



# Canadian Environmental Law:

## Climate Change Q&A

*Blakes*

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Blakes Means Business



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# Introduction

Across industry sectors, Blakes Environmental Group assists with solutions to environmental law challenges by navigating the layers of environmental regulation, advising on environmental assessments, permitting and approvals, devising risk-management strategies and resolving disputes, all with a goal of advancing business growth objectives.

As the exclusive member firm in Alberta, Ontario and Quebec for Lex Mundi – the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide - our lawyers Jonathan Kahn and Anne-Catherine Boucher developed this Canadian Environmental Law: Climate Change Q&A. This overview is current as of February 4, 2020, and part of a complete interactive Global Climate Change Guide created by Lex Mundi.



## General

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### **Has your country signed/ratified the Paris Agreement? If so, what is its INDC / NDC?**

Yes. Canada's INDC is that it intends to achieve an economy-wide target to reduce its greenhouse gas emissions by 30% below 2005 levels by 2030.

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### **What are the key national policy instruments regarding climate change and what are the national long term greenhouse gas emissions (GHG) reduction targets?**

Key national policy instruments include the Vancouver Declaration on Clean Growth and Climate Change, the Pan-Canadian Framework on Clean Growth and Climate Change (Pan-Canadian Framework), the Federal Adaptation Policy Framework, and the Government of Canada's Clean Fuel Standard, a regulatory framework to be phased in over the next several years that will address all fossil fuels used in Canada.

The objective of the Clean Fuel Standard is to achieve 30 million tonnes of annual reductions in GHGs by 2030 as a means of achieving Canada's INDC.



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### **Have national policies or legislation been adopted limiting or prohibiting the use of certain fossil fuels (e.g. coal, natural gas, nuclear)?**

Yes. The Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity Regulations made under the Canadian Environmental Protection Act, 1999 (CEPA) imposes a limit of 420 tonnes of CO<sub>2</sub> for each gigawatt-hour of electricity produced from coal per year. Further to recent amendments to these regulations, all new and existing coal-fired electricity units must comply with this performance standard after the earlier of 50 years of operation or by 2030 as a way of phasing out conventional coal.

In addition to this, the Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity under CEPA establish a regime for limiting CO<sub>2</sub> emissions resulting from the generation of electricity by means of thermal energy from the combustion of natural gas.

It should be noted that certain provinces have also undertaken significant measures. For example, Ontario and Manitoba have retired all coal-fired power plants.

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### **What specific national climate change legislation has been adopted?**

Canadian national climate change legislation includes the Canadian Environmental Protection Act, 1999 and regulations, the Energy Efficiency Act and regulations, and the Greenhouse Gas Pollution Pricing Act.

# GHG emission trading schemes

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## Does your country participate in an international or national GHG emissions trading scheme?

Participation in cap-and-trade programs varies across the Canadian provinces. The province of Quebec is engaged in a cap-and-trade program with the State of California pursuant to the Western Climate Initiative (WCI). The province of Nova Scotia has also adopted a cap-and-trade system that permits trading within the province only.

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## Has a national CO2 tax or similar instrument been adopted?

Pursuant to the Pan-Canadian Framework, which fixes benchmarks on carbon pollution pricing, the provinces were granted flexibility to adopt their own policies to meet emissions-reducing targets, either through the imposition of carbon pricing or a cap-and-trade system. Provinces that failed to introduce their own policies, however, were subject to a federal government fuel charge 'backstop' system implemented pursuant to the Greenhouse Gas Pollution Pricing Act.

This legislation is (as at the fall of 2019) being challenged in the Courts on the basis that it represents an unconstitutional federal incursion into provincial jurisdiction.

British Columbia, Newfoundland and Labrador, Prince Edward Island, and the Northwest Territories have established their own carbon pollution pricing systems. Quebec and Nova Scotia are engaged in cap-and-trade systems, and in the provinces of Saskatchewan, Manitoba, Ontario, and New Brunswick, and the territories of Nunavut and Yukon, the federal pricing system applies. The federal pricing regime will also apply in Alberta at the beginning of 2020.

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## Does national legislation regulate and/or subsidize carbon capture and storage (CCS)?

There is no national legislative scheme in Canada that regulates or subsidizes CCS, although temporary exemptions from the coal-fired electricity generation performance standard described above may be granted to units that function as CCS systems under the Regulations Amending the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations.

The regulation of CCS occurs at the provincial level. The province of Alberta, for example, has its own Carbon Capture and Storage Funding Act regulations.



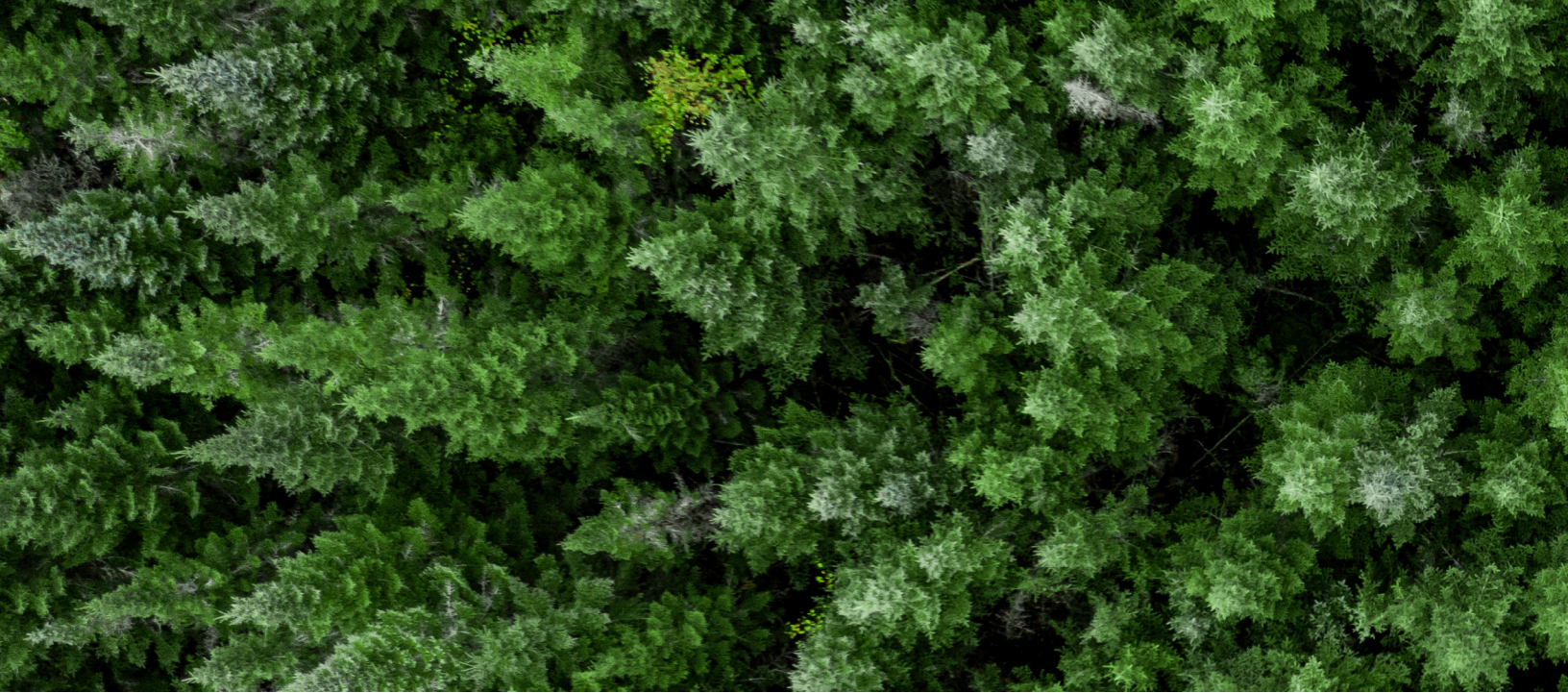
# Renewables

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## **Are the production and/or use of renewable energy sources subject to a national subsidy or similar support scheme?**

Yes. Canada's Emerging Renewable Power Program provides up to \$200 million in investments in emerging technologies to expand commercially viable renewable energy resources available to provinces and territories working to reduce GHG emissions from their electricity sectors.

Through this program, the federal government has provided support for solar, geothermal, and marine renewable energy projects.



# Energy efficiency

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## What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the built environment?

The Pan-Canadian Framework and Build Smart: Canada's Building Strategy set out the shared goals of both levels of government in Canada regarding energy efficiency in the building sector. These include the implementation of increasingly stringent model building codes and the adoption of 'net-zero energy ready' (or entirely energy efficient) model building codes by 2030.

While the Canadian provinces have jurisdiction over building codes, the National Building Code of Canada and the National Energy Code of Canada for Buildings serve as model building codes which the provinces may adapt or adopt in full. These model codes include energy-efficiency performance requirements for single-family homes and small buildings, and high-rise towers and warehouses.

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## **What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the transport sector?**

In accordance with the strategy for reducing transportation emissions set out in the Pan-Canadian Framework, the federal government has established its Zero-Emission Vehicle Infrastructure Program. Through this program, the government is devoting \$130 million over five years (2019-2024) to deploy a network of zero-emission vehicle charging and refueling stations in localized areas. It will also support projects for electric vehicle and/or hydrogen infrastructure for corporate fleets, last-mile delivery fleets, and mass transit.

In addition, through its Electric Vehicle and Alternative Fuel Infrastructure Initiative, the federal government is investing \$96.4 million in repayable contributions to support the construction of a coast-to-coast electric vehicle fast-charging network, natural gas stations along key freight corridors, and stations for hydrogen fuel cell electric vehicles in metropolitan centers. Several million dollars will also be available to support next-generation charging technologies and the development of binational codes and standards for low-carbon vehicles and infrastructure in collaboration with the United States.

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## **What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the industry?**

Pursuant to the Pan-Canadian Framework, the federal government has committed to reducing methane emissions by 40-45% by 2025. It has introduced new regulations under CEPA, the Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector), which are set to come into force in stages on January 1, 2020, and in 2023.

The Government of Canada has also entered into a partnership with Canadian industry members through the Canadian Industry Partnership for Energy Conservation (CIPEC) to promote innovation in energy management. CIPEC members are eligible for financial assistance from Natural Resources Canada (NRCan) to implement the ISO 50001 Energy Management Standard, an internationally recognized standard that gives organizations a structured framework to manage energy and minimize GHG emissions.

NRCan provides further funding to organizations to implement Energy Management Information Systems so that they may better plan and manage energy use and costs. NRCan also funds Process Integration and Computational Fluid Dynamics studies by technical firms, which assess how organizations may recover heat and identify efficient ways to design and operate energy systems.

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## **What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in agriculture and land use?**

Pursuant to the Pan-Canadian Framework, the federal government is working with the provinces, territories, and landowners to support efforts to enhance carbon stored in Canadian forests, wetlands, and agricultural soils. The Government of Canada has also committed to support the increased use of wood in the construction of buildings and to reduce emissions from the agricultural sector by encouraging sustainable land management practices such as 'zero-till' farming.

The Canadian government is engaged in the Agricultural Clean Technology program, which is a \$25-million, three-year investment over 2018-2021 to support research, development and adoption of clean technologies to help reduce GHG emissions through investments in and promotion of precision agriculture and agri-based bioproducts. Canada's Agricultural Greenhouse Gases Program also provides up to \$2 million in supports over 2018-2021 for projects that will create technologies, practices, and processes that can be adopted by farmers to mitigate GHG emissions.

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## **What are the main national measures being taken to reduce GHG emissions / improve energy efficiency in the electricity production sector?**

The Pan-Canadian Framework sets out actions on which the federal and provincial governments will work collaboratively to increase the amount of electricity generated from renewable and low-emitting sources and to modernize electricity systems.

As noted above, the federal government's recent amendments to the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations (2012) under CEPA that will accelerate the phasing-out of conventional coal-fired electricity units to 2030. The regulations set stringent performance standards for new coal-fired electricity generation units and those that have reached the end of their useful life.

Various provinces and territories have already taken action to move from traditional coal-fired generation to clean electricity: Ontario and Manitoba have phased out their use of coal, Alberta has plans to phase out coal-fired electricity by 2030, Nova Scotia has created a regulatory framework to transition from coal to clean electricity generation, and Saskatchewan uses a coal-fired generating unit with carbon capture technology that captures 90% of emissions.



## Finance

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**What measures are national financial institutions (incl. banks, pension funds, asset management companies and insurance companies) aimed at reducing the GHG emissions of their customers?**

Canadian financial institutions are engaged in measures that can contribute to the reduction of GHG emissions of their customers. These include offering environmental products and services to clients relating to the transition toward a low-carbon economy, such as energy saver loan and mortgage products and solar panel financing, as well as the offering of low-carbon lending and environmental, social, and governance (ESG) products.

Canadian financial institutions are also taking steps to support a low carbon economy through sustainable finance. 40 of the largest Canadian investors are now signatories of the UN Principles for Responsible Investment, which involve a commitment to incorporate ESG issues into investment analysis and decision-making processes. Certain Canadian financial institutions have also signed onto the UNEP Principles for Responsible Banking, which involves a commitment to work with clients and customers to encourage sustainable practices. Over 35 Canadian organizations are now also official supporters of the Task Force for Climate-related Financial Disclosure.

Several large Canadian companies including big banks, pensions and insurance companies have issued green bonds in support of clean energy projects. The Bank of Canada has also joined the Network of Central Banks and Supervisors for Greening the Financial System, which promotes best practices in climate risk management for the financial sector and conducts analytical work on green finance.



## Litigation

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**Are there prominent national climate change litigation cases in your country? If so please provide a short description (e.g. plaintiffs/defendants, public or civil law based, etc.).**

There are a number of climate change lawsuits underway in Canada. Currently, the provinces of Saskatchewan and Ontario are appealing decisions by their provincial appellate courts on the constitutionality of the Greenhouse Gas Pollution Pricing Act. The ability of the federal government to impose a carbon tax across Canadian provincial jurisdictions will be subject to a decision by the Supreme Court of Canada.

In Quebec, an environmental educational organization called ENvironnement JEUnesse has filed a class-action lawsuit on behalf of all young Quebecers aged 35 and under against the federal government for its inaction on climate change.

A group of 15 youths from across Canada has recently sued the federal government over injuries due to climate change and elevated GHG emissions, claiming that the government's inaction over climate change has infringed upon their constitutional rights to life, liberty, and security of the person.



## Miscellaneous

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### **Climate change policies, measures or legislation (other than covered by the questions above).**

An important part of the Pan-Canadian Framework is Canada's \$2 billion Low Carbon Economy Fund, which comprises the Low Carbon Economy Leadership Fund and the Low Carbon Economy Challenge. The fund provides federal government funding to support the provinces in their commitment to reduce GHG emissions and to invest in innovative projects working to reduce emissions and generate clean growth.

The federal government also supports the Climate Action Fund, which has awarded \$3 million per year since 2018 to support innovative ideas. The projects funded under the program are intended to raise awareness and increase action toward climate change.



