

AN OVERVIEW AND ASSESSMENT OF KEY CONSTITUTIONAL ISSUES RELEVANT TO THE CANADIAN NORTHERN CORRIDOR

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KEY MESSAGES

- This report considers, at a high level, some of the key constitutional considerations associated with the development of the Northern Corridor.
- It considers both the ways in which the Canadian Constitution may facilitate such a development and ways in which it may offer barriers to such a project.
- The aim is to consider these issues at a high level that flags a number of areas for more detailed examination and to consider them in the light of both existing legal doctrine and potential trends that may be pertinent to a project that could be developed in a staged way.
- The Northern Corridor concept attempts, in some ways, to overcome a jurisdictional anti-commons made up of a large number of decision-makers who can affect each individual project and to bundle into a multimodal corridor the ability for future projects to get rights-of-way in a more predictable manner under a chosen governance structure.
- The Constitution allows for co-operation and negotiation, and even elements of intergovernmental delegation subject to some constraints, that could facilitate the development of such a multimodal corridor with its own governance structure. The key challenge in that respect would not be a constitutional bar but that of attaining sufficient agreement among the necessary constitutional actors.
- The Constitution provides significant jurisdictional authority to the federal government on matters of interprovincial and international transportation and communications that could be deployed in support of a project like the Northern Corridor. On the surface, these powers would look like they could be deployed unilaterally if it came to it, but there are various reasons that path might be undesirable and subject to challenges. A federal leadership role may be more appropriate.
- A complex evolving landscape on Indigenous rights raises an array of issues needing further examination, but they tend to push toward the need to engage with, involve and draw support from Indigenous communities for the Northern Corridor concept.
- The development of the Northern Corridor will require further legal research on various constitutional issues and will ultimately depend upon strong federal leadership in collaboration with other governments.