

Energy Transition Series: What is Energy Transition?

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Welcome to the first of a three-part Energy Transition Series that will examine the changing legal and industry trends behind the emergence of the new renewable energy market.

Energy transition is a global shift towards decarbonization in all industries towards net-zero emissions. Governments, industry, and financial institutions across the globe are committed to - and have set - various carbon reduction targets, paving the way for a transition towards renewable energy and other technologies to achieve net-zero emissions.

Government Policy

Canada is a signatory to the *Paris Agreement*¹ and as part of its commitments following ratification of the agreement in 2016, the federal government announced a national “30 by 30” mandate to reduce greenhouse gas (GHG) emissions by 30% below 2005 levels by 2030. More recently, the federal government announced, following the Leaders Summit on Climate on April 22, 2021, that it would increase its “30 by 30” commitment to 40-45% and established a national floor of 36% in the 2021 federal budget.

The *Greenhouse Gas Pollution Pricing Act*² was introduced in 2018 to place a minimum price on GHG emissions with reference to the CO₂ equivalent or CO_{2e}. The federal legislation regarding emissions pricing applies to provinces who have not imposed an equivalent pricing mechanism to ensure there is a national minimum emissions price throughout Canada. This is commonly referred to as the “carbon tax” and is a polluter-pays mechanism to incentivize Canadian industry to meet the GHG emissions reduction targets imposed by the federal government. Currently, the minimum price for GHG emissions is \$40/tonne of CO_{2e}. The minimum price of CO_{2e} will increase by \$15/tonne until it reaches a cap of \$170/tonne in 2030.³ In March 2021, the Supreme Court of Canada ruled that the federal carbon tax imposed on provinces who have refused to implement their own carbon pricing framework is constitutional.⁴

Energy Transition for Companies

With increasing pressures from governments, investors, and consumers, companies are adapting and transitioning to a net-zero future. This extends beyond commitments to achieving net zero emissions on an individual scale and investing in all facets of climate tech. In 2020, Microsoft vowed to remove, at a minimum, all of the GHG that it has ever emitted by 2050 and administer a Climate Innovation Fund

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whereby it will invest \$1 billion over four years in new technologies and innovative sustainability solutions.⁵ Similarly, Amazon has launched a \$2 billion climate-tech fund, financed in whole from its balance sheet.⁶ In Canada, oilsands producers Canadian Natural Resources, Suncor, Cenovus, Imperial Oil, and MEG Energy have formed an alliance to collectively reach net-zero emissions from their operations by 2050.⁷

The International Energy Agency, an intergovernmental group, calculates that new patents related to core technologies like batteries, hydrogen, smart grids, and carbon capture are far outpacing those in other technologies, including fossil fuels.⁸

The provinces and territories differ widely in their approach to carbon pricing. The full federal backstop is an output-based pricing system (OBPS), a regulatory trading system for industry, and a fuel charge.⁹ The provinces and territories have generally adopted some combination of a provincial carbon tax, fuel charge, cap-and-trade system, or reliance on the federal OBPS.¹⁰

Energy Transition for the Financial Services Industry

As part of the transition towards a net-zero economy, government policy is being reinforced by senior international lenders, insurers, and capital markets. In particular, an increasing number of financial institutions are offering green bonds. The core principles of green debt instruments are that the proceeds must be used for green projects and the borrower must maintain certain environmental sustainability covenants regarding their operational practices.

An increasing number of lenders are assessing environmental, social and corporate governance (ESG) risk as part of their due diligence on prospective borrowers and their projects. Many institutional lenders are committed to the “*Equator Principles*,” which serve as an ESG risk management framework and are integrating them into their internal environmental and social policies, procedures and standards for financing projects.¹¹ Currently, 118 financial institutions have adopted the Equator Principles to mitigate climate transition risks. It is now widespread that ESG needs to be an integral part of any entity from inception.

In a similar vein, Institutional Shareholder Services (ISS) guidelines, to which Canadian reporting issuers adhere, have changed their guidelines to mitigate climate transition risks. Following a 2020 global policy survey, where 75% of investors agreed with the statement that it is appropriate to consider a vote against directors who are deemed to be responsible for poor climate change risk management oversight, ISS added language identifying “demonstrably poor risk oversight of environmental and social issues, including climate change” to its list of examples of material risk oversight failures by a board that would result in a recommendation of “against” or “withhold” for directors, committee members or the whole board.¹²

With governments, industry, and financial institutions committed to achieving net-zero emissions, there will be a vast number of opportunities in the coming years in all aspects of the emerging green economy.

Cassels provides strategic legal advice to clients across the country on Canada's transition to a low-carbon economy. Our lawyers have experience advising clients in the financial services, mining, oil & gas, renewable energy, and cleantech industries on energy transition matters. Energy transition opportunities for companies include carbon credits, green loans, building retrofits, battery metals, electric vehicles, carbon capture, use and storage (CCUS), low carbon fuels, and power purchase agreements for renewable energy. Our energy transition team has deep experience with the financing (debt and equity) of these projects and industries.

This is the first of a three-part Energy Transition Series that examines the changing legal and industry trends behind the emergence of the new renewable energy market. Topics include:

- *Energy transition overview*
- *Legal and regulatory trends in the Canadian energy industry*
- *Energy transition in the financial services industry*

¹ *Paris Agreement*, 12 December 2015, UNTS 54113 (entered into force 4 November 2016), online (PDF):

<treaties.un.org/doc/Publication/UNTS/No%20Volume/54113/Part/I-54113-0800000280458f37.pdf>.

² *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186.

³ John Paul Tasker, "Ottawa to hike federal carbon tax to \$170 a tonne by 2030", *CBC News* (December 11, 2020), online: <[cbc.ca/news/politics/carbon-tax-hike-new-climate-plan-1.5837709](https://www.cbc.ca/news/politics/carbon-tax-hike-new-climate-plan-1.5837709)>.

⁴ References re *Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, as discussed in Cassels Comment (March 26, 2021), online: <https://cassels.com/insights/supreme-court-of-canada-finds-that-carbon-tax-backstop-is-constitutional/>.

⁵ Luca D'Urbino, "Billions are pouring into the business of decarbonisation", *The Economist* (August 21, 2021), online: <<https://www.economist.com/business/billions-are-pouring-into-the-business-of-decarbonisation/21803649>> [The Economist]

⁶ *Ibid.*

⁷ Chris Varcoe, "Varcoe: An energy transition on hyper-speed takes off in Canada", *Calgary Herald* (June 28, 2021), online: <calgaryherald.com/opinion/columnists/varcoe-an-energy-transition-on-hyper-speed-takes-off-in-canada>.

⁸ *The Economist*, *supra* note 1.

⁹ Department of Finance Canada, "Exploring Border Carbon Adjustments for Canada" (last modified August 5, 2021), online: <canada.ca/en/department-finance/programs/consultations/2021/border-carbon-adjustments/exploring-border-carbon-adjustments-canada.html>.

¹⁰ *Ibid.*

¹¹ The Equator Principles Association, "The Equator Principles" (last visited August 12, 2021), online: <equator-principles.com/about/>.

¹² Kalyeena Makortoff, "ISS updates proxy voting policy against directors who fail to address climate change", *The Guardian* (February 15, 2021), online: <theguardian.com/business/2021/feb/15/iss-updates-proxy-voting-policy-against-directors-who-fail-to-address-climate-crisis>.