

Schulich School of Law, Dalhousie University

## Schulich Law Scholars

---

Articles, Book Chapters, & Popular Press

Faculty Scholarship

---

2018

### **Decades of Climate Policy Failure in Canada: Can we Break The Vicious Cycle?**

Meinhard Doelle

Follow this and additional works at: [https://digitalcommons.schulichlaw.dal.ca/scholarly\\_works](https://digitalcommons.schulichlaw.dal.ca/scholarly_works)



Part of the [Environmental Law Commons](#), and the [Legal History Commons](#)

---

# Decades of Climate Policy Failure in Canada: Can we Break The Vicious Cycle?

Meinhard Doelle

During the course of a hot and humid stretch in the middle of summer on the East Coast of Canada, while hearing about record heat waves and wild fires, I find myself reflecting on over 20 years of efforts in Canada to respond appropriately to the challenge of climate change. During the past 20 years, Canada has gone from leader to laggard twice, once with the Kyoto Protocol, and again, it would appear based on recent developments, with the implementation of the Paris Climate Agreement. All this, of course, after Canada had already committed to stabilize emissions at 1990 levels by 2000 in the context of the 1992 Framework Convention on Climate Change, a commitment it also failed to implement.

Following its leadership role in 1997 in the Kyoto negotiations, Canada's federal government of the day worked hard with provinces and stakeholders to develop a set of climate policies to implement effective climate mitigation and adaptation in Canada. It ratified the Kyoto Protocol, supported its entry into force, but efforts to take effective steps to implement Canada's commitments ultimately failed. Canada eventually withdrew its ratification of the Kyoto Protocol, and in the process did very little to reduce domestic emissions compared to most developed and even some developing countries. Some provinces, such as British Columbia, Ontario, Quebec and Nova Scotia, stepped up to lead during this period of federal withdrawal, but Canada as a whole never achieved any leadership in its domestic mitigation efforts.

Canada has more recently made another effort at climate mitigation leadership, this time in the context of the Paris Climate Agreement in December 2015, only to falter yet again in translating its international leadership into effective domestic implementation. In this post, I will share my reflections on this most recent cycle, which started with the election of the Trudeau Liberal Government in the fall of 2015.

The Liberal Party under Justin Trudeau showed signs of leadership on climate change during the 2015 federal election. It beat out the NDP in part by appealing to traditional NDP and Green Party voters on issues such as climate change. Once elected, it continued to show leadership during the UN climate negotiations, by playing an important, constructive role in the final days of the Paris climate negotiations in December 2015. It was part of an 'ambition coalition' of over 100 countries that secured the inclusion of the global goals of keeping temperature increases to well below 2 degrees while striving for 1.5, and to aim to reach global carbon neutrality by the second half of the century. Canada continued to show leadership by ratifying the Paris Agreement quickly to help bring it into force in record time by November 2016.

As the Trudeau government turned its attention to domestic implementation, the failure to turn international leadership into domestic action soon began to show. The first step was not

encouraging. In spite of its criticism of the Harper government on its inadequate efforts on climate change, and in spite of its commitment to the Paris Climate Agreement, the Trudeau government did not increase the ambition of Canada's Nationally Determined Contribution (NDC) from the inadequate NDC the previous government had filed before the Paris Agreement was finalized. In spite of agreeing to provisions in the Paris Agreement that recognize the gap between individual commitments and the collective goals and call for an increase of effort over time to meet the collective goals, Canada continues to show no willingness to increase its commitment by revising its NDC.

The second step of the Trudeau government was more encouraging. It was able to negotiate a Pan Canadian Framework on Climate Change with most of the provinces and all territories.<sup>1</sup> The agreement was disappointing to some in that it did not bring all provinces on board, and its commitment would not get Canada all the way to its 2020 or 2030 emission reduction targets under the inadequate NDC filed by the Harper government. Nevertheless, it had the potential to be an important breakthrough in overcoming the past divisions over effective climate mitigation in Canada, and to put Canada on the path to decarbonization.

Perhaps the biggest flaw of this effort was the federal government's failure to clearly position the Pan Canadian Framework, from the start, as an initial step that needed to be strengthened over time. Instead, it has become an inadequate high-water mark to be attacked and whittled down by powerholders who oppose to the decarbonization of Canadian society out of near-sighted self-interest and political opportunism. It is clear that the opposition to the transition comes from those who benefit from the status quo. There is no credible evidence that Canada, as a whole, will benefit from resisting this transition. There are strong indications to the contrary even in the short to medium term, and the combination of the cost of inaction and the economic opportunities associated with action leaves little doubt about the net economic benefits of decarbonization in the long term.<sup>2</sup>

Since it negotiated the Pan Canadian Framework, rather than fully implement it and prepare for the next level of effort, the Trudeau government has taken major steps backward in response to relentless pressure from some provinces and industry sectors. Such steps include the following:

- Developing backstop legislation for a key element of the Pan Canadian Framework, the carbon pricing element, that abandons the spirit of the framework by exempting 70 percent of emissions for some industry sectors from the carbon price. This essentially

---

<sup>1</sup> Environment and Climate Change Canada, *Pan-Canadian Framework on Clean Growth and Climate Change* (Gatineau, Quebec: Environment and Climate Change Canada, 2016).

<sup>2</sup> See e.g. Nicholas H Stern, *The Economics of Climate Change: The Stern Review*, (Cambridge, UK: Cambridge University Press, 20017); *Juliana v United States* 217 F.Supp.3d 1224 (D Or 2016), (Evidence, Expert Report of Dr Joseph E Stiglitz's on the economics of transitioning to a non-fossil fuel economy now rather than later), online: <[https://biotech.law.lsu.edu/blog/document\\_cw\\_01-2.pdf](https://biotech.law.lsu.edu/blog/document_cw_01-2.pdf)>.

means that most emissions from these sectors are actually not subject to a carbon price at all.<sup>3</sup>

- Announcing that exemption to some industries will be increased to 80 and 90 percent, further eroding the carbon pricing element of the framework, meaning that even more emissions from these sectors are not subject to a carbon price. Assuming modest efforts to reduce emissions, these sectors may now be exempt from the carbon price all together, without a clear signal that the remainder will be priced in the future.<sup>4</sup>
- Negotiating agreements with some provinces that will delay the 2030 coal phase out under the Pan Canadian Framework well past 2030.<sup>5</sup>
- Significantly weakening its methane emission reduction initiative under the framework, even though it is clear that reducing methane emissions in the short term is critical for meeting the collective goals in Paris, given that methane is a much more potent GHG than CO<sub>2</sub> with a shorter lifespan in the atmosphere.<sup>6</sup>
- Indicating that it intends to exclude certain new fossil fuel projects (such as in situ oil sands projects) from the scrutiny of its reformed assessment process under the new Impact Assessment Act.<sup>7</sup>
- Approving new fossil fuel infrastructure without imposing conditions on the approvals to ensure consistency with Canada's climate commitments (such as carbon offsetting or restricting project lifespans in line with a clear decarbonization timeframe consistent with Canada's climate commitments), and without demonstrating the economic viability of this infrastructure if it is to operate within the constraints of Canada's climate commitments.<sup>8</sup>
- Releasing a discussion paper on a planned strategic assessment that signals a reluctance to carefully consider the climate implications of new projects, particularly infrastructure and industrial projects likely to lock in future GHG emissions and undermine Canada's ability to meet its current weak NDC, let alone meet Canada's commitment to increase

---

<sup>3</sup> Bill C-74, *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 27, 2018 and Other Measures*, 1st Sess, 2nd Parl, 2018, cl 5 (assented to 1 June 2018), online: <<http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9727472>>.

<sup>4</sup> Mia Rabson, "Canada has No Immediate Plans to Increase Target for Cutting Emissions: McKenna", *The Globe and Mail* (21 June 2018), online: <<https://www.theglobeandmail.com/politics/article-canada-has-no-immediate-plans-to-increase-target-for-cutting-emissions/>>.

<sup>5</sup> Meinhard Doelle, "Toward a Principled Design of Provincial Cap & Trade Systems: Lessons from Nova Scotia's Proposal to Meet the Carbon Pricing Requirement in the Pan-Canadian Framework for Climate Change" *J Environmental L & Practice* [forthcoming], online: <<http://dx.doi.org/10.2139/ssrn.3006264>>.

<sup>6</sup> Margo McDiarmid, "Federal government seeks to push back methane reduction regulations by up to 3 years", *CBC News* (23 April 2017), online: <<https://www.cbc.ca/news/politics/methane-emissions-regulations-changes-1.4078468>>.

<sup>7</sup> Mia Rabson, "Selected Oilsands Projects May Avoid New Environmental Assessment Rules", *Global News* (27 April 2018), online: <<https://globalnews.ca/news/4173992/selected-oilsands-projects-may-avoid-new-environmental-assessment-rules/>>.

<sup>8</sup> See e.g. Jon O'Riordan, "The Challenges at the Nexus of Canada's Energy and Climate Change Policies" (2018), 60:3 *Environment: Science & Policy Sustainable Development* 4, online: <<https://doi.org/10.1080/00139157.2018.1449536>>; Jason MacLean, "Will We Ever Have Paris? Canada's Climate Change Policy and Federalism 3.0" 55:4 *Alta L Rev* [forthcoming in 2018], online: <<https://ssrn.com/abstract=3080710>>.

the ambition of its NDC to make a fair contribution to the global effort to keep temperatures well below 2 degrees and decarbonize the global economy in time to achieve this temperature goal.<sup>9</sup>

Of course, the transition remains unavoidable, and it will become more urgent and costly for us as a country, the longer we delay. Already, we have lost two decades of ensuring a gradual transition to a carbon free society in Canada. We continue to build infrastructure that will become stranded assets through the transition to carbon neutrality. We continue to protect and strengthen sectors that are part of the problem, and miss opportunities to support, strengthen and grow sectors that are part of the solution. We continue to miss opportunities to encourage important sectors that need to thrive through this transition to make the investments needed to do so. Sectors such as agriculture, mining, forestry, manufacturing and mining all need to find ways to thrive in a carbon neutral world. They still don't have the needed policy certainty in Canada to seriously invest in this transition, putting their long-term viability increasingly at risk. For Canada, this means the economic cost of the transition, which remains inevitable, will be higher, and economic opportunities will continue to be missed.

Canada is now retreating from a Pan Canadian Framework that would have been an important if inadequate step toward meeting a weak international commitment made by the climate-adverse Harper government. Among our peers, Canada has done less than most to date to contribute to the global effort to decarbonize. We are one of very few developed countries whose emissions are still on the rise, and among the countries with the highest per capita emissions in the world.<sup>10</sup>

Whatever the reasons, we have failed to deal with the climate crisis for the past 20 years, even though the science is clear that the consequences of not doing so will come at an incredibly high price for humanity. What's more, the economics are clear that the sooner we act, and the more quickly we reduce emissions, the better off we will be economically, given that mitigation as a general rule is cheaper and more effective than adaptation, which in turn tends to be cheaper than dealing with the loss and damage of unabated climate change. Dealing with the economic and non-economic losses of climate change will be an incredible burden on societies for generations to come. While we have continued to fail to implement effective domestic action, other countries (such as China, Germany, the UK, Denmark and Sweden) have demonstrated that there are economic gains to be had from leading this transition.

---

<sup>9</sup> Government of Canada, *Discussion Paper: Developing a Strategic Assessment of Climate Change* (Gatineau, Quebec: Environment and Climate Change Canada, 2018), online: <<https://www.strategicassessmentclimatechange.ca/>>.

<sup>10</sup> Government of Canada, *Canada's 7<sup>th</sup> National Communication and 3<sup>rd</sup> Biennial Report: Actions to Meet Commitments Under the United Nations Framework Convention on Climate Change* (Gatineau, Quebec: Environment and Climate Change Canada, 2017), online: <[http://unfccc.int/files/national\\_reports/national\\_communications\\_and\\_biennial\\_reports/application/pdf/82051493\\_canada-nc7-br3-1-5108\\_eccc\\_can7thncomm3rdbi-report\\_en\\_04\\_web.pdf](http://unfccc.int/files/national_reports/national_communications_and_biennial_reports/application/pdf/82051493_canada-nc7-br3-1-5108_eccc_can7thncomm3rdbi-report_en_04_web.pdf)>; see also <https://climateactiontracker.org/> to see Canada's progress in comparison.

How did we get here? The answer to this question is far from straight forward. The climate crisis is complex, putting a full understanding of all its key elements beyond the understanding of any one scientist, any one politician, any one citizen. The debate about an effective response to the climate crisis has not paid adequate attention to facts, science, or the long-term best interests of Canada or the global community, and Canadian have not been well informed about the perils and opportunities involved. The discourse, instead, has been predominantly about selective short-term economic interests, about power and influence, about the manipulation of public opinion, and about myopic politics. A detailed assessment of the question how we got here is not possible in this one post, but the following are a few key contributors to the problem as I see it:

- We seem to live in an increasingly complex, post-fact society, where, for more and more citizens, facts appear to be indistinguishable from opinion. This means that on any given issue, including climate change, too many citizens are unable or unwilling to reach their own conclusion, and instead chose a side to “believe in”.
- Few citizens seem to get their information from credible sources that seek to test the accuracy of claims being made by those with a vested interest in the issue.
- We seem to have a political system that overvalues selective social and economic benefits of the status quo, overemphasizes the cost of change, and underemphasizes the benefits of change and the cost of standing still.
- Those with a stake in preserving the status quo have effectively utilized the complexity of the issue of climate change to undermine governments who have tried to take effective steps to facilitate the decarbonization of our society.
- Those who stand to benefit from the status quo have more resources, power and influence than those who stand to benefit from the decarbonization of our society.
- We have, over the past two decades, increasingly allowed concerns about environmental harm of human activity to be marginalized as anti-development, anti-business, rather than make rational decisions informed by science and fact, and in the interest of society as a whole.
- In trying to make a transition from fossil fuels to renewable energy, we encounter governments who listen to the fossil fuel industry more than the renewable energy industry. That’s the equivalent of listening to the horse and buggy industry in dealing with the transition to mechanized transportation, or to let the commercial fishing industry decide whether to reduce fishing quotas to save the cod or to change fishing practices to save the right whale.
- Governments have reacted by either appearing almost ideologically opposed to action on climate change, or, if they are willing to act, have become facilitators of stakeholders and their lobbyists, rather than leaders that drive policy. With the relentless and powerful lobby from the industry sectors trying to prevent or slow down the decarbonization of our economy, this has inevitably resulted in domestic inaction on this critical issue in Canada.
- As individuals, we have not adequately connected with the climate crisis in our capacities as investors, as employees, as parents, as voters, as citizens.

What does this experience tell us about the state of our democracy in Canada? What is wrong with our government when the goal posts keep moving in response to pressure from industry sectors (who so clearly represent their own interest, not the interests of Canada) that time and time again we end up with meaningless action on one of the greatest threats to the future of humanity? We should all be concerned that we seem to live in a country that allows sectors of our society that so clearly have an interest that is in conflict with the public interest to play such a dominant role in driving government policy. The solution lies in a combination of factors and efforts to improve our democracy. Among them are a more informed and engaged citizenry, a stronger independent media, stronger advertising rules, restrictions on lobbying and campaign fundraising, a better electoral system, a better education system, more independent science, a more transparent government, and more public engagement in decision making.

The experience with the development of climate mitigation policy in Canada points to a failure to draw an appropriate line between the legitimate role of affected industries and their undue influence over policy. Affected industries have an important role to play in helping to find effective, efficient and fair ways to reach a given policy goal, such as the decarbonization of our society. However, we continue to cross this line by giving those industries a role in deciding whether we will even work toward critical societal goals at all, and at what pace. It is nothing short of a failure of our system of democracy, when time and time again for over 20 years, the public's understanding of the seriousness of the climate crisis, and the economic, social and environmental consequences of not tackling it are undermined by those who stand to benefit by the status quo.

The lessons of the past 20 years go well beyond climate change. They demonstrate that the way we govern our society is not well suited to respond to change, to deal quickly, effectively and fairly with challenges, or take advantages of opportunities ahead. This is troubling in a world of accelerated change, change in environmental impact of human activities, change in technology, and change in the globalization of human societies.<sup>11</sup> If we cannot respond effectively to a crisis as serious as climate change, we need to recognize that we likely have a fundamental and systemic problem. It seems that the way we govern ourselves in Canada does not allow us to respond effectively and swiftly to changing circumstances in a transparent and accountable manner. This should be a tremendous concern in a world of accelerating change that shows no signs of letting up. We need to find ways to govern ourselves so that those who resist change for personal short-term gain do not have a disproportionate voice, a voice that is the product of their current power and influence in our society rather than their role in the future we strive for.

Of course, it is not too late to turn things around on climate change. Former Prime Minister Pierre Elliot Trudeau once said that when you face opposition to something you know to be right, you go over the heads of those opposed and speak directly to the people. President Obama similarly learned to work within the limits of a similarly flawed political system with

---

<sup>11</sup> Thomas L Friedman, *Thank You for Being Late: An Optimist's Guide to Thriving in the Age of Accelerations*, (New York: Farrar Straus and Giroux, 2016).

persistence and leadership to implement effective climate policies in the US over the strong and persistent opposition of industry, and in the face of the ever-present readiness of his political opponents to exploit the complexity of the issue for political gains.

We have to recognize, however, that until the underlying problems are addressed, the cards are stacked against such efforts, and those who persist in spite of these challenges do so at the risk of paying the price at the ballot box. In this difficult time, what we need are politicians with the courage to persist on critical issues such as climate change in spite of the odds, and politicians with the courage to address the serious structural problems with our system of government and our democracy.