ENERGY-ENVIRONMENT FEDERALISM IN CANADA

FINDING A PATH FOR THE FUTURE

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EXECUTIVE SUMMARY

This study examines the role that federalism plays in the intersection of energy and environment policy in Canada. Energy and the environment are inexorably linked: energy production is a major economic driver in Canada, but both the production and consumption of energy are major contributors of greenhouse gas (GHG) emissions. This study was undertaken because there have been major battles between the federal government and provinces, or between provinces, on energy and environment policy in Canadian history. These conflicts have had significant political, economic, and environmental costs.

This study identifies two principal options for a path forward: 1) identifying the few windows of opportunity when a consensus can be achieved and 2) focusing on achieving small levels of cooperation through bilateral or unilateral provincial initiatives.

There are five main parts to this study. First, it identifies the constitutional arrangements and the economic and political interests that govern Canada's energy-environment policy. Second, it describes the historical challenges of energy-environment federalism (Churchill Falls, National Energy Program, Kyoto Protocol, oil and gas pipelines). Third, it explains why cooperation over energy and environment policy has been so difficult. Fourth, it offers some recommendations for a path for the future for energy-environment policy. Fifth, it offers a brief conclusion that wraps up the key arguments of this study.

The research finds that a combination of several federal intergovernmental mechanisms – multilateralism (Ottawa and all/most provinces), bilateral (Ottawa and one/two provinces), or unilateralism (Ottawa or a province) – are required in order to meet the challenge of energy-environment policy in Canada.

A success of multilateralism was the Pan-Canadian Framework on Clean Growth and Climate Change (2016) because it exploited a window of opportunity: a newly elected Trudeau government, the four largest provinces with provincial prices on carbon, Alberta (the country's largest oil and gas producer) had just brought in a carbon tax, a likeminded administration in the United States, and international pressure leading to the Paris Climate Change Conference. While some provinces have since pulled out of the Pan-Canadian Framework, and some have even fought the federal carbon tax in the courts, many of its mechanisms remain in place. Trudeau even felt comfortable unilaterally updating its climate plan and announced in December 2020 a gradual increase of the carbon tax that, by 2030, would triple it beyond its current level. This example shows that moments in time can emerge that allow for multilateral cooperation in energy-environment policy.

Given the difficulties associated with achieving a multilateral consensus, bilateralism has been used much more effectively: Ottawa and Ontario jointly developed civilian nuclear energy starting in the 1950s, in the mid-1970s, Ottawa-Alberta-Ontario worked together on investing in the emerging oil sands, in the mid-1990s, Ottawa and Alberta worked together on a new tax regime to encourage investment in the oil sands, and BC and Alberta were able to negotiate an agreement on the Trans Mountain Pipeline (although that was scuttled with a subsequent change in BC government).

There are examples of successful provincial unilateral actions. In 2008, BC was the first jurisdiction in North America to introduce an economy-wide carbon tax. In 2015, the Rachel Notley government in Alberta brought forward its Climate Leadership Plan. Successive Ontario governments over the last 20 years have restarted and refurbished its nuclear fleet and shut down coal-fired electricity generation. Successful provincial unilateralism, such as BC's introduction of an economy-wide carbon tax, often has spillover effects as different provinces learn from the lead example and adopt similar programs.

Unilateral action by the federal government has sometimes had disastrous consequences (e.g., the NEP). However, there have been other examples of unilateral action from Ottawa through its use of its spending power to intervene in energy-environment issues. For example, Ottawa's purchase of the Trans Mountain Pipeline (2018) and spending $1.7 billion to clean up orphaned oil and gas wells in Western Canada (2020).

Navigating federalism and the energy-environment sector is extremely difficult. Finding a path forward is not easy, but there are real costs to failing to cooperate. Therefore, decision-makers need to recognize when policy windows open up and take full advantage of them. However, policy windows are rare. This means that an incremental approach of a series of bilateral agreements (either between the federal government and one province, or between two provinces) and unilateral action (most likely by an individual province, but could also be done by the federal government in unique cases) is a more probable path forward. The concept is the classic Canadian formula of one step forward and a half step back. If this is repeated long enough, eventually Canada gets to the finish line.

INTRODUCTION

There have been a few major battles between the federal government and provinces, or between provinces, on energy and environment policy in Canadian history. Three prominent examples were the constitutional struggle for Alberta, Saskatchewan, and Manitoba, and parts of British Columbia, to gain control over their natural resources (like all other provinces) that was achieved in 1930, the Churchill Falls hydro project involving Newfoundland and Québec in the 1960s, and the National Energy Program (NEP) pitting Ottawa against Alberta in the early 1980s. Recently these disputes have greatly increased due to two major factors: climate change and the transformation of the United States as an energy customer to an energy competitor. This can be seen in the battle over oil and gas pipeline projects (Northern Gateway, Energy East, and Trans Mountain) and the federal price on carbon. This study examines the role that federalism plays in the intersection of energy and environment policy in Canada.

Energy and the environment are inexorably linked. Energy production is a major economic driver in Canada. Natural Resources Canada estimates that Canada's energy sector:

- Produces all of the major energy sources (oil, natural gas, uranium, coal, hydro-electricity, solar, and wind);
- Directly employs over 282,000 people and indirectly employs over 550,000 people;
- Generates over $219 billion in economic activity, which is over 10 percent of Canada's Gross Domestic Product (GDP);
- Provides $17.9 billion in government revenues;
- Conducts more than $1.1 billion in research and development;
- Produces the world's sixth largest amount of energy and is the fourth largest net exporter;
- Exports over $134 billion, making it 23 percent of total Canadian goods exports.[1]

Unfortunately, both the production and consumption of energy is a major contributor of greenhouse gas (GHG) emissions. "This includes activities such as using gasoline for transportation, non-renewable electricity production, oil and gas production, and heating and cooling of buildings." Over 82 percent of Canada's GHG emissions comes from the production and consumption of energy. This is because Canada is a major energy producer, but it is also a very high energy consumer "due to our extreme temperatures, vast landscape, and dispersed population." There is no way that Canada can dramatically reduce its GHG emissions without addressing the production and consumption of energy. [2]

1. Natural Resources Canada, *Energy and the Economy* (October 6, 2020). https://www.nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/energy-and-economy/20062
2. Natural Resources Canada, *Energy and Greenhouse Gas Emissions* (GHGs) (October 6, 2020). https://www.nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/energy-and-greenhouse-gas-emissions-ghgs/20063

This study makes several key arguments. First, the reason that there have been conflicts over energy and environment policy in Canada between the different orders of government is primarily because of the constitutional arrangements. However, the fact that these fights are increasing, both in number and in political intensity, is also due to the different energy breakdown and accompanying GHG emissions by province. Second, there is a high cost to failing to cooperate on energy-environment federalism. These costs might include higher GHG emissions, delays or abandonments in building critical energy infrastructure, and some Canadians in different parts of the country doubting the utility of the federal system. The lack of new energy infrastructure has consequences for Canada's economy as well as its national unity. Third, despite the hopes and dreams of some, achieving a comprehensive agreement on energy and environment policy is very difficult. Getting unanimous consent from the federal government, ten provinces, and three territories on any contentious file is almost impossible. Even in the rare cases that a consensus (either unanimous or at least a super majority) has been reached – the 1987 Meech Lake Accord or the 2016 Pan-Canadian Framework – elections can change the actors and destroy the consensus.

Ultimately, this paper argues that there are two principal options for a path forward:

1. identifying the few windows of opportunity when a consensus can be achieved and

2. focusing on achieving small levels of cooperation through bilateral or unilateral provincial initiatives

Other actors such as industry, environmental non-governmental organizations (ENGOs), and Indigenous communities have significant influence over energy and environment decisions. Similarly, different processes, court challenges, public engagement, and civil disobedience have emerged. Nevertheless, federal and provincial governments will still lead energy and environment decisions. The issue is to identify which decisions one order of government (federal or one province) can make and which decisions have to be made through multiple orders of government (federal and provinces, or several provinces).

One major caveat needs to be stated up front. The current study is one of a series of Positive Energy projects examining "Roles and Responsibilities" in energy and climate decision-making (see Box 1). As such, the following topics will not be included here: the rising power of environmental non-governmental organizations, Indigenous rights and the duty to consult and accommodate, and the changing role of energy regulators. Many of these issues are addressed in other studies, as noted in Box 1.

There are five main parts to this study. First, it identifies the constitutional arrangements and the economic and political interests that govern Canada's energy-environment policy. Second, it describes the historical challenges of energy-environment federalism. Third, it explains why cooperation over energy and environment policy has been so difficult. Fourth, it offers some recommendations for a path for the future for energy-environment policy. Finally, it offers a brief conclusion that wraps up the key arguments.

BOX 1: POSITIVE ENERGY'S RESEARCH ON ROLES AND RESPONSIBILITIES

The second three-year phase of Positive Energy (2019-2021) aims to address the following question: How can Canada, an energy-intensive federal democracy with a large resource base, build and maintain public confidence in public authorities (federal, provincial, and territorial policymakers and regulators, Indigenous governments, municipal governments and the courts) making decisions about the country's energy future in an age of climate change?

Three fundamental questions form the research and engagement agenda. How can Canada effectively overcome polarization over its energy future? What are the respective roles and responsibilities between policymakers, regulators, the courts, municipalities and Indigenous governments when it comes to decision-making about its energy future? What are the models of and limits to consensus-building on energy decisions? Clearly articulating and strengthening roles and responsibilities between and among public authorities is one of the most pivotal but understudied factors shaping Canada's energy future in an age of climate change. Confidence of the public, investors and communities in government decision-makers – be they policymakers, regulators, courts, Indigenous governments or municipalities – is a critical success factor in Canada's ability to successfully chart its energy and emissions future.

Positive Energy's research and engagement over the last five years reveals that answering two questions will be fundamental to confidence in public institutions: *Who decides? How to decide?* Positive Energy's research and engagement also underscores that two core principles should inform answers to these questions: *Informed Reform* and *Durable Balance*.

The roles and responsibilities research programme includes projects in the following areas:

- Federal-provincial relations
  - A research report examining evolving models and practices for intergovernmental relations over energy and climate
  - A comparative study of factors driving final investment decisions for liquefied natural gas facilities in British Columbia and Western Australia
- Policy-regulatory-judicial relations
  - A literature review on regulatory independence in Canada's energy systems: origins, rationales and key features
  - Historical case studies of federal and provincial regulators exploring the evolution of regulatory independence over time
  - Policy-regulatory relations: analyzing innovations in policy-regulatory relations to identify 'What Works?' (research collaboration with CAMPUT)
- New imperatives in energy decision-making
  - Emerging technologies: interviews with provincial and municipal policymakers and regulators to identify the impact of emerging technologies on decision-making
  - Public engagement: analyzing innovations in regulators' engagement practices to identify 'What works?' (research collaboration with CAMPUT)

CONSTITUTIONAL/LEGAL ARRANGEMENTS AND ECONOMIC/POLITICAL INTERESTS

The clash between Ottawa and the provinces and between provinces over energy and environment policy comes through in two ways: constitutional/legal and political. Canada's constitution outlines the basic rules of the game in the federal framework over energy and environment policy. The Constitution Act 1982, Section 92A, "Non-Renewable Natural Resources, Forestry Resources and Electrical Energy" gives provinces exclusive jurisdiction over:

> (1a) exploration for non-renewable natural resources in the province;
>
> (1b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
>
> (1c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Nuclear energy is an exception because the federal government has exclusive jurisdiction over the regulation of all nuclear materials and activities. However, provincial governments still have jurisdiction over whether to open a nuclear power plant.

In addition, section 92A(2) states that:

in each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

However, there are several parts of the constitution that conclusively grant jurisdiction to the federal government over energy - whether by transmission lines, pipelines, or rail - that crosses provincial boundaries. For example, Section 92(10a) grants the federal government the authority to legislate on "[l]ines of Steam or other Ships, Railways, Roads, Telegraphs, and *other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province*" (emphasis added). Section 92A(3) also gives the federal government jurisdiction "to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict." Finally, Section 91(2) gives the Canadian Parliament "exclusive Legislative Authority" over "[t]he Regulation of Trade and Commerce." In the case of electricity transmission lines, so far the federal government has chosen not to exercise this jurisdiction, instead arrangements are made between the two (and so far it has only been two) provinces. However, if provinces pursued the creation of a national electricity grid, it is probable that the federal government would assert its constitutional jurisdiction.

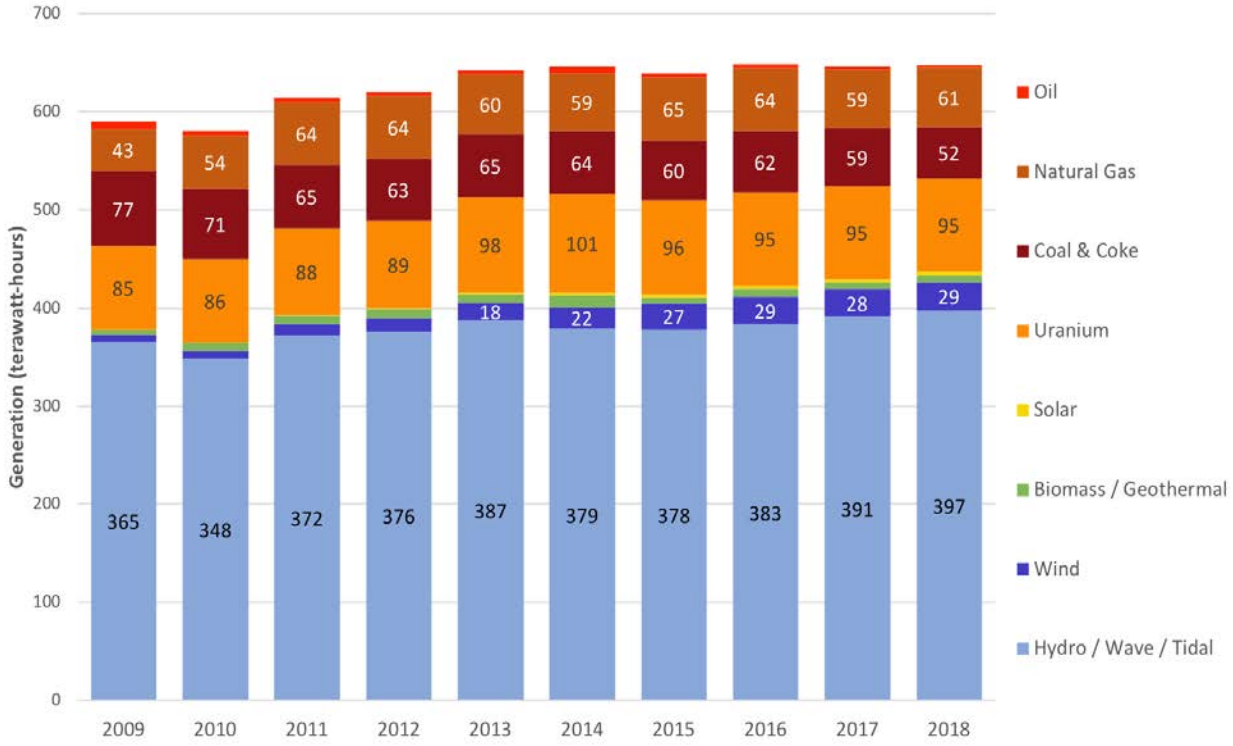
The environment was not specifically identified in the Constitution; that means it is de facto shared jurisdiction. The Canadian Supreme Court, due to a challenge from Saskatchewan, Ontario, and Alberta, ruled that the federal government has the unilateral ability to address climate change through the ability to impose a national carbon tax. This key case provides greater clarity on the legal arrangements between the federal and provincial governments over transboundary environment issues. The federal government argued that it has constitutional responsibilities to respond to climate change because the problem is too big for any one province to tackle and that GHG emissions in one province affect other provinces. In contrast, the provincial governments argued that the federal government overreached and that it should be up to the provinces to determine how they reduce GHG emissions.

The constitution provides the legal framework, but to understand the behaviour of jurisdictions, we have to look at the political arrangements. In particular, we need to identify the drivers that govern provincial energy and environment policy. What is the energy breakdown by province? Is the province primarily a producer or a consumer? For example, when it comes to oil, Alberta, Saskatchewan, and Newfoundland are the producing provinces, and Ontario and Québec are the largest consuming provinces. Another question concerns the energy usage within each province. For example, when it comes to electricity generation, some provinces rely primarily on hydroelectricity (Québec and Manitoba), others on coal (Saskatchewan and Nova Scotia), natural gas (Alberta), and nuclear (Ontario and New Brunswick). Chart 1 identifies Canada's electricity generation by source from 2009-2018 and Chart 2 shows the breakdown of electricity generation by province in 2018. Chart 3 shows oil and natural gas production by province for 2008 and 2018. It shows that Alberta dominates oil production with over 80 percent of the total, followed by Saskatchewan at close to 10 percent. Meanwhile, Alberta also leads natural gas production with about 65 percent, followed by British Columbia at 31 percent. Many provinces produce either negligible amounts of oil and gas or none at all, including the most populous provinces of Ontario and Québec.

There are also challenges between host jurisdictions and transit jurisdictions for export purposes. Examples include landlocked Alberta trying to get its oil to international markets through other provinces, Newfoundland trying to get its hydroelectricity to other markets through Québec, or until a January 2020 agreement, Québec trying to export its hydroelectricity to US markets through New Brunswick.[3]

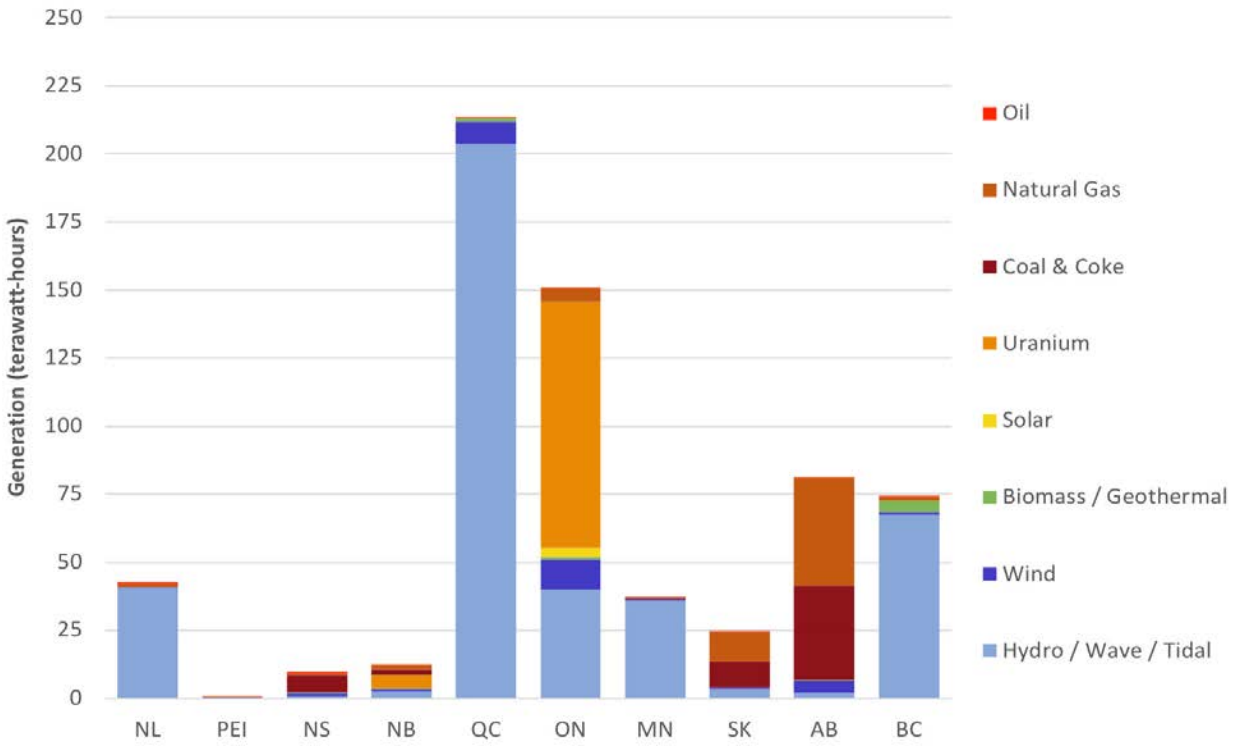
3. Jacques Poitras, "Want to understand Hydro-Québec's Mactaquac plan? Look south of the border," *CBC News* (January 20, 2020). https://www.cbc.ca/news/canada/new-brunswick/hydro-Québec-mactaquac-analysis-1.5432123

CHART 1 - CANADA'S ELECTRICITY GENERATION BY FUEL TYPE (2009-2018)



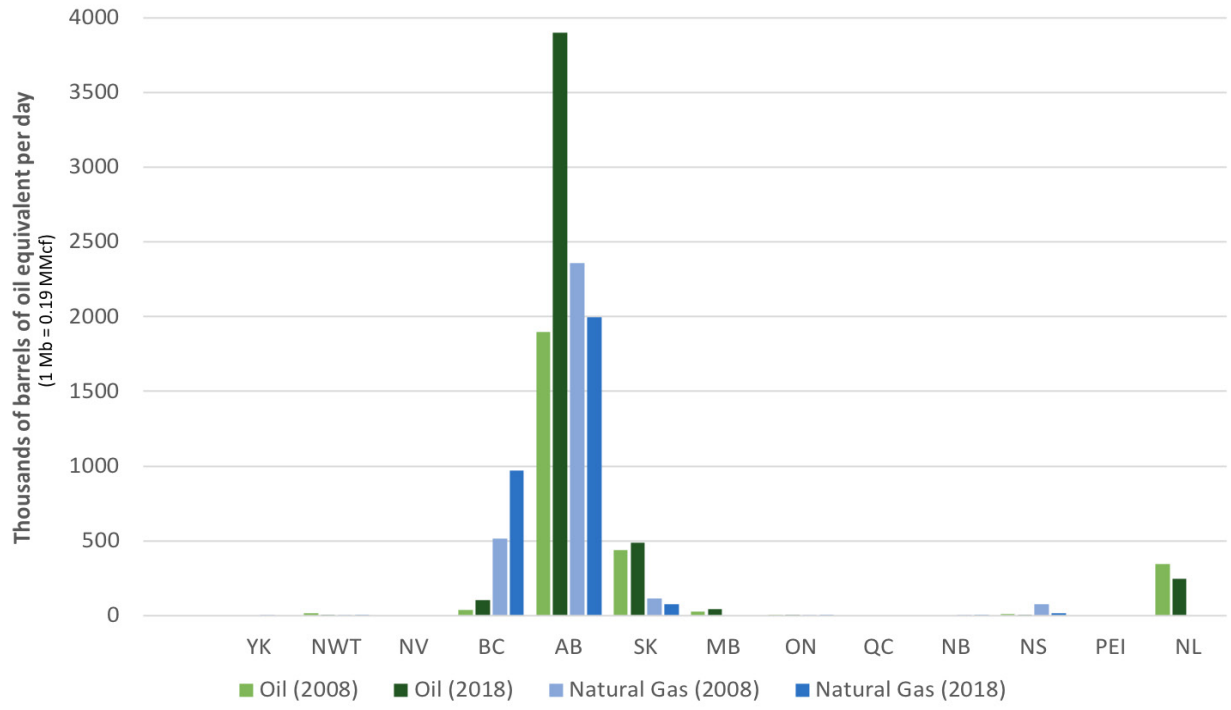
Source: Natural Resources Canada, *Electricity Generation Reference Case: Electricity Generation - Primary Fuel (GWh) (2020).* Accessed at https://apps.cer-rec.gc.ca/ftrppndc/dflt.aspx?GoCTemplateCulture=en-CA

CHART 2 - PROVINCIAL ELECTRICITY GENERATION BY SOURCE FUEL (2018)



Source: Natural Resources Canada, *Electricity Generation Reference Case: Electricity Generation - Primary Fuel (GWh) (2020)*. Accessed at https://apps.cer-rec.gc.ca/ftrppndc/dflt.aspx?GoCTemplateCulture=en-CA

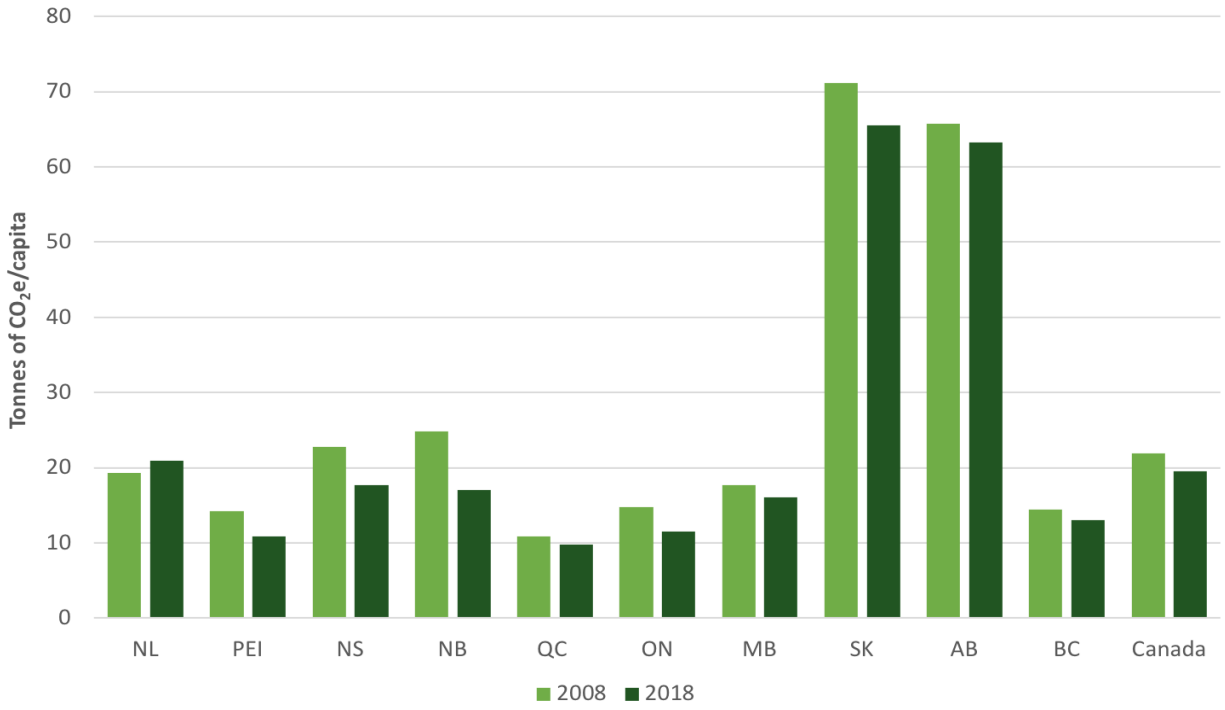
CHART 3- OIL AND NATURAL GAS PRODUCTION BY PROVINCE (MBOE)



Source: Canada Energy Regulator, *Provincial & Territorial Energy Profiles* (29 September 2020). Accessed at https://www.cer-rec.gc.ca/en/data-analysis/energy-markets/provincial-territorial-energy-profiles/index.html

The second aspect is the GHG emissions produced by each province. This is largely determined by the type of energy produced, with those provinces who produce hydroelectricity (Québec, Manitoba, Ontario, and BC) and/or nuclear (Ontario and New Brunswick) having much lower per capita emissions than those that produce oil (Alberta and Saskatchewan). Chart 4 shows the growth in GHG emissions in Canada, and in each province, between 1990 and 2018. Chart 5 breaks down GHG emissions in Canada by economic sector. The majority of emissions comes from energy production and use (oil and gas, electricity, transportation, coal production). This explains why Alberta has Canada's highest amount of GHG emissions. As Chart 6 shows, 51 percent of Alberta's emissions are due to oil and gas production.

CHART 4 - PROVINCIAL GHG EMISSIONS, PER CAPITA (2008-2018)

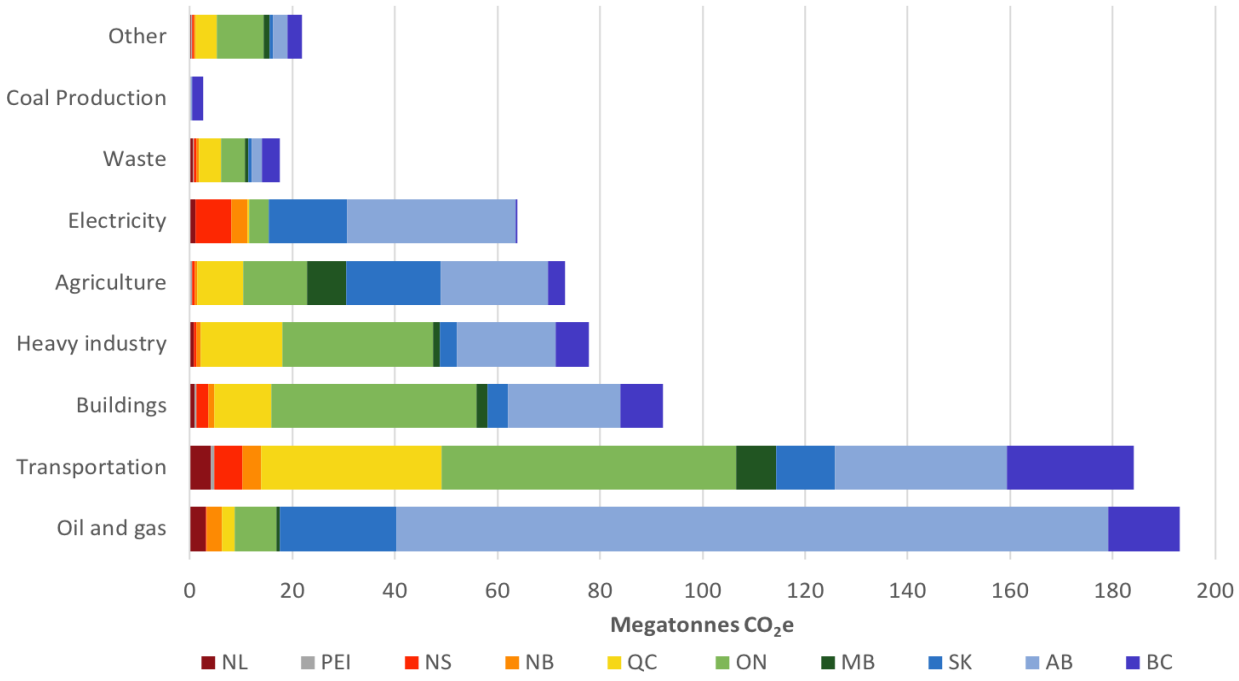


Sources: Environment and Climate Change Canada, "National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada," *Canada's Submission to the United Nations Framework Convention on Climate Change* (2020). Accessed at http://publications.gc.ca/collections/collection_2020/eccc/En81-4-2018-3-eng.pdf

Environment and Climate Change Canada, "National Inventory Report 1990-2011: Greenhouse Gas Sources and Sinks in Canada," *Canada's Submission to the United Nations Framework Convention on Climate Change* (2013). Accessed at https://unfccc.int/process/transparency-and-reporting/reporting-and-review-under-the-convention/greenhouse-gas-inventories/submissions-of-annual-greenhouse-gas-inventories-for-2017/submissions-of-annual-ghg-inventories-2013

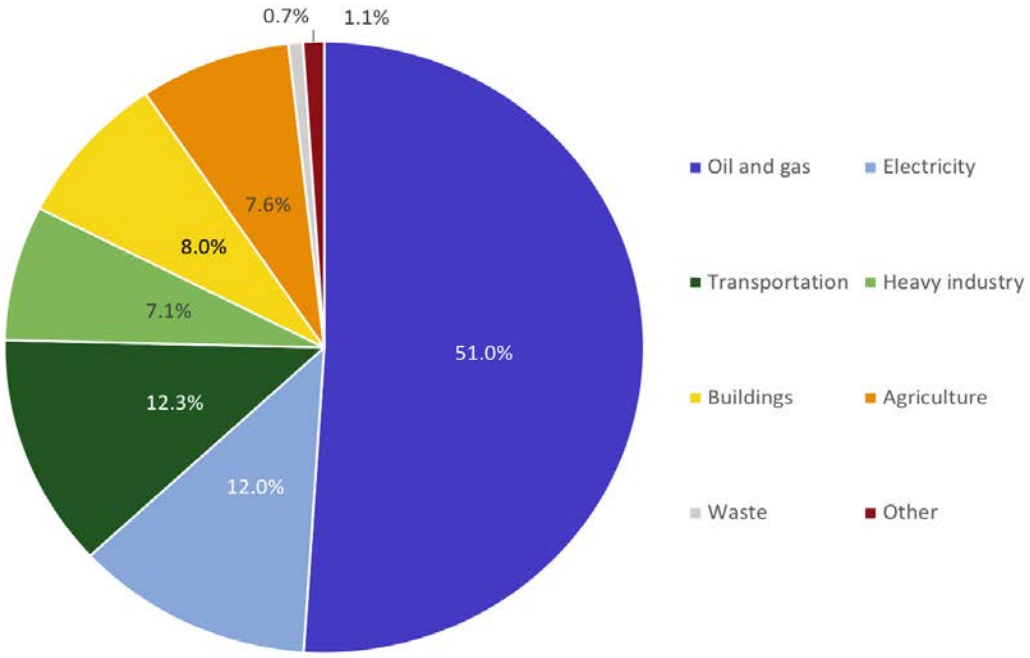
Statistics Canada, "Population estimates, quarterly" (2020). Accessed at https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901&cubeTimeFrame.startMonth=10&cubeTimeFrame.startYear=2008&cubeTimeFrame.endMonth=10&cubeTimeFrame.endYear=2018&referencePeriods=20081001%2C20181001

CHART 5 - GHG EMISSIONS BY ECONOMIC SECTOR (2018)



Source: Environment and Climate Change Canada, "National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada," *Canada's Submission to the United Nations Framework Convention on Climate Change* (2020). Accessed at http://publications.gc.ca/collections/collection_2020/eccc/En81-4-2018-3-eng.pdf

CHART 6 - 2018 ALBERTA GHG EMISSIONS BY ECONOMIC SECTOR



Source: Environment and Climate Change Canada, "National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada," *Canada's Submission to the United Nations Framework Convention on Climate Change* (2020). Accessed at http://publications.gc.ca/collections/collection_2020/eccc/En81-4-2018-3-eng.pdf


KEEP AWAY

HISTORICAL CHALLENGES

This section traces the historical challenges of energy-environment federalism through a handful of the most contentious cases. This includes the Churchill Falls hydroelectric generating station (1960s), the National Energy Program (early 1980s), the Kyoto Protocol (late 1990s and early 2000s), and pricing carbon (2016-present). It also examines the more recent fights over oil pipelines: Northern Gateway, Trans Mountain, and Energy East.

In the 1960s, Newfoundland sought to develop the Churchill Falls hydroelectric project in Labrador. Once completed, Churchill Falls would generate 5,000 MW of power, making it the second largest hydro station in Canada and one of the largest in the world. However, the government of Premier Joey Smallwood had a major problem. Newfoundland was too small a jurisdiction to use much of the electricity that was generated and so needed to export it. However, the only cost-effective way that Newfoundland could export its electricity to other markets was by going through Québec, and the Québec government refused transit rights. Investors would not put money into the project if they could not get the electricity to market. Ottawa refused to intervene in the dispute. After years of negotiations, a financing and purchase arrangement was finalized between Newfoundland and Québec in 1969 and power generation started in 1976. The Churchill Falls Corporation was formed to build and operate the generating station. The Corporation would be jointly owned by Newfoundland and Labrador Hydro Corporation (65.8 percent) and Hydro-Québec (34.2 percent). In addition, Hydro-Québec agreed to purchase 90 percent of the electricity for 40 years at a fixed price (which was low even for the late 1960s) and the contract was renewable for another 25 years. Over the decades, Hydro-Québec would resell this electricity, at a huge profit, to other provinces and the New England states. Estimates are that Hydro-Québec has profited between $1 and $2 billion dollars a year. It has been a major sore point for successive Newfoundland governments going back to the mid-1970s, and they have tried, without success, to have the courts invalidate the contract.[4] The Churchill Falls case is an example of an inter-provincial dispute between a producing province (Newfoundland) and a transit province (Québec). It is also a case where the federal government refused to intervene despite the fervent wishes of the Newfoundland government.

In the 1970s twin oil shocks (1973 OPEC boycott and 1979 Iranian Revolution) led to a dramatic increase in oil prices. For Canada, this resulted in major increased costs for consumers, but huge profits for producing provinces. In the fall of 1980, the newly-elected Pierre Trudeau government introduced the National Energy Program (NEP).[5] The NEP had multiple goals: "security of supply and ultimate independence from the world oil market; opportunity for all Canadians to participate in the energy industry, particularly oil and gas, and to share in the benefits of its expansion; and fairness, with a pricing and revenue-sharing regime which recognizes the needs and rights of all Canadians."[6]

4. James Feehan, "The Churchill Falls Contract: What Happened and What's to Come?" *Newfoundland Quarterly* 101/4 (2009), 35-38.
5. G. Bruce Doern and Glen Toner, *The Politics of Energy: The Development and Implementation of the NEP* Methuen: Agincourt, ON, 1985.
6. Allan J. MacEachen, *The Budget* (October 28, 1980). Available at https://www.budget.gc.ca/pdfarch/1980-plan-eng.pdf

There were a series of mechanisms to advance these goals: a "made-in-Canada" oil price that was below world prices, a tax on natural gas exports, a petroleum and gas revenue tax, a back-in clause where all new and existing projects on Canada Lands had to give a 25 percent ownership stake to Petro-Canada (a federal crown corporation), generous grants for oil exploration beyond the province of Alberta, and incentives to develop alternative energy. It greatly angered Alberta, which saw the mechanisms as a way of benefitting consumers living in Ontario and Québec and a major wealth transfer from the Alberta government to the federal government. In retaliation, Premier Peter Lougheed reduced oil production in Alberta. In 1981, the Trudeau and Lougheed governments reached a settlement, and in 1985, months after the federal election of Brian Mulroney and the Progressive Conservatives, the NEP was eliminated. The NEP, whose legacy continues to haunt Alberta 40 years later, is the classic dispute between the federal government and a provincial government over energy policy.[7] Since the NEP, successive Alberta governments, and many of its citizens, remain wary of any federal intrusion into its energy sector including for environmental protection. The Kyoto Protocol, the federal carbon tax backstop, bills C-48 (restricting oil tankers off the Northwest Coast of BC) and C-69 (federal environmental impact policy) have all been referred to as "another NEP."

The United Nations Framework Convention on Climate Change was established at the Earth Summit in Rio de Janeiro (1992). However, it was not until the Kyoto Protocol (1997) that specific targets aimed at reducing GHG emissions were agreed to. Canada agreed to a target of 6 percent total reduction in 1990 GHG emissions levels by 2012. While there were big partisan differences with regards to the Kyoto Protocol—Jean Chrétien's Liberals signed (1997) and ratified (2002) it, but Stephen Harper's Conservatives withdrew (2011) from it—there were also differences between the federal government and some provincial governments. The federal government supported it, but it was opposed by the large oil and gas producing provinces of Alberta and Saskatchewan. Québec also opposed the Kyoto Protocol, but for a different reason; it felt that it would have to take on a disproportionate share of the GHG emissions reductions in order to appease Alberta.[8] Ontario also opposed the Kyoto Protocol in part because of the impact on its coal generation, but also because the Mike Harris government was ideologically aligned with the Ralph Klein government in Alberta. In addition, all provinces opposed the Chrétien government's 2002 ratification of the Kyoto Protocol because they believed that it intervened into provincial jurisdiction. The case of the Kyoto Protocol involved a dispute between the federal government and most of the provinces (but especially Alberta and Saskatchewan) over energy-environment policy.

7. Drew Anderson and Allison Dempster, "Lougheed, Trudeau, and the Notorious NEP: How a political fight 40 years ago still casts a long shadow in Alberta," *CBC* (October 24, 2020).
8. Steven Chase, Richard Mackie, and Ingrid Peritz, "Ontario opposed to Kyoto Plan," *The Globe and Mail* (October 19, 2002).

The Justin Trudeau government, on October 3, 2016, announced a national price on carbon in order to reduce Canada's GHG emissions. There were several elements to the federal plan:

- Provinces and territories would determine whether they would apply a carbon tax or a cap-and-trade system.
- The carbon tax would start at $10 per tonne in 2018 rising to $50 per tonne in 2022.
- The revenue would stay in the provinces and territories.
- If a province or territory refused to have their own program (i.e., Saskatchewan), did not have a sufficiently stringent price on carbon, repealed their pre-existing provincial program (i.e., Alberta and Ontario), or elected to opt into the federal plan (i.e., Yukon and Nunavut), then the federal government would step in with their own plan (a federal backstop).[9]

Ottawa was able to announce such an ambitious climate plan because the four largest provinces had already met the benchmark. Ontario and Québec had a linked cap-and-trade system, and British Columbia and Alberta had a carbon tax. More significantly, Alberta, the country's largest energy producer and carbon emitter, had recently developed its Climate Leadership Plan that included an economy-wide carbon tax, a phase out of coal-fired electricity, a 100 megatonne cap on oil sands GHG emissions, and methane emissions reductions.[10] Initially, every province signed on to the Pan-Canadian Framework (which included the price on carbon) with the exception of Saskatchewan and Manitoba. However, after a series of elections that resulted in changes of government, both Ontario and Alberta eliminated their carbon taxes and the federal backstop kicked in. Saskatchewan, Ontario, and Alberta decided to fight the federal carbon backstop in court. This case of environment federalism pitted the federal government against these three provinces.[11]

9. Justin Trudeau, "Prime Minister Justin Trudeau delivers a speech on pricing carbon pollution," 3 October 2016. Ottawa, Ontario.
10. Duane Bratt, *Addressing Polarization: What Works? The Alberta Climate Leadership Plan*. Positive Energy at the University of Ottawa (March 2020). Available at https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/adressing_polarization_-_what_works_-_clp_website.pdf
11. British Columbia (supporting the federal government) and Québec (supporting the three provinces) were also interveners in the case.

The political battle over inter-provincial pipelines greatly intensified in the 2010s. The Northern Gateway pipeline was proposed in 2006 by Enbridge and would go through Alberta and northern BC before stopping at Kitimat, BC.[12] It was strongly supported by Alberta and the federal government then-led by Stephen Harper and the Conservatives. However, the BC government opposed it. In 2012, BC Premier Christy Clark laid out five conditions that the province needed met in order to support the project.[13] After a couple of years of negotiations, it appeared the Alberta and BC governments had struck a deal over the Northern Gateway pipeline pending legal approval regarding Indigenous treaty rights.[14] However, Indigenous communities along the route, with the support of environmental groups, challenged the project in court. In addition, the 2015 election saw Justin Trudeau and the Liberals come to power. Trudeau soon enacted a moratorium on tanker traffic along the Northwest Coast of BC that would have stranded the oil pumped through the pipeline. This moratorium would later be codified in Bill C-48.[15] In June 2016, the Federal Court of Appeal, responding to the court challenge from Indigenous bands, quashed the approval of the Northern Gateway pipeline.[16] In November 2016, Trudeau formally cancelled the federal government's approval of Northern Gateway.[17]

TransCanada (now TC Energy) proposed the 3,000 km Energy East pipeline in 2013. It would convert an existing natural gas pipeline from Alberta to Montréal to oil and then extend it to Saint John, New Brunswick. The front-end province (Alberta) and back-end province (New Brunswick) both strongly supported the project. However, there was a range of views along the transit route: support (Saskatchewan and Manitoba), mixed support (Ontario), and strong opposition (Québec). The federal government's view of the project changed with the 2015 election; the Harper government had supported it, but the Trudeau government's position was not completely clear. TransCanada abandoned the project in 2017 due to a combination of factors: economics, federal regulatory challenges, and the political environment (especially Québec's opposition).[18]

12. Duane Bratt, "The Energy Triangle: Canada, the United States, and China," in Bratt and Christopher J. Kukucha, eds., *Readings in Canadian Foreign Policy: Classic Debates and New Ideas. 3rd Edition* (Oxford University Press: Toronto, 2015), 437-439.
13. British Columbia, Department of the Environment, *Requirements for British Columbia to Consider Support for Heavy Oil Pipelines* (July 2012), available at www.env.gov.bc.ca/main/docs/2012/TechnicalAnalysis-HeavyOilPipeline_120723.pdf
14. James Wood, "Alberta, BC salvage deal on Gateway pipeline," *Calgary Herald*, 6 November 2013.
15. Parliament of Canada, C-48: *An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast*, 21 June 2019.
16. Federal Court of Appeal, *Gitxaala Nation v. Canada*, 2016 FCA 187 (June 23, 2016).
17. Justin Trudeau, "Prime Minister Justin Trudeau's Pipeline Announcement," 29 November 2016. Ottawa, Ontario.
18. TransCanada's letter to the National Energy Board announcing its withdrawal from the Energy East project (with its rationale) is available here. https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2540913/2543426/3336489/A86594-1_TransCanada_Withdraws_Energy_East_and_Eastern_Mainline_Project_Applications_TransCanada_retire_la_demande_des_projets_%C3%89nergie_Est_et_R%C3%A9seau_principale_Est_-_A5V1X1.pdf?nodeid=3336063&vernum=-2

In 2013, Kinder Morgan proposed expanding the existing Trans Mountain pipeline (TMX) that went from Edmonton, Alberta to Burnaby, BC. It would triple the capacity of the pipeline. Both the Alberta and BC governments initially supported the project. However, in May 2017, the provincial British Columbia NDP formed a minority government with the support of the Green Party. The new BC Premier John Horgan promised to use "every tool in our toolbox" (denying construction permits, intervening in legal challenges, etc.) to stop the construction of Trans Mountain. In early 2018, Kinder Morgan halted construction efforts due to the political risk it entailed. In response, and under pressure from Alberta's NDP Premier Rachel Notley, the Trudeau Government purchased the pipeline for $4.5 billion, thereby enabling the project to proceed as a Crown corporation. However, in a major court defeat for the project, in August 2018 the Federal Court of Appeal ruled against the federal government and in favour of a lawsuit from about dozen organizations including Indigenous groups, environmentalists and the cities of Vancouver and Burnaby.[19] The Court argued that the consultation process with Indigenous communities was inadequate and that the National Energy Board should have considered the potential of oil tanker accidents off the coast of BC. The Trudeau government responded to the court's decision by attempting to rectify the deficiencies identified. This led to the National Energy Board reapproving the pipeline in February 2019 and the Trudeau cabinet doing likewise in June. However, the delays were very costly in terms of investment chill and lack of access to the Asia-Pacific market. In late August 2019, the Federal Court of Appeal ruled that six of twelve new lawsuits regarding the revised approval of Trans Mountain could go ahead. It restricted the issue to the limited consultation that the Trudeau Government had undertaken in 2018–19 and did not quash the construction permits. In February 2020, the Federal Court of Appeal dismissed the legal challenges to the Trans Mountain Pipeline. Canada's Supreme Court subsequently refused to hear any further appeals. This concluded the legal battle over the Trans Mountain Pipeline extension, but there remain skeptics about whether it will ever be completed. [20]

Reviewing these three pipeline disputes, we can see the energy-environment federal framework through the lens of inter-provincial disputes (combined with interventions from Indigenous communities and ENGOs): Alberta versus BC (Northern Gateway and Trans Mountain) and Alberta/New Brunswick versus Québec (Energy East). The federal government, although it had constitutional jurisdiction, was not the major actor. While the Harper government supported all three projects, it could not get any of them built before its mandate ended in 2015. Meanwhile the Trudeau government's behaviour ranged from opposition (Northern Gateway), implicit opposition (Energy East), to support (Trans Mountain).

19. Federal Court of Appeal, *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (August 30, 2018).
20. As of March 2021, over 20 percent of the Trans Mountain pipeline expansion has been completed with the peak construction period scheduled for 2021. It is expected that completion will occur by the end of 2022.

EXPLAINING THE ENERGY-ENVIRONMENT CHALLENGE

As the previous section showed, Canada has had numerous intense intergovernmental conflicts over energy and the environment. This section tries to explain why cooperation has been so difficult. Most important to the explanation is reconciling energy development with climate change. How can Canada transition to a low-carbon economy when there are so many economic interests (many of them regional) at stake with energy production?

Douglas Macdonald, in his 2020 book *Carbon Province, Hydro Province: The Challenge of Canadian Energy and Climate Federalism*, identifies three important challenges. [21] First, is Canada's East-West divide: the major oil producing provinces of Alberta and Saskatchewan are in Western Canada, and the non-fossil fuel producing provinces of Ontario and Québec are in Eastern Canada (pp. 90-101). This divide is magnified by the difference between the heavily-populated (and therefore politically influential) provinces of Ontario and Québec versus the less populated provinces of Alberta and Saskatchewan. Regionalism has been a consistent axis of Canadian politics and it is greatly replicated in the debates over energy and the environment.

Second is the allocation challenge: how to determine equitable emission reductions across provinces (pp. 101-107). As Charts 4-5 showed, Canada's GHG emissions are not evenly distributed, which means that Alberta and Saskatchewan would have to disproportionally cover the costs of emission reductions. Therefore, naturally, they would resist efforts to reduce emissions. Meanwhile, the other provinces, who did not directly benefit economically from the production of fossil fuels, would resist subsidizing the cost of emission reductions.

The third challenge is the national intergovernmental process (pp.107-112). Because of constitutional jurisdictions, energy production profiles, and GHG emission rates, unilateral federal or provincial action cannot solve the energy and environment debate. Instead, it requires intergovernmental cooperation.

Responding to the challenges Macdonald identifies would be hard enough, but there are actually even more. The conflict over energy and the environment is not just between the federal government and the provinces, but also between provinces. For example, Newfoundland and Québec fought over Churchill Falls, Alberta and British Columbia over the Trans Mountain pipeline, and Alberta and Québec over the proposed Energy East pipeline.

In addition, the legal and jurisdictional ability to take action over projects that cross provincial boundaries lies with the federal government. However, the federal government has often refused to exercise that power to avoid getting into a fight with a particular province. More importantly, and directly connected to the East-West divide identified by Macdonald, the federal government tends to either side with some provinces over others, or refuses to intervene in an interprovincial dispute. Due to population and seat counts in the House of Commons, the federal government, no matter whether it is a Liberal or Conservative government, will typically support Ontario and Québec versus Western or Atlantic provinces.

21. Douglas Macdonald, *Carbon Province, Hydro Province: The Challenge of Canadian Energy and Climate Federalism*. University of Toronto Press: Toronto, 2020.

However, there has been a gradual westward swing of Canada's economic and political power.[22] This is best illustrated by the fact that British Columbia and Alberta now have a combined population and GDP larger than Québec. In 2019, Québec had a GDP of $377 billion, which was dwarfed by the $587 billion in Alberta ($334 billion) and BC ($253 billion).[23] In 2020, Québec had 8.5 million people, but there were 9.5 million people in BC (5.1 million) and Alberta (4.4 million).[24] While the ratio of House of Commons seats between Québec and BC/Alberta has grown, Québec still has slightly more seats despite a million-person deficit in population. In the 1968 federal election, there were 75 Québec seats compared to 42 in BC (23) and Alberta (19). By the 2019 federal election, there were 78 Québec seats compared to 76 in BC (42) and Alberta (34). This does not mean, of course, that Alberta and BC are always aligned. In fact, on matters of energy-environment policy, they are often at odds. Instead, the point is that these demographic changes have greatly complicated the political calculus of federal governments.

There are also challenges addressed in other Positive Energy studies. These include how to strengthen public and investor confidence in infrastructure project decisions, clarifying and strengthening the relationships between policymakers, regulators and the courts in energy and environmental decisions,[25] and the growing role, rights and influence of Indigenous peoples in energy/environmental decision-making (see Box 1).

22. Darrell Bricker and John Ibbitson, *The Big Shift: The Seismic Change in Canadian Politics, Business, and Culture And What It Means For Our Future* (Harper Collins: Toronto, 2013).
23. Statista, "Real Gross Domestic Product (GDP) of Canada in 2019, by province," (June 2, 2020). https://www.statista.com/statistics/463905/canada-real-gross-domestic-product-by-province/
24. Statistics Canada, "Table 17-10-0009-01 Population estimates, quarterly," (December 1, 2020). https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901
25. Michael Cleland, Ian T.D. Thomson with Monica Gattinger, *Policymakers, Regulators, and Courts – Who Decides What, When, and How? The Evolution of Regulatory Independence.* Positive Energy at the University of Ottawa, December 2020. Available at https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/policymakers_regulators_and_courts_-_who_decides_what_when_and_how_final.pdf and Ian T.D. Thomson, *A Literature Review on Regulatory Independence in Canada's Energy Systems: Origins, Rationale, and Key Features.* Positive Energy at the University of Ottawa, November 2020. Available at https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/a_literature_review_on_regulatory_independence_in_canadas_energy_systems_final.pdf

Another challenge is the future of oil and gas demand around the world. Predicting future demand and prices is always difficult and relies upon demographic, technological, economic, and political information. In a comparison of the four most cited energy forecasters (BP, Shell, the International Energy Agency, and the Institute for Energy Economics, Japan), global oil and gas demand up to 2040 will continue to rise.[26] COVID-19 led to a dramatic drop in oil demand due to restrictions on travel, tourism, trade and transportation.[27] However, oil demand is expected to rebound once vaccination efforts have succeeded and countries start to lift their restrictions. China has emerged as the second largest energy consumer.[28] However, Canada-China bilateral relations are at their lowest point since the Korean War in the early 1950s. This means that, for at least the near future, the potential of expanding exports of oil and gas (as well as coal and uranium) to China is politically constrained.[29]

A final challenge are the new market forces facing Canada's oil sector. The international financial community (private banks, central banks, sovereign wealth funds, pension funds, insurance companies, bond-rating agencies, etc.) have all become more concerned with climate change and are divesting from oil and gas in general and the oil sands in particular.[30]

Even large international oil companies have divested from the oil sands. For example, Shell, Total, and Equinor ASA (formerly Statoil) have sold significant stakes in oil sands projects in recent years. These divestment efforts have already had a significant economic and political impact. In response, during the 2019 Alberta election, the United Conservative Party leader Jason Kenney campaigned on a fight back strategy on behalf of Alberta's oil sector. After winning a majority government, the Kenney government implemented the fight back strategy by creating an energy war room (officially called the Canadian Energy Centre) to respond to perceived misinformation about the oil sands and launched a controversial public inquiry into the alleged foreign-funding of Canadian ENGOs in order to landlock Alberta's oil. In March 2020, the Kenney government also invested $1.5 billion and another $6 billion in loan guarantees to TC Energy's Keystone XL Pipeline that would take oil from the oil sands to US refineries along the Gulf Coast. This investment was ultimately lost when, on the day of his inauguration, US President Joe Biden cancelled the permit for the Keystone XL pipeline. Therefore, regardless of whether there is increasing or decreasing global demand for oil, there are political and market pressures facing Alberta's oil.

26. G. Kent Fellows, Victoria Goodday, Rabia Ladha, and Jennifer Winter, "Our Planet in 2040: Comparing World Energy Outlooks," (July 2019). https://www.policyschool.ca/wp-content/uploads/2019/07/Energy-Trends-World-Energy-Outlooks-final-2.pdf
27. Richard Masson and Jennifer Winter, "Addressing the Threat of Covid-19 and the Oil Price War in the Petroleum Sector," (March 2020). https://www.policyschool.ca/wp-content/uploads/2020/03/EPT-Addressing-the-Threat-of-COVID19-in-the-Petroleum-Sector-final-2.pdf
28. United States Energy Information Administration, China (September 30, 2020). https://www.eia.gov/international/analysis/country/CHN
29. Duane Bratt, "Stuck in the Middle with You: Canada-China relations in the era of US-China clashes," in David Carment and Richard Nimijean, eds., *Canada Among Nations 2020: Political Turmoil in a Tumultuous World* (Palgrave-MacMillan: Toronto, 2021).
30. Christopher Flavelle, "Global Financial Giants Swear Off Funding an Especially Dirty Fuel," *New York Times* (February 12, 2020). https://www.nytimes.com/2020/02/12/climate/blackrock-oil-sands-alberta-financing.html

FINDING A PATHWAY

Given the enormous challenges identified in the previous sections, how can Canada find a pathway forward? Several options exist within federal intergovernmental mechanisms: multilateralism (Ottawa and all/most provinces), bilateralism (Ottawa and one/two provinces), or unilateralism (Ottawa or a province). A successful example of multilateralism – at least temporarily –was the Pan-Canadian Framework on Clean Growth and Climate Change. As noted earlier, in 2016, Ottawa and all the provinces (with the exception of Saskatchewan and Manitoba) signed on to the Pan-Canadian Framework, a national energy/environment agreement that included putting a price on carbon.[31] However, subsequent changes in provincial governments gradually eroded support for the Framework.

Notwithstanding some of the eventual reversals, the Pan-Canadian Framework illustrates the value of exploiting windows of opportunity. In this case, a window of opportunity for cooperation in energy-environment opened in 2015-2016 and the Trudeau government took on the mantle of policy entrepreneur[32] and successfully navigated it. As partially described earlier, before Trudeau came to office, Canada's three largest provinces all had some form of price on carbon: BC had a carbon tax and Québec/Ontario had cap-and-trade systems. They would soon by joined by Alberta, the fourth largest province, but biggest producer of oil and gas. In May 2015, Alberta changed governments for the first time in 44 years when Rachel Notley and the NDP defeated Jim Prentice and the Progressive Conservatives. Notley quickly convened a panel, led by University of Alberta economist Andrew Leach, to make recommendations on addressing climate change. In November 2015, Alberta released its Climate Leadership Plan that included an economy-wide carbon tax, a phase out of coal-fired electricity, a 100 megatonne cap on oil sands GHG emissions, and reducing methane emissions. Having Canada's largest oil and gas producing province unilaterally adopting an aggressive climate change plan was a critical part of the policy window opening.[33]

31. Macdonald, *Carbon Province, Hydro Province,* 202-233.
32. John Kingdon developed the concept of policy windows and policy entrepreneurs. John W. Kingdon, *Agendas, Alternatives and Public Policies.* 2nd Edition (London: Longman, 2010).
33. Bratt, *The Alberta Climate Leadership Plan.*

The election of Trudeau in October 2015 after a decade of Conservative rule, was another key moment. Even if Alberta had not brought in a climate change plan, the Trudeau government would have introduced some type of plan. The 2015 Liberal election platform had stated "we will provide national leadership and join with the provinces and territories to take action on climate change, put a price on carbon, and reduce carbon pollution."[34] Another part of the policy window was that Barack Obama was still US President. Obama, like Trudeau, was committed to action to address climate change. Finally, the United Nations Framework Convention on Climate Change Conference, held in Paris in December 2015, provided a deadline to get a deal. Trudeau, Notley, and other premiers, wanted to bring a package of Canadian initiatives to Paris. All of these events aligned at the right moment, which allowed Trudeau to negotiate the Pan-Canadian Framework in 2016.

As described above, while some provinces have pulled out of the Pan-Canadian Framework, and some even fought the federal carbon tax in the courts, many of its mechanisms remain in place. Trudeau even felt comfortable unilaterally updating his government's climate plan and announced in December 2020 a gradual increase of the carbon tax that, by 2030, would rise to $170 per tonne.[35] This example shows that moments in time can allow for multilateral cooperation in energy-environment policy. Windows are rare, will naturally close, and there may be some backsliding, but some cooperation will also be maintained. It is up to policy entrepreneurs to recognize when windows open and take full advantage of them. However, a policy entrepreneur, no matter how skilled, cannot create the conditions that allow windows to open; there are just too many variables that need to come together.

34. Liberal Party of Canada, *Real Change: A New Plan for A Strong Middle Class* (2015). https://liberal.ca/wp-content/uploads/sites/292/2020/09/New-plan-for-a-strong-middle-class.pdf

35. Marieke Walsh and Emma Graney, "Ottawa to triple carbon tax to meets emissions target," *The Globe and Mail* (December 12, 2020).

Given the difficulties associated with achieving a multilateral consensus, bilateralism has been used much more effectively. There are numerous examples of successful bilateral actions in the energy-environment sector. Ottawa and Ontario jointly developed civilian nuclear energy starting in the 1950s. In the mid-1970s, Ottawa-Alberta-Ontario worked together on investing in the emerging oil sands. In the mid-1990s, Ottawa and Alberta worked together on a new tax regime to encourage investment in the oil sands. BC and Alberta were able to negotiate an agreement on the Trans Mountain Pipeline, although that was scuttled with NDP leader John Horgan replacing the Liberal government led by Christy Clark in the 2017 election. Small-scale bilateral cooperation is also possible. Building a nation-wide electricity grid would be very costly, technically challenging, and rife with political difficulties. However, a series of small-scale bilateral cooperation initiatives between provinces could be replicated across the country. For example, in 2020, Saskatchewan and Manitoba agreed to build a new transmission line between the two provinces, allowing Saskatchewan to purchase up to 315 MW of Manitoba's hydroelectricity. This helps Saskatchewan lower GHG emissions from its electricity sector and allows Manitoba to export surplus hydroelectricity.[36]

One critical bilateral partnership is between Alberta and Ontario. These two provinces are critical given that Alberta is Canada's largest producer of fossil fuels and accompanying GHG emissions and Ontario is Canada's largest consumer of fossil fuels. The Alberta-Ontario alliance (when it occurs) can be a spur to cooperation. For example, Premiers Peter Lougheed and Bill Davis worked together in the mid-1970s to acquire investment in the oil sands. Four decades later, Premiers Rachel Notley and Kathleen Wynne helped support the Trudeau government's Pan-Canadian Framework. The Alberta-Ontario alliance is important because it has also been used to block cooperation. For example, Premiers Ralph Klein and Mike Harris worked together to stymie the Kyoto Protocol. Two decades later, Premiers Jason Kenney and Doug Ford have been at the forefront of lawsuits against the federal carbon tax backstop.

There are examples of successful provincial unilateral actions. In 2008, BC was the first jurisdiction in North America to introduce an economy-wide carbon tax. In 2015, the Rachel Notley government in Alberta brought forward its Climate Leadership Plan. Successive Ontario governments over the last twenty years have restarted and refurbished the province's nuclear fleet and shut down coal-fired electricity generation—a big contributor to the 2010s decrease in national GHG emissions. Successful provincial unilateralism, such as BC's introduction of an economy-wide carbon tax, often has spillover effects as different provinces learn from the lead example and adopt similar programs.

36. Manitoba Hydro, *Energy Matters* 20/10 (October 2020).

Unilateral action by the federal government has sometimes had disastrous consequences (e.g., the NEP). However, there have been other examples of unilateral action from Ottawa using its spending power to intervene into energy-environment issues. For example, in 2018, after Kinder Morgan, the owner of the Trans Mountain Pipeline, decided to walk away from the project, Ottawa decided to buy the pipeline for $4.5 billion. This ensured that the federal government had an incentive to redo its consultations with affected Indigenous communities after the Federal Court of Appeal halted the project in August 2018. Construction has been steady and it is now increasingly likely that oil will flow through the expanded pipeline by the end of 2022.

Ottawa, in responding to the COVID-19 health pandemic, dramatically increased federal spending by dedicating hundreds of billions of dollars to income supports, wage subsidies, and other economic support programs. This also included additional spending in the area of energy and environment. In April 2020, Ottawa committed $1.7 billion to clean up orphaned oil and gas wells in Alberta, Saskatchewan, and BC. Companies, many of whom had to declare bankruptcy when the price of oil started to fall in late 2014, had abandoned over 69,000 wells. In addition, there were over 95,000 inactive wells. This fund had environmental benefits and also supported the energy sector by providing employment for over 5,200 workers assigned to reclamation projects.[37] Separate programs offered loan guarantees to energy companies (with climate change strings attached) and over $750 million for methane emissions reductions.[38] In total, when non-energy specific funding is included, it is estimated that Alberta oil and gas companies received over $13.6 billion from the federal government in 2020.[39]

37. Drew Anderson, "$1.7B to clean up orphaned and abandoned wells could create thousands of jobs," *CBC News* (April 17, 2020). https://www.cbc.ca/news/canada/calgary/federal-oil-and-gas-orphan-wells-program-1.5535943#:~:text=46-,The%20federal%20government%20will%20spend%20%241.7%20billion%20to%20help%20clean,5%2C200%20jobs%20in%20Alberta%20alone
38. Kyle Bakx and Tony Seskus, "What the oilpatch thinks about the financial aid offered by Ottawa," *CBC News* (May 27, 2020). https://www.cbc.ca/news/business/oilpatch-federal-assistance-covid-19-1.5585264
39. Kyle Bakx, "How Ottawa is providing a financial lifeline to the oilpatch," *CBC News* (December 8, 2020). https://www.cbc.ca/news/business/bakx-feds-oilpatch-pandemic-1.5829095

One possible pathway for federal cooperation is the model being used to develop and deploy Small Modular Reactors (SMRs). Nuclear energy is a federal jurisdiction, but energy production is a provincial jurisdiction. In the early years of developing nuclear energy, there was close cooperation between the federal government and the province of Ontario. However, in the 21st century there have been significant clashes between Ottawa and the provinces over refurbishing the existing nuclear fleet (New Brunswick), purchasing new reactors (Ontario), and building a new major research reactor (Saskatchewan).[40] Nevertheless, in recent years there has been growing federal cooperation on SMRs. SMRs are smaller and differently constructed than traditional reactors. They are designed for remote communities (e.g., Northern Canada), large-scale mining sites (e.g., the oil sands), and supplanting coal in those provinces that still rely on coal for on-grid electricity generation (e.g., Saskatchewan). In the fall of 2018 Natural Resources Canada released an SMR roadmap[41] and followed up two years later with an action plan.[42] At the provincial level, Ontario, Saskatchewan, and New Brunswick signed a memorandum of understanding on SMRs in December 2019.[43] Alberta later signed on in August 2020.

SMRs reveal federal cooperation in deploying a new energy technology that is designed to reduce GHGs. Just as significantly, the cooperation is between a Liberal federal government and four Conservative provincial governments. This is in contrast to the lawsuit launched by Ontario, Saskatchewan, and Alberta over the federal carbon tax backstop noted above, which, like SMRs, is designed to reduce greenhouse gas emissions in the energy sector. In addition, Ontario, Saskatchewan, and Alberta sued Ottawa over the federal carbon tax that, like SMRs, is designed to reduce greenhouse gas emissions in the energy sector. The SMR case, although in its early stages, might provide a further pathway for federal cooperation in energy-environment policy.

An additional consideration is to identify the type of energy-environment cooperation required. There are high-level big picture examples (e.g., the Pan-Canadian Framework) that can only be pursued through full multilateral mechanisms. Then there are specific projects that can be pursued through bilateral mechanisms, (e.g., Ottawa-Alberta-Ontario investment in the oil sands or electricity transmission between Manitoba and Saskatchewan). There is also cooperation regarding a specific technology (i.e., Ottawa-Ontario-Saskatchewan-New Brunswick-Alberta on SMRs). High-level cooperation is difficult and can only occur when policy windows open up. However, cooperation on specific projects and technology is easier to achieve because it involves few actors and an easily identifiable task.

40. Duane Bratt, *Canada, the Provinces, and the Global Nuclear Revival: Advocacy Coalitions in Action* (McGill-Queen's University Press: Montreal and Kingston, 2012).
41. Natural Resources Canada, *A Call to Action: A Canadian Roadmap for Small Modular Reactors* (November 2018). https://smrroadmap.ca/wp-content/uploads/2018/11/SMRroadmap_EN_nov6_Web-1.pdf?x64773
42. Natural Resources Canada, *Canada's Small Modular Reactor Action Plan* (December 2020). https://smractionplan.ca/
43. New Brunswick, Ontario, and Saskatchewan, *Collaboration Memorandum of Understanding* (December 1, 2019). https://s3.amazonaws.com/files.news.ontario.ca/opo/en/learnmore/premier_ford_premier_higgs_and_premier_moe_sign_agreement_on_the_development_of_small_modular_reacto/2019%2011%2027%20-%20MOU%20Prov%20NB%20and%20ON%20and%20SK.pdf

CONCLUSION: MUDDLING THROUGH ON ENERGY-ENVIRONMENT FEDERALISM

Navigating federalism and the energy-environment sector is extremely difficult. There are historic constitutional, political, and economic challenges. Moreover, these challenges have increased in recent years due to the growing importance of climate change. Finding a path forward is not easy, but there are real costs to failing to cooperate. In the absence of cooperation, GHG emissions will continue to rise. This has long-term environmental consequences due to a warming planet that includes increases in natural disasters and changing weather patterns. In addition, Canada would have to pay the economic costs of responding to these environmental consequences.

A failure to get energy infrastructure built also has costs. The economic consequences can include a drop in GDP and investment that would lead to the loss of jobs. In addition, the drop in investments could also expand beyond the energy sector to other large infrastructure projects. Robert Mansell, an economist at the University of Calgary, has estimated that the Trans Mountain pipeline will generate over $9 billion a year in investment, $3 billion in federal and provincial government revenue, and an overall 2 percent increase in Alberta's GDP.[44] These economic benefits would be lost if the Trans Mountain expansion is not completed.

It also has national unity consequences. For example, since 2019 there has been a rise in separatist sentiments in Alberta and Saskatchewan. Public opinion surveys over the last two years have shown support for separatism in Alberta ranging from 15 to 30 percent.[45] Separatist sentiment can also be seen in the creation of independence parties such as the Wildrose Independence Party in Alberta, the Buffalo Party in Saskatchewan, and the Maverick Party running federally in Alberta, Saskatchewan, and parts of interior BC (modeling themselves on the Bloc Québécois). Meanwhile the Kenney government is pursuing a set of Fair Deal proposals to promote Alberta's autonomy within Canada. Examples include pulling out of the Canada Pension Plan and creating an Alberta Pension Plan, and replacing the RCMP with a new Alberta Provincial Police Force.[46] There will also be a referendum in October 2021 on amending or abolishing the federal equalization program.

44. Mike Blanchard, "Trans Mountain will boost Alberta's economy: economists," *Edmonton City News* (June 18, 2019). https://edmonton.citynews.ca/2019/06/18/trans-mountain-will-boost-alberta-economy-economists/
45. Common Ground, Western Alienation Persists Amid Pandemic (October 28, 2020). https://drive.google.com/file/d/13I7ZY2z_BSfF4CMGejlOb-KZW9LBfDdEE/view
46. Alberta, Fair Deal Panel (2021). https://www.alberta.ca/fair-deal-panel.aspx

There is no silver bullet to achieve federal energy-environment cooperation. Every one of the options identified in this report will have to be utilized. Despite the wishes of pro-energy or pro-environment activists, achieving a big deal is very difficult. Getting unanimous consent is tough. Even when that occurs, elections can change the actors and remove the consensus (e.g., Meech Lake, Pan-Canadian Framework). That being said, there are moments in time when a large multilateral deal can be achieved. This usually involves a confluence of forces: elections that bring new actors and new perspectives to the First Ministers table (in 2015 that helped to achieve the Pan-Canadian Framework), a massive domestic crisis (the COVID-19 pandemic led to massive unilateral federal spending, but with the support of the provinces), or international pressure (e.g., a change in the US Presidency that may provide new opportunities). While these windows of opportunity are rare, they are worth pursuing. While parts of large multilateral deals often wither away, some of them will stay in place. In addition, the existence of a framework allows for committed governments to build upon them unilaterally or bilaterally.

Bilateralism (either between the federal government and a specific province or between two provinces) has been proven to work. Obviously, the fewer the partners means the fewer actors have to agree. In addition, bilateralism means that there are fewer issues and considerations to discuss. This makes it easier to come to an agreement.

In the case of unilateralism, federalism is a flexible device that allows individual provinces the legal authority and political motivations to take independent action in the area of energy-environment policy. Successful provincial unilateralism can have spillover effects as different provinces learn from the lead province and adopt similar programs. However, unilateral action by the federal government should be rare. Previous examples of federal unilateralism often lead to massive backlash and make the situation even worse. This can even be the case when Ottawa is taking unilateral action in a clear area of federal jurisdiction.

A combination of multilateralism, bilateralism, and unilateralism will, through a series of small initiatives, create a cumulative web of energy-environment cooperation. It is the classic Canadian process of muddling through. Big ideas, no matter the topic, are tough to negotiate and sustain in Canada. But small steps can occur. The concept is one step forward and a half step back. If this is repeated long enough, eventually Canada get to the finish line.

NOTES

POSITIVE ENERGY AT THE UNIVERSITY OF OTTAWA USES THE CONVENING POWER OF THE UNIVERSITY TO BRING TOGETHER ACADEMIC RESEARCHERS WITH EMERGING AND SENIOR DECISION-MAKERS FROM INDUSTRY, GOVERNMENT, INDIGENOUS COMMUNITIES, LOCAL COMMUNITIES AND ENVIRONMENTAL ORGANIZATIONS TO DETERMINE HOW TO STRENGTHEN PUBLIC CONFIDENCE IN ENERGY DECISION-MAKING.

POSITIVE **ENERGY**

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