Policy Brief: A New Canadian Climate Accountability Act

Building the legal foundation to achieve net-zero emissions by 2050

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Policy Brief: A New Canadian Climate Accountability Act: Building the legal foundation to achieve net-zero emissions by 2050

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CAN-RAC

Canada's primary network of organizations working on climate change and energy issues, Climate Action Network Canada is a coalition of 120 organizations operating from coast to coast to coast. Our membership brings environmental groups together with trade unions, First Nations, social justice, development, health and youth organizations, faith groups and local, grassroots initiatives. For 30 years, CAN-Rac has been the only national organization with a mandate to promote the interests of the Canadian climate movement as a whole, rather than any one individual organization.

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Ecojustice was established on the Canadian west coast as the Sierra Legal Defence Fund in 1990, and now has offices across the country, in Vancouver, Calgary, Toronto, Ottawa and Halifax. Ecojustice's 22 staff lawyers go to court and use the power of the law to defend nature, combat climate change, and fight for a healthy environment. Its strategic, innovative public interest lawsuits and law reform programs lead to legal precedents and legislation that deliver lasting solutions to Canada's most urgent environmental problems. More information about Ecojustice can be found at: https://www.ecojustice.ca/approach/.

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The Pembina Institute is a national non-partisan think tank that advocates for strong, effective policies to support Canada's clean energy transition. We employ multi-faceted and highly collaborative approaches to change. Producing credible, evidence-based research and analysis, we consult directly with organizations to design and implement clean energy solutions, and convene diverse sets of stakeholders to identify and move toward common solutions.

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West Coast Environmental Law is a non-profit group of environmental lawyers and strategists dedicated to safeguarding the environment through law. Since 1974, West Coast has successfully worked with communities, non-governmental organizations, the private sector and all levels of government, including First Nations governments, to develop proactive legal solutions to protect and sustain the environment.

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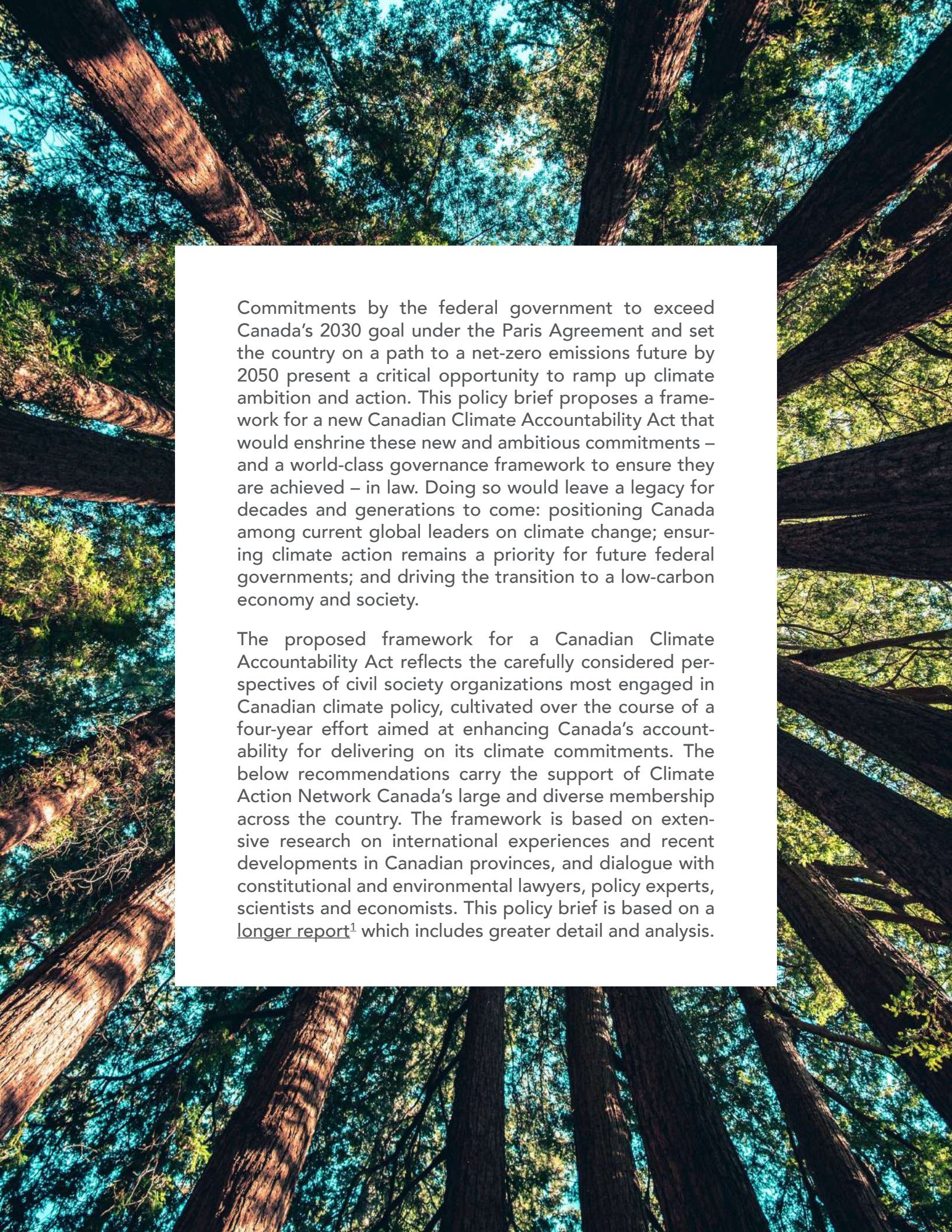

Commitments by the federal government to exceed Canada's 2030 goal under the Paris Agreement and set the country on a path to a net-zero emissions future by 2050 present a critical opportunity to ramp up climate ambition and action. This policy brief proposes a framework for a new Canadian Climate Accountability Act that would enshrine these new and ambitious commitments – and a world-class governance framework to ensure they are achieved – in law. Doing so would leave a legacy for decades and generations to come: positioning Canada among current global leaders on climate change; ensuring climate action remains a priority for future federal governments; and driving the transition to a low-carbon economy and society.

The proposed framework for a Canadian Climate Accountability Act reflects the carefully considered perspectives of civil society organizations most engaged in Canadian climate policy, cultivated over the course of a four-year effort aimed at enhancing Canada's accountability for delivering on its climate commitments. The below recommendations carry the support of Climate Action Network Canada's large and diverse membership across the country. The framework is based on extensive research on international experiences and recent developments in Canadian provinces, and dialogue with constitutional and environmental lawyers, policy experts, scientists and economists. This policy brief is based on a longer report[1] which includes greater detail and analysis.

Why Canada needs a new Climate Accountability Act

Canadians want their governments to commit to fighting climate change, and they want them to deliver on that commitment. Unprecedented mobilizing around climate action across the country – led by Indigenous and frontline communities and young people – has brought together hundreds of thousands of Canadians of all generations and all walks of life in a unified call for a safe and prosperous future. Canadians are clearly looking to the federal government for greater climate leadership: over 60 per cent of voters in the 2019 federal election cast ballots for parties that made firm commitments to increase ambition and scale up action on climate change.

As a nation, Canada has missed every greenhouse gas (GHG) reduction target set by the federal government prior to the current 2030 target.[2] This happens, at least in part, because the technical details and long timeframes involved in climate policy can be confusing. It is all too easy for governments to interpret the resulting public uncertainty as a lack of concern, and accordingly deprioritize the creation of effective climate plans or full implementation of existing plans.

That is why countries around the world are establishing the same types of accountability measures used in financial planning – budgets, independent audits, long- and short term plans, and so on – to address climate change. Notably, the United Kingdom, since passing its 2008 Climate Change Act (UK CCA), has managed to reduce its GHG emissions to 44 per cent below 1990 levels.[3] The UK CCA is very highly regarded globally and has served as a model for legislation in other jurisdictions, including Sweden, Denmark, France, Germany, Spain and New Zealand.[4] Here in Canada, Manitoba and British Columbia have enacted, and Quebec is considering, legislation that implements similar accountability measures.[5]

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A Canadian Climate Accountability Act would:

1. Cement Canada's promise to the international community to do our fair share to keep global temperature rise below 1.5 C, and assure Canadians that the federal government will remain committed to long-term action to mitigate and adapt to climate change. Despite significant activity under the Pan Canadian Framework (PCF) over the past four years, Canada is still not on track to meet its existing Paris pledge to reduce GHG emissions 30 per cent below 2005 levels by 2030. Legislation that sets binding, science-backed long-term GHG reduction targets, mandates.

2. Transform how Canadians engage with the issue of climate change and climate action. Currently, citizens hear once a year through the media how close or far Canada is from some distant climate goal. Instead, a Canadian Climate Accountability Act would establish an arms-length institution mandated, in part, to develop and transparently track near-term 'positive targets' – for example, reducing the number of single-passenger internal combustion engine vehicle trips – to assess and report on Canada's progress toward long-term goals. This approach will help Canadians, as similar processes have helped citizens in other jurisdictions, better understand the richness of climate action taking hold across the country and how they can play a part in a national undertaking of great importance.

3. Help build the resilience of the Canadian economy and bolster Canada's transition to a low carbon economy and society. The Bank of Canada recently reported that climate change is a key threat to our economy and financial system, and global experts are warning of significant risks to countries that fail to make an "orderly transition to a low-carbon economy." Climate accountability legislation would establish a framework for charting Canada's pathway to net-zero GHG emissions by 2050: providing certainty for investors and industry; stimulating growth in clean-tech, renewable energy and nature-based climate solutions; and coordinating the economy-wide and whole-of-government approach to climate action.

Canada has missed every GHG reduction target it has set.

A climate accountability law with 5 key elements can put us back on track.

CANADIAN CLIMATE ACCOUNTABILITY LAW

1

Legislate

2050 net-zero

and new 2030 targets

to ensure Canada's fair share contribution to **keeping global temperature rise to below 1.5 C**

No more missed targets

A coherent approach to tackling climate change

2050

Climate Accountability Laws are being implemented all over the world

2 Five-year carbon budgets

Statutory national and sub-national carbon budgets that cap total GHG emissions adopted on a rolling basis

Budgets are recommended by experts and **set in law**

3 Five-year impact reports

Reports will assess the risks of the impacts of climate change on Canada

Reports based on expert analysis will then be **tabled in Parliament**

Climate Accountability Legislation will hold governments accountable to deadlines, delivering solutions to achieve net-zero **by 2050**

4 Plan. → Respond. → Act.

Require the federal government to:

i. Develop a plan and act to achieve carbon budgets in a set time
ii. Develop a plan and act to adapt climate impacts
iii. Respond to expert climate committee reports on govt. progress

5 Expert climate advisory committee

An expert committee from across the country, Indigenous groups and Knowledge holders that:

i. Advises on targets, carbon budgets and impacts reports
ii. Monitors and reports on government progress
iii. Provides advice on climate solutions

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Framework legislation to achieve net-zero by 2050

The proposed legislative framework is built around five pillars that are common in leading climate accountability laws in other jurisdictions. These international best practices have been adapted to suit the unique context of the Canadian federation. Additionally, it is essential that any Canadian climate accountability framework recognize the Indigenous inherent right to self-government, uphold the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), and advance the Truth and Reconciliation Commission (TRC) Calls to Action.

The five pillars should be seen as a comprehensive package rather than a suite of options.[6]

If implemented in an integrated and coordinated manner, the framework can transform how Canada approaches climate action, redefine our ambition nationally and globally, and set the country on course to a prosperous, low carbon future. Below is an overview of the five pillars; each is described in further detail below, along with detailed recommendations for how they would be incorporated into a Canadian Climate Accountability Act.

Five pillars of Canadian Climate Accountability Act

Pillar 1: Long-term (2050 & 2030) GHG reduction targets that are ambitious and move Canada towards its fair contribution to a 1.5 C mitigation scenario.

Pillar 2: Five-year carbon budgets that cap total GHG emissions and fairly distribute emissions reductions across the country. Carbon budgets are the basis for mitigation planning.

Pillar 3: Five-year impact reports tabled before Parliament that assess the risks of current and predicted climate impacts in Canada. Impact reports are the basis for adaptation planning.

Pillar 4: Planning and reporting requirements to achieve carbon budgets and guide adaptation. Plans, progress reports on their implementation, and the government's response to progress reports must be tabled before Parliament.

Pillar 5: Arm's-length expert climate advisory committee to advise on long-term targets, five-year carbon budgets, climate impact reports and policy solutions, and independently monitor and report on implementation progress. The expert committee is central to the accountability framework and has a key role in each of the preceding pillars.

Pillar 1: Long-term 2030 & 2050 GHG reduction targets

Political promises[7] to "exceed Canada's 2030 emission reduction goal" and "join countries around the world in reaching net-zero greenhouse gas emissions by 2050" should be set in law. Legal targets actually commit current and future governments to sustained climate action, and signal that commitment to the nation and the world. [8]

Clear Ministerial responsibility for achieving the targets is critical to delivering on Canada's GHG reduction targets. Assignment of that responsibility should reflect the fact that the transition to a net-zero emissions future is an economy-wide and whole-of-government project. The responsible Minister or Ministers must be able to facilitate and provide:

- Ongoing engagement with sub-national governments and Indigenous governments and peoples;
- Consistent and collaborative policy development and decision-making across key federal departments, including ECCC, Natural Resources Canada, Canadian Heritage, etc.; and,
- Alignment of financial budgeting with carbon budgeting requirements.

The targets must be evidence-based and responsive to new developments in scientific knowledge and international policy. To that end, the legislation should establish strong technical input by the arm's length expert committee (Pillar 5) and duties on the responsible Ministers to receive and consider that input.[9]

The targets must also reflect Canada's fair share of the global challenge of tackling climate change. If a revised 2030 target is ambitious, it may be appropriate to achieve a larger portion of that target through international credits.[10] If the revised target is not ambitious, it should be achieved, largely or entirely, domestically.

Industrial Sunset by Billy Wilson via Flickr Attribution-NonCommercial 2.0 Generic (CC BY-NC 2.0)

Recommendations

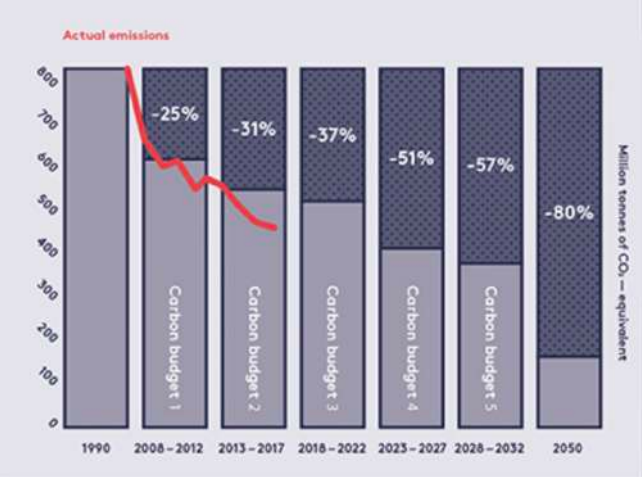
1. Enshrine the net-zero 2050 target and a more ambitious 2030 target in law, and include provisions to strengthen these targets to reflect changes in scientific knowledge and policy.

2. Place clear and unqualified legal duties on government to establish and meet the long-term targets.

3. Assign those duties to Ministers who are best positioned to lead the economy-wide and whole-of-government task of reducing GHG emissions. That could be some combination of the Minister of Environment and Climate Change, Minister of Finance, and the Prime Minister.

4. Consult experts to define a 'net carbon account' – the figure against which progress towards achieving the long-term targets and carbon budgets can be measured - and consider whether to include international aviation and shipping, what parameters to place on international credits, and how to account for land use, land-use change and forestry (LULUCF).

Pillar 2: Five-year carbon budgets



Source: 10 years of the Climate Change Act. Report. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science ["Grantham CCA 2019"]

The legislation should require the federal government to establish five-year carbon budgets in regulations or orders-in-council, based on the recommendations of the expert committee, to guide efforts to achieve long-term targets.

Carbon budgets – also known as emissions budgets or milestones – cap economy-wide GHG emissions over a period of time. They represent GHG emissions by volume rather than a percentage. For example, the UK's fourth carbon budget caps GHGs emitted between 2023 and 2027 at 1,950 MtCO2e.[11] Canada should follow the UK's lead and establish carbon budgets that limit the volume of emissions over a five-year period, a length of time that balances predictability and flexibility.[12]

Figure 1 illustrates a potential timeline for setting carbon budgets. Appendix A sets out a series of steps to set up a system of carbon budgets.

Canada needs two types of carbon budgets – national and sub-national. ***National carbon budgets*** apply to the country as a whole: these are what the UK, for example, mandates under the CCA. The national five-year carbon budgets should be apportioned fairly, equitably and efficiently into ***sub-national carbon budgets*** for emissions generated within the geographic borders of each of the provinces and territories. This is a pragmatic approach because it tracks current Canadian GHG emissions reporting.[13] [14] In addition, jurisdiction over GHG emissions in Canada is shared by all levels of government, and varies significantly by region. Sub-national carbon budgets allow true accountability by clearly and productively engaging with that reality.

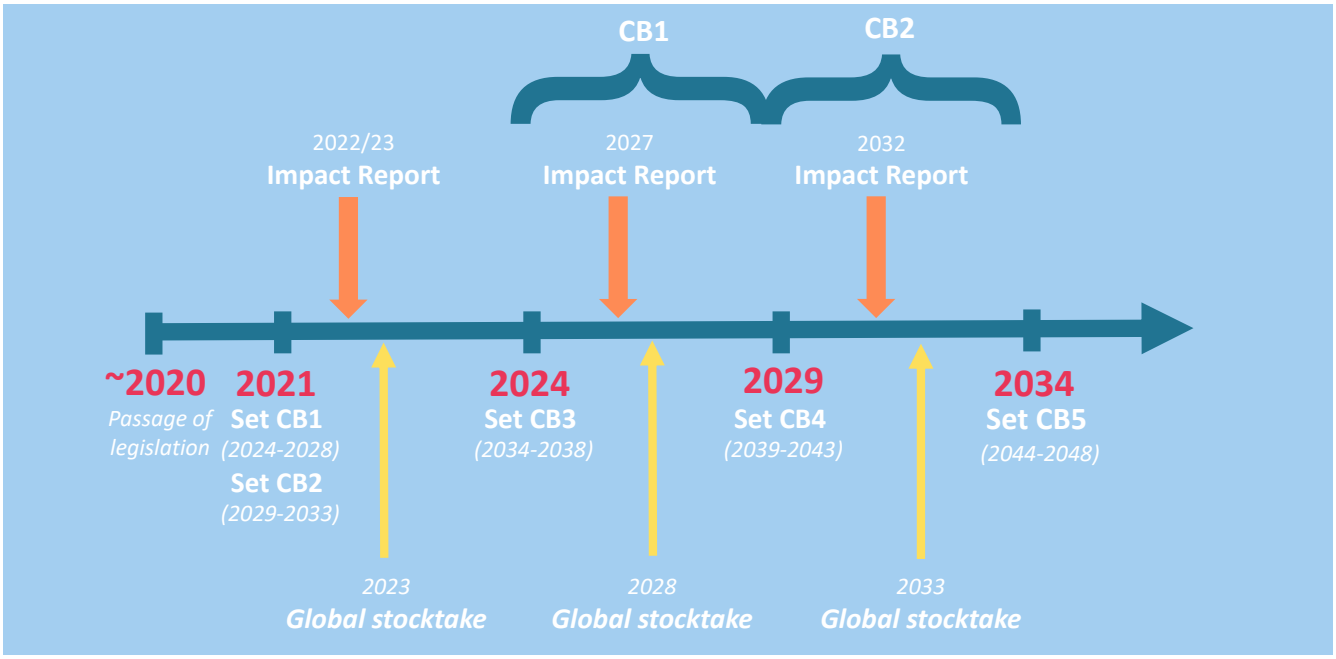


Figure 1 - Potential timeline for setting of carbon budgets. Impact reports, explained below, focus on the existing and forecasted impacts of climate change on Canada and inform adaptation planning.

Sub-national carbon budgets respect the constitutional division of powers because they would not bind on sub-national governments *per se*. They would bind on the federal government to the extent that they set out a path to achieving the national budget, but are *informational* for sub-national governments, setting out their expected role in contributing to the national budget. Furthermore, as discussed below, the sub-national budgets would be based on expert advice and consultation with sub-national governments.

Once set, both levels of government would draw on or enact legislative tools to achieve the reductions necessary to meet sub-national budgets. Examples of federal legislative tools include the *Canadian Environmental Protection Act, 1999 (CEPA)* and the *Greenhouse Gas Pollution Pricing Act (GGPPA)*. Equivalency agreements (e.g., under CEPA) could incentivize ambitious provincial action and foster cooperative federalism.

Why are sub-national carbon budgets necessary?

Constitutionally, the environment is a shared and overlapping jurisdiction in Canada,[15] which means that the work of reducing GHG emissions must be spread across both national and sub-national governments. The federal government has well-established powers to regulate all sources of GHG emissions, fuels and the energy efficiency of appliances, equipment and vehicles, as well as broad taxation and spending powers. Provinces and territories also hold crucial policy levers related to reducing GHG emissions – including policies related to buildings and land-use planning, electricity supply, natural resource project approvals, transportation and administration of municipal governments. This shared and overlapping jurisdiction adds complexity to climate policy and accountability. For example, a province may regulate emissions from a coal plant, but CO2 emissions from the same facility can also be federally regulated since CO2 is on the List of Toxic Substances (Schedule 1) of the CEPA.

To have accountability, there must be (1) responsibility, (2) answerability and (3) enforceability. Climate accountability legislation aims to apportion answerability for reducing GHG emissions to the relevant actors. If sub-national governments are not all publicly answerable for any GHG reductions, responsibility for those key climate policies may fall away, significantly weakening the entire framework. Studies on climate change mitigation in other federal nations, such as Austria and Switzerland, recommend (as we do) centralizing responsibilities in the federal government where possible, and ensuring that sub-national targets are meaningful.[16]

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Recommendations

5. Place clear and unqualified duties on the responsible Ministers to set and meet rolling five-year national carbon budgets, requiring that the first two national carbon budgets (e.g., for 2024-2028 and 2029-2033) be set within 6-12 months of passage of the legislation, and future national carbon budgets be set ten years in advance of the first year of their implementation period.

6. Require that responsible Ministers set and meet legally binding five-year sub-national carbon budgets that equitably and efficiently apportion national carbon budgets among provinces and territories.

Pillar 3: Impact reports

Mitigation responses are deeply connected to adaptation responses: respond to one, and you often respond to the other at the same time.[17] As the impacts of the climate crisis on communities and ecosystems escalate, it is essential that government scale-up the response to those impacts and create plans for investing in resilience efforts across the country. On this basis, many international jurisdictions are explicitly and closely twinning their mitigation and adaptation efforts.[18] We propose the same approach under a Canadian climate accountability framework. Specifically, the responsible Ministers should be required to complete and table before Parliament a report on the risks to Canada of the impacts of climate change. These impact reports would take the advice of the expert advisory committee into account and be released every five years, 1-2 years before each new carbon budget is set, so as to inform that process.

The Expert Panel on Climate Change Risks and Adaptation Potential, which completed similar work in the one-off 2019 "Canada's Top Climate Change Risks," suggested that such reports should be undertaken regularly.[19]

Recommendation

7. Require that responsible Ministers table an impact report, informed by the expert advisory committee, on the risks to Canada and the impacts of climate change every five years.

Pillar 4: Planning and reporting

Legislating clear, specific and time-bound obligations on the government to plan, report and respond to feedback takes climate accountability from aspirational to actual. Planning and reporting creates an early-warning system to signal if a future target may be missed and to provide information for course correction. Consistent and regular reporting that uses near-term 'positive target' indicators of progress that are tracked consistently over time can make climate action more tangible and relatable to Canadians, and can generate stories of success. Feedback on the UK's CCA confirms that legislated regular and rigorous planning plays an important role in providing certainty for a range of interests, in particular for investors.[20] Similar planning and reporting is already taking place under the Pan-Canadian Framework (PCF) and to the UNFCCC; these exercises would simply need to be calibrated to the targets and five-year carbon budgets, once set.

Planning

There must be a legislated duty on the responsible Ministers to prepare, and table before Parliament, a plan that sets out the policies and strategies for meeting the upcoming carbon budgets. Timing for the tabling of plans must be clear to provide certainty[21] and should be synchronized with the Article 14 Global Stocktake of the Paris Agreement, which would reinforce the credibility and enhance the transparency of both processes. Figure 2 illustrates a potential timeline for planning to meet carbon budgets.

As in the UK and New Zealand, the plans must be prepared with key considerations in mind, such as the varying impacts on economic sectors, effects on the health and well-being of Canadians, and the need for a just transition to a low carbon economy.[22] Sub-national carbon budgets will require specific planning that demonstrates how regional GHG reductions will be achieved (see **Appendix B**).

The government should also prepare a national adaptation plan – to be tabled before Parliament shortly after each 5-year impact report – that sets out it polices and strategies for adapting to climate change.[23] The legislation should set out the adaptation planning requirements in clear language, and include a timeline for tabling the plans. This provision would mirror the provision requiring a plan to meet the carbon budgets. The national adaptation plan should be informed by input from the expert advisory committee, provinces and territories and Indigenous Peoples.

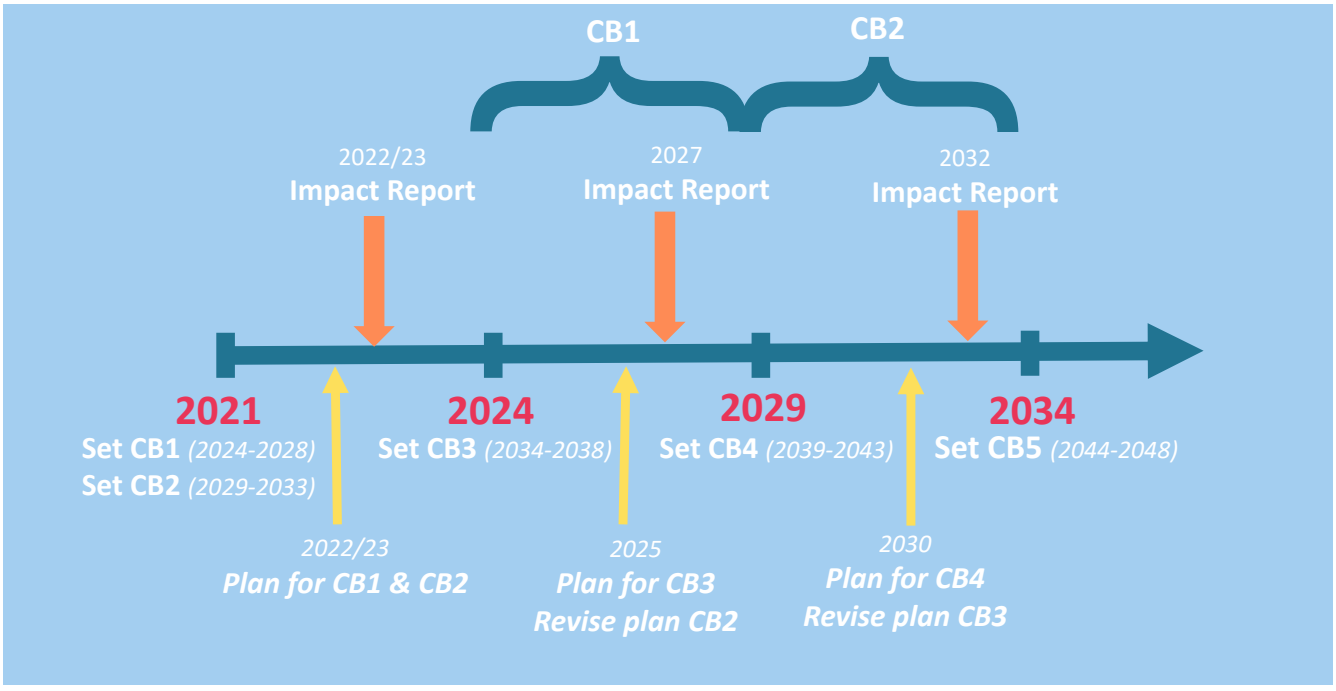

Figure 2 - Potential timeline for planning to meet Canadian carbon budget

Reporting

Targets must be complemented with good reporting to mark progress and ensure they are achieved. Some elements of a strong reporting framework are already set out above, but in summary, the legislation would require direct reporting to Parliament by the government and the expert advisory committee as follows:

- After each carbon budget is set, the government would publish and table in Parliament a plan setting out its policies and strategies for meeting the next, and future, carbon budgets;
- After each impact report is tabled in Parliament, the government would table an adaptation plan that sets out its policies and strategies for adaptation to climate change;
- The government would report GHG emissions (1) annually, (2) at the end of each 5-year carbon budget period, (3) in 2032, on the 2030 target, and (4) in 2052, on the 2050 target;
- The expert advisory committee would report annually on: (1) progress towards budgets and targets, and (2) progress on implementing the adaptation plan; and
- The government would be required to respond to the expert advisory committee's annual progress reports.

Specific reporting obligations should also be triggered if any of the 5-year carbon budgets or the long-term targets are not met in order to explain how the government will compensate for carbon budget shortfalls and/or why a long-term target was not met.[24]

It is important that progress reporting be based on clear deliverables and trackable metrics of success. Without objective indicators, progress on meeting climate targets and budgets cannot be accurately assessed. Work to this end is already being undertaken by the Canadian Council of Ministers of the Environment (CCME) under the PCF, and can be built on by the expert advisory committee as necessary.[25] Examples of best practice on progress reporting include the German Environment Agency, and, in Canada, the 2015 Progress Report of the Federal Sustainable Development Strategy.[26]

Establishing these trackable metrics can also be thought of as establishing 'positive targets' for Canadian climate action. Coupled with a strong public communications strategy, these positive targets can serve as the basis for stories of success to be shared with Canadians on an ongoing basis to mark and celebrate progress toward more distant long-term GHG reduction targets.

Recommendations

8. Require that responsible Ministers prepare and table before Parliament a plan to meet the next national carbon budget (and accordingly the associated sub-national carbon budgets) within 2 years of when budgets are set. Considerations when preparing the plan should include: the duty to meet long-term targets, how the plan affects different sectors of the economy, how the plan affects the health and well-being of Canadians, and the need for a just transition to a low carbon economy.

9. Require that responsible Ministers prepare and table a national adaptation plan (informed by the expert advisory committee) that sets out the policies and strategies for adapting to climate change within 2 years after each impact report is tabled before Parliament.

10. Require that responsible Ministers report GHG emissions (1) annually, (2) at the end of each 5-year national carbon budget period, (3) in 2032, on the 2030 target if applicable and (4) in 2052, on the 2050 target.

Pillar 5: Expert climate advisory committee

The UK's Committee on Climate Change (CCC) has been described as the key institutional innovation of the UK CCA. Its advice and reporting carry immense authority and it acts as a reliable resource for stakeholders and decision-makers.[27] An arm's length expert advisory committee would play a similarly critical role in ensuring progress under a Canadian climate accountability framework, regardless of changes in political leadership. Government is the ultimate decision-maker, but the advisory committee would maintain pressure on the government to keep progressing towards the targets and budgets.

The recently formed Canadian Institute for Climate Choices (CICC) was modelled on the UK's CCC, and accordingly has the necessary elements of independence and expertise.[28] The CICC does not have a legislated mandate, but some amendments to its current structure and legal status could address the core statutory functions and our other recommendations for an expert advisory committee. Alternatively, a separate, new expert advisory committee could be created under the framework. A new committee would have to work closely with the CICC.

The legislation should establish the expert advisory committee's core functions, namely to provide time-bound input on (1) the long-term targets, (2) the five-year national and sub-national carbon budgets[29] and impact reports, and (3) climate-related policy. The expert advisory committee would also report annually to Parliament on (1) progress made towards meeting existing carbon budgets and the 2050 target, (2) further progress that is needed to meet budgets and the 2030 and 2050 targets, (3) whether carbon budgets and the long-term targets are likely to be met, and (4) progress in implementing the government's adaptation plan.[30] As set out above, the expert advisory committee should be required to proactively consult with a range of interests, including with sub-national governments, when drafting its advice and reports.

A duty would be placed on the government to respond to these progress reports and make their responses public. This back and forth between the expert advisory committee and government

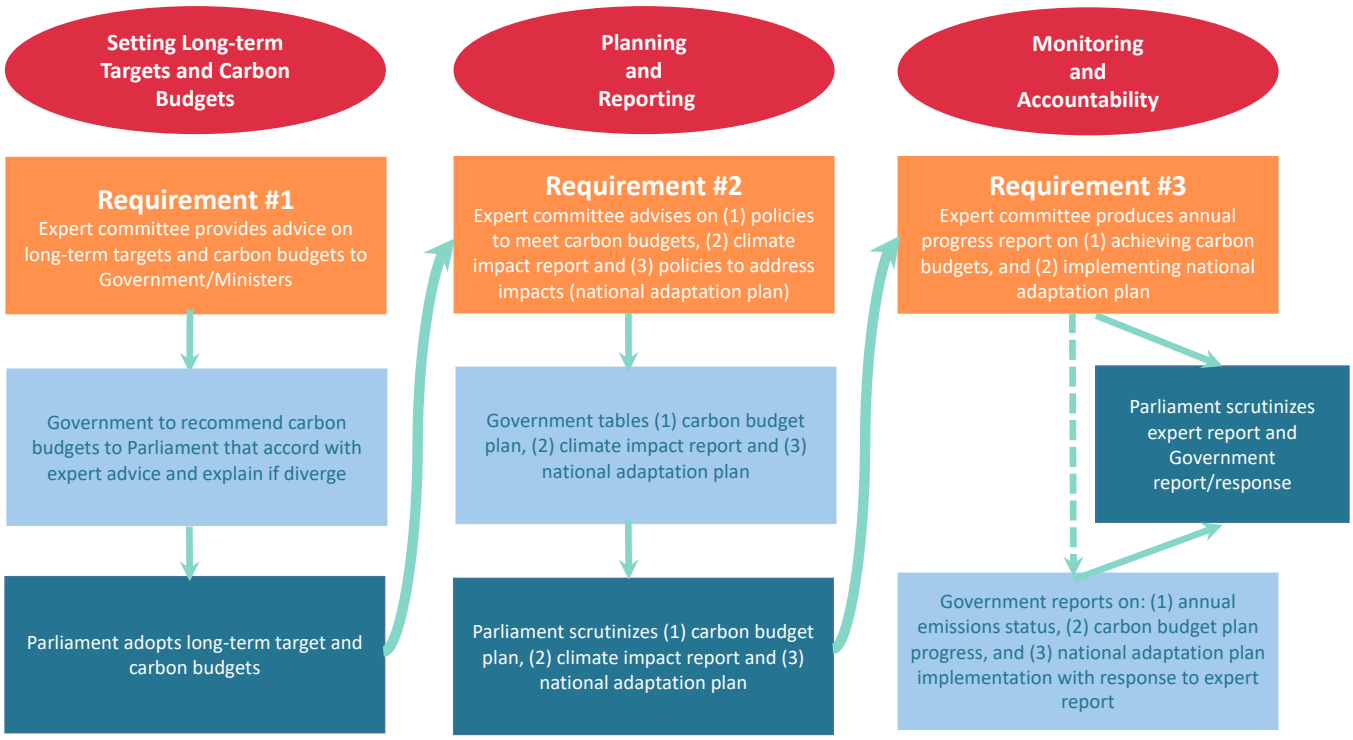

Figure 3 - Expert advisory committee's role under Canadian climate accountability legislation

ensures progress towards the long-term targets is subject to trusted expert scrutiny, protecting climate policy from the shifting priorities and agendas of short term political cycles. While the Commissioner of Environment and Sustainable Development (CESD) could offer important input, it could not under its existing mandate perform the analysis and policy advice roles recommended here (set out below in Figure 3) because it is backward-looking and assesses the implementation of one policy at a time rather than comprehensively.

We propose that the legislation specify the desirable experience and knowledge of the committee members, and that the makeup of the committee reflect all regions and not over-represent any one interest group.[31] Importantly, the committee should include Indigenous representation to ensure that the rights, knowledge and lived experience of Indigenous people are effectively integrated.[32,33]

Recommendation

11. Provide for the creation of an independent expert advisory committee tasked with advising and reporting functions

.

Conclusion

Promises to exceed Canada's current climate targets and achieve net-zero emissions by 2050 clearly demonstrate the federal government's ambition on confronting the climate crisis. But Canadians are looking for more than aspirational long-term goals: they want assurance that this and future federal governments will translate that ambition into sustained action and real results. They are looking for the plans and pathways that will reduce GHG emissions and guide Canada's transition to a low carbon economy and society.

A new Canadian Climate Accountability Act would establish the legal foundation for that transition. The five-pillar framework outlined in this policy brief is designed to break down long-term, aspirational targets into more proximate and manageable milestones, to drive the whole-of-government and economy-wide planning needed to achieve those milestones, and to ensure there is accountability for delivering real progress on climate mitigation and adaptation. The legacy created by a new Canadian Climate Accountability Act will live on for generations to come, positioning Canada among global leaders on climate policy and assuring Canadians their government is truly invested in leading the country a resilient, prosperous and sustainable future.

Appendix A
Setting up a system of carbon budgets

We propose six steps to set up a system of carbon budgets under a Canadian Climate Accountability Act:

1. Duties: Legislation would place clear and unqualified duties on the responsible Ministers to set and meet five-year national carbon budgets. Like the UK CCA and most other international examples, the legislation would not set the national carbon budgets, but would set out clear timelines for their establishment.

2. Timelines: Legislation would require that at least the first two five-year carbon budgets be set within 6 - 12 months of the Act receiving Royal assent.[34] Future carbon budgets would be set approximately 10 years in advance of the relevant period, as more lead time contributes to predictability.[35] The timing of the carbon budget-setting process should align with the ambition mechanism under the Paris Agreement which will take place every five years starting in 2023 (the "Article 14 Global Stocktake").

3. Volume: The legislation should require the expert advisory committee to recommend the volume or amount of national and sub-national carbon budgets, based on prescribed considerations. Responsible Ministers must then set national carbon budgets that are at least as ambitious as those recommended by the committee. At a minimum, every national budget must be set with a view to meeting the long-term target and international obligations, namely the Paris Agreement's 1.5 C goal. Additional substantive matters to be considered by the expert advisory committee when advising on the budgets include Indigenous and scientific knowledge relevant to climate change and the results of consultations.[36]

Sub-national targets would be informed by similar considerations as national budgets. In addition, burden sharing principles such as ability to pay, grandfathering, equity and others should factor into the sub-national carbon budget advice.[37]

4. Consultation and communication: The legislation should establish processes for provincial and territorial governments, Indigenous peoples and governments, stakeholders and the public to provide input on the national and sub-national carbon budgets. We propose that:[38]

- The expert advisory committee proactively engage and provide for participation where necessary, including with sub-national governments.
- The responsible Ministers provide an opportunity to receive representations and/or discuss the expert advisory committee's proposed carbon budgets with the sub-national governments. Sub-national governments that do not provide comments within a defined time period would be deemed to accept the committee's recommendations.
- The responsible Ministers must be satisfied that the consultation by the expert advisory committee was adequate. If they are not, they must consult further as necessary.

- Where the responsible Ministers' proposed budget deviates from the expert advisory committee's recommendations, they must consider whether they need to conduct further consultation.

We also suggest considering that the legislation establishes a standing table for dialogue and negotiation among national and sub-national governments. The *Species at Risk Act* similarly establishes both an expert committee (COSEWIC) and a federal-provincial-territorial table (the Canadian Endangered Species Conservation Council). A government committee under climate accountability legislation could be an important forum for establishing sub-national budgets.

5. Setting the budgets: Steps 1 - 4 outline a transparent, principles-based process for deciding how to share the work of GHG reductions across the country. Once complete, responsible Ministers will be in a position to set national and sub-national carbon budgets. Sub-national carbon budgets must add up to the national carbon budget for any given five-year period. The responsible Ministers may, through their consultation and discussions with the sub-national governments and others, choose to vary the expert advisory committee's recommendations. This is acceptable so long as sub-national budgets total the national budget recommended by the committee.

The responsible Ministers' duty to set sub-national carbon budgets would be in the core legislation and should mirror the timing of the national carbon budgets set out above. The responsible Ministers' duty to, in cooperation with the relevant sub-national governments, meet a given set of sub-national carbon budgets should be enshrined in a legal instrument such as an Order-in-Council or regulation. This could be the same legal instrument as the national carbon budget for the given period, or a separate instrument.

This duty held by the responsible Ministers will be the foundation for any backstopping measures that may be required. As laid out in more detail in **Appendix B** on sub-national planning and reporting, if a sub-national government will not take on its share of the work to achieve its sub-national carbon budget, the responsible Ministers can use various federal tools to achieve those sub-national carbon budgets, including: an escalating price on carbon pricing under the federal *Greenhouse Gas Pollution Pricing Act (GGPPA)*, which can be applied on a regional / provincial / territorial basis;[39] the C*anadian Environmental Protection Act, 1999 ("CEPA")*; the *Impact Assessment Act ("IAA")*; and others.

6. Amending carbon budgets: As with the long-term targets, the legislation should allow for carbon budgets to be strengthened, for example, when there are significant changes in scientific knowledge regarding climate change, or on the advice of the expert advisory committee.[40]

Appendix B
Sub-national planning and reporting

Achieving sub-national budgets is ideally done through cooperation among all levels of government. If the system of planning and reporting demonstrates that a province or territory is not effectively using policy levers within its jurisdiction to help reach the sub-national carbon budget target, the federal government may need to escalate use of federal powers. Concurrently, equivalency agreements and financial incentives could help encourage provincial action.

Tools available to the federal government to reduce GHG emissions, both generally and to backstop provincial or territorial gaps in progress, include:

Greenhouse Gas Pollution Pricing Act: The carbon price is an important tool for achieving the national carbon budget, and may also be increased on a regional or provincial basis to address a shortfall, in a manner analogous to that used in determining equalization payments.

Canadian Environmental Protection Act, 1999 (CEPA): CEPA is already used to regulate GHG emissions. It gives the federal government broad powers to set standards, with the option for provinces and territories to apply provisions that are considered "equivalent" to a federal regulation (section 10). If sectoral caps are deemed advisable, regulations under section 93 of CEPA can be used to set caps on emissions by industry type.

Impact Assessment Act: The new Impact Assessment Act requires evaluation of the effects of larger projects on Canada's ability to meet its climate change commitments, which should include consideration of whether a project is consistent with both national and sub-national carbon budgets.

Incorporating principles for a just transition to a low-carbon economy into the sub-national carbon budgeting process: Provinces and/or territories that bear the near-term brunt of GHG emissions reductions should have federal infrastructure investments prioritized and should be able to access transition funding and resources from the federal government.

Endnotes

1 Croome, J., Abreu, C, et. al. (2020): A New Canadian Climate Accountability Act: Building the legal foundation to achieve net-zero emissions by 2050. [Report], Ecojustice, CANRac, et al. https://www.ecojustice.ca/wp-content/uploads/2020/05/a-new-climate-accountability-act.pdf

2 Canada, in signing the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, agreed in principle that (as a Developed Country) it would "take the lead" to "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities." (Article 3(1)). Under the Kyoto Protocol, in 1997, Canada committed to reduce its emissions by 6 per cent relative to 1990 levels. In 2007 the Canadian government committed to reduce its GHG emissions by 20 per cent relative to 2007 levels by 2020, but this was rolled back to a 17 per cent reduction relative to 2005 levels by 2020 in the Copenhagen Agreement. It is virtually impossible for Canada to meet either of these targets in the next year, and government has simply stopped talking about them.

3 Canada's 2016 GHG emissions of 704 MT were approximately 3.8 per cent below 2005 levels, 5.5 per cent below 2007 levels and 16.7 per cent above 1990 levels.

4 Committee on Climate Change, "Reducing the UK's emissions": https://www.theccc.org.uk/our-impact/reducing-the-uks-emissions/

5 See Croome, J and M. Gorrie (2020): Mini briefing on international climate change laws – abbreviated – March 2020. Report. Toron-to: Ecojustice. [International climate laws March 2020] Available at: https://www.ecojustice.ca/wp-content/uploads/2020/05/6-Mi-ni-Briefing-on-international-climate-change-laws-abbreviated-March-2020.pdf. We also extensively reference the New Zealand Climate Change Response (Zero Carbon) Amendment Act which amended New Zealand's Climate Change Response Act, 2002
(the "NZ Climate Act").

6 Manitoba introduced climate accountability legislation in 2018 through its Climate and Green Plan Implementation Act. British Columbia followed shortly after in 2019 with amendments to the province's Climate Change Accountability Act. The Quebec government put forward a bill on climate governance (Loi visant principalement la gouvernance efficace de la lutte contre les change-ments climatiques et à favoriser l'électrification) during Fall 2019, which is currently under the National Assembly's consideration.

7 International experience strongly suggests that legislated targets, accountability measures and independent expert review together can drive GHG emissions reductions. See in particular Fankhauser, S et al (2018) 10 years of the Climate Change Act. Report. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science ["Grantham CCA 2019"] and Averchenkova, A (2019) Legislating for a low carbon and climate resilient transition: learning from international experiences. Report. Madrid: Real Instituto Elcano and Grantham Research Institute on Climate Change and the

8 Environment, London School of Economics and Political Science ["Elcano 2019"]

9 Liberal Party of Canada. A climate vision that moves Canada forward: https://www.liberal.ca/a-climate-vision-that-moves-canada-forward/ and Forward: A real plan for the middle class: https://www2.liberal.ca/our-platform/.

10 If the revised 2030 target has not yet been confirmed at the time of passage of legislation, the legislation should provide for it to be included once finalized.

Liberal Party of Canada. A climate vision that moves Canada forward: https://www.liberal.ca/a-climate-vision-that-moves-canada-forward/ and Forward: A real plan for the middle class: https://www2.liberal.ca/our-platform/.

11 The EU's NDC does not allow offsets from outside the EU to be used for compliance with the EU NDC. See also https://climateactionnetwork.ca/wp-content/uploads/2019/12/CAN-Rac-Fair-Share-%E2%80%94-Methodology-Backgrounder.pdf ["CANRac Fair Share Technical Backgrounder"]

12 Using "carbon dioxide equivalent" abbreviated as CO2e allows us to roll all GHGs into a single measure like a carbon budget. CO2e is a metric measure used to compare the emissions from various GHGs on the basis of their global-warming potential (GWP), by converting amounts of other gases to the equivalent amount of CO2 with the same GWP.

13 The EU's NDC does not allow offsets from outside the EU to be used for compliance with the EU NDC. See also Holz, Christian, (2019): "Deriving a Canadian Greenhouse Gas reduction target in line with the Paris Agreement's 1.5°C goal and the findings of the IPCC Special Report on 1.5°C". Technical Backgrounder. Climate Equity Reference Project, CANRac. Available at: https://clima-teactionnetwork.ca/wp-content/uploads/2019/12/CAN-Rac-Fair-Share-%E2%80%94-Methodology-Backgrounder.pdf

14 Under Canada's emissions reporting under the National Inventory Report (NIR) and to the United Nations Framework Convention on Climate Change (UNFCCC) provincial and territorial GHG emissions estimates are based on the quantitative amount of human activity resulting in emissions during a given time period taking place within the geographical boundaries of that province or territory. See Canada's 4th Biennial Report to the United Nations Framework Convention on Climate Change (UNFCCC) ["4th Biennial

15 Report"].

16 ECCC (2019) Canadian Environmental Sustainability Indicators: Greenhouse gas emissions. Consulted on March 15, 2020. Available at: https://www.canada.ca/content/dam/eccc/documents/pdf/cesindicators/ghg-emissions/2019/national-GHG-emissions-en.pdf.

17 Chalifour, N, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions through Regulations, a National Cap and Trade Program, or a National Carbon Tax", Nat J Con Law (2016) 36: 331 ["Chalifour 2016"]

Environment and Climate Change Canada (2019) Canadian Environmental Sustainability Indicators: Greenhouse gas emissions. Consulted on March 15, 2020. Available at: https://www.canada.ca/content/dam/eccc/documents/pdf/cesindicators/ghg-emissions/2019/national-GHG-emissions-en.pdf

Chalifour, N, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions through Regulations, a National Cap and Trade Program, or a National Carbon Tax", Nat J Con Law (2016) 36: 331 at pp. 8 & 20 [Chalifour 2016].

18 Casado-Asensio, Juan et al, "Mitigating climate change in a federal country committed to the Kyoto Protocol: how Swiss federalism further complicated an already complex challenge", Policy Sci (2016) 49: 257-279 [Casado-Asensio 2016] and Steurer, Reinhard et al, "Is decentralisation always good for climate change mitigation? How federalism has complicated the greening of building policies in Austria", Policy Sci (2015) 48: 85-107 [Steurer 2015]. The study authors conclude that federalism can lead to watered down outcomes. Their recommendations align with ours: centralize responsibilities in the federal government where possible, and ensure that sub-national targets are meaningful..

19 Rivers, N. et al, Sharing the burden for climate change mitigation in the Canadian federation, Cnd J Econ (2015) 48 (4): 1350-1380 at p. 1351 ["Rivers 2015"]

20 See Grantham CCA 2019 at pp. 3 & 26

21 The NZ Climate Act and the UK CCA both leave the timing of tabling a plan to meet a given carbon budget vague. See subsection 5ZGof the NZ Climate Act and sections 13 and 14 of the CCA. These loose timelines have been criticized - see Grantham CCA 2019 at p. 32 - and we recommend a more prescriptive deadline.

22 See for example ss. 5ZG(3)(b) and (c) of the NZ Climate Act and ss. 13(2)-(4) of the CCA.

23 See section 58 UK CCA.

24 See section 20 UK CCA.

25 The CCME has been working on similar indicators under the Pan-Canadian Framework, per the Second Annual Synthesis Report on the Status of PCF Implementation; see p. iii. These indicators should appear in the Third Annual Synthesis Report on the Status of PCF Implementation (that report was expected at the end of 2019, but remains outstanding as of mid-March 2020).

26 See for example the Agency's Data on the Environment report: https://www.umweltbundesamt.de/sites/default/files/medien/376/publikationen/2017_dzu-bericht_wf_en.pdf and see the Commissioner of Environment and Sustainable Development's 2016 Review of the 2015 Progress Report of the Federal Sustainable Development Strategy.

27 Grantham CCA 2019

28 The UK CCA mandates an adaptation sub-committee of the CCC. We propose a similar approach for Canada, noting that the CICC already has, effectively, an adaptation sub-committee since it's work is organized under three main areas: mitigation, adaptation and clean growth.

29 We recommend that the expert advisory committee, like the CCC under the UK CCA, have the duty to advise the Responsible Ministers, in relation to each budgetary period on (a) the level of the national and sub-national carbon budgets, (b) the extent to which the budgets should be met by domestic emission reductions versus use of international carbon units and other "net carbon account" issues outlined above, and (c) sectors of the economy in which there are particular opportunities for emission reduction contributions. See 5H of the NZ Climate Act and Schedule 1 of the UK CCA.

30 The UK CCA mandates an adaptation sub-committee of the CCC. We propose a similar approach for Canada, noting that the CICC already has, effectively, an adaptation sub-committee since its work is organized under three main areas: mitigation, adaptation and clean growth.

31 This diverse representation would be achieved by establishing a nominating committee to identify suitably qualified candidates to serve on the expert advisory committee. The legislation should set out the qualifications that inform the selection of committee members. We propose that a Canadian nominating committee include regional representation and Indigenous Peoples. If the CICC were to step into the role of the expert advisory committee, the nominating committee would be tasked with confirming what additional members, if any, need to be appointed and/or replaced as their term ends.

32 See 5H of the NZ Climate Act and Schedule 1 of the UK CCA.

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34 See for example Section 4 CCA.

35 Section 4 CCA. New Zealand has taken the approach of setting out the deadline for each budget up to 2050 in the body of its legislation – see section 5X(3) NZ Climate Act.

36 See for example subsection 5ZC(2)(b) NZ Climate Act.

37 See Rivers 2015 at p. 1351

38 Our recommendations are a combination of the UK's and New Zealand's approaches. See sections 5N(1)-(2), 5ZB(1)-(2) and 5ZB(4) of the NZ Climate Act and subsection 22(4) of the UK CCA. See also Elcano 2019 at p. 28 and p. 74, citing the lessons learned from the experiences of France, Chile and Germany in particular.

39 Chalifour 2016 at pp. 8 & 20

40 Mexico's amendment to its legislation in 2018 specified that increasing ambition is required, in other words, the long-term target could only be increased. See Elcano 2019, p. 76.