

# Goodmans<sup>LLP</sup> Update

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## Cleantech in Canada 2019: Recent Policy Developments - The Good, the Bad and the Ugly

### Overview

The news is replete with developments affecting the cleantech sector and the environment. While the global transition to cleaner forms of energy and transportation technologies continues to accelerate, Canadian policy makers are sending mixed messages to the cleantech sector. On the one hand, the recent federal budget (which included significant support for zero emissions vehicles (ZEV) and other clean technologies), the roll-out of the national price on carbon, and provincial initiatives such as the British Columbia ZEV mandate and plans to phase out fossil fuelled vehicles, are assisting the development of the sector. On the other hand, the changes promised by the newly-elected United Conservative Party (UPC) in Alberta and the challenges brought by a number of provinces to the federal price on carbon are clearly less positive. These conflicting approaches are creating uncertainty as to the long-term policy context for the cleantech sector in Canada.

Notwithstanding the above, globally and locally, the warnings about the dire consequences of a failure to rapidly ramp down our collective greenhouse gas (GHG) emissions are becoming increasingly strident, as the linkages between these emissions and climate disruption are becoming increasingly apparent. The development and implementation of solutions to this, and other, pressing environmental problems, represent opportunities that Canadian cleantech companies are pursuing, at home and abroad, including through the recent formation of the Ontario Clean Technology Industry Association to promote the development of the sector.

This Update surveys recent developments and highlights opportunities for growth relevant to the cleantech sector in Canada.

### Supporting Growth of the Clean Economy

#### *2019 Federal Budget*

This year's [federal budget](#) allocates resources to support the growth of the "clean energy economy". The government proposed to spend \$130 million over five years to install new recharging and refueling stations for electric and hydrogen fuel cell vehicles in remote locations, workplaces, public parking spots and commercial and residential buildings. The government also budgeted \$300 million over three years to create an incentive of up to \$5,000 for the purchase of electric or hydrogen fuel cell vehicles with a retail price of less than \$45,000.

Transport Canada will also receive \$5 million over three years to encourage auto manufacturers to set voluntary sales targets for zero-emission vehicles and to ensure vehicle supply meets increased demand.

The federal government plans to spend \$1.01 billion in 2018-2019 through the [Green Municipal Fund](#) to help the [Federation of Canadian Municipalities](#) to increase energy efficiency in residential, commercial and multi-unit buildings. The money will be used to make large community buildings more energy efficient, help homeowners with the costs of retrofitting their homes, and provide financing to improve energy efficiency in affordable housing developments.

The federal government further pledged to support several renewable energy infrastructure projects. This includes \$30 million towards a wind generation project in Inuvik and \$29.8 million for a marine renewable energy project to provide clean electricity to Nova Scotia.

Finally, the budget earmarked \$100 million for the [Clean Resource Innovation Network](#), a consortium of energy companies, research facilities, government bodies, academic institutions and financiers dedicated to enhancing innovation in the Canadian oil and gas sector and reducing the industry's environmental footprint. The money is intended to support the development and commercialization of cleaner technology in the oil and gas industry.

## ***National Retail Price on Carbon in Force***

The retail price ([fuel charge](#)) component of the federal carbon pollution pricing system came into effect in Ontario, New Brunswick, Saskatchewan and Manitoba on April 1, 2019 for provinces that did not have their own emissions pricing. It will come into effect in July 2019 in Nunavut and the Yukon. The federal price on carbon is \$20 a tonne of CO<sub>2</sub>e for this year and is set to increase by \$10 annually until it reaches \$50 a tonne in April 2022. The proceeds under the federal system will be returned to the province or territory of origin. The payments will be made to residents of affected provinces through a new tax credit called the [Climate Action Incentive](#).

## ***BC Plans to Phase Out Sales of Gas-Powered Vehicles by 2040***

On April 10, 2019, British Columbia introduced legislation requiring all light-duty cars and trucks sold in the province to be zero-emission by 2040. The [Zero Emission Vehicles Act](#) is intended to combat climate change by phasing out the sales of gas-powered vehicles. The legislation is part of the province's [CleanBC](#) program, which aims to make electric cars more affordable, invest in charging stations, and shift to renewable fuels. The program includes incentives for purchases of zero-emission vehicles by providing up to \$5,000 in rebates for a new battery electric or plug-in hybrid electric vehicle and up to \$6,000 for a hydrogen fuel-cell vehicle.

## ***Canada Joins IRENA***

On January 9, 2019, Canada officially joined the [International Renewable Energy Agency](#) (IRENA), a global intergovernmental organization that aims to support countries in their transition to a sustainable energy future. The organization currently engages 170 member states and promotes the use of renewable energy and the development of renewable technologies. In joining IRENA, Amarjeet Sohi, Canada's Minister of Natural Resources, recognized the importance and potential of the cleantech industry for the Canadian economy. He stated, "[becoming an IRENA member will accelerate Canada's efforts to build a clean energy future which will bring new economic growth and thousands of new, well-paying jobs](#)".

## ***Formation of the Ontario Clean Technology Industry Association (OCTIA)***

Stakeholders in the cleantech sector in Ontario have recently formed [OCTIA](#), a not-for profit organization, to promote the interests of the sector, and to serve as part of the national cleantech alliance. For further information may be obtained from: [contact@octia.ca](mailto:contact@octia.ca)

## ***Headwinds to Growth of the Clean Economy***

### ***Alberta Election***

With the election of the UPC to a majority government in Alberta on April 16, 2019, disruptions to the province's current carbon pricing regime appear inevitable. Jason Kenney, the premier-elect, has promised to repeal and replace the current provincial carbon pricing regime, under the [Alberta Climate Leadership Plan](#) (CLP), and to challenge the constitutionality of the federal carbon price in court. Pending the resolution of this challenge, if the provincial price on carbon were to be repealed, it would likely be replaced by the national federal back-stop carbon price.

Premier-elect Kenney has also promised that the UCP government will scrap the 100-megatonne oilsands emissions cap under the CLP, and extend the deadline for the phase-out of coal-fired power plants to beyond 2030. While the implications of the Alberta election for current and proposed renewable energy projects, and more generally for the cleantech sector, in the province are not clear, in the short term it would appear the new government intends to focus its attention primarily on pipelines and the fossil fuel energy sector.

### ***Opposition to the Federal Price on Carbon***

In the wake of the election, Alberta joined the coalition of provinces opposed to the federal price on carbon, namely Saskatchewan, Ontario, New Brunswick, and Manitoba.

Two provinces, Ontario and Saskatchewan, launched formal constitutional challenges. Hearings in the Saskatchewan government's case in the Saskatchewan Court of Appeal began on February 13, 2019, and in the Ontario government's case in the Ontario Court of Appeal on April 15, 2019. Saskatchewan and Ontario argued that the federal government does not have the jurisdiction to impose its current carbon pricing regime on the provinces. New Brunswick, Manitoba, and Alberta pledged to support the challenges brought by other provinces and/or launch their own legal challenge to the carbon tax.

## Broader Context

These developments in Canada must be viewed in the broader international context, within which far more aggressive GHG reductions are understood to be essential to avoid the most damaging climate change impacts. The [IPCC Special Report on Global Warming of 1.5 °C](#) (1.5 °C Report) outlined the dangers posed by global warming of 1.5 °C (which we are on track to reach between 2030 and 2052 on the current trajectory) and the far greater dangers posed by global warming of 2 °C or more. The 1.5 °C Report concluded that limiting global warming to meet the 1.5 °C target would require a “global net anthropogenic CO<sub>2</sub> emissions decline by about 45% from 2010 levels by 2030 . . . , reaching net zero around 2050”.

The 1.5 °C Report, and other similar reports from authorities in the [United States](#) and [Canada](#) are fuelling [student](#) and other [protests](#) and proposals, such as those in the “[New Green Deal](#)” calling for a radical overhaul of energy systems to enable a rapid transition away from the use of fossil fuels. Despite the Canadian federal government's endorsement [in Paris](#) and [since](#) of the 1.5 °C target, progress to date has been limited, and [Canada's 2017 emissions](#) actually increased by 8 Mtonne CO<sub>2</sub>e relative to 2016.

## *Canada Not on Track to Meet International Commitments*

Canada is a party to the Paris Agreement, which was ratified in October 2016. As part of the international agreement to keep the global temperature rise this century below 2°C and pursue efforts to further limit the increase to 1.5°C, Canada made a commitment to reduce its GHG emissions by 30% (relative to emissions levels in 2005) by 2030. However, recent reports from federal and provincial agencies indicate Canada is not on track to meet its commitments under the Paris Agreement.

The federal Commissioner of the Environment and Sustainable Development's [2018 Spring Report](#) examined Canada's preparedness to implement the United Nations' 2030 Agenda for Sustainable Development (2030 Agenda), which includes the Paris Agreement. The report found a lack of a governance structure and limited national consultation and engagement on the 2030 Agenda and concluded the federal government is not adequately prepared to implement its international commitments.

Furthermore, according to Ontario's former Environmental Commissioner's [2018 Greenhouse Gas Progress Report](#), the federal government's current climate change plans will not reduce emissions enough to meet these commitments. Ontario's decision to cancel the cap and trade program further hinders Canada's ability to achieve its climate change goals.

## Summary

There is a growing awareness of the seriousness of the risks associated with climate change. Environment and Climate Change Canada's latest [report](#) finds that continued climate change is expected to cause more climate disruption. With the warming trend projected to intensify, Canada will likely experience more extreme weather, changes in precipitation, decreases in snow and ice coverage in the Arctic, increased risk of freshwater shortages, droughts and wildfires, changes to the ocean ecosystems and rising sea levels.

In the longer term, growing public awareness of the serious consequences of climate change may be expected to prompt the development of a more ambitious carbon pricing program and/or more rigorous regulatory responses by the federal and provincial governments in Canada. For its part, the cleantech sector needs to more effectively promote its current and potential contributions to the Canadian economy, and to highlight the benefits and falling prices of renewable energy and other readily available cleantech solutions. While the changing priorities of different governments across Canada is a source of uncertainty for the cleantech sector, opportunities for growth and innovation abound, both at home and abroad, and the longer term future remains bright.

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We are preparing a further Update on the federal Output-Based Pricing System and the Ontario industrial Emission Performance Standards which we plan to issue shortly, and will continue to monitor and provide Updates on further developments relevant to the sector.

For further information on this Update, please contact any member of our [Cleantech Practice Group](#).

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The authors would like to thank Ti-Anna Wang, Articling Student-at-law, for her assistance in writing this Update.

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