

IN THE COURT OF APPEAL FOR SASKATCHEWAN

**IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*,
BILL C-74, PART 5**

**AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR
IN COUNCIL TO THE COURT OF APPEAL FOR SASKATCHEWAN UNDER
*THE CONSTITUTIONAL QUESTIONS ACT, 2012, SS 2012, c C-29.01.***

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PART I. OVERVIEW

1. Canada and the world are engaged in an existential struggle against climate change. The *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186 (the “GGPPA” or the “Act”) is urgently necessary to address a national emergency: Canada is running out of time to mitigate climate change’s disastrous health, economic, environmental and social impacts. The GGPPA can be supported constitutionally by the “national emergency” branch of the federal “peace, order, and good government” (“POGG”) power.

2. Parliament has jurisdiction to legislate to prevent or respond to an emergency if there is a rational basis for doing so. The threat of climate change and the need to curtail it is at least as grave, and surely graver, than past emergencies for which the Courts have upheld Parliament’s legislative response under POGG. The warming climate has already unleashed floods, wildfires and other extreme weather events on Canadians. Unless Canada takes its share of decisive action over the next decade to lower emissions, the damage will become increasingly dire and irreversible.

3. Saskatchewan acknowledges Parliament’s ability to legislate, including on matters of provincial jurisdiction, in situations of an “urgent nature that require immediate action”.¹ It further agrees that the GGPPA is designed to respond to the effects of climate change, which require immediate action. The principle of cooperative federalism upon which Saskatchewan relies does not displace Parliament’s emergency jurisdiction, especially where, as here, provincial inaction or insufficient action exacerbates the emergency Parliament is tackling.

4. The federal power to legislate in response to a national emergency is limited only insofar as the legislation must be of a temporary character. The GGPPA is inherently temporary. It is an emergency measure required in the short term to set in motion the transition to a low-carbon future for Canada.

5. In the emergency circumstances in which Canada now finds itself, the GGPPA is a constitutional measure that Parliament has reasonably taken in discharge of its responsibility to protect the country from disaster.

¹ Reply Factum of the Attorney General of Saskatchewan at para 54.

PART II. SUMMARY OF FACTS

6. The David Suzuki Foundation (“DSF”) agrees with the statement of facts in Canada’s factum. Additional facts below illustrate Parliament’s subjective apprehension of a climate emergency, and the objective existence and scale of that emergency.

A. Parliament apprehends an emergency and proposes a response

7. In his speech in favor of Canada’s ratification of the Paris Agreement under the United Nations Framework Convention on Climate Change (“*Paris Agreement*”), Prime Minister Justin Trudeau announced Canada’s intention to implement national carbon pricing. He described the need for pricing in emergency terms:

If one lives in Canada’s north or in our coastal communities, or really in any community that is subject to extreme weather conditions and the resulting floods, droughts, and wild fires, the effects of climate change itself cannot be denied. There is no hiding from climate change. It is real and it is everywhere.²

8. When he introduced the GGPPA into Parliament, Joël Lightbound – Parliamentary Secretary to the Minister of Finance and sponsor of the legislation – noted that climate change has already caused serious damage such as “coastal erosion, thawing permafrost, and increases in heat waves, droughts and flooding”.³ He stated that putting a price on carbon pollution would help “put Canada on a course to meet our 2030 emission target” under the *Paris Agreement*.⁴

9. Explaining the need for the GGPPA, Catherine McKenna, Minister of the Environment and Climate Change, recounted in vivid detail scenes of the devastation that climate change has brought on Canadian families:

One of the hardest calls I have ever had to make was to a rancher in Alberta's interior. Her family ranch was destroyed by intense wildfires that spread through B.C. and Alberta. Today, as a result of climate change, these wildfires are raging longer and are harsher than ever before.

Last year, I was in Gatineau, Quebec, helping to fill sandbags. As I was talking to the families who were protecting their homes from the rising flood waters, some homes were saved and many more were destroyed. We are seeing devastation like

² *House of Commons Debates*, 42nd Parl, 1st Sess [*Debates*], No [086](#) (3 October 2016) at 1215 (Right Hon Justin Trudeau), Book of Authorities of the Attorney General of Canada [*Canada’s BOA*], Vol 2, Tab 48.

³ *Debates*, [No 279](#) (16 April 2018) at 1210 (Joël Lightbound), Canada’s BOA, Vol 2, Tab 52.

⁴ *Ibid.*

this across Canada and around the world.

Then there is the heartbreaking story from last summer when I was visiting the high Arctic. I spoke to an Inuit boy from Cambridge Bay, Nunavut, who told me about the impacts of climate change that he was seeing in his homeland. He told me about his feet getting stuck in thawing permafrost like quicksand when he was hunting. He told me about the disappearance of the caribou, their country food. He also told me of experienced hunters—fathers, uncles, brothers, providers—dying after falling through the sea ice that they could no longer tell the thickness of. Today Canada's high Arctic is warming at three times the rate of the rest of Canada. Climate change is real, and it is having a real impact on Canadians from coast to coast to coast.⁵

10. Jonathan Wilkinson, Parliamentary Secretary to the Minister of Environment and Climate Change, said that “climate change is not a distant threat, something only for future generations to worry about. It is affecting us now, here at home and around the world”.⁶ Bill Morneau, Minister of Finance, warned of the costs associated with the effects of climate change, saying that they are expected to cost Canada’s economy \$5 billion a year by 2020, and as much as \$43 billion a year by 2050, “if we do not take action”.⁷

11. On October 15, 2018, Parliament held an emergency debate – which occurs when the matter proposed for discussion is of “genuine emergency, calling for immediate and urgent consideration”⁸ – in response to the Intergovernmental Panel on Climate Change’s Special Report (“IPCC Special Report”), which explains the urgent need to keep the human-caused rise in global temperatures to no more than 1.5 degrees.⁹ According to the IPCC Special Report, a rise above 1.5 degrees would have severe consequences for the high latitudes of the Northern Hemisphere which includes Canada:

Reaching 2°C instead of 1.5°C of global warming would lead to substantial warming of extreme hot days in all land regions. It would also lead to an increase in heavy rainfall events in some regions, particularly in the high latitudes of the Northern Hemisphere, potentially raising the risk of flooding... The impacts of any additional warming would also include stronger melting of ice sheets and glaciers,

⁵ *Debates*, [No 289](#) (1 May 2018) at 1045 (Hon Catherine McKenna), Canada’s BOA, Vol 2, Tab 54.

⁶ *Debates*, [No 146](#) (23 February 2017) at 1515 (Jonathan Wilkinson), Canada’s BOA, Vol 2, Tab 49.

⁷ *Debates*, [No 283](#) (23 April 2018) at 1220 (Hon Bill Morneau), Canada’s BOA, Vol 2, Tab 53.

⁸ House of Commons, *Standing Orders of the House of Commons*, at Standing Order 52(6)(a), BOA, Tab 9.

⁹ Record of the Attorney General of Canada [CR] Vol 1, Tab 1, Exhibit E, Intergovernmental Panel on Climate Change, “[Special Report](#) on the impacts of global warming of 1.5°C: Frequently Asked Questions”, October 2018 [**IPCC Report FAQ**].

as well as increased sea level rise, which would continue long after the stabilization of atmospheric CO2 concentrations.¹⁰

12. The IPCC Special Report further warns that “[t]o limit warming to 1.5°C, mitigation would have to be large-scale and rapid”.¹¹ Unless the global community, including Canada, takes such action, the Earth’s climate will pass “tipping points”, or “thresholds beyond which certain impacts can no longer be avoided, even if temperatures are brought back down later on”.¹² One unavoidable impact after tipping points are passed, according to the report, would be the collapse of the Greenland and Antarctic ice sheets over the course of centuries or millennia.¹³

13. In her remarks during the emergency debate, Minister of the Environment and Climate Change Catherine McKenna said that “the emergency we are talking about now was an emergency 10 years ago”.¹⁴ and emphasized the need for immediate action:

We need to figure out how we are going to save the planet. We need to figure out how we are going to ensure that our kids are not going to face...things like acute food shortages, devastating storms, climate refugees, a melting Arctic which has consequences for the entire world.¹⁵

14. Several other MPs echoed the Minister. MP Nathaniel Erskine-Smith said: “We[’re] running out of time,”¹⁶ describing climate change as “the most pressing issue of the day” and “an urgent issue to deal with”.¹⁷ He linked climate impacts to the failure to price GHG emissions, quoting the most recent Nobel Prize winner in Economics who said that: “The most perilous of all environmental problems, climate change, is taking place because virtually every country puts a price of zero on carbon dioxide emissions.”¹⁸ MP Mark Gerretsen said that “we have to do something immediately as this is an extremely dire situation”.¹⁹ Sean Fraser, Parliamentary Secretary to the Minister of Environment and

¹⁰ *Ibid* at 10.

¹¹ *Ibid* at 12.

¹² *Ibid* at 11.

¹³ *Ibid*.

¹⁴ *Debates*, [No 334](#) (15 October 2018) at 1900 (Hon Catherine McKenna), BOA, Tab 8.

¹⁵ *Ibid* at 1905 (Hon Catherine McKenna), BOA, Tab 8.

¹⁶ *Ibid* at 1725 (Nathaniel Erskine-Smith), BOA, Tab 8.

¹⁷ *Ibid* at 1730 (Nathaniel Erskine-Smith), BOA, Tab 8.

¹⁸ *Ibid* at 2150 (Nathaniel Erskine-Smith), BOA, Tab 8.

¹⁹ *Ibid* at 2200 (Mark Gerretsen), BOA, Tab 8.

Climate Change, called the consequences outlined in the IPCC Special Report “catastrophic”, threatening the “livability of the ecosystems human beings inhabit today”.²⁰

B. Climate Change is a national emergency

15. According to the World Meteorological Organization, the world is entering a new climate reality with an extreme level of CO₂ up to 145% that of pre-industrial levels that have not existed in the atmosphere for the last 3,000,000-5,000,000 years.²¹ The extremely elevated level of CO₂ is unprecedented in human history. It is threatening Canada’s livability and increasing risks to health, livelihoods, food security, water supply, human security, and economic growth.²²

16. Rising greenhouse gas (GHG) emissions have already led to an increase in average global temperature, which has contributed to the catastrophic frequency and severity of natural disasters, including wildfires in western Canada, floods in Quebec, coastal erosion and thawing of permafrost in Canada’s northern territories and a heat wave that killed dozens of people in Quebec.²³ Such extreme weather events have been longer and harsher than ever before, devastating local economies and leaving thousands of Canadians without homes, which explains why they are rated by the World Economic Forum as among the most significant risks facing humanity in terms of likelihood and impact.²⁴

17. Canada is in an unfortunately unique position as our Arctic temperatures are rising even faster than elsewhere.²⁵ This leads to changes in relative sea level (sea level as measured in relation to land), rising water temperatures, increased ocean acidity, and loss of sea ice and permafrost which threatens Canada’s coastal areas.

²⁰ *Ibid* at 2250 (Sean Fraser), BOA Tab 8.

²¹ CR, Vol 1, Tab 1, Exhibit A, World Meteorological Organization, [WMO Statement on the State of the Global Climate in 2017](#), WMO-No. 1212, (Geneva: Publications Board World Meteorological Organization, 2018) [*WMO Statement*] at 7-8.

²² CR, Vol 1, Tab 1, Exhibit D, Intergovernmental Panel on Climate Change, [Global Warming of 1.5°C: Summary for Policymakers](#), IPCC SR1.5 (October 2018) at 9.

²³ Record of the Attorney General of Saskatchewan, Tab 1, “Vancouver Declaration on Clean Growth and Climate Change” 3 March, 2018 at 4.

²⁴ CR, Vol 1, Tab 1, Exhibit A, [WMO Statement](#), *supra* note 21 at 4.

²⁵ CR, Vol 1, Tab 1, Exhibit G, Government of Canada, [Canada’s 7th National Communication and 3rd Biennial Report](#), (Environment and Climate Change Canada, 2017) at 186.

18. Climate change has severe health impacts. A major Canadian Government report set out the litany of ways in which climate change damages health:

Heat waves can cause heat-related illness and death, as well as exacerbate existing conditions, such as respiratory and cardiovascular diseases. Higher temperatures also contribute to increased air pollution and production of pollens, worsening allergies and asthma and exacerbating some existing health conditions. Smoke from wildland fires also impacts air quality. Increased contamination of drinking and recreational water by run-off from heavy rainfall can cause illness and disease outbreaks (e.g., acute gastrointestinal illness, *E. coli*).²⁶

19. The economic impacts for Canada associated with climate change are equally severe. At the turn of the century, insurance claims for severe storm damage were around \$300 million annually; that number has now surged to over \$1 billion a year.²⁷ Globally, 2017 was the year with the highest documented economic losses associated with severe weather.²⁸

20. Canada's allies consider climate change to be an emergency. The North Atlantic Treaty Organization ("NATO"), the military alliance to which Canada belongs, warned that climate change is having serious negative impacts on global security. It noted in a 2017 report that climate change could be a factor in "triggering violent conflicts."²⁹ Indeed, "[t]he impact of climate change on water supplies alone could constitute a global emergency".³⁰ Emmanuel Macron, President of France (which hosted the meeting that produced the *Paris Agreement*), called climate change an emergency in a speech to the United Nations: "It is an emergency. So let's comply with the commitments we've made".³¹

C. The emissions performance of Saskatchewan and Canada

21. The paper included in Appendix 1 to this factum, "By the Numbers", presents GHG emissions data across from Canada, including per capita emissions by province. Two points in the paper demonstrate the urgent the need for federal action to address the emergency of

²⁶ *Ibid* at 187.

²⁷ *Debates*, [No 146](#) (23 February 2017) at 1515 (Jonathon Wilkinson), Canada's BOA, Vol 2, Tab 49.

²⁸ CR, Vol 1, Tab 1, Exhibit A, [WMO Statement](#), *supra* note 21 at 4. Data from 2018 could not be included in the record given the filing date.

²⁹ CR, Vol 1, Tab 1, Exhibit F, NATO Parliamentary Assembly (Economics and Security Committee), [Assessing and Mitigating the Cost of Climate Change](#), 167 ESCTER 17 (NATO, 7 October 2017) at para 30.

³⁰ *Ibid*.

³¹ CR, Vol 1, Tab 4, Exhibit B, "Seventy-third United Nations General Assembly – Speech by M. Emmanuel Macron, President of the Republic", New York, 25 September 2018 at 8.

GHG mitigation:

- a) Expressed in per capita terms, Saskatchewan is among the developed world's largest emitters at 68 tonnes per annum. By comparison, the best performers in Western Europe, such as Germany, are in the 10-14 tonne range, which is also the range for BC, Ontario and Quebec.³²
- b) Even if all current provincial targets were fully achieved, Canada would still need to reduce GHG emissions by an additional 45 Mt in 2020 and 55 Mt in 2030 to meet its international commitments.³³

PART III. POINT IN ISSUE

22. Does the “National Emergency” branch of the POGG power under s. 91 of the *Constitution Act, 1867*³⁴ provide constitutional support for the GGPPA?

PART IV. LAW AND ARGUMENT

23. The 1976 and still leading case on the National Emergency power, *Reference re Anti-Inflation Act*,³⁵ supports the GGPPA as valid federal legislation. Parliament had a rational basis to implement the GGPPA as a temporary emergency measure.

A. The GGPPA is Emergency Legislation

24. The Supreme Court has said that Parliament has “power to deal with a grave emergency without regard to the ordinary division of legislative power under the Constitution”.³⁶ The power is available in the following circumstances:

where there can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces and thus presenting an emergency which can only be effectively dealt with by Parliament in the exercise of the powers conferred upon it by s. 91 of the *British North America Act* “to make laws for the peace, order and good government of Canada”.³⁷

25. The National Emergency power has most often been interpreted to justify economic measures – such as controls on prices and rents – to deal with crises in times of war and the

³² “By the Numbers: Canadian GHG Emissions”, by Paul Boothe and Felix A. Boudreault, published by the Ivey Business School of Western University (2016) [Ivey] at 3, Appendix 1 to this factum.

³³ *Ibid.*

³⁴ *The Constitution Act, 1867*, 30 & 31 Vict, c 3, section 91.

³⁵ [1976] 2 SCR 373 [*Re Anti-Inflation Act*], BOA, Tab 5.

³⁶ *R v Crown Zellerbach Canada Ltd*, [1988] 1 SCR 401 at para 57, Canada’s BOA, Vol 1, Tab 24, excerpts at BOA, Tab 3.

³⁷ *Re Anti-Inflation Act*, *supra* note 35 at 436-437, per Ritchie J, Canada’s BOA, Vol 1, Tab 26.

aftermath of war, but also during times of peace.³⁸ In *Anti-Inflation Reference*, the Supreme Court upheld peacetime federal legislation implementing economic controls to curb runaway inflation, specifically by restraining “profit margins, prices, dividends, and compensation”, which was a much broader and more prescriptive Parliamentary intrusion than the impugned “backstop” features of the GGPPA.

26. In the *Anti-Inflation Reference*, Chief Justice Laskin determined that, for legislation to be validly enacted under the National Emergency branch of POGG, there must be a “rational basis” to characterize it as a measure responding to “exceptional circumstances”.³⁹ To determine whether such a rational basis exists, the Court referred to the language of the statute, particularly the preamble, and the relevant extrinsic evidence.⁴⁰ Chief Justice Laskin noted that it is not necessary to prove the crisis as a matter of fact, as one would in civil litigation, since such matters concern “social and economic policy and hence governmental and legislative judgment”.⁴¹ Rather, “it may be that the existence of exceptional circumstances is so notorious as to enable the Court, of its own motion, to take judicial notice of them without reliance on extrinsic material to inform it”.⁴²

27. Following Chief Justice Laskin in *Anti-Inflation Reference*, this Honourable Court can take judicial notice of the national peril that climate change is causing and will continue to cause, and conclude that Parliament has a rational basis upon which to legislate a response. The Court can equally draw a reasoned inference and apprehend an emergency from the text of the legislation, the parliamentary record, and the extrinsic material.

28. In its reply factum, Saskatchewan acknowledges Parliament’s ability to legislate, even on matters of provincial jurisdiction, in time of an emergency – which it defines as being a situation “of an urgent nature that require[s] immediate action”.⁴³ Saskatchewan further agrees that the GGPPA is designed to respond to the urgent problems that climate change poses for Canada, including “[c]onfining the increase of the global temperature by

³⁸ See *Fort Frances Pulp and Power Co v Manitoba Free Press Co*, [1923] UKPC 64 [*Fort Frances*], BOA, Tab 2; *Reference re Wartime Leasehold Regulations*, [1950] SCR 124, BOA, Tab 6.

³⁹ *Re Anti-Inflation Act*, *supra* note 35 at 419-420 and 422-423, per Laskin CJC, BOA, Tab 3.

⁴⁰ *Ibid* at 391, 422-423, per Laskin CJC, and 438-439, per Ritchie J.

⁴¹ *Ibid* at 423.

⁴² *Ibid*.

⁴³ Reply Factum of the Attorney General of Saskatchewan at para 54.

1.5 degrees Celsius rather than 2.0 degrees”; “[a]chieving Paris Accord commitments to deliver Canada’s part with a view to so confining the temperature rise”; and “[r]educing GHG emissions in Canada”.⁴⁴ Taken together, these admissions establish the rational basis for Parliament’s emergency intervention.

29. When the Court considers extrinsic material, that material “need go only so far as to persuade the Court that there is a rational basis for the legislation which it is attributing to the head of power invoked in this case in support of its validity”.⁴⁵ The material in this case (canvassed in Part II, above) shows far more than just a “rational basis”; rather it shows cause for genuine alarm. It vividly illustrates the dire nature of the National Emergency, including its environmental, social, economic, and health aspects.

30. Parliament’s emergency response to the climate crisis is also reflected in the urgent language of the GGPPA’s preamble. As in the *Anti-Inflation Reference*, Parliament did not use the word “emergency” in enacting the GGPPA. However, the Court found that the preamble to the legislation in question was “sufficiently indicative that Parliament was introducing a far-reaching programme prompted by what in its view was a serious national condition” and that it provided a “base for assessing the gravity of the circumstances which called forth the legislation.”⁴⁶ A formal declaration of emergency was not required. It was enough that Parliament was “motivated by a sense of urgent necessity created by highly exceptional circumstances”.⁴⁷ The Court held that legislation need not “use any particular form of words in order to disclose [Parliament’s] belief that an emergency existed”.⁴⁸

31. Parliament was clearly motivated by a sense of urgent necessity created by highly exceptional circumstances in enacting the GGPPA. The Act’s preamble recounts the damage the current level of GHGs has caused and the consequences of ongoing, rising emissions:

Whereas there is broad scientific consensus that anthropogenic greenhouse gas emissions contribute to global climate change;

Whereas recent anthropogenic emissions of greenhouse gases are at the highest

⁴⁴ *Ibid* at para 67.

⁴⁵ *Re Anti-Inflation Act*, *supra* note 35 at 423, per Laskin CJC, BOA, Tab 5.

⁴⁶ *Ibid* at 422, per Laskin CJC.

⁴⁷ *Ibid* at 439, per Ritchie J.

⁴⁸ *Ibid* at 438, per Ritchie J.

level in history and present an unprecedented risk to the environment, including its biological diversity, to human health and safety and to economic prosperity;

Whereas impacts of climate change, such as coastal erosion, thawing permafrost, increases in heat waves, droughts and flooding, and related risks to critical infrastructures and food security are already being felt throughout Canada and are impacting Canadians, in particular the Indigenous peoples of Canada, low-income citizens and northern, coastal and remote communities;

Whereas Parliament recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations;

Whereas the United Nations, Parliament and the scientific community have identified climate change as an international concern which cannot be contained within geographic boundaries;

32. The rational basis for apprehending an emergency or crisis is supported by the statements (summarized in Part II, above) of Members of Parliament in the debates on the GGPPA, and in an emergency debate during which the Minister of the Environment and Climate Change called climate change “an emergency” and warned of “catastrophic impacts in 30 years...if we do not take action”.⁴⁹

33. Parliament is entitled to a high degree of curial deference regarding the need for emergency legislation and its means and scope. The Court owes “deference to Parliament’s judgment that there was an evil of nationwide proportions to which it was entitled to address general legislation to effect a cure”.⁵⁰

34. Saskatchewan must refute a rational basis for the GGPPA, as well as meet the general burden of overcoming the presumption of constitutionality.⁵¹ This is an extremely high bar: Chief Justice Laskin quoted Lord Wright approvingly in holding that “very clear” evidence is needed to refute the presumption:

[V]ery clear evidence that an emergency has not arisen, or that the emergency no longer exists, is required to justify the judiciary, even though the question is one of *ultra vires*, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required. To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the

⁴⁹ *Debates*, [No 334](#) (15 October 2018) at 1850 (Hon Catherine McKenna), BOA, Tab 8.

⁵⁰ *Ibid* at 397, per Laskin CJC.

⁵¹ *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23 at paras 81-83, Canada’s BOA, Vol 2, Tab 34.

propriety of the particular policy which is embodied in the emergency legislation.⁵²

35. In this case, there is no evidence, and certainly not “clear” evidence, that an emergency has not arisen. The evidence emphatically establishes the contrary. In the circumstances, DSF submits that the Court should defer to Parliament’s judgment that mitigating GHG emissions must proceed on an emergency basis. The Court should equally avoid being drawn into a debate about the effectiveness of carbon pricing – although there is ample evidence before it that it is extremely effective. The pricing mechanisms in the GGPPA are Parliament’s chosen means of addressing the crisis, and there is a more than rational basis to believe that those mechanisms are well chosen.

B. The GGPPA is temporary in character

36. The GGPPA is an emergency measure required for the coming decade to set in motion the transition to a low carbon future for Canada. This satisfies the requirement that the emergency, or the measures to address the emergency, be temporary.

37. While the legislation Parliament chooses to address the emergency must be of a “temporary character”, it need not be explicitly time limited. Rather, Chief Justice Laskin found in *Anti-Inflation Reference* that a “statutory provision valid in its application under circumstances envisaged at the time of its enactment can no longer have a constitutional application to different circumstances”.⁵³ In other words, the nature of the legislation can make it time-bound apart from any explicit reference to its termination. Accordingly, the National Emergency branch has been held to support legislation and orders-in-council that lacked explicit termination clauses.⁵⁴ Indeed, Professor Hogg questions the usefulness of formal time limitations for emergency measures, observing that “an ostensibly temporary measure can always be continued in force by Parliament, while an ostensibly permanent measure can be repealed at any time”.⁵⁵

⁵² *Re Anti-Inflation Act*, *supra* note 35 at 439, per Ritchie J, BOA, Tab 5; citing Lord Wright in *Co-Operative Committee on Japanese Canadians v Canada (Attorney General)*, [1947] AC 87, [1947] 1 DLR 577 at para 2, BOA, Tab 1.

⁵³ *Re Anti-Inflation Act*, *supra* note 35 at 427, per Laskin CJC, BOA, Tab 5.

⁵⁴ *Fort Frances*, *supra* note 38 at paras 8-10, 20 and 24, BOA, Tab 2.

⁵⁵ Hogg, PW, *Constitutional Law of Canada*, 4th ed (Toronto: Carswell, 1997) at 469, BOA Tab 7; see also *Re Anti-Inflation Act*, *supra* note 35 at 427, per Laskin CJC, BOA Tab 5.

38. National emergencies rarely have easily predicable end dates. In the case of climate change, the emergency has developed over decades and will take years to resolve.

However, it also has acute dimensions, notably the need to take immediate action to put the country on a path to mitigating climate change's worst effects.

39. Viscount Haldane, whom Chief Justice Laskin cites with approval, clarified that the nature of the emergency dictates the longevity of the legislation enacted to deal with it: once the emergency has abated, legislation enacted to deal with it will cease to be valid and will become *ultra vires* Parliament.⁵⁶ In the context of legislation to deal with the effects of war, he said that "it may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes *ultra vires* when it is no longer called for."⁵⁷

40. Since the emergency power has supported legislation to address war, which has no fixed timetable, it should certainly address the climate crisis, which does. Canada can and has placed a timeline on itself by committing to the *Paris Agreement*. That agreement sets goals to be accomplished by 2030, namely to have Canada on track to achieve a limit of 1.5 degrees of warming. The GGPPA's preamble is clearly linked to Canada's commitments under the *Paris Agreement*:

Whereas Canada has also ratified the Paris Agreement, done in Paris on December 12, 2015, which entered into force in 2016, and the aims of that Agreement include holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

Whereas the Government of Canada is committed to achieving Canada's Nationally Determined Contribution – and increasing it over time – under the Paris Agreement by taking comprehensive action to reduce emissions across all sectors of the economy, accelerate clean economic growth and build resilience to the impacts of climate change;

41. Canada's "Nationally Determined Contribution" ("NDC") under the Paris Agreement creates a clear eleven-year timeline (from 2019) to achieve the purpose of the

⁵⁶ *Re Anti-Inflation Act*, *supra* note 35 at 405, BOA, Tab 5.

⁵⁷ *Re Anti-Inflation Act*, *supra* note 35 at 408-409, per Laskin CJC, BOA, Tab 5; citing Viscount Haldane in *Fort Frances*, *supra* note 38 at para 20, BOA, Tab 2.

Act: Canada’s NDC is to reduce its GHG emissions by 30 per cent below 2005 levels by 2030.⁵⁸ The IPCC Special Report underlines the urgency of meeting the 11-year deadline, for it warns that Canada and the world have only that amount of time – until 2030 – to make the changes necessary to hold emissions to 1.5°C above pre-industrial levels.⁵⁹ To fail is to suffer irreversible effects of climate change.

42. When the GGPPA, combined with other efforts of both federal and provincial governments, has fulfilled its stated purpose it will arguably no longer be necessary and can be repealed, amended, or subject to a further challenge as to its *vires* at that time. If in 2030 Canada falls short of its Paris Agreement commitments, then the GGPPA could remain operative to the extent that Parliament has a rational basis to find that it is still necessary to achieve belated compliance. The Court has confirmed that it is possible, and indeed may be necessary, to leave emergency legislation in place in order to deal with the continuing effects of a crisis. For example, it was permissible under the National Emergency branch of POGG that war measures could outlive the end of the war “while the effects of war conditions might still be operative”.⁶⁰

43. Practically, however, if the GGPPA and other GHG mitigation efforts do not achieve Canada’s emissions reduction target by the 2030 deadline, Parliament and the provinces may have to devise a different and likely stronger approach given the urgency of the crisis. DSF submits that the GGPPA should be upheld as constitutional and given an opportunity to address the climate crisis now, for without it the likelihood increases that stronger, more stringent measures—which Saskatchewan would find even more objectionable—will perforce become necessary.

C. Cooperative federalism does not displace Parliament’s emergency jurisdiction

44. Saskatchewan relies heavily on the principle of cooperative federalism⁶¹ but that principle does not displace Parliament’s jurisdiction to act in a national emergency, especially where the emergency includes or is exacerbated by insufficient provincial action.

⁵⁸ CR, Vol 1, Tab 1, Affidavit of John Moffet at paras 42-45.

⁵⁹ CR, Vol 1, Tab 1, Exhibit E, IPCC Report FAQ, *supra* note 9 at 6.

⁶⁰ *Fort Frances*, *supra* note 38 at para 24, BOA, Tab 2.

⁶¹ Factum of the Attorney General of Saskatchewan at paras 48-50.

45. It was argued in *Anti-Inflation Reference* that the legislation was *ultra vires* the federal government because inflation was “too sweeping a subject to be dealt with by a single authority, i.e., the federal Parliament”, and that the proper constitutional approach was through “federal-provincial cooperation in terms of their respective powers under the respective enumerations in ss. 91 and 92.” Chief Justice Laskin soundly dismissed these arguments, holding that the desire for federal-provincial cooperation could not prevent Parliament from acting to address a crisis situation. He said:

No doubt, federal-provincial co-operation along the lines suggested might have been attempted, but it does not follow that the federal policy that was adopted is vulnerable because a co-operative scheme on a legislative power basis was not tried first. **Co-operative federalism may be consequential upon a lack of federal legislative power, but it is not a ground for denying it** [emphasis added].⁶²

Cooperative federalism is equally not a ground for denying Parliament’s jurisdiction to legislate in response to the climate emergency.

46. As in *Anti-Inflation Reference* and in other cases in which Parliament has responded to a great national crisis, it is not feasible in this case to depend on the collective action of the provinces. In fact, the prospect of provincial inaction was a motive for enacting the GGPPA, as is again apparent from the preamble:

Whereas the absence of greenhouse gas emissions pricing in some provinces and a lack of stringency in some provincial greenhouse gas emissions pricing systems could contribute to significant deleterious effects on the environment, including its biological diversity, on human health and safety and on economic prosperity;

47. Parliament correctly apprehended a risk that recalcitrant provinces—such as Saskatchewan, Ontario, and New Brunswick—could undermine Canada’s efforts in the face of a grave emergency, and legislated accordingly. As Canada submitted in its factum:

The failure of some provinces to act undermines the GHG emissions pricing measures taken by the rest. Moreover, provinces that are mitigating GHG emissions with carbon pricing are constitutionally unable to take legislative measures to compel other provinces to do so. Only Parliament can ensure that GHG emissions pricing applies throughout Canada.⁶³

⁶² *Re Anti-Inflation Act*, *supra* note 35 at 421, per Laskin CJC, BOA, Tab 5.

⁶³ Factum of the Attorney General of Canada at para 94.

48. In the GGPPA, Parliament has used temporary emergency authority to backstop the Provinces' GHG reduction efforts. It is settled law that Parliament can legislate a "backstop", contingent on the operation of provincial legislation. Parliament "may incorporate provincial legislation by reference and it may limit the reach of its legislation by a condition, namely the existence of provincial legislation."⁶⁴

49. In the context of the race to meet the reduction deadline that will avert climate disaster, it is eminently reasonable that Parliament should seek to ensure provincial actions are coordinated and sufficiently ambitious. This is especially true in the face of evidence that provincial plans would leave Canada short of its reduction target, which it must achieve to meet the crisis.⁶⁵

50. As Canada's largest per capita emitter (and one of the world's largest),⁶⁶ it is imperative that Saskatchewan comply with Parliament's emergency response. Parliament has a legitimate interest in ensuring a coordinated response to the climate change national emergency: a crisis that threatens every Canadian in every province.


D. Conclusion

51. With atmospheric CO₂ already at a level not seen in the last several million years and the planet in climatological state never before experienced in human history, Canada and its people—especially future generations—are in peril. The unprecedented climate crisis Canada faces is an emergency requiring an extraordinary response. It justifies and requires the use of all federal power, including National Emergency powers under POGG.

PART V. ORDER SOUGHT


52. That the Reference question be answered: The GGPPA is constitutional in whole.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2019



Joshua Ginsberg

Counsel for the David Suzuki Foundation



Randy Christensen

⁶⁴ *R v Furtney*, [1991] 3 SCR 89 at para 34, BOA, Tab 4.

⁶⁵ *Ivey*, *supra* note 32 at 3, Appendix 1 to this factum.

⁶⁶ *Ibid.*

SCHEDULE A. AUTHORITIES

Cases

Co-Operative Committee on Japanese Canadians v Canada (Attorney General), [1947] AC 87, [1947] 1 DLR 577

Fort Frances Pulp and Power Co v Manitoba Free Press Co, [1923] UKPC 64, [1923] AC 695, 3 DLR 629

R v Crown Zellerbach Canada Ltd, [1988] 1 SCR 401, *excerpted*

R v Furtney, [1991] 3 SCR 89

Reference re Anti-Inflation Act, [1976] 2 SCR 373

Reference re Wartime Leasehold Regulations, [1950] SCR 124, [1950] 2 DLR 1

Secondary Sources

Hogg, PW, *Constitutional Law of Canada*, 4th ed (Toronto: Carswell, 1997), *excerpted*

House of Commons Debates, 42nd Parl, 1st Sess, No 334 (15 October 2018), *excerpted*

House of Commons, *Standing Orders of the House of Commons*, at Standing Order 52(6)(a), *excerpted*

APPENDIX 1 - “By the Numbers: Canadian GHG Emissions”

By Paul Boothe and Felix A. Boudreault, published by the Ivey Business School of Western University (2016)



Lawrence National Centre
for Policy and Management

A photograph of industrial smokestacks against a cloudy sky. The sky is filled with large, dark, billowing clouds, suggesting a hazy or smoggy atmosphere. Two prominent smokestacks are visible in the foreground, with thick plumes of white smoke rising from them. The lighting is dramatic, with the sun low on the horizon, creating a silhouette effect on the smokestacks and highlighting the edges of the clouds.

BY THE NUMBERS: CANADIAN GHG EMISSIONS

Paul Boothe and Félix-A. Boudreault
Lawrence National Centre for Policy and Management
Ivey Business School at Western University

EXECUTIVE SUMMARY

PAUL BOOTHE AND FÉLIX-A. BOUDREAULT

- Canada's greenhouse gas (GHG) emissions currently represent about 1.6 percent of the global total. Canada is among the top 10 global emitters and one of the largest developed world per capita emitter of GHGs.
- Canadian federal governments have committed to reduce annual GHG emissions from the current level of 726 megatonnes (Mt) to 622 Mt in 2020 and 525 Mt in 2030.
- Within Canada, GHG emissions vary widely across provinces ranging from 267 Mt in Alberta to 1.8 Mt in PEI in 2013.
- In per capita terms, Saskatchewan and Alberta are among the developed world's largest emitters at 68 and 67 tonnes respectively. Per capita emissions in BC, Ontario, and Quebec are in the 10-14 tonne range, comparable to best performers in Western Europe.
- For provinces with announced GHG emission targets, the level of ambition varies widely. Alberta plans to increase emissions towards 2020, and then return to today's levels by 2030, while Ontario Quebec and Manitoba plan to reduce emissions by 56, 27 and 8 Mt respectively.
- Even if all provincial targets were fully achieved, Canada would still need to reduce GHG emissions by an additional 45 Mt in 2020 and 55 Mt in 2030 to meet its international commitments.

INTRODUCTION

A lot has changed recently in the world of Canadian climate change policy. With the election of new governments in Alberta and Ottawa, there is a sense that reducing greenhouse gas emissions (GHGs) is back on the policy agenda. The previous federal government's approach of ambitious targets plus policy inaction is, if one is to believe the pronouncements of federal and provincial political leaders, about to be replaced by one of ambitious targets plus vigorous policy action. Even provinces that have relatively low emissions by Canadian standards have pledged to do more. The previous government's ambitious 2030 target submitted to the United Nations Framework Convention on Climate Change (UNFCCC), the UN body responsible for climate change negotiations, has been characterized by the new government as 'a floor rather than a ceiling.' Federal and provincial officials have begun to meet to work out how they will coordinate their actions to achieve Canada's targets.

Yet, despite this flurry of activity and the promise of concrete action to reduce GHGs, citizens have relatively little understanding of the simple arithmetic of climate change targets. Given the magnitude of the challenge facing Canada and the delicate negotiations that are yet to come, it is important that everyone share a clear understanding of what will be required by individual provinces and industries if Canada is to match its new rhetoric with action.

In this paper, we lay out the simple arithmetic of GHG emissions. We begin by comparing Canada to a selection of other countries. We then disaggregate Canadian emissions by province and look at the targets that different provinces have set for 2020 and 2030. We hope that this analysis will help provide both a common understanding of the current situation and a firm foundation for tackling the challenge we face as a society.

CANADA IN THE WORLD

According to the latest statistics, Canada emits about 1.6 percent of the world's GHG emissions.¹ Despite this relatively low share, Canada is among the top 10 global emitters on an absolute basis, and stands firmly in the top 3 for emissions per capita. By way of comparison, Canada's population makes up about 0.5 percent of the world total so that our emissions' share is about 3 times our population share.²

Canada played an active role in December 2015 at the Paris COP21 (21st Conference of the Parties) which led to a global agreement on mitigation, adaptation and financing of climate change action. The new Liberal government indicated that 'Canada is back' and wants to do its part in reducing GHGs at home, and helping developing countries that are already facing hardship because of climate change.

In May 2015, the former Conservative government submitted its Intended Nationally Determined Contribution (INDC)³ to the UNFCCC indicating an economy-wide target of reducing GHG emissions by 30 percent below 2005 levels by 2030. Following the fall 2015 election, the Liberal Government indicated that it considered the target to be a 'floor', suggesting that a consultation process with provinces would be launched to design a credible plan for Canada that might lead to an even more ambitious reduction target.

In order to assess the cumulative effect of all INDCs received before the Paris Conference, the United Nations Framework Convention on Climate Change commissioned a synthesis Report.⁴ It concludes that "aggregate global emission levels resulting from the implementation of INDCs will not fall within the 2°C scenario", let alone the 1.5°C scenario that some countries, including Canada, were advocating. Some have estimated that emissions in 2025 will be 11-13 gigatonnes (Gt) higher than the 2°C scenario, and as much as 15-17 Gt higher by 2030 (see Figure 1). To put the gap in perspective, China emitted approximately 11 Gt in 2012 and 16 Gt is the equivalent of the total emissions by China and the United States for 2012.

1. <http://cait.wri.org/historical>, consulted January 2016.

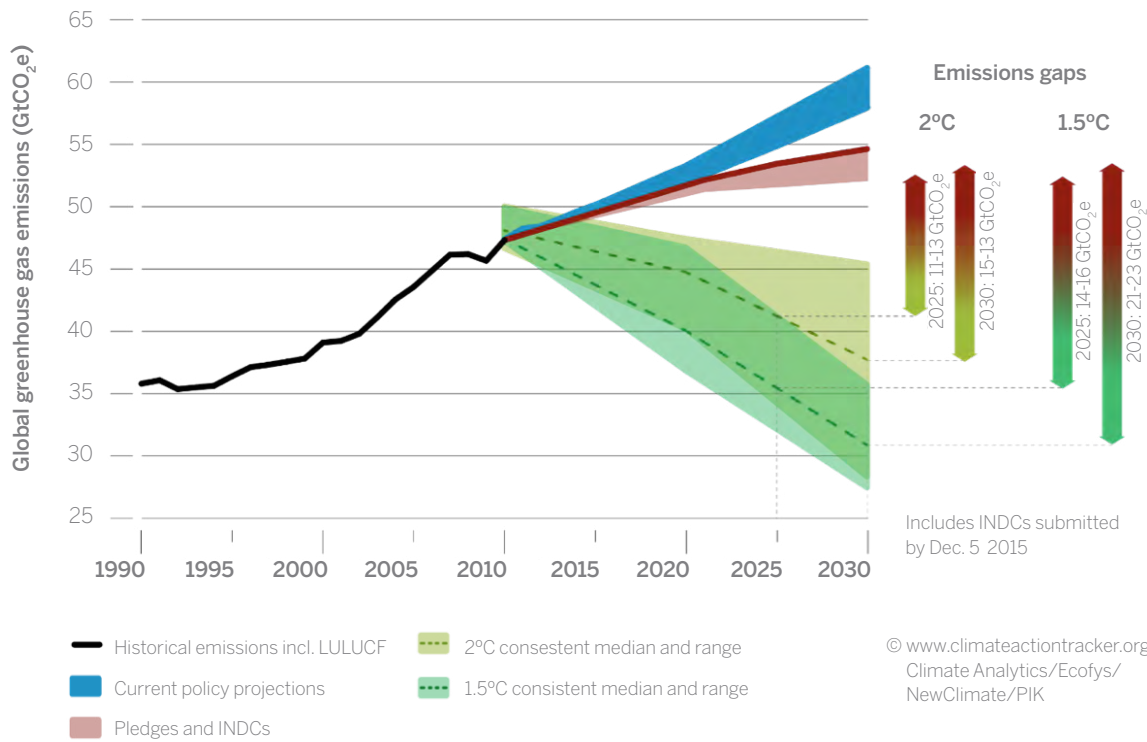
2. <http://data.worldbank.org/indicator/SP.POP.TOTL>, consulted January 2016.

3. <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Canada/1/INDC%20-%20Canada%20-%20English.pdf>, consulted January 2016

4. http://unfccc.int/focus/indc_portal/items/9240.php, consulted January 2016.

FIGURE 1 – COMPARISON OF GLOBAL EMISSION LEVELS RESULTING FROM THE INTENDED NATIONALLY CONTRIBUTIONS IN 2025 AND 2030 WITH OTHER TRAJECTORIES

(source: <http://climateactiontracker.org/global/173/CAT-Emissions-Gaps.html>)



In light of this gap, the international community agreed in Paris to revise their commitments every 5 years in order to close in on the level of GHG emissions that scientists say is required to limit warming to 2°C above pre-industrial levels.

Figure 2 presents total GHG emissions for selected countries for the period 1990 to 2012 (latest global emissions data) and their respective estimated 2020 and 2030 targets submitted as part of their Copenhagen commitment (for 2020) and INDCs (for 2030, except USA, who introduced a 2025 commitment). As expected, most developed countries reached their peak emissions sometime

in the past (between 1990 and 2005) whereas developing nations’ emissions have yet to peak.

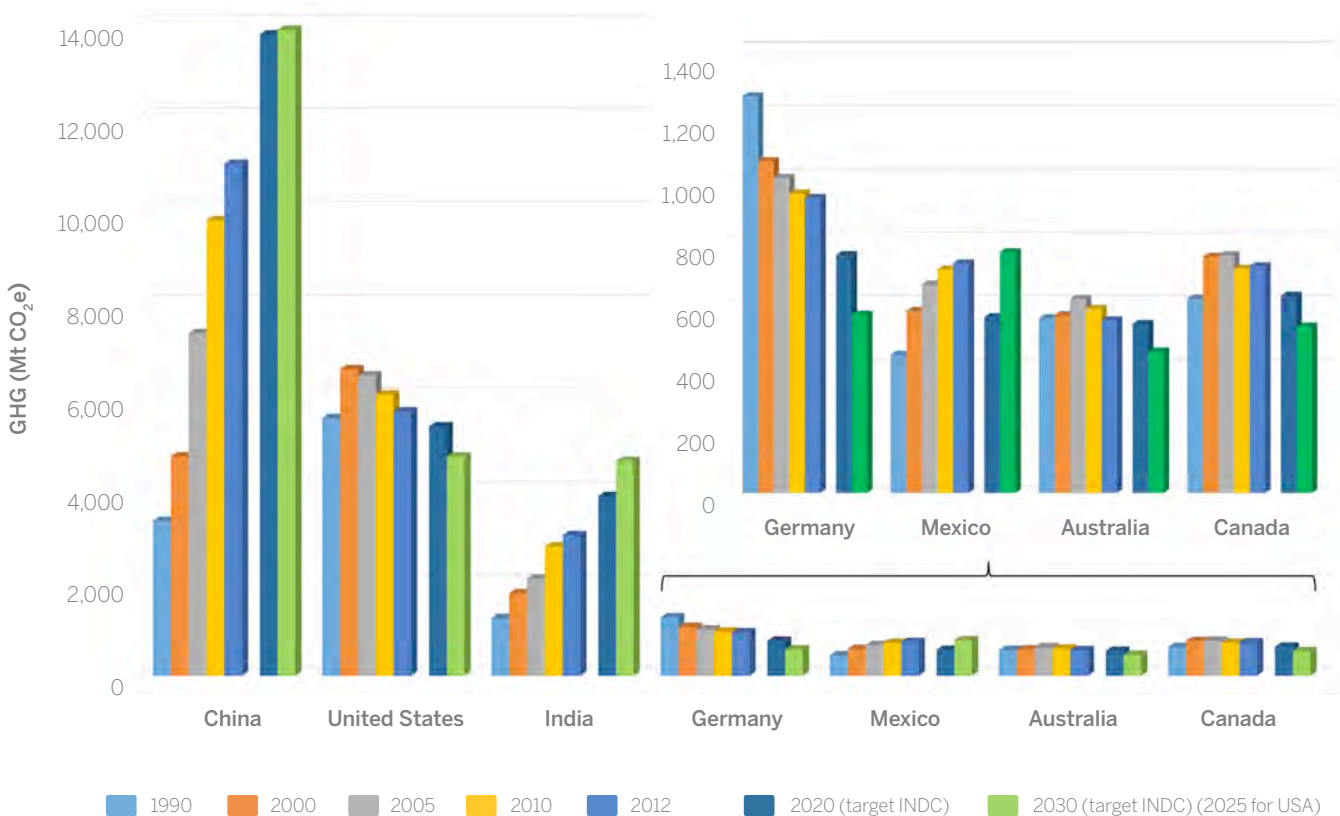
Simply comparing developed and developing countries’ reduction pledges can be misleading since national circumstances play an important role in determining the level of effort required by a country to reduce GHG emissions. Should developing nations be allowed to increase their emissions while they pull people out of extreme economic and energy poverty? Should countries that are responsible for most of the GHGs currently in the atmosphere pay for damages already incurred? These are some of the questions that bedevil international GHG reduction negotiations.

China's situation is of critical importance as they already represent a quarter of the world's emissions and would be expected to grow emissions substantially as they continue on the path to becoming the world's largest economy. Their commitment to "peak emissions by 2030 and making best efforts to peak earlier" is likely to be a very challenging goal while they simultaneously seek to raise average standards of living to developed country levels.

In contrast, India's INDC did not specify when emissions are forecast to peak. This is problematic for a country that saw its emissions triple between 1990 and 2012 and is currently the third largest global emitter. It is estimated that "if India's emissions were to peak when India reached the same per capita income as China is expected to have in 2030, the peak will not occur until about 2043".⁵ Such a late peak in emissions is clearly inconsistent with moving global emissions to a downward path.

FIGURE 2 – TOTAL GHG EMISSIONS – SELECTED COUNTRIES

(source: <http://cait.wri.org/historical> and Environment Canada)



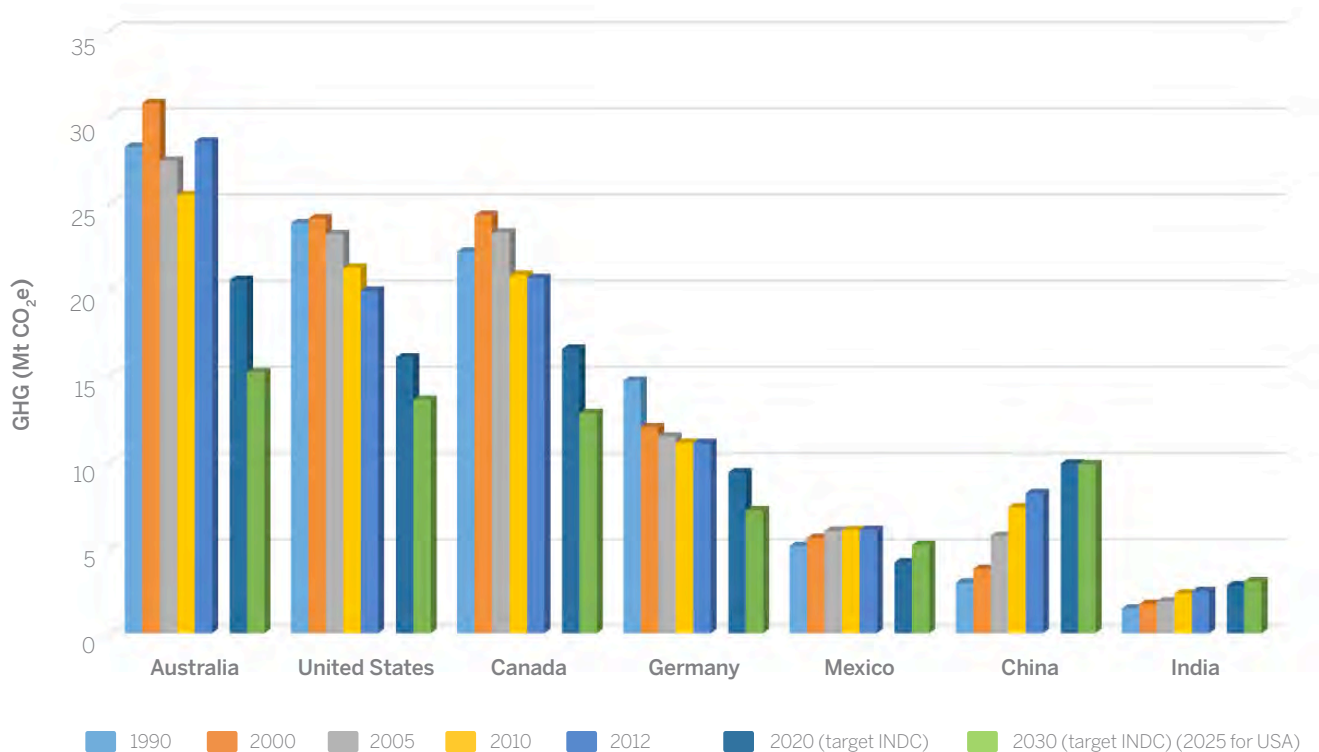
5. <http://www.brookings.edu/blogs/planetpolicy/posts/2015/12/11-india-greater-emissions-reductions-dhar>, consulted January 2016.

Comparing absolute GHG emissions between countries does not take into account differences in population. In Figure 3 we present per capita emissions for the same group of countries. At about 20.6 tonnes per capita in 2012, Canada is second behind Australia (28.5) as highest per capita emitter in this group of countries, slightly exceeding the US (20) and exceeding China (8.1) and India (2.4) by a wide margin. Turning to the INDC pledges for 2030, Canada has pledged to reduce annual emissions to 12.8 tonnes per capita, slightly lower than the US (13.4 in 2025), but well above China (9.8) and India (3.0).

To put these per capita emissions levels in context, the Deep Decarbonization Pathways Project,⁶ an initiative of the United Nations Sustainable Development Solutions Network (UNSDSN) and Institute for Sustainable Development and International Relations (IDDRI), determined that in order to limit global warming to 2°C above pre-industrial levels, the target for all countries should be to reduce global GHG emissions to 1.7 tonnes per capita by 2050 from the 2012 level of about 6.2 tonnes per capita.⁷ With per capita emissions in developed countries being substantially above this level and developing nations' emissions projected to increase in both absolute and per capita terms as they raise living standards, the global challenge ahead is significant.

FIGURE 3 – CPER CAPITA EMISSIONS – SELECTED COUNTRIES

(source: <http://cait.wri.org/historical>, Environment Canada and World Bank Population data)



6. <http://deepdecarbonization.org>, consulted January 2016

7. [http://cait.wri.org/profile/World%20\(sum%20of%20all%20CAIT%20countries\)](http://cait.wri.org/profile/World%20(sum%20of%20all%20CAIT%20countries)), consulted January 2016

CANADA AT HOME

The data presented in the previous section shows that while Canada contributes only about 1.6 percent of global emissions, it is one of the world's top ten emitters and also one of the its highest per capita emitters. However, these aggregate statistics mask a good deal of diversity with respect to both emissions and climate policy across the country. In this section we delve more deeply into Canadian results by province.

In the last few years, much of the action to combat climate change has come through provincial government policies. Such policies include a carbon tax in British Columbia, a newly-announced hybrid of a carbon tax and emissions trading scheme in Alberta, a cap-and-trade system in Quebec that will shortly be joined by Ontario and Manitoba, and stringent electricity regulations in Ontario to phase out coal and incentivize renewable energy. Table 1 summarizes provincial plans and commitments as of January 2016.

TABLE 1 – PROVINCIAL PLANS AND TARGETS AS JANUARY 2016

PROVINCE	2013 EMISSIONS PER CAPITA	POLICY MEASURES	2020 TARGET	2030 TARGET
Newfoundland and Labrador	8.6 Mt (16.4 t/capita)	<i>Climate Change Action Plan (2011)</i> ⁸ introduces progressive action on climate change into its policy, planning and programs. Focus on hydroelectricity with support of Lower Churchill Hydroelectric project.	10% below 1990	NA
Prince Edward Island	1.8 Mt (12.4 t/capita)	<i>Strategy for Reducing the Impacts of Global Warming (2008)</i> ⁹ outlines 49 actions to mitigate and adapt to climate change.	10% below 1990	NA
Nova Scotia	18.3 Mt (19.4 t/capita)	<i>Toward a Greener Future (2009)</i> ¹⁰ presents Nova Scotia's plan to address climate change by introducing the Environmental Goals and Sustainable Prosperity Act, notably establishing a cap on Nova Scotia Power Inc.'s emissions by 2010.	10% below 1990	NA
New Brunswick	15.7 Mt (20.8 t/capita)	<i>Climate Change Action Plan 2014–2020</i> includes actions in various areas, including renewable energy, transportation, industrial sources, etc. mainly through voluntary measures. ¹¹	10% below 1990	NA

(CONTINUED ON FOLLOWING PAGE)

8. <https://www.exec.gov.nl.ca/exec/ccee/index.html>, consulted January 2016

9. <http://www.gov.pe.ca/environment/climatechange>, consulted January 2016

10. <https://climatechange.novascotia.ca>, consulted January 2016

11. http://www2.gnb.ca/content/gnb/en/departments/elg/environment/content/climate_change.html, consulted January 2016

TABLE 1 – PROVINCIAL PLANS AND TARGETS AS JANUARY 2016 (CONTINUED)

PROVINCE	2013 EMISSIONS PER CAPITA	POLICY MEASURES	2020 TARGET	2030 TARGET
Quebec	82.6 Mt (10.1 t/capita)	<i>Climate Change Action Plan and Adaptation Strategy (2013-2020)</i> reaffirmed Quebec's vision to operate a Cap-and-trade system for GHG emission allowances aimed at all large emitters, which was legislated in 2013. In 2014, Quebec linked up with California's carbon market. In 2015, Ontario and Manitoba announced their intention to join in the near future.	20% below 1990	37.5% below 1990
Ontario	171.0 Mt (12.6 t/capita)	<i>Ontario's Climate Change Strategy (2015)</i> ¹² provides an update on the 2007 Action Plan. It highlights the results of the Green Energy Act of 2009 that effectively phased out the use of coal and introduced a feed-in-tariff program to promote renewable energy. In 2015, Ontario announced its intention to join the cap-and-trade system along with Quebec and California.	15% below 1990	37% below 1990
Manitoba	21.4 Mt (16.9 t/capita)	<i>Climate Change and Green Economy Action Plan (2015)</i> ¹³ introduced a number of policy measures in the transportation, agriculture and energy efficiency sectors. It also indicates to Manitobans the government's plan to join the cap-and-trade system established by Quebec.	No 2020 target but had a 2012 target of 6% below 1990	33% below 2005
Saskatchewan	74.8 Mt (67.6 t/capita)	In December 2009, the government introduced a climate change legislation setting out the province's plan to meet its target. However, the legislation was never enacted due to delays of federal plan and elections. ¹⁴	20% below 2006	NA

(CONTINUED ON FOLLOWING PAGE)

12. <https://www.ontario.ca/page/climate-change-strategy>, consulted January 201613. <http://www.gov.mb.ca/conservation/climate>, consulted January 201614. <http://environment.gov.sk.ca/climatechange>, consulted January 201615. <http://www.alberta.ca/climate-leadership-plan.cfm>, consulted January 2016

TABLE 1 – PROVINCIAL PLANS AND TARGETS AS JANUARY 2016 (CONTINUED)

PROVINCE	2013 EMISSIONS PER CAPITA	POLICY MEASURES	2020 TARGET	2030 TARGET
Alberta	267.0 Mt (66.6 t/capita)	<i>Alberta's Climate Leadership Plan (2015)</i> ¹⁵ presents the new strategy on climate change based on recommendations put forward by the Climate Change Advisory Panel. Details of the final strategy are being developed, but the plan covers 4 key areas: Phasing out coal-generated electricity and developing more renewable energy, implementing a new carbon price, legislated oilsands emission limit, and implementing a new methane emission reduction plan.	Implementation of the plan is expected to reduce emissions by 20Mt from business-as-usual scenario (297Mt).	Implementation of the plan is expected to reduce emissions by 50Mt from business-as-usual scenario (320Mt).
British Columbia	62.8 Mt (13.7 t/capita)	<i>Climate Action Plan (2008)</i> ¹⁶ introduces short, medium and long-term targets as well as a number of provincial legislations, including the Carbon Tax Act.	33% below 2007	40% below 2007 (target has been proposed but not adopted)
Territories	2.0 Mt (17.6 t/capita)	<i>Yukon Government Climate Change Action Plan (2009)</i> , ¹⁷ <i>NWT's A Greenhouse Gas Strategy 2011-2015 (2011)</i> ¹⁸ and <i>Nunavut's Climate Change Strategy (2003)</i> ¹⁹ all introduce a number of measures to mitigate but also adapt to climate change.	Yukon: Carbon neutral Government related emissions NWT: limit to +66% from 2005	NWT: Return to 2005 levels
CANADA	726.1 Mt (20.7 t/capita)	Federal measures to date include sectoral regulations (light and heavy vehicles, electricity standards for coal-fired generation, energy efficiency measures, etc.)	17% below 2005	30% below 2005

Different measures have different impacts. For example, it has been estimated that Ontario's phase out of coal-fired electricity generation helped reduce GHGs by about 30 Mt, while British Columbia's carbon tax-related reductions resulted in a reduction of about 3 Mt.²⁰

Almost every Canadian province has made 2020 commitments (the exception being Manitoba). Quebec, Ontario and Manitoba have announced formal targets for 2030 while Alberta has modeled the 2030 reductions implied by its recently-announced plan. Together, these provinces represent about 75 percent of Canadian emissions.

16. <http://www2.gov.bc.ca/gov/content/environment/climate-change/policy-legislation-programs>, consulted January 2016.

17. <http://www.env.gov.yk.ca/air-water-waste/ccactionplan.php>, consulted January 2016.

18. <https://www.enr.gov.nt.ca/programs/nwt-climate-change>, consulted January 2016.

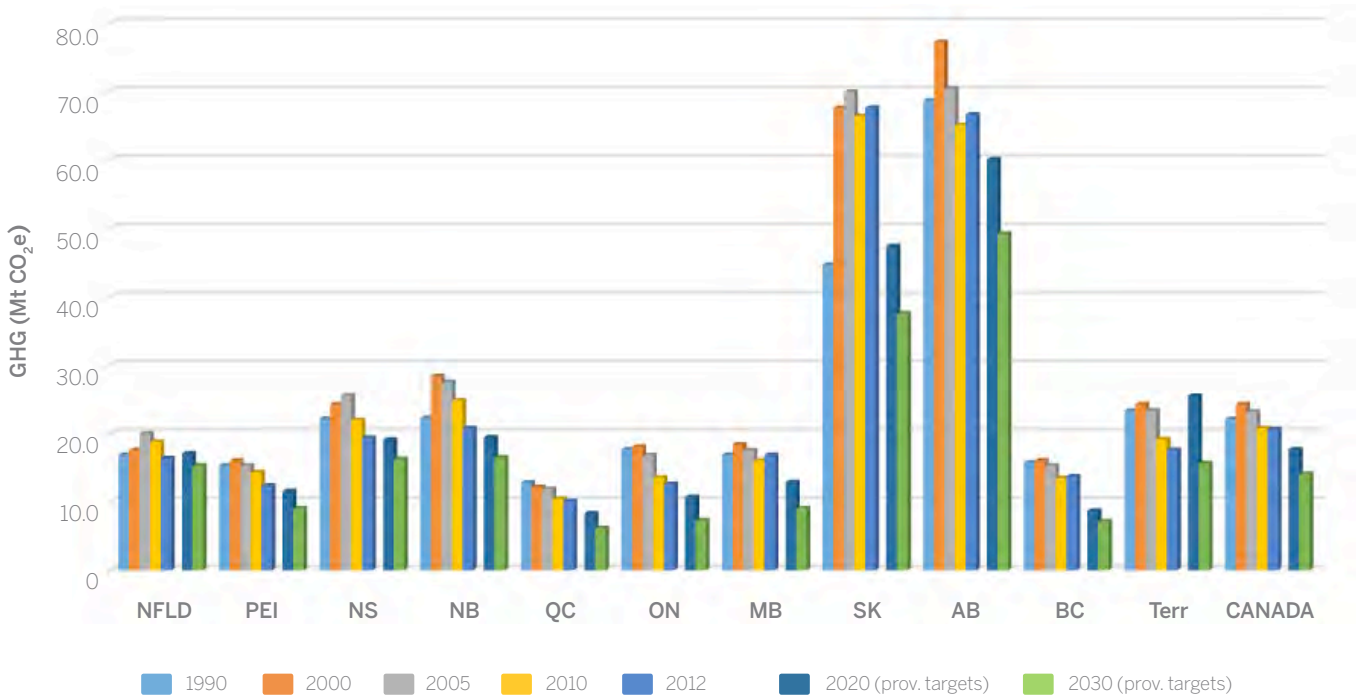
19. <http://climatechangenunavut.ca>, consulted January 2016.

20. http://www.iisd.org/pdf/2012/bc_carbon_tax.pdf, consulted January 2016.

Figure 5 normalizes emissions by population to account for the different sizes of provinces. Saskatchewan and Alberta have some of the largest per capita emissions in the world at 68 and 67 tonnes respectively. BC, Ontario and Quebec weigh in at 14, 13 and 10 tonnes per person respectively, in line with best performers in Western Europe.

Saskatchewan and Alberta's high levels of per capita emissions come from their reliance on coal-fired electricity generation as well as oil sands and heavy oil production. In contrast, BC, Ontario and Quebec rely on hydro-electric or nuclear electricity generation and have relatively few large industrial emitters.

FIGURE 5 – PER CAPITA EMISSIONS PER PROVINCE FOR 1990-2013 AND PROJECTED LEVELS FOR 2020 AND 2030 TARGETS



We can also use Figures 4 and 5 to compare the 2020 and 2030 targets for the provinces. In cases where no provincial targets have been announced, either the most recent target is used (e.g. Manitoba's 2012 target is used as a proxy for 2020) or an estimate is determined based on the increased stringency (e.g. for provinces that have not announced a 2030 target, targeted emissions in 2030 have been estimated to be 15 percent lower than in 2020, which is the average stringency increase from provinces that have announced 2030 targets).

Looking first at Figure 4, we see that BC's 2020 target calls for a decline of about 20 Mt from the current level of 63 Mt and then a further decline of 3 Mt over the decade to 2030.²¹ The Alberta plan has 2020 emissions growing by about 10 Mt from current levels to 277 Mt and then declining by 7 Mt over the next decade to 2030. In Ontario, emissions will need to decline by about 16 Mt to 155 Mt to reach its 2020 goal and then an additional 40 Mt over the next decade to 2030. Finally, Quebec has pledged to reduce emissions by about 11 Mt to 72 Mt in 2020 and an additional 16 Mt over the decade to 2030. Thus, provincial targets reflect substantial differences in both absolute levels and ambition.

Figure 5 shows the contrast between the plans of the four largest provinces more sharply. Of course, translating pledges of future emissions into per capita terms requires a forecast of population. For this exercise, we used the medium-growth case of Population Projections for Canada, published by Statistic Canada.²² For the 2015-2030 period, the population projections extend recent trends: Western provinces, led by Alberta, will see faster population growth than the national average. Quebec and Ontario' populations will grow steadily with the national average, while Atlantic Canada's population will remain flat.

BC's targets have per capita emissions declining from the current level of about 14 tonnes per person to 9 in 2020 and 7 in 2030. In Alberta, aided by projected strong population growth, targeted per capita emissions decline from about 67 in 2013 to 60 in 2020 and 49 in 2030. Ontario per capita emissions, currently at 13 tonnes are pledged to fall to 11 in 2020 and 7 in 2030, while in Quebec, emission per capita are targeted to fall from 10 tonnes in 2013 to 8 in 2020 and 6 in 2030. All of this arithmetic ignores the fact that provinces may well miss their 2020 targets, making the achievement of their 2030 goals all the more difficult.

As a final exercise, it is interesting to compare the known federal commitments for 2020 (622 Mt) and 2030 (525 Mt) with the aggregate of provincial targets, assuming they are achieved. As we noted above, for provinces that have not announced targets, we generally used the average level stringency of the announced targets to develop proxy 2030 targets. Since 75 percent of Canada's emissions are covered by announced 2030 provincial targets, these proxy targets for the remaining provinces probably have only marginal effects on the overall results.

Table 2 presents the announced and proxy 2020 and 2030 targets by province. In total, the provincial targets sum to about 667 Mt in 2020 and 580 Mt in 2030. Thus, even if all provinces achieved their announced or proxy targets, Canada would still face a gap of about 45 Mt in 2020 and 55 Mt in 2030.

21. BC's target has been recommended by a government panel but not yet officially adopted.

22. <http://www.statcan.gc.ca/pub/91-520-x/91-520-x2010001-eng.htm>, consulted January 2016

TABLE 2 – PROVINCIAL TARGETS AND ESTIMATED GAPS TO MEET CANADA'S 2020 AND 2030 TARGETS

PROVINCES	2020 TARGET		2030 TARGET	
	Mt	t/per capita	Mt	t/per capita
NFLD	8.5	17.1	7.5*	15.5
PEI	1.8	11.6	1.5*	9.0
NS	18.2	19.1	15.5*	16.3
NB	14.9	19.4	12.6*	16.5
QC	71.8	8.9	56.1	6.2
ON	154.7	10.7	114.7	7.3
MB	17.6*	12.9	13.7	9.1
SK	55.5	47.4	47.2*	37.5
AB	277.0	60.1	270.0	49.2
BC	43.5	8.7	39.5*	7.2
TERRITORIES	3.1	17.7	2.0*	15.6
CANADA TOTAL	667	17.7	580	14.1
CANADA TARGET	622	16.5	525	12.8

* Estimated by authors

Parallels can be drawn between the Canadian and international situations. In both cases, economic, demographic and political circumstances that affect the distribution of emissions are at play. In Canada, natural resources are unevenly distributed among

provinces.²³ This leads to widely different absolute and per capita emissions across provinces. The same is true of countries, although differences in stages of national development are probably the most important driving factor.

CONCLUSIONS

Significant challenges lie ahead for Canada as it works to meet its GHG emission targets, and those challenges parallel the ones faced by the international community. Finding ways to equitably share the burden of GHG emission reductions and practical mechanisms to allow regional and national economies to transition to a low-carbon world will test the ingenuity and will of political leaders at home and abroad.

