

## **Working Paper: Federalism and Canadian Climate Change Policy**

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#### Introduction

As a participant in the international climate change regime established by the 1992 United Nations Framework Convention on Climate Change (UNFCCC), Canada, like other countries, makes periodic commitments to reduce total greenhouse gas (GHG) emissions. Were Canada to actually keep any of those commitments, an enormous strain would be placed on the workings of Canadian federalism. The reason is that different regions are going down very different climate-change policy tracks. Emissions are increasing in Alberta and Saskatchewan, which together account for close to half of total Canadian emissions, while declining elsewhere. Alberta and Saskatchewan are implicitly saying that in order for Canada to keep the commitment it made in Paris in 2015 to reduce emissions to 30% below the 2005 level by 2030 other provinces will have to make the major cuts in GHG emissions which they are unwilling to make. The portending high stakes territorial conflict over the coming decade will test to the limit the ability of Canadian federalism to generate effective policy. Unfortunately, it also offers to Canadian policy makers, yet again, the almost irresistible temptation to miss an international commitment, sacrificing policy effectiveness to preserve national unity.

The subject of this chapter is the workings of Canadian climate-change federalism since Prime Minister Brian Mulroney made Canada's first commitment to reduce GHG emissions in 1990. Climate change, like the regulation of toxic substances, has been treated by governments as an area of shared jurisdiction, in which both the federal and provincial governments have constitutional authority to govern. (The 2018 court actions by Saskatchewan, Ontario and Alberta to test federal authority are discussed below.) Since both orders of government are acting in the same policy field, there is a need for them to co-ordinate their activities. An even more important need for co-ordination, if Canada is to achieve the 2030 target, is the necessity of reconciling the divergent policy paths set out above.

While co-ordination is essential, it has not always been attempted. There are two reasons why. The first is that during the period 2006 to 2015, the federal Conservative government of Stephen Harper had no interest in acting itself or leading co-ordinated federal-provincial policy. To the extent co-ordination existed it was on a subnational, cross-border basis, primarily through provincial participation in the Western Climate Initiative led by California (Winfield and Macdonald, 2012; VanNijnaten, 2016). The second factor explaining a lack of full co-ordination is that even during the periods when they were working to develop co-ordinated national policy governments at both orders have also acted independently. Provincial governments have set reduction targets without regard for co-ordinated effort and federal governments have taken independent action; examples of the latter are the plans by the Chretien and Martin governments for federal regulation of industrial emissions and, more recently, the

Justin Trudeau government's federal backstop carbon pricing system. For these reasons, this chapter examines both co-ordinated and independent government actions.

The subject of climate change necessarily also includes intergovernmental politics and policies respecting proposals to build new pipelines to carry Alberta oil to foreign markets, which, because they cross provincial or international borders, require regulatory approval from the federal government. Although not an issue in the initial attempts to develop co-ordinated policy, pipeline politics have bedevilled the Pan-Canadian Framework (PCF) program led by the Justin Trudeau government.

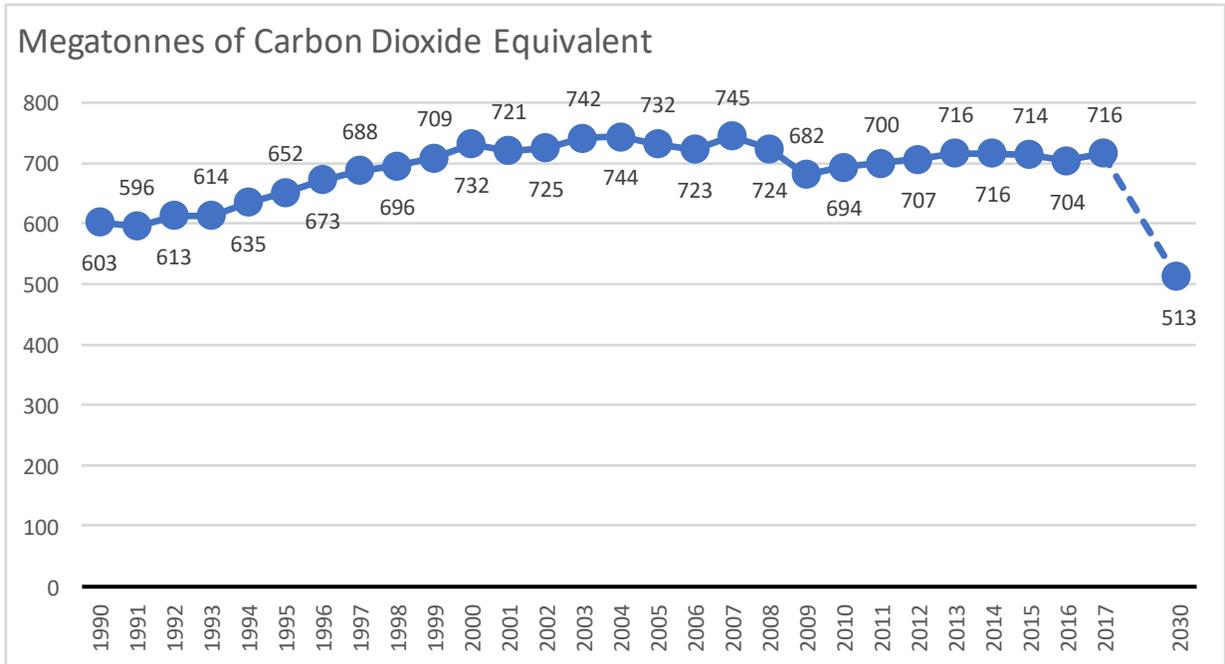
In keeping with the other chapters in this volume, the purpose here is three-fold. First, the chapter *describes* the workings of Canadian climate federalism. A second objective is to *evaluate* national policy making to date using the three criteria of performance, effectiveness and legitimacy. The third objective is to *explain* these outcomes, which is done in the penultimate section by providing analysis of why Canadian national climate-change policy has followed its particular evolutionary path since 1990.

The chapter discusses the unique nature of the climate change issue and the context within which Canadian policy making takes place. With respect to the first, given the need to change the use of fossil fuels, one must remember that climate change overlaps closely with energy policy. The result is that the differing economic interests of the oil and gas producing regions relative to other parts of the country inevitably come into play and do so in a salient, high-stakes manner. Beyond these regional differences, climate change is also marked by ideological differences, with citizens and political parties on the centre-left far more likely to act on the issue than are those on the right.

## 2. Description: Historical overview 1990 to 2019

As can be seen in Figure 1 below, with the exception of a decline starting in 2008 due to the economic recession that year and a more recent dip between 2014 and 2016, Canadian GHG emissions have been steadily increasing since 1990.

Figure 1. Total Canadian GHG emissions 1990 to 2017  
(2030 Paris target 513 Mt (Source: ECCC, 2019d))



While the trend in over-all emissions has been largely upward, the trends for emissions from different forms of economic activity vary. Use of fossil fuels for extracting and transporting oil and gas (27% of total Canadian emissions) and transportation (24%) are the two sources which have seen increases in recent years; other sources, such as electricity (10%) and heavy industry (less than 12%%) have declined (ECCC, 2019d: 58).

Transportation is spread approximately evenly across the country on a per capita basis and so all parts of the country have seen similar increases in emissions from that source. The oil and gas industry, on the other hand operates only in some regions. For that reason, plus differences in policies implemented, emissions have been increasing in some provinces while decreasing in others in recent years. Table 1 below gives an example.

Table 1. Decreasing and increasing provincial emissions, four provinces 2005 to 2016

*Decreasing*

Quebec	-9.8%
Ontario	-22%

*Increasing*

Alberta	+18%
Saskatchewan	+14%

Source of data: Environment and Climate Change Canada (2019d). National Inventory Report 1990 – 2017: Greenhouse Gas Sources and Sinks in Canada. Part 1.  
[http://publications.gc.ca/collections/collection\\_2019/eccc/En81-4-2017-1-eng.pdf](http://publications.gc.ca/collections/collection_2019/eccc/En81-4-2017-1-eng.pdf)

Emissions from oil and gas activity are expected to continue to increase, in part due to anticipated increases in production from the Alberta oil sands. Oil sands emissions were estimated to be 77 Mt in 2018 (Pembina, 2018). If all the oil sands projects which have already received regulatory approval come on line, emissions will increase to 131 Mt (Pembina, 2018). The Rachel Notley NDP government elected in Alberta in 2015 took significant action to reduce the rate of increase in Alberta emissions. Its measures included a carbon tax, an end to coal-fired electricity and a cap of 100 Mt, with exceptions, on oil sands emissions. Those actions, however, worked to reduce the rate of increase in Alberta emissions, rather than bring about a net reduction. In 2018, the Alberta government forecast that its emissions would be higher in 2030 than they were in 2010 (Alberta, 2018). The Jason Kenny United Conservative Party, elected on April 16, 2019 plans to end those NDP policies, with the likely result of increasing Alberta's emissions even further.

In 1992, 1997 and again in 2010 the Government of Canada, as it has participated in the international climate-change regime, has given commitments for reductions in total Canadian emissions. All three targets have been missed. Whether or not Canada is able to achieve the current Paris target depends very much on whether the country continues to go down two different policy tracks, or instead is able to use the intergovernmental policy making system so that all parts of the country are moving in the same direction of declining emissions.

## 2.1 Failure to develop effective co-ordinated national policy, 1990 to 2015

In 1990, the Progressive Conservative government of Brian Mulroney, having previously helped to put the issue on the international policy agenda by co-hosting the 1988 "Toronto conference", set the target of stabilizing emissions at the 1990 level by the year 2000. It started to work with the provinces to develop co-ordinated policy to achieve that goal. That was done for the next twelve years, without use of effective policy instruments such as law or tax. Not surprisingly, emissions continued to increase. Throughout that period, the government of Alberta played a veto role, lobbying against adoption of the 1990 target; lobbying in favour of voluntary instruments; and successfully pushing for a two-year pause after the 1997 Kyoto summit, during which governments did planning instead of policy implementation (Macdonald, 2009).

In 2002, the Canadian government led by Liberal Prime Minister Jean Chretien ratified the 1997 Kyoto Protocol. The fact it did so over the objections of Alberta and all other provinces brought the effort to develop co-ordinated policy to an end. Earlier that year, Alberta and Ottawa began to move in different policy directions. . Alberta adopted a reduction target significantly weaker than the existing national target and initiated the policy it still follows today, of a net increase in provincial emissions, even while the country as a whole is seeking to reduce emissions. For its part, Ottawa gave up on working with the provinces and started to develop independent plans to regulate industrial emissions (Winfield and Macdonald, 2012).

Those plans for independent federal regulation were continued by the Liberal Paul Martin government from 2003 to 2005. The government fell, however, in December 2005 before the regulations were put into effect. The Conservative Harper government, in office from 2006 to 2015, then essentially ignored the issue. It made no effort either to work with the provinces to develop co-ordinated policy or to implement its own emissions-reduction policy (Toner and

McKee, 2014). During this period, however, some provinces began to independently implement effective policy. The most notable examples are the 2008 BC carbon tax, the phasing out of coal-fired electricity in Ontario, the joint Quebec-California cap-and-trade system (which Ontario joined in 2016 but then abandoned in 2018 after the Wynne Liberal government was replaced by the Doug Ford Progressive Conservative government) and legislated reductions from electricity generation in Nova Scotia. As noted, the Rachel Notley NDP government elected in May 2015 reversed Alberta climate-change policy by enacting significant measures to reduce emissions. At the same time, Premier Notley, like previous Alberta governments, lobbied for federal approval of new pipelines which would allow continued increase in oil sands production.

By fall, 2015 independent governments had been acting unilaterally for nine years, making no attempts to develop co-ordinated Canadian policy. Cross-border subnational co-ordination, which had seemed promising a decade earlier (Winfield and Macdonald, 2012), had not borne fruit, other than the Quebec-California partnership. Analysis done a few years earlier showed that the sum of the independent actions being taken would not be sufficient to meet the 2020 target (NRTEE, 2012), indicating that uncoordinated provincial action, with no leadership from the federal government, cannot achieve a Canadian commitment. That federal leadership reappeared, however, when Justin Trudeau's Liberal government was elected on October 19, 2015.

## 2.2 The Pan-Canadian Framework and Pipelines October 2015 – May 2019

The change of government in 2015 brought about a sea-change in federal-provincial climate policy. Unlike its predecessor, the new Liberal government was committed both to acting itself on the issue and to working with the provinces to develop co-ordinated policy. Furthermore, the Alberta government, whose participation is essential for any national program given that it is responsible for 38% of Canadian emissions (ECCC 2019d), had moved under Premier Notley from the veto role it had played during the national efforts of the 1990s to one supporting co-ordinated national action. That support, however, came at a price: one which would significantly complicate the intergovernmental process. Alberta would only participate in a new national program if the Justin Trudeau government approved a new pipeline to tidewater.

Since the late 2000s, the oil industry and successive Alberta governments have been strongly committed to seeing new pipelines built both to the US, and to either the west or east coast of Canada, from which point oil could be shipped to Asia or other parts of the world. The latter component of the pipeline strategy was driven by a combination of a weakening US market due to the increasing availability of low-cost 'fracked' oil, and opposition to pipeline expansions by the Obama administration in the US, particularly in light of the Harper government's climate policies. These dynamics made regulatory approvals for new pipelines, which used to be largely invisible and almost automatic, very visible and highly politicized. The American environmental movement, frustrated by the inability of the Obama administration to get climate-change legislation through Congress, had adopted a new objective of stopping the Keystone XL pipeline. It had begun working with Canadian environmentalists on a strategy of "land locking" Alberta oil – making investment in the oil sands less attractive because of difficulties in getting the product to market (Hoberg, 2013).

Two other factors compound the challenge faced by industry and the government of Alberta. The first is a series of court rulings flowing from s.35 of the *Constitution Act, 1982* requiring substantive and meaningful consultation with Indigenous peoples where proposed pipelines and other projects may affect their aboriginal and treaty rights and traditional or unceded territories (Haida, 2004). At the same time, pipelines have the inherent effect of imposing costs on some and benefits on others, since the benefits flow to Alberta industries and governments while costs, in the form of risk from spills, are borne by those in the other provinces through which the pipeline passes. Local politicization of these risks led Quebec municipalities to object to the now cancelled Energy East pipeline. It has also led to the major dispute between British Columbia and Alberta over Kinder Morgan's plans to build a new line on the route of the existing Trans Mountain pipeline from Edmonton to Burnaby on the Pacific coast.

Although Prime Minister Justin Trudeau was clearly committed to climate change action, he had been elected on a platform of support for both environmental protection and building some new pipelines. (Prior to the election Trudeau had publicly expressed support for Keystone XL but not Northern Gateway and said nothing about the Kinder Morgan expansion. (Campion-Smith, 2015)). Trudeau and Rachel Notley were in basic agreement. This "balanced" approach, however, was to cause the Prime Minister considerable headaches as he attempted to stitch together a new, federal-provincial climate change policy.

That process started when the Prime Minister and Premiers met on November 23, 2015, immediately prior to the Paris summit. A number of premiers then accompanied Prime Minister Trudeau and his Environment Minister to Paris, where they and other members of the Canadian delegation, for the first time in many years, spoke strongly in favour of international action. By early spring, 2016 it had become clear that the primary objective of the Trudeau government was to ensure that a price was put on carbon in all parts of the country, with "price" defined as either an explicit tax or a trading system which achieved a comparable reduction.

The central instrument was a federal "backstop" price. Originally planned to start at \$10 a tonne in 2018, it would rise to \$50 by 2022. (In fact, the federal tax was first imposed in 2019, at \$20.) Ottawa would itself impose that price within the borders of any province which had not introduced a tax or trading program. All resulting revenues would be returned to the province in question. Whether given directly to citizens or firms or instead to the provincial government was not specified at the time. In 2018, it became clear the tax would be returned to citizens, over the heads of objecting provincial governments.

The fact that the four largest provinces-- BC, Alberta, Ontario and Quebec-- already had pricing programs in place and so were only asked to agree to the 2022 \$50 price made achieving the federal pricing objective that much easier. Saskatchewan, which had no pricing program and was relying primarily upon technological development of carbon capture and storage to achieve future reductions, objected to the federal proposal. So too did Nova Scotia. It had reduced its per capita emissions by more than any other province, but without use of a carbon tax or trading system; reductions were due to declining demand for electricity, legislated caps on Nova Scotia Power and subsidy for renewable-source electricity (Doelle, 2018; Haley, 2019).

Federal and provincial environment ministers met on January 29, 2016, followed by a meeting of First Ministers in Vancouver on March 2-3. Some premiers objected to the Prime Minister's insistence that provincial pricing be done only by means of a tax or trading program. Faced with this resistance, the Prime Minister acquiesced and as a result the meeting communiqué said that all governments would act: "by adopting a broad range of domestic measures, including carbon pricing mechanisms, adapted to each province's and territory's specific circumstances ...." (Vancouver Declaration, March 3, 2016). Saskatchewan and Nova Scotia interpreted this as meaning their programs would exempt them from the federal backstop price. It seemed that governments were working in a collaborative mode, as equals developing national policy together.

By early fall, however, things had changed considerably, with collaboration giving way to unilateral federal action. In September, federal Environment Minister Catherine McKenna stated that the minus 30% target, which had previously been presented as a "minimum" was in fact the Canadian target (Payton, 2016). On September 21, 2016 Minister McKenna stated provincial action had to be in the form of a tax or trading system (CBC News, September 21, 2016). This was perhaps correctly perceived by some provinces as breaking the Vancouver agreement on "carbon pricing mechanisms." On October 3, 2016 the Prime Minister formally announced the backstop price in the House of Commons, showing a surprising lack of diplomatic finesse since on that same day federal and provincial environment ministers were meeting to develop the national plan. The Saskatchewan, Newfoundland and Nova Scotia ministers walked out of the ministers' meeting in protest. Premier Wall of Saskatchewan called the federal announcement a "betrayal" of the Vancouver agreement (CBC News, October 3, 2016). For her part, Alberta premier Rachel Notley said publicly her province would only participate in the national program if the federal government approved a new pipeline.

Prime Minister Trudeau gave Alberta what it wanted on November 29, 2016 when his government rejected the Northern Gateway pipeline but approved the Kinder Morgan Trans Mountain and the Alberta to Wisconsin Line 3 pipeline renewal and expansion. These pipelines would significantly increase the quantity of oil Alberta could export daily, both to the US and to the Pacific west coast. Although subsequently running into difficulties, these approvals made possible the agreement reached at a First Ministers Meeting in Ottawa on December 9, 2016 when all governments except Manitoba and Saskatchewan signed on to the Pan-Canadian Framework on Clean Growth and Climate Change. Manitoba refused to sign because of an unrelated dispute over health care spending. Saskatchewan, which had inherited from Alberta the mantle of chief Ottawa opponent, both refused to sign and promised to challenge the federal backstop price in court. Nova Scotia on the other hand dropped its opposition, agreed to bring in a cap-and-trade system and signed on to the PCF, in exchange for federal agreement that it could operate its coal-fired electricity plants past the year 2030.

Since then, Ottawa has proceeded to implement those parts of the program which fall fully within its jurisdiction. The Trudeau government enacted its Greenhouse Gas Pollution Pricing Legislation (authorization for the federal backstop price) as part of the 2018 federal budget. On October 23, 2018 the Prime Minister announced that four provinces (Saskatchewan, Manitoba, Ontario and New Brunswick) had not implemented carbon pricing. Since they had not met the federal standard, the federal tax would be applied there, with resulting revenues returned to

citizens in each province. Federal regulations on hydrochlorofluorocarbons (HFCs), substances that both deplete the ozone layer and contribute to climate change, came into effect in October 2017 and draft federal regulatory requirements to end coal-fired electricity generation by 2030 (with exemptions given to Saskatchewan and Manitoba) were published in 2018 (ECCC, 2018a; 7). Federal regulations to reduce methane emissions from oil and gas, with provisions for provincial equivalency agreements, were published in 2018. Consultations on development of the federal clean fuel standard, intended to reduce the carbon intensity of liquid, gas and solid fuels by means of federal law, continued.

Work with the provinces in the form of shared-cost programs for projects leading to emission reductions also proceeded. By December 2018 \$1.1 billion of the \$1.4 billion federal funding for the PCF Low Carbon Economy Leadership Fund had been approved (ECCC 2018a). Joint programs had been agreed to with eight provinces, all except Manitoba and Saskatchewan, who having not signed the PCF were not eligible (Government of Canada, 2019). As discussed below, Ontario under the Doug Ford government, cancelled its participation in all the federal shared-cost programs (Government of Canada, 2018). In response, the Trudeau government said it would look for options to provide funding to Ontario organizations (ECCC 2018b). In the same way, federal funding has been supplied to bodies within the province of Saskatchewan, such as the City of Regina, despite the provincial government's ineligibility (ECCC 2019b).

The path of implementation for the PCF in other areas, however, has not been smooth. Two major challenges have emerged. One is the inability to proceed with the Trans Mountain expansion pipeline: the price of Alberta participation in the PCF. The second is the partisan, ideological opposition to the federal backstop carbon price on the part of Conservative premiers and the leader of the federal opposition, Conservative Party leader, Andrew Scheer.

In July 2017 the NDP led by John Horgan, supported by the three Green Party members, replaced Christy Clark's Liberals as the government of British Columbia. Five years earlier, Clark's government had announced it would only support a new heavy-oil pipeline crossing its territory from Alberta to the west coast if five conditions were met. They included upgraded marine spill response capacity to be provided by Ottawa and a "fair share" of the associated financial benefits (BC, 2012). The tensions BC's conditions created with Alberta were eventually resolved by an agreement between the two provinces that was signed November 5, 2013. Under the agreement, Alberta accepted the BC conditions and both parties agreed that BC would seek financial compensation from the relevant pipeline company, rather than Alberta (Alberta, 2013). After negotiations, Kinder Morgan agreed to pay the BC government a minimum of twenty-five million dollars a year for twenty years. In exchange, the Clark government issued regulatory approvals for the Trans Mountain line, complementing the prior federal approval.

The NDP-Green coalition, however, did not feel bound by this agreement, and, true to their election platforms, announced it would try to stop construction of the new Trans Mountain line. In January 2018 the Horgan government announced plans to introduce new legislation giving it authority to regulate increases in the quantity of heavy oil shipped through British Columbia. The Alberta and federal governments condemned BC's action as being beyond the province's jurisdiction. In late February, Premier Horgan announced he would seek a court ruling on the constitutionality of his proposed regulations. In early April, Kinder Morgan announced it had

temporarily halted work on pipeline construction and would abandon the project all together if it did not have regulatory certainty by May 31 (Ferrerase and Mertz, 2018).

Faced with this threat of capital flight, the governments of Alberta and Canada accepted the deadline and vowed to do what was needed to ensure the pipeline was built. The federal and Alberta governments entered into secret negotiations with Kinder Morgan. They culminated in an announcement on May 29, 2018 that Ottawa had agreed to buy the existing pipeline for \$4.9 billion and planned to spend another seven billion dollars to build the new line, in the hopes of then selling both to private investors. Alberta had promised another two billion dollars if needed.

On August 30, 2018, however, the Federal Court of Appeal overturned the federal approval of the pipeline expansion, given in November 2016, on the grounds that the NEB had not considered impacts of increased tanker traffic upon endangered killer whales in the ocean waters off British Columbia and that the federal government consultation with Indigenous peoples had been inadequate. The Trudeau government did not appeal the decision. Instead, it ordered the NEB to reconsider the project application (this time with the federal government as owner and proponent) and launched a new series of Indigenous consultations. On February 22, 2019 the NEB released its Reconsideration Report, recommending approval. Although the Report stated that the Kinder Morgan project will have adverse effects on the whales, the project was still justified in light of its economic benefits (NEB, 2019). On June 18, 2019 the Trudeau government again approved the pipeline and shortly afterward new court actions were launched to stop it.

Responding to the August 30, 2018 court decision, Alberta Premier Rachel Notley announced that her government was opting out of the PCF “until the federal government gets its act together” (CBC News, 2018). Premier Notley’s announcement was interpreted as a suspension of Alberta’s participation in the PCF until new regulatory approvals for the Trans Mountain expansion were in place and construction had started. Premier Notley did not, however, cancel the Alberta carbon tax which had increased to \$30 a tonne in 2018. Instead, she decreed that Alberta would not comply with the federal backstop by increasing the Alberta tax to \$40 in 2021 and then \$50 in 2022. (The federal government deemed Alberta to be in compliance with the backstop price in 2019.) Nor yet did Alberta withdraw from participation in PCF programs (Bertrand, 2019). For instance, the PCF Second Annual Report, issued in December 2018 three months after Premier Notley’s announcement of opting out said that: “Alberta continues ... engagement on the federal Clean Fuel Standard development (ECCC, 2018b: 55).” It seems that the Alberta withdrawal from the PCF, at least prior to the Alberta election in the spring of 2019, was more rhetorical than actual.

While the Trudeau-Notley alliance between two centre-left governments survived more or less intact, relations between the Trudeau government and conservative provincial governments became visibly hostile. Brian Pallister, Progressive Conservative leader in Manitoba, joined the PCF in February 2018 and began planning to introduce carbon pricing. Pallister then abruptly cancelled those plans later in the year (Lambert, 2018), with the result that the federal tax was applied in that province. Saskatchewan Premier Scott Moe, who had replaced Brad Wall as premier, continued that province's vocal opposition to the federal tax. Saskatchewan’s court action to declare the tax unconstitutional went to a hearing in February 2019. Shortly after he

was elected Ontario Premier on June 7, 2018 Doug Ford cancelled the Ontario cap-and-trade program and Ontario's participation in shared-cost programs and initiated legal action against the federal tax. The Saskatchewan and Ontario Courts of Appeal subsequently found the federal backstop carbon pricing regime to be constitutional. Both provinces have appealed to the Supreme Court of Canada.

On November 29, 2018 the Ford government introduced a new climate change plan. It made no reference to tax or trading but instead contained vague plans to use government spending to induce industrial emission reductions. The plan scaled back the Ontario 2030 target. For his part, federal Conservative Leader Andrew Scheer made attacks on the federal backstop carbon price central to his critique of the Trudeau government. While, as of spring, 2019 Scheer had not yet published his own climate plan, it is clear that the PCF will not survive, should he win the 2019 election.

The Trudeau-Notley alliance was brought to an end by Jason Kenney's Alberta election victory in April, 2019, an event which further weakened the PCF. During the campaign, Kenney had promised an end to Notley's willingness to co-operate with the federal Liberals, as well as cancellation of her climate policies. It seems likely Kenney will emulate the Doug Ford government by fully withdrawing from the PCF, even if technically remaining a member. If so, Alberta and the other four non-participating provinces will represent 59% of the Canadian population and 76% of total Canadian GHG emissions. By that point, it will be difficult to call the PCF a "national" program. Furthermore, with both Alberta and Ontario, which together account for about 60% of Canadian GHG emissions, both opting out of the PCF while also scaling back their climate policies, other provinces will have to do much more (which is difficult to believe) and the likelihood of achieving the Paris target becomes more remote.

Rather than a national program, the PCF is best thought of as a program relying primarily upon federal legislation and spending, with some provincial participation and opposition by five other provinces. In the spring of 2019, in formal terms Saskatchewan is the only province not participating (Bertrand, 2018). In de facto terms, Ontario has fully withdrawn from the program and Alberta is about to follow. Only British Columbia and Quebec, among the major-emitter provinces, are enthusiastic participants. The PCF represents a considerable advance over the national programs of the 1990s, which never involved the use of effective policy instruments such as law or tax, and also over the lack of any federal leadership by the Harper government.

However, the PCF cannot be characterized as a collaborative exercise in development of federal-provincial co-ordinated policy. Instead, it is a federal program in which some provinces have agreed to participate, and others have declined. Nor does it address the basic problem presented at the outset, of rising emissions in some parts of the country and declining emissions elsewhere. Indeed, it institutionalizes that dichotomy, both by accepting that Alberta emissions will increase through to 2030 and by being based upon federal action to expand pipeline capacity which will enable that Alberta emission increase.

### 3. Evaluation

This section evaluates the workings of Canadian climate-change federalism, including both coordinated and independent government actions, since 1990.

#### 3.1 Performance: Institutions, Processes and Results

The first item to be examined here is consistency with federal principles: do governments recognize the proper role and autonomy of other governments? Is there a balance between unity and diversity? By and large, since 1990 governments developing climate policy, alone or together, have respected the role (jurisdiction) and autonomy of other governments. The only possible exception has been the Trudeau government's backstop carbon price, which is exceptionally assertive federal action. That said, whether it violates norms of federalism is less clear. On the one hand, it could be argued that the policy violates norms of respect for provincial governments' autonomy in two ways. First, it entails the government of Canada telling a provincial government which has explicitly said it does not want its citizens and businesses to be subjected to some form of carbon pricing that they will indeed be subject to a carbon price. Such action by Ottawa could be seen as unwarranted interference. Second, the specific case of Nova Scotia suggests undue federal interference. As discussed, the province had reduced its GHG emissions more than any other province and yet was told by Ottawa that, nevertheless, it would have to introduce some form of pricing. On the other hand, one could argue that the federal backstop does not reduce autonomy because provincial governments are still free to put in place any other climate-change policies or to altogether refrain from acting on the issue. With respect to Nova Scotia, Ottawa allowed the province to choose its form of carbon pricing (tax or trading systems). Moreover, national consistency and the risk of 'carbon leakage,' where economic activities move from provinces that do price carbon to those who do not, requires that some form of comprehensive pricing be introduced in all provinces.

There has not been a balance between unity and diversity. Since 1990, given the ineffective nature of the two 1990s national processes, the emerging problem of provincial legal challenges to the PCF and the large number of autonomous provincial programs, diversity has been the norm. The prospects for unity in the form of carbon pricing in each jurisdiction rest upon two conditions: the Supreme Court eventually ruling that the federal carbon pricing backstop price is constitutional and the Trudeau government being re-elected in 2019.

Have we seen "workability"? That is, do forums exist for consultation, negotiation, and coordination of governments? During the 2003-15 period, workability prevailed in the form of the Martin government pursuing a strategy of bilateral engagement with the provinces individually. The complex intergovernmental processes of the 1990s provided many venues for consultation, coordination and negotiation, but these opportunities did not translate into effective policy. Since the PCF signing in 2016, there have been no further First Ministers' Meetings specifically focussed on climate change (although climate and energy policy were discussed at the December 7, 2018 FMM) or meetings of environment ministers specifically devoted to the PCF. (Ministers meet annually under the auspices of the CCME.) Instead, the multilateral process which generated the PCF has been replaced by a series of Ottawa-provincial bilateral discussions.

Can governments produce results by agreeing on policy? Again, no such agreement was possible during the period when no intergovernmental process was in place. Governments engaged in intergovernmental processes have agreed on climate policy on two occasions. The first was during the 1990s, which saw agreements, but only for voluntary action. The second was on December 9, 2016 when all but two governments signed the PCF. Governments could *not* reach agreement in 2002, when Ottawa launched its own unilateral policy, ratified Kyoto in the face of provincial resistance, and attempts at co-ordination came to an end. Nor were they able to reach agreement in 2018 when some provinces opted out of the carbon pricing system and took legal action hoping to have it declared unconstitutional. While agreement was reached by signing the December 2016 PCF the fundamental policy difference between Alberta, with its policy of steadily increasing emissions, and other provinces implementing reduction policies was papered over.

Has Canadian climate-change federalism since 1990 shown a capacity to pull conflicting objectives into one coherent whole, thereby managing political cleavages? The answer is no. The fossil-fuel provinces of Alberta and Saskatchewan have moved steadily in the direction of increasing oil and gas production, which has meant rising emissions, while other provinces have reduced their emissions. None of the intergovernmental processes has brought about a change in this interprovincial cleavage. Nor has the PCF been able to address the ideological cleavage between right-wing governments vehemently opposed to carbon pricing and others which are successfully implementing pricing.

Has decision making been consensual? Do rules promote accountability of governments to their citizens and to one another? The three intergovernmental processes have relied only on consensus (that is, unanimity) with the associated right of governments to opt out. That is, no consideration has ever been given to such things as qualified majority voting (to be adopted a decision must be approved by more than 50 per cent of participants or some other formula). Even had such a system been used for the December 2016 adoption of the PCF, absent some effective enforcement mechanism, provinces would still have had the ability to subsequently opt out (as Ontario did after the its 2018 election).

Canada's accountability to the international UNFCCC regime is achieved through the requirement that, like all participating countries, it file annual reports on progress. During the 1990s intergovernmental processes, there was no reporting by governments to their citizens. The PCF, however, has generated two annual reports on progress, in 2017 and 2018 (ECCC 2018a; 2017). In addition, in an unprecedented move Auditor Generals of all jurisdictions worked together to produce a joint report for Canadians in March 2018 on the collective progress being made (or not) by governments to achieve climate change goals (Auditor General of Canada, 2018). The accountability of governments to one another in the PCF is diminished by the lack, of regularly scheduled meetings of First Ministers and energy/environmental ministers to review progress and plan next steps. To the extent it exists, accountability flows only from provinces to Ottawa, in the form of the federal backstop price should provinces not act, arrangements governing shared-cost programs and through bilateral discussions.

### 3.2 Effectiveness: Policy Outcomes

As discussed, the most effective policies have been those implemented by Canadian provinces acting autonomously, without regard to what other Canadian governments were doing. Intergovernmental processes, by contrast, have been ineffective. The 1990s processes failed to meet the first two Canadian reduction targets and the PCF is on track to miss the 2030 target. The federal government reported in 2019 (ECCC, 2019a) that, with both existing policies and policies still being developed, emissions were forecast to be 19% (rather than 30%) below the 2005 level by 2030. Furthermore, the reductions achieved by some provinces acting alone have been overwhelmed by the emission increases in free-riding provinces. Canadian climate policy, that which is intergovernmental as well as that which is unilateral, has been ineffective because it has been unable or unwilling to address that basic problem.

In the face of this failure, Canadian governments have used all policy instruments available to them, including fiscal incentives, law-based regulation, tax and cap-and-trade, public outreach and education, to promote policies to reduce GHG emissions. They have also innovated, most especially in the 2016 federal backstop price.

Canadian climate policy has imposed at least marginal costs upon powerful actors, such as the energy extraction and production companies subject to provincial tax or trading programs, or the coal industry in Alberta which after 2030 (with compensation) will be unable to sell to coal-fired electricity plants, which are the most carbon intensive method of producing electricity, without very costly carbon capture and storage technologies, in that province. However, generous arrangements have been made to accommodate large industrial emitters. An example is free allowances provided in the initial phases of the Ontario and Quebec trading systems. The federal backstop price imposed on industry is designed to reduce costs to trade-exposed industries. The costs to trade-exposed industries was further reduced, potentially to zero in many cases, by changes to the system announced by the Trudeau government in August (McCarthy, 2018) and December 2018 (Vigliotti, 2018). This meant that industry's share of total costs of the reductions brought about through federal carbon pricing are reduced relative to the share paid by citizen through fuel purchases (for which they receive a rebate).

Have policy outcomes allowed asymmetry where it is needed and warranted? Certainly, climate policy since 1990 has been marked by the basic asymmetry which is a major theme of this chapter, between regions with rising emissions and those where emissions are falling. Is that warranted? Perhaps it is if national unity is the major criterion applied; it is not, when seen through the lens of policy effectiveness. This asymmetry is the underlying explanation for the fact of policy failure to date.

### 3.3 Effectiveness: Legitimacy

Polling data indicate that about half of Canadians express support for the federal backstop price (Angus Reid, 2018). About 60% of Canadians also want governments to do more than at present to address the climate issue (CBC News, April 4, 2018). While presumably most Canadians want the country to keep its international commitments, a significant minority of them do not see

action on the issue, or the particular policy instrument of a carbon price, as being legitimate or needed.

Public opinion in Quebec is consistently the most favourable towards government action on environment and climate change. Quebec government officials are supportive of the federal backstop price, since it helps to address their concern that other provinces will not match Quebec's level of ambition, or that Quebec's economy will be undercut but competition from competing jurisdictions that do not price carbon (HEC Montreal and York University, 2015).

The issue of climate policy legitimacy in the eyes of Indigenous people is complex and cannot be fully addressed here. Court decisions enforcing the Crown's duty to consult with Indigenous people prior to major project approval have meant that Indigenous peoples and their governments are now a new, powerful actor in the domain of climate and energy politics. As noted, they were successful in derailing the Trans Mountain expansion in 2018 and will certainly play a central role in future developments respecting energy infrastructure. However, Indigenous peoples do not speak with one voice. Some benefit financially from oil and gas exports, and tend to be supportive, while others take the opposite position.

In summary, the performance of Canadian federalism in this policy field has generally been in keeping with federalism norms. That has only been possible, however, by sacrificing policy effectiveness to avoid damage to national unity. By and large, climate policy has been seen to be legitimate, but that is because Canadians do not have an overwhelming desire for fully effective policy. That perception may shift in the face of the increasingly evident impacts of climate change in the forms of extreme weather events, flooding and wildfires (Environment and Climate Change Canada, 2019c).

Two other summary points are made. First, the experience of the PCF since signing, with governments withdrawing because of electoral change or a court decision, shows the basic problem of ensuring policy continuity in a federal-provincial climate-change program designed to stretch over a considerable period. The death of the 1987 Meech Lake accord because governments changed is another example of the problem. The Trudeau government, for its part, never expected its carbon pricing backstop to become the primary mechanism for implementing carbon pricing in Canada. Indeed, until June 2018 it seemed likely that it would only be applied, and even then only partially, in one province – Saskatchewan.

Finally, experience since 1990 on the climate file does point to one strength of Canadian federalism. Co-ordinated action may not have been effective, but the autonomy given to governments for policy experimentation and independent action has meant that total greenhouse gas emissions are not as high today as they would have been without that diversity.

### Explanation

Explanation is offered here of two related phenomena. The first is the pattern of Canadian climate federalism since 1990, in terms of co-ordinated and independent government actions. The second is the inability of Canadian governments to put in place effective climate change

policy which can bring about a reduction in total Canadian emissions sufficient to achieve a national target. In terms of the first, the pattern of Canadian climate federalism is summarized as follows.

- 1) 1990 – 2002 . co-ordinated action with Alberta veto role
- 2) 2003 – 2005 . federal unilateral action plus some bilateral federal-provincial agreements
- 3) 2006 – 2015 . no federal action, no attempt at co-ordinated action  
. provinces acting independently, generating some effective policy  
. some attempts at cross-border subnational co-ordination
- 4) 2015 – 2019 . federal unilateral action plus leadership of co-ordinated action; weakened by provinces opting out

How do we explain that pattern, which begins and ends with attempts to develop co-ordinated policy? Presumably the first explanation is that co-ordinated action is the default option, given that Supreme Court decisions have confirmed that both levels of government share jurisdiction with respect to environment. Given this starting point, the question becomes: how do we explain the instances of divergence from co-ordinated action, by both levels of government? For the provinces in the 2006-15 period, independent action is explained by the simple fact there was no intergovernmental process available to them had they wished to work in concert with others. Driven by their own circumstances, such as the nature of their economies and the ideology of the governing party, they acted or did not. Independent action by provinces during periods of co-ordinated policy making, such as adoption of provincial targets unrelated to the national effort or the Ontario cap-and-trade cancellation, is explained by the weak ability of the Canadian intergovernmental relations process to bind participating governments.

An explanation of the first instance of unilateral action by Ottawa has been provided by David Anderson, Minister of Environment in the Chretien government in the spring of 2002 when that government decided to move from co-ordinated action to unilateral regulation. He and the Prime Minister had become convinced the existing voluntary approach was ineffective, they wanted to move to a policy instrument closer to law-based regulation; and sensed that the business community was also becoming frustrated by the ambiguities inherent in the voluntary approach (Macdonald, Houle and Patterson, 2011). He told the news media at the time that if that change of policy instrument meant Ottawa had to work alone, without the provinces, so be it (McCarthy, 2002).

The independent action of the Harper government – the decision to not act on the issue itself or to lead co-ordinated action – can be explained by that Prime Minister's view of federalism and of the climate issue. Harper was convinced each government should act within its own jurisdiction and had no interest in co-ordinated national programs in any policy area. Nor did he believe climate change required significant government action. Independent action in the form of the Trudeau government's backstop carbon price seems also to be explained by Trudeau's view of federalism. Unlike Harper, he clearly does believe in co-ordinated action but also believes

Ottawa should play a role in establishing minimum national standards. In a pre-election speech given in Calgary on February 6, 2015 Trudeau compared his approach to federal-provincial climate policy to the minimum standards found in health care (Trudeau, 2015).

How do we explain the failure of Canadian climate policy to reduce total emissions?

A review done in 2008 of the explanations offered by analysts for the failure of Canadian climate-change policy up to that date found four explanations: 1) the magnitude of the Canadian challenge, flowing from geography (long distances, hot summers and cold winters) plus population increases; 2) political action by industry and Alberta seeking to delay or weaken policy; 3) the related issue of differing regional economic interests; and, 4) internal conflict within the federal government between the Environment and Natural Resource departments (Macdonald, 2008). In that same year, Winfield and Macdonald (2008) argued that Canadian federalism was able to generate at least somewhat effective co-ordinated policy respecting toxic substances, in the form of the 1998 Environmental Harmonization Accord, but not respecting greenhouse gas emissions because the cost of action, and associated conflict among regions, was so much higher for the latter. Ten years later, those explanations are still largely valid, although the internal federal conflict has disappeared from public view.

Contextual factors, such as Canadian geography and the high degree of reliance upon the US as an export market, which leads Canadian business to push for harmonization of Canadian climate policy with that of the US, are clearly part of the explanation. Far more significant, though, is the factor pointed to above, differing regional economic interests flowing from the geographic location of oil and gas reserves and associated political action. The Rachel Notley government of Alberta introduced new climate change policy in 2015 but did not deviate from the objective of its predecessors, wealth creation by means of fossil fuel export, for which additional pipeline capacity is needed. Nor yet was it willing to bring about a net reduction of Alberta emissions prior to 2030. The two tracks of decreasing and increasing provincial emissions, with the latter cancelling out the former, explain the Canadian failure.

However, the explanation lies not just in action by Alberta and Saskatchewan to protect their economic interest, since the federal government has always supported their efforts. The fact that Canada is an oil and gas exporting nation has always influenced federal policy. The Liberal Chretien, Martin and Trudeau governments have moved with varying degrees of enthusiasm to implement climate policy themselves and to lead a search for co-ordinated federal-provincial action but never at the expense of reducing oil and gas exports. Most recently, Justin Trudeau's "balanced" approach of a carbon price and a new pipeline demonstrate his government's willingness to accept a national program which includes Alberta emission increases through to 2030.

The second explanation is ideology of the governing party. As noted, climate change has become a highly polarized issue with the result that Liberal or NDP governments are far more likely to act than are Conservative governments. At the federal level, Liberal governments have acted while the Harper Conservative government did not. The federal Conservative leader has attacked the Trudeau carbon tax. At the provincial level, the Alberta government brought in effective climate policies when an NDP government ended some forty years of Conservative rule. British Columbia moved from accepting the Trans Mountain pipeline to opposing it because an NDP

government was elected there, while Ontario ended its cap-and-trade program and partnership with Ottawa in the PCF because a Progressive Conservative government was elected in that province. Ideology, however, only explains so much. As shown by the bitter conflict between the two NDP governments of British Columbia and Alberta, the dominant factor distinguishing provincial climate policy is differences in provincial economies.

## 5. Conclusion

In addressing the challenge of climate change mitigation, Canadian federalism has seen federal and provincial governments use both co-ordinated and independent policy action. Independent policy, such as the Ontario decision to end coal-fired electricity generation, has been more effective than co-ordinated policy. That said, the Pan-Canadian Framework signed in 2016 is a more effective attempt at co-ordinated policy than were any of the 1990s federal-provincial programs. The PCF's future is uncertain, however, due to conflicts over pipelines and increasing provincial opposition, particularly as a result of provincial election outcomes in 2018 and 2019. Nor has it been able to address the basic problem of climate policy going down two different tracks, with emission increases in the oil-exporting provinces cancelling out reductions made elsewhere. Indeed, the Trudeau government has enabled that two-track situation, by introducing carbon pricing but also buying a pipeline.

By and large, co-ordinated climate policy has been implemented within the norms of Canadian co-operative federalism. Norms of cooperative federalism have prevailed because federal governments, except for Justin Trudeau's backstop carbon price, have asked almost nothing of provinces. Working within federalism norms helps to explain the failure to date of Canadian climate policy. Addressing the two-track problem might require heavy-handed federal action and certainly runs the risk of bitter, high-stakes, regional conflict. Perhaps not surprisingly, to date governments have shied away, preferring national peace and harmony over policy effectiveness.

An effective federal-provincial program would bring about emission reductions in all part of the country and would thereby be able to meet an international commitment such as the Paris target. Whether our federal system is able to achieve such ends remains an open question.

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