” while May said it was “a fundamental betrayal” of the Liberal promise to rebuild the impact assessment regime that she said was “destroyed” under the Harper government.

“The Liberals promised to reform and restore environmental assessment law in Canada,” said May, referring to commitments in the 2015 mandate letters for the environment and fisheries ministers to undo the changes brought about under former Conservative prime minister Stephen Harper and codified in 2012 through an omnibus bill.

May said then-fisheries minister Dominic LeBlanc (Beauséjour, N.B.) “did a great job restoring the Fisheries Act,” resisting pressure from his officials to maintain the lighter assessment regime Harper had created. But, she added, then-environment minister Catherine McKenna “listened to her officials” and maintained a less rigorous assessment regime, despite advice from the panel of environmental law experts who had “toured the country and held hearings.”

In particular, May said, the 2019 legislation maintained the Harper-era practice of having a “project list” of projects to be screened or reviewed, with significant ministerial discretion, as opposed to having mandatory criteria that required many projects, large or small, to have at least a minimal screening. May said the distinction meant that, where it used to be that approximately 4,000 projects (<https://elizabethmaymp.ca/speech-bill-c-69-gets-an-f-at-committee-let-us-please-get-it-to-a-c/>) a year went through some kind of screening or review, the Liberals have maintained the Harper-era practice of screening fewer than 100 projects a year.

The Narwhal reported in 2018 (<https://thenarwhal.ca/its-appalling-greens-ndp-oppose-federal-environmental-assessment-bill/>), while the IAA was still before the House as Bill C-69, that then-NDP MP Linda Duncan, who shared May’s concerns, resigned from the House Environment Committee over its handling of the bill. Duncan, a long-time environmental lawyer who was then the NDP’s only Alberta MP, told *The Narwhal* at the time that the bill was “a total missed opportunity.” She did not run (<https://www.thestar.com/edmonton/2018/08/28/edmonton-strathcona-mp-linda-duncan-will-not-seek-re-election-in-2019.html?rf>) for re-election in the 2019 general election. All NDP, Conservative, and Bloc Québécois MPs, and May, voted against the bill (<https://www.ourcommons.ca/members/en/votes/42/1/877>) at third reading in June 2018.

May acknowledged that her continued opposition to the IAA might not reflect the positions of other environmental groups, who she said rallied around the Liberals as an alternative to the Conservatives.

Ginsberg called the Alberta Court of Appeal judgment a “reference” case.

“It’s not a case aiming to strike down the legislation. Governments can ask any court for an opinion on the legislation without striking down that legislation,” he said.

“The Supreme Court’s ruling, for practical purposes, will be respected. That will dictate what occurs with the IAA,” said Ginsberg.



Ecojustice lawyer Josh Ginsberg supported the federal government at the Alberta Court of Appeal. *Photograph courtesy of Josh Ginsberg*

The Alberta government celebrated the May 10 judgment from the province's highest court, with Alberta Environment Minister Jason Nixon tweeting (<https://twitter.com/JasonNixonAB/status/1524131002917941248>) that his government would treat the court's opinion as binding in Alberta, even though it was "technically an opinion and not a decision of the court."

Conservative MP Michelle Rempel Garner (Calgary Nose Hill, Alta.) released a statement that same day saying "today's ruling confirms what Albertans already knew: Bill C-69 was nothing more than an unconstitutional, ideologically-driven power grab by Justin Trudeau that aimed to destroy Alberta's energy sector."

She called on the federal government to immediately repeal the relevant legislation.

Despite Ecojustice going to court in Alberta to support the federal government's argument that it does have the necessary jurisdiction to conduct environmental impact assessments on provincial resource projects, the advocacy group has recently launched a lawsuit against Ottawa and the Impact Assessment Agency of Canada over their recent approval of the Bay du Nord project off the coast of Newfoundland.

Ginsberg has worked on both files. "On the one hand, we want to defend the federal government's jurisdiction, and on the other hand have to call out how these statutes are applied," he said, when asked about the apparent contradiction.

"Yes they have jurisdiction, and yes they have to use the full requirements of the act."

Ecojustice's argument in the Bay du Nord case is that the government failed to consider downstream emissions—emissions that come once the oil is sold to customers and burned as fuel—and that it had an obligation to do so.

"This is the very first time a court will consider whether downstream emissions will be a



Conservative MP Michelle Rempel Garner says the Impact Assessment Act was ‘nothing more than an unconstitutional, ideologically-driven power grab.’ *The Hill Times* photograph by Andrew Meade

mandatory consideration,” said Ginsberg.

kphilipupillai@hilltimes.com

The Hill Times

To read more great stories like this one and stay ahead of the political curve, subscribe to The Hill Times (<https://www.hilltimes.com/get-a-subscription>).

RELATED STORIES



NOV 15, 2020

‘They’ve been very interested in our ideas’: what experts expect from feds’ climate change bill (<https://www.hilltimes.com/2020/11/15/theyve-been-very-interested-in-our-ideas-what-experts-expect-from-the-liberal-climate-change-bill/271845>)



FEB 12, 2020

Court challenges, opposition to the Trans Mountain pipeline expansion remain after feds’ Appeal Court win (<https://www.hilltimes.com/2020/02/12/court-challenges-opposition-to-the-trans-mountain-pipeline-expansion-remain-after-appeal-court-win/234677>)

Sponsored Content
ENBRIDGE GAS



DEC 2, 2019

Policy primer: Liberals promise to address Impact Assessment law outrage without amendments (<https://www.hilltimes.com/2019/12/02/policy-primer-liberals-promise-to-address-impact-assessment-law-outrage-without-amendments/226556>)

Sponsored Content
MICROSOFT CANADA



FEB 19, 2018

Feds' sweeping, new environmental assessment bill keeps power in ministers' hands, say observers (<https://www.hilltimes.com/2018/02/19/environmental-assessment-bill-keeps-power-ministers-hands-say-observers/134641>)



JAN 31, 2018

McKenna in spotlight as major environment reforms expected in February (<https://www.hilltimes.com/2018/01/31/mckenna-in-spotlight-as-major-environment-reforms-expected-in-february/132817>)

===== **MORE IN NEWS** ([HTTPS://WWW.HILLTIMES.COM/NEWS/](https://www.hilltimes.com/news/)) =====

Alberta court decision a chance to fix flawed environmental impact assessment regime, says Green MP May (<https://www.hilltimes.com/2022/05/16/alberta-court-decision-a-chance-to-fix-flawed-environmental-impact-assessment-regime-says-green-mp-may/362054>)

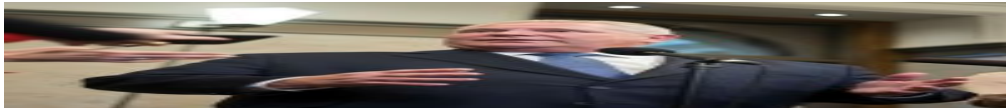
NEWS | By KEVIN PHILIPUPILLAI ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/KEVIN-PHILIPUPILLAI](https://www.hilltimes.com/author/kevin-philipupillai))



(<https://www.hilltimes.com/2022/05/16/alberta-court-decision-a-chance-to-fix-flawed-environmental-impact-assessment-regime-says-green-mp-may/362054>)The government says it plans to appeal the May 10 Alberta Court of Appeal decision that found the Impact Assessment Act is unconstitutional because it infringes on provincial jurisdiction.

Federal ministers, MPs, and staff working on high-stakes Ontario election (<https://www.hilltimes.com/2022/05/16/federal-ministers-mps-and-staff-working-on-high-stakes-ontario-election/361656>)

NEWS | By ABBAS RANA ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/ABBAS-RANA](https://www.hilltimes.com/author/abbas-rana))



(<https://www.hilltimes.com/2022/05/16/federal-ministers-mps-and-staff-working-on-high-stakes-ontario-election/361656>)Liberal MP Michael Coteau predicts that Ontarians will vote Liberal in tight Liberal-NDP races in order to oust the Ford government.

Canada supports rapid accession of Sweden and Finland to NATO, but experts say it needs to improve its Arctic defences (<https://www.hilltimes.com/2022/05/16/canada-supports-rapid-accession-of-sweden-and-finland-to-nato-but-experts-say-it-needs-to-improve-its-arctic-defences/362140>)

NEWS | By DENNIS KOVTUN ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/DENNIS-KOVTUN](https://www.hilltimes.com/author/dennis-kovtun))



(<https://www.hilltimes.com/2022/05/16/canada-supports-rapid-accession-of-sweden-and-finland-to-nato-but-experts-say-it-needs-to-improve-its-arctic-defences/362140>)Fearing Russian aggression, Finland and Sweden will likely apply for NATO membership. While Canada supports the membership of these countries, it needs to step up its own contributions, especially in the Arctic: experts.

Ontario election will be a test on how upset Canadians are with incumbents and affordability issues, say some MPs and Nanos (<https://www.hilltimes.com/2022/05/16/ontario-election-will-be-a-test-on-how-upset-canadians-are-with-incumbents-and-affordability-issues-say-some-mps-and-nanos/361812>)

NEWS | By ABBAS RANA ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/ABBAS-RANA](https://www.hilltimes.com/author/abbas-rana))



(<https://www.hilltimes.com/2022/05/16/ontario-election-will-be-a-test-on-how-upset-canadians-are-with-incumbents-and-affordability-issues-say-some-mps-and-nanos/361812>)The decision Ontarians make at the ballot box on June 2 will come down to who has the best plan to address the affordability issues of Ontarians, says Liberal MP Michael Coteau.

Groups return to 'invaluable' in-person advocacy on the Hill after years lobbying behind screens
(<https://www.hilltimes.com/2022/05/16/groups-return-to-invaluable-in-person-advocacy-on-the-hill-after-years-lobbying-behind-screens/361688>)

NEWS | By JESSE CNOCKAERT ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/JESSE-CNOCKAERT](https://www.hilltimes.com/author/jesse-cnockaert))



(<https://www.hilltimes.com/2022/05/16/groups-return-to-invaluable-in-person-advocacy-on-the-hill-after-years-lobbying-behind-screens/361688>)For the first time since COVID-19's outbreak in 2020, some organizations lobbied on the Hill for a 'relationship building' experience unmatched by virtual events, says Direct Sellers Association of Canada's Peter Maddox.

New blood donation policy still targets queer men and trans women, advocates argue
(<https://www.hilltimes.com/2022/05/13/new-blood-donation-policy-still-targets-queer-men-and-trans-women-advocates-argue/361680>)

NEWS | By STUART BENSON ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/STUART-BENSON](https://www.hilltimes.com/author/stuart-benson))



(<https://www.hilltimes.com/2022/05/13/new-blood-donation-policy-still-targets-queer-men-and-trans-women-advocates-argue/361680>)While every donor will now be asked the same questions, the new policy's focus on anal sex and barring those who take PrEP is seen by some as more egregious and intrusive than the previous blanket ban.

A 'Parliamentary Precinct family reunion': Politics and the Pen in person for first time in two years
(<https://www.hilltimes.com/2022/05/16/a-parliamentary-precinct-family-reunion-politics-and-the-pen-in-person-for-first-time-in-two-years/361678>)

NEWS | By STUART BENSON ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/STUART-BENSON](https://www.hilltimes.com/author/stuart-benson))



(<https://www.hilltimes.com/2022/05/16/a-parliamentary-precinct-family-reunion-politics-and-the-pen-in-person-for-first-time-in-two-years/361678>)This year's finalists feature some of the country's best non-fiction writing on Canada's financial future, China relations, the SNC-Lavalin affair, and historic and influential women in politics.

Experts, critics wary of feds' 'clearly opposite' private investing plan to rejig infrastructure bank
(<https://www.hilltimes.com/2022/05/12/experts-critics-wary-of-feds-clearly-opposite-private-investing-plan-to-rejig-infrastructure-bank/361365>)

NEWS | By KEVIN PHILIPUPILLAI ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/KEVIN-PHILIPUPILLAI](https://www.hilltimes.com/author/kevin-philipupillai))



(<https://www.hilltimes.com/2022/05/12/experts-critics-wary-of-feds-clearly-opposite-private-investing-plan-to-rejig-infrastructure-bank/361365>)Infrastructure Bank CEO Ehren Cory has talked about finding win-win projects that serve both public and private interests, but critics say this middle ground has proved elusive.

No big winners or losers in curious Conservative leadership debate, say strategists
(<https://www.hilltimes.com/2022/05/12/big-winners-or-losers-in-curious-conservative-leadership-debate-say-strategists/361629>)

NEWS | By IAN CAMPBELL ([HTTPS://WWW.HILLTIMES.COM/AUTHOR/IAN-CAMPBELL](https://www.hilltimes.com/author/ian-campbell))



(<https://www.hilltimes.com/2022/05/12/no-big-winners-or-losers-in-curious-conservative-leadership-debate-say-strategists/361629>) Several candidates had 'their sights set on trying to blunt Pierre Poilievre's momentum,' while also trying to 'shore up more moderate support for themselves,' say Conservative strategists.

TRENDING STORIES



MAY 13, 2022

New blood donation policy still targets queer men and trans women, advocates argue
 (<https://www.hilltimes.com/2022/05/13/new-blood-donation-policy-still-targets-queer-men-and-trans-women-advocates-argue/361680>)



MAY 12, 2022

Experts, critics wary of feds' 'clearly opposite' private investing plan to rejig infrastructure bank
 (<https://www.hilltimes.com/2022/05/12/experts-critics-wary-of-feds-clearly-opposite-private-investing-plan-to-rejig-infrastructure-bank/361365>)

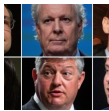
Sponsored Content

ÉCOLE DE TECHNOLOGIE SUPÉRIEURE (ÉTS)



MAY 12, 2022

Read all about it: Immigration Minister Fraser's new 17-member team
 (<https://www.hilltimes.com/2022/05/12/read-all-about-it-immigration-minister-frasers-new-17-member-team/361459>)



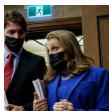
MAY 12, 2022

No big winners or losers in curious Conservative leadership debate, say strategists
 (<https://www.hilltimes.com/2022/05/12/no-big-winners-or-losers-in-curious-conservative-leadership-debate-say-strategists/361629>)



MAY 12, 2022

Canada should 'review, reconsider, refocus' Middle East strategy, says Egyptian envoy
 (<https://www.hilltimes.com/2022/05/12/canada-should-review-reconsider-refocus-middle-east-strategy-says-egyptian-envoy/361586>)



MAY 12, 2022

Will feds keep their promise to crack down on predatory lending?
 (<https://www.hilltimes.com/2022/05/12/will-feds-keep-their-promise-to-crack-down-on-predatory-lending/361525>)

INSIDE THE HILL TIMES

News (<https://www.hilltimes.com/news/>)
 Opinion (<https://www.hilltimes.com/opinion/>)
 Foreign Policy (<https://www.hilltimes.com/foreign-policy/>)
 Politics (<https://www.hilltimes.com/politics/>)
 Policy (<https://www.hilltimes.com/policy/>)
 Legislation (<https://www.hilltimes.com/legislation/>)
 Lobbying (<https://www.hilltimes.com/lobbying/>)
 Hill Life & People (<https://www.hilltimes.com/hill-life-people/>)

COLUMNISTS

Andrew Caddell (<https://www.hilltimes.com/columnists/andrew-caddell/>)
 Andrew Cardozo (<https://www.hilltimes.com/columnists/andrew-cardozo/>)
 John Chenier (<https://www.hilltimes.com/columnists/john-chenier/>)
 Sheila Copps (<https://www.hilltimes.com/columnists/sheila-copps/>)
 David Crane (<https://www.hilltimes.com/columnists/david-crane/>)
 Jim Creskey (<https://www.hilltimes.com/columnists/jim-creskey/>)

HILL TIMES PUBLISHING

About Us (<https://www.hilltimes.com/about-us/>)
 Our Team (<https://www.hilltimes.com/our-team/>)
 Contact Us (<https://www.hilltimes.com/contact-us/>)
 Advertising (<https://www.hilltimes.com/advertising/>)
 Subscribe (<https://www.hilltimes.com/subscribe/>)
 Group Subscriptions (<https://www.hilltimes.com/group-subscriptions/>)

(https://www.hilltimes.com/life-people)	(https://www.hilltimes.com/news)	(https://www.hilltimes.com/author/powers)	(https://www.hilltimes.com/group)	(https://www.hilltimes.com/the-hill-times-store)
Embassy Archives	(https://www.hilltimes.com/embassy-archives)	Gwynne Dyer	Susan Riley	Submit an Article package
Archives	(https://www.hilltimes.com/archives)	Michael Harris	Les Whittington	Research Health Internships (https://hilltimesresearch.ca/)
(https://www.hilltimes.com/archives)	(https://www.hilltimes.com/archives)	(https://www.hilltimes.com/archives)	(https://www.hilltimes.com/archives)	(https://www.hilltimes.com/internships)
		harris)	whittington)	Reuse and Permissions
		Erica Ifill		(https://www.hilltimes.com/author/erica-ifill)
				(https://www.hilltimes.com/reuse-permissions)
				Member Centre
				(https://www.hilltimes.com/usercenter)
				FAQ
				(https://www.hilltimes.com/get-a-subscription#faq)

© 2022 Hill Times Publishing Contact Us (<https://www.hilltimes.com/contact-us>) Work With Us (<https://www.hilltimes.com/internships>)

Advertise (<https://www.hilltimes.com/advertising-audience-page>) Privacy (<https://www.hilltimes.com/privacy-policy>) Terms of Service (<https://www.hilltimes.com/terms-of-service>)