



STATE OF CANADIAN CLIMATE LAW 2024 REPORT



Green Economy Law Professional Corporation is a boutique Toronto-based law firm with a focus on green business startups, psychedelics, and housing.

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Introduction

In 2023, having just emerged from the COVID-19 crisis, Canadians confronted previously inconceivable consequences of our changing climate. Unprecedented wildfires, exacerbated by *another* year of record heat, raged for months in nearly every province and territory.¹ In cities like Toronto, Montreal, and Calgary, residents were occasionally advised to stay indoors to avoid breathing ash-filled air.² The fires were then complimented by severe flooding in the Maritimes.³

Notwithstanding the evident and worsening repercussion of humanity's failure to mitigate climate change, an ambitious policy agenda advanced by federal Environment Minister (and former Greenpeace activist) Steven Guilbeault battled staunch opposition by several provincial governments. Worse still, a misleading 'Axe the Tax' campaign, spearheaded by the inflammatory and resolutely anti-environment Conservative Party leader Pierre Poilievre, made national carbon pricing controversial for the umpteenth time - seven years and two federal elections after its introduction.⁴

In this report, we provide a broad overview of the current animated Canadian climate law and policy landscape. We review the most consequential legal efforts, successes, and failures of the last year, including:

- Canada's newly enshrined right to a healthy environment;
- The introduction of jobs-focused green transition legislation;
- A proposed oil and gas industry cap-and-trade program;
- Ongoing youth climate action litigation; and
- The year's most significant environmental law court rulings.

Much of this report is derived from our Green Economy Law [blog](#) coverage of environmental and climate law news. To keep updated on developments as they occur, follow Green Economy Law on [LinkedIn](#) and/or subscribe to our [monthly newsletter](#).

Climate Legislation and Policy

Over the last year, Canada's federal government established a statutory right to a healthy environment, introduced green transition legislation, launched a national climate adaptation strategy, and published draft regulations for a cleaner national electric grid, a cap on energy sector emissions, and the transition to a zero (or low) emission vehicle future.

Below, we discuss each item in detail:

1. *Bill S-5: Strengthening Environmental Protection for a Healthier Canada Act*

On June 13, 2023, Canada's *Strengthening Environmental Protections for a Healthier Canada Act* received royal ascent.⁵ It amended the *Canadian Environmental Protection Act* (CEPA) to recognize a Canadian right to a healthy environment and otherwise update the nation's principal environmental protection legislation.

The amended law formally declares that "every individual in Canada has a right to a healthy environment" and requires Canada's government to protect that right "subject to any reasonable limits." To accomplish this, Environment and Climate Change Canada must "develop an implementation framework to set out how [the] right will be considered in the administration" of the law.

The explicit conferral of a right to a healthy environment should, in theory, allow potential claimants, such as youth climate action litigants, to directly challenge government policies and actions that infringe upon Canadians' environmental rights. Taking into consideration recent (and so-far unsuccessful) *Charter*-focused climate action cases such as *La Rose* and *Mathur* (discussed more later in this report), the amended CEPA may accordingly carve a legal path for new, more successful claims.⁶

2. *Bill C-50: The Canadian Sustainable Jobs Act*

Also in June, Canada's legislature introduced Bill C-50, the *Canadian Sustainable Jobs Act*.⁷ The proposed legislation seeks to establish a framework by which the federal government will plan for and assist Canada's workforce in transitioning to a new, more sustainable economy.

The Act functions by requiring that a minister - whichever one the government thinks best suited to the task - deliver a "Sustainable Jobs Action Plan" every five years. The first plan is due December 31, 2025.

Each plan must:

- Establish sustainable jobs support programs and policies;
- Identify plan goals and milestones;
- Summarize “available data related to economic growth and the labour market in a net-zero economy”; and
- Detail progress made in achieving the milestones of previous plans, as applicable.

The Act also calls for the creation of a Sustainable Jobs Partnership Council to consist of a maximum 15 members who “reflect Canada’s diversity”. The council will advise the responsible minister on strategies “to encourage growth in good-paying, high-quality jobs...in a net zero economy”, with such advice being incorporated in the creation of each plan. The minister responsible for creating and implementing the Sustainable Jobs Action Plan must publish annual reports containing the council’s advice, as well as the minister’s response to such advice. Lastly, the Act calls for the creation of a Sustainable Jobs Secretariat to provide administrative and advisory support with the implementation of each plan.

Despite the ruling Liberal Party’s strenuous efforts to reassure the fossil fuel industry that the Act will not bring about the sector’s demise anytime soon, the industry and its most ardent supporters, like Alberta Premier Danielle Smith, have nonetheless sought to depict and wage political warfare against the bill as an existential threat to Canadian oil and gas.⁸ In reality, the proposed legislation is a procedural planning and accountability measure similar in form to 2021’s *Canadian Net-Zero Emissions Accountability Act*.⁹

3. *Canada’s National Adaptation Strategy*

To close out a busy June 2023, the Government of Canada launched its National Adaptation Strategy. It identifies various goals and focus areas for future climate adaptation-related initiatives and investments.¹⁰ It also establishes four principles to guide decision-makers in designing and implementing adaptation policies:

- Respecting local, provincial, territorial, national, and First Nations, Inuit, and Métis governments’ climate adaptation efforts and upholding Indigenous rights;
- Advancing equity and environmental justice;
- Taking proactive, risk-based measures to reduce climate impacts before they occur; and
- Maximizing adaptation benefits while avoiding “maladaptation”.

The plan's priorities are arranged in pyramid form, with action plans outlining immediate priorities at the top; near and medium-term objectives to be achieved by 2030 in the middle; and longer-term 2050 goals at the base. The government's news release summary further stated that the framework will "reduce the risks of climate-related disasters, improve health outcomes, protect nature and biodiversity, build and maintain resilient infrastructure, and support a strong economy and workers."¹¹

In terms of implementation, the Government of Canada Adaptation Action Plan presents a range of federal government actions and funding commitments, including up to \$284 million over five years for wildfire prevention/mitigation and establishing a Centre for Wildland Fire Innovation and Resilience. Provinces and territories are expected to contribute their own adaptation initiatives, with the federal government promising to facilitate increased "coordination, cooperation, and exchange of best practices between different orders of government."¹²

The federal government will also look to work with First Nations, Inuit, and Métis communities over the next two years to develop and advance an Indigenous Climate Leadership Agenda that reflects Indigenous climate priorities.¹³

4. Regulatory Framework for an Oil and Gas Sector Greenhouse Gas Emissions Cap

In December, Environment Minister Guilbeault announced the draft Regulatory Framework for an Oil and Gas Sector Greenhouse Gas Emissions Cap at COP28 in Dubai. The framework outlines a set of regulations, promulgated pursuant to CEPA, that will establish a cap-and-trade program for Canada's oil and gas industry, with a sectoral limit 35-38% below 2019 levels. The cap will lower every year, requiring oil and gas companies to reduce emissions (or buy and trade emission allowances) until the sector hits the government's 2050 net-zero goal.¹⁴

The proposed program was developed following years of "extensive engagement with industry, Indigenous groups, provinces and territories, and stakeholders," according to the government's press release.¹⁵ Nonetheless, the framework's announcement was (predictably) met with immediate disparagement by the oil and gas industry,¹⁶ while environmentalist reactions ranged from "reasonable and necessary" to "tepid...weak".¹⁷

Paraphrasing an unnamed source and Minister Guilbeault, CBC reported that the framework's modest targets – dropped from a planned 42% below 2019 levels by 2030 – could be attributed to the federal government's desire to "avoid legal and constitutional fights with provinces" in light of recent court decisions forcing Ottawa to "tread more carefully on climate policy."¹⁸

5. Proposed Regulations to Incentivize Adoption of Low-Emission Vehicles

Environment and Climate Change Canada also announced draft regulations in December aimed at encouraging greater adoption of zero-emission vehicles (ZEVs), namely electric and hydrogen-powered passenger cars, SUVs and light trucks.¹⁹ The proposed regulations will require car companies to hit specific ZEV target fleet sales percentages:

- 20% starting in 2026;
- 60% by 2030; and
- 100% by 2035.

If companies fail to achieve these goals, they will need to buy credits from competitors who exceed their annual ZEV sales targets. Alternatively, companies can perform an “eligible ZEV activity” in lieu of purchasing credits, such as installing charging stations or other ZEV infrastructure.²⁰

The draft regulations were widely reported as a gas vehicle sales “ban” or electric vehicle sales “mandate”.²¹ In fact, the rules will institute a market-based, cap-and-trade style program designed to incentivize ZEV sales.

6. Clean Electricity Regulations

The *Clean Electricity Regulations* aim to reduce electricity generation greenhouse gas (GHG) emissions in Canada to net-zero by 2035. The finalized rules are slated for publication later this year and intended to take effect January 1, 2025. They will establish technology-neutral ‘command-and-control’ emission performance standards for the electricity sector. These will strengthen over time in favour of low-carbon energy sources. Carbon capture and sequestration use is also anticipated.²²

Although the regulations have not been published, Alberta has already launched a massive campaign against them, with Premier Smith referring to the 2035 net-zero goal as “impossible for the province to meet without risking blackouts and high costs for consumers.”²³ Alberta’s legislature even went as far as tabling a resolution to invoke, for the first time, its controversial *Alberta Sovereignty Within a United Canada Act* in response to the *Clean Electricity Regulations*.²⁴

The *Sovereignty Act* purports to suspend allegedly unconstitutional and/or Alberta-unfriendly federal law. It is, in reality, largely an Act of legislative publicity.²⁵ A motion pursuant to said Act, tabled in November 2023, pre-emptively called for “all provincial entities to ignore” the *Clean Electricity Regulations* when they come into effect...but only to the extent legally permissible.²⁶

Climate Action Litigation

In 2023, one youth climate action lawsuit was dismissed while another received new life. In both cases though, the courts determined that the plaintiffs’ *Charter* complaints were (at least partly) justiciable – that is, within the scope of the court’s jurisdiction for review – which bodes well for the success of future climate litigation.

1. *Mathur v. Ontario*

In *Mathur v. Ontario*, seven young plaintiffs alleged that Ontario’s lackluster 2018 climate plan violates the *Charter* rights of today’s youth and future generations. They specifically focused on the province’s 2018 *Cap and Trade Cancellation Act*, which substantially increased the likelihood young Ontarians will suffer serious harm from the projected rise in global temperatures due to anthropogenic climate change.²⁷

The case was, however, dismissed in April 2023. The presiding judge did not regard failure to set more ambitious climate goals as constituting a violation of the plaintiffs’ *Charter* rights because the *Charter* does not impose positive legal obligations upon the government; it merely restrains government from infringing certain rights.²⁸ Still, despite a disappointing result, the judge’s recognition of the complaint as justiciable and her harsh indictment of the province’s actions were encouraging:

“I find that Ontario’s decision to limit its efforts to an objective that falls severely short of the scientific consensus as to what is required is sufficiently connected to the prejudice that will be suffered by the Applicants and Ontarians should global warming exceed 1.5°C. By not taking steps to reduce [GHGs] in the province further, Ontario is contributing to an increase in the risk of death and in the risks faced by the Applicants and others with respect to the security of the person.”²⁹

The plaintiffs intend to appeal the ruling.

2. *La Rose v His Majesty the King*

On December 13, 2023, Canada’s Federal Court of Appeal released a unanimous decision to revive the previously-dismissed *La Rose* case and send it to trial.³⁰ The lawsuit’s 15 youth plaintiffs, hailing from various jurisdictions and social groups across Canada, sought to hold Canada’s federal government accountable for failure to appropriately address climate change. They allege this failure will bring about substantial harm to Canada’s youth in violation of their s. 7 and s. 15 *Charter* rights.³¹

As relief, the plaintiffs want the Canadian government to establish a climate recovery plan and undertake comprehensive accounting of Canada’s GHG emissions. They also seek a declaration that the government breached, and continues to breach, its obligation to preserve public trust resources such as air, water, and permafrost.³²

In the Federal Court of Appeal’s ruling, it determined that the plaintiffs deserve a trial to adjudicate whether their s. 7 *Charter* rights were infringed, but the argument regarding s. 15 rights will not proceed. Justice Rennie wrote that “the argument is novel, but it is not doomed to fail. Courts should be cautious in striking claims at an early stage...the law is not static and unchanging—actions that were deemed hopeless yesterday may succeed tomorrow.”³³

Judicial Backlash

Last year, the federal government faced legal challenges regarding the constitutionality of its *Impact Assessment Act* and regulatory 'plastics ban'. In both instances, the courts ruled against the federal government but lacked jurisdiction to strike down the applicable laws.

1. *The Impact Assessment Act*

The Supreme Court of Canada found a large part of the *Impact Assessment Act* unconstitutional in an advisory opinion issued on October 13, 2023.³⁴

The Act and its regulations establish a two-part project review scheme allowing federal authorities to assess certain projects for their potential social and environmental impact.³⁵ The court objected to the review scheme segment that aims to regulate major resource and infrastructure projects, such as oil and gas endeavors. The regime established under this aspect of the law allows an Impact Assessment Agency to assess such projects for potential adverse effects on federal lands, neighbouring provinces, Indigenous peoples, and other parties. If substantial adverse effects are found, the Agency can impose restrictions or conditions on the project to minimize negative impacts.

By a 5-2 majority, the Supreme Court regarded the latter part of the scheme as exceeding federal jurisdiction. Chief Justice Richard Wagner, writing for the majority, gave two primary reasons for reaching this conclusion:

- The scheme’s focus on “designated projects” is overly broad; and
- Its broad coverage of all “effects within the federal jurisdiction” allows the federal government to transgress upon provincial jurisdiction to an intolerable extent.

While this decision had no immediate legal effect (as an advisory decision, it is not binding), Environment Minister Guilbeault confirmed that the government is willing to make the changes necessary to comply with the Supreme Court’s ruling.³⁶ However, he stated that any amendments to the legislation “are unlikely to change the outcome” of the review process.

2. *Canada’s Federal ‘Plastics Ban’*

In November, a federal court quashed Canada’s regulatory ‘plastics ban’ in a lawsuit filed on behalf of several Big Plastic industry members, including Dow Chemical, Nova Chemicals, and Imperial Oil.³⁷

Justice Angela Furlanetto in her decision wrote that the federal regulatory order which added plastic manufactured items (PMI) to the Canadian Environmental Protection Act’s (CEPA) list of toxic substances, was “both unreasonable and unconstitutional.”³⁸ The Justice further stated that there was insufficient evidence to conclude all PMI are toxic and by including PMI in the list, the Administrator-in-Council/Governor-in-Council (GIC) “acted outside of their authority.”

Justice Furlanetto acknowledged in her ruling that “it is undisputed that plastics are ubiquitous” and that “plastic waste management...and plastic pollution...have been the subject of growing environmental concern and government focus since at least 2016.” However, she regarded the evidence relied upon by the GIC in classifying PMI as a toxic substance as only demonstrating that PMI can *become* plastic pollution, rather than proving all PMI are toxic.³⁹

There are currently federal regulations limiting or banning certain single-use plastic items, which rely on PMI’s classification as a toxic substance.⁴⁰ Notwithstanding the court’s decision, the regulations remain in effect. However, the long-term impact of the decision for plastic regulation in Canada remains to be determined.

Immediately following the judgment’s issuance, Alberta Premier Smith and the province’s Environment Minister Rebecca Schulz released a statement urging the federal government not to appeal the decision, but rather, to reverse its plastic regulation policies.⁴¹ At a press conference on November 20, 2023, federal Environment Minister Guilbeault stated that the federal government intends to appeal.⁴²

Conclusion

It is a tough time for those working on Canadian climate solutions. High interest rates have wrought havoc on the cleantech startup and investment space,⁴³ while inflation, the high cost of living, and a nationwide housing crisis have made climate policy an attractive political scapegoat for right-wing politicians.⁴⁴ Faced with these challenging circumstances and brutal poll numbers, the Liberal Government of Canada is making policy concessions, including (temporarily) exempting home heating oil from the fuel charge and moderating their draft *Clean Electricity Regulations*.⁴⁵ Though these concessions seem to have the effect of encouraging rather than mollifying opposition forces.⁴⁶

The state of Canadian climate law is precarious because Canada's economy is weak. Whether or not the country is technically in recession, Canadians are experiencing a profound 'vibe recession' which makes progress towards our net-zero goals more challenging for both the public and private sectors.⁴⁷ But climate change is a massive problem that will (or will not) be solved over an extended time horizon. There will be encouraging and discouraging times. Those who can persevere through challenging periods are likely to be in the best position to seize opportunities when conditions improve.

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