

**Ecojustice Canada’s Responses to “Call for Inputs:**

**Climate Change and Human Rights: a Safe Climate”**

***Question 1 - Response***

Climate change is affecting the rights of Canadians to life, liberty, security of the person and a clean and healthy environment in various ways. Due to space limitations, only select examples are included below. We recommend reviewing the documents cited herein for a more complete picture of how climate change is impacting human rights in Canada.

1. Vulnerable Communities

The Government of Canada recognizes that “seniors, children and infants, the socially and economically disadvantaged, those with chronic diseases and compromised immune systems, Aboriginal people, and residents of northern and remote communities [are] more vulnerable” to the health impacts of climate change.[[1]](#footnote-1)

Northern and Remote Communities: Northern communities are being disproportionately affected by climate impacts, such as melting permafrost and loss of winter roads resulting from sea ice decline, which have direct consequences for community and economic activity. The effects of climate change could also make them more vulnerable to food security issues. The homelands, culture, traditional knowledge, and hunting practices of northern Indigenous peoples could also be directly affected.[[2]](#footnote-2) The negative impacts on the ability to hunt, trap, harvest and travel to cabins in northern communities has also been shown to negatively affect mental health.[[3]](#footnote-3)

Coastal Communities: Many parts of Canada’s coastline are rising. For instance, sea levels in Halifax, N.S., has been rising at 3.3 mm per year[[4]](#footnote-4) and it is anticipated that Lennox Island, P.E.I. could be underwater in 50 years.[[5]](#footnote-5) Climate change affects health in coastal regions through population displacement and social disruption due to land loss from sea-level rise, flooding and erosion, and changes in biodiversity, which affects cultures and use of natural resources.[[6]](#footnote-6)

1. Specific Climate Change Impacts

Flooding: Increased flooding results in a variety of potential negative effects on infrastructure, housing, property and health. For example, storm surges combined with the large expanse of low-relief area in the Mackenzie River Delta, N.W.T., can result in flooding over large areas as far as 100 km upriver from the coast.[[7]](#footnote-7) Floods have been associated with a range of mental health issues including PTSD, increased social disruption, violent behavior, substance abuse and increased suicide risk.[[8]](#footnote-8)

Wildfires: Increased risk of, frequency, and severity of wildfires has displaced communities, damaged property, and affected air quality in nearby communities. For example, northeastern Alberta communities, such as Fort McMurray and High Level recently suffered wildfires that lead to numerous evacuations and serious air quality warnings across the entire province.[[9]](#footnote-9) Other affected communities include Interior BC communities such as Williams Lake and Kamloops[[10]](#footnote-10)

Extreme Heat: Projections show a likely average temperature increase of several degrees Celsius across Canada.[[11]](#footnote-11) Health Canada states that “[w]ithin Canada, the effects of extreme heat have already been observed, and are expected to increase.”[[12]](#footnote-12) A combined increase in hot days and warm nights is likely to “cause significant increases in heat-related morbidity and mortality”[[13]](#footnote-13) particularly among young, elderly and frail people.[[14]](#footnote-14) In 2018, there were an estimated 70 deaths resulting from a heat wave in Quebec.[[15]](#footnote-15)

Drought: Increased drought is affecting various communities across Canada. For example, dwindling food source for cattle and other livestock is affecting farming yields and the farming season from Vancouver Island to Manitoba.[[16]](#footnote-16) Drought is known to affect respiratory health, mental health, illnesses related to exposure to toxins, food/water security, rates of injury and infectious disease.[[17]](#footnote-17)

Food insecurity: Higher temperatures and changing precipitation patterns are leading to observed impacts relevant to non-commercial food systems and security in rural and remote environments.[[18]](#footnote-18) Further, melting glaciers are causing short term flooding and may result in long term drought after they are gone, leading to observed impacts relevant to non-commercial food systems and security in rural and remote environments.[[19]](#footnote-19)

Infectious Disease: Climate change affects human exposure to various diseases. Some increased risk has already been observed. The best example is with Lyme disease, which is carried by blacklegged ticks. Projections indicate that climate change will continue to drive geographic expansions of blacklegged tick habitat even under aggressive GHG reduction scenarios that achieve the Paris Agreement target of well below 2°C.[[20]](#footnote-20)

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***Question 2 - Response***

Canada, along with many of its provinces, has recognized its responsibility to take action to address climate change. However, there is no comprehensive federal climate change legislation in Canada. Our climate targets are not mandatory, and are inconsistent with Canada’s fair share contribution to a 1.5°C warming scenario, let alone 2°C.[[21]](#footnote-21)

Ontario phased-out coal in 2014.[[22]](#footnote-22) Alberta committed to phasing out coal by 2030, but it is unclear whether the new provincial government will retain that commitment.[[23]](#footnote-23) In 2018, Canada introduced regulations that would phase out traditional coal-fired plants by 2030.[[24]](#footnote-24)

Alberta and Canada have both enacted regulations to reduce fugitive emissions of methane in the upstream oil and gas sector, [[25]](#footnote-25) although the Alberta regulations are not equivalent to the federal regulations and will not achieve the same reductions.[[26]](#footnote-26)

***Question 3 – Response***

Some positive developments within Canada include:

1. Pan-Canadian Framework on Clean Growth and Climate Change (“Framework), including implementing a carbon price (see Response 4 for more details). This Framework provides a first step towards addressing climate change in Canada.
2. Creation of the Pan-Canadian Expert Collaboration Institute (“Climate Institute”), an independent agency with research, advising and reporting obligations. The role of the Climate Institute should be expanded and coordinated with other related agencies to create more climate oversight and accountability in Canada.
3. Reducing carbon emissions from transportation by investing in charging stations, improving and expanding public transit, encouraging the sale of new, fuel-efficient vehicles, and implementing Canada’s clean fuel standards.[[27]](#footnote-27)

Positive examples in other countries include:

1. Climate accountability legislation enacted in various other countries, such as the UK, New Zealand, Sweden, the Netherlands and Finland. This includes legislated targets, carbon budgets, mandatory reporting requirements and an independent climate watch dog to track progress.[[28]](#footnote-28)
2. Over 100 jurisdictions around the world have enacted laws that protect citizen’s right to a healthy environment, including a stable climate.[[29]](#footnote-29)
3. Many countries have recognized the right to a healthy environment in their Constitution, such as South Africa and Brazil.[[30]](#footnote-30) Various jurisdictions have recognized nature as a legal entity or “Rights of Nature”, such as Ecuador, New Zealand and Brazil.[[31]](#footnote-31)

***Question 4 - Response***

In 2018, Canada introduced regulations that would phase out traditional coal-fired plants by 2030.[[32]](#footnote-32)

There is no deadline set for ending the sale of motor vehicles with internal combustion engines in Canada. However, in British Columbia Bill 28 titled the *Zero Emissions Vehicle Act*, if enacted, prohibits the sale of a light-duty motor vehicle in 2040.[[33]](#footnote-33)

In 2018, the federal government instituted a national carbon price of $20/tonne carbon tax in 2019, which will increase to $50/tonne by 2022 to be implemented either by a provincial scheme or via federal “backstop” legislation. However, there are various exemptions to the carbon tax. For example, some large emitters will have 80-90% of their emissions exempted from the tax.[[34]](#footnote-34) Further, several provinces have challenged the constitutionality of a federal carbon tax.[[35]](#footnote-35) While the first court judgement upheld federal jurisdiction to enact the carbon tax,[[36]](#footnote-36) this issue will likely end up at the Supreme Court of Canada.

***Question 5 - Response***

Canada has failed to meet every greenhouse gas emissions target it has ever set, and is currently on track to miss the current 2030 target by a significant amount. [[37]](#footnote-37) This failure happens, in part, because there are no legal accountability mechanisms that obligate government to achieve those targets (see response 7 below for more details).

For example, there is no mechanism to track the progress made under the Framework. In particular, there is no requirement to demonstrate how the plans and policies that are implemented under this Framework will ensure that Canada achieves its emission targets. There is also a lack of integration between various decision-making points and the broader climate strategy. As a result, the Canadian government, along with its provincial counterparts, continues to issue regulatory approvals that cause increased GHG emissions. For example, there is no requirement that government demonstrate how project approval decisions will help or hinder Canada’s ability to achieve its climate commitments. This allows high-emitting projects such as the Frontier Teck Oil Sands Mine to be approved.[[38]](#footnote-38)

Another example is the abscondment of federal assessment of oil sand projects. As long as the province of Alberta has an oil sands emissions cap in place, the federal government has stated that it will not assess the climate impacts of in situ oil sands projects, even though they represent 80% of oil sands reserves and produce significantly more GHG emissions than oil sands mining.[[39]](#footnote-39) There is also evidence that oil sands emissions are not being accurately reported, such that the cap cannot be effectively enforced. In particular, recent reports published by federal government scientists indicate that oil sands emissions are much higher than what is being reported by operators (64% more CO2 emissions, on average). [[40]](#footnote-40) That means that Canada's total GHG emissions could be between 2-6% higher than estimated, just based on under-reporting from oil sands *mines*. That number could be significantly higher once the potential underestimations of emissions for *in-situ* projects is factored in.[[41]](#footnote-41)It is unclear how Canada can justify refusing to assess such a significant source of GHG emissions.

***Question 7 – Response***

1. In general, the lack of laws is a significant barrier. For example:
2. Canada does not have legislated climate targets or accountability mechanisms

Canada lags behind jurisdictions such as the UK, New Zealand, Sweden, the Netherlands and Finland, all of which have implemented climate accountability legislation. Our failure to join these ranks stands in stark contrast to Canada’s international commitment to lead on climate. Evidence demonstrates that domestic climate accountability legislation is a key means to consolidate political support for climate agendas, provide the framework for implementation of the Paris Agreement and for assessing progress, as well as to enable ratcheting-up of ambition going forward.[[42]](#footnote-42)

1. Canada has no laws that directly regulate the GHG emissions from the oil and gas sector

The Federal Government has promised many times that it would regulated GHG emissions in the oil and gas sector but failed to deliver. In the absence of federal regulation GHG emissions from the oil and gas sector have grown faster since 1990 than any other sector and now comprise the largest share of any sector within the Canadian economy.[[43]](#footnote-43) Federal decisions to approve major oil and gas export infrastructure (e.g. Keystone XL pipeline, Trans Mountain pipelines, Line 3 expansion, Line 9 expansion, LNG export terminals in BC), oil sands mines and offshore oil and gas projects ensure the oil and gas sector’s emissions will continue to grow until 2030 at least and continue at dangerous levels well beyond that time. The federal government’s decision to exclude *in situ* oil sands development under the federal assessment regime is also of concern.[[44]](#footnote-44)

1. Canada has not legislated national air quality standards OR a right to a healthy environment, including a right to a stable climate
2. Lack of Procedural rights

The three pillars of procedural rights (access to climate change information, public participation in decision-making about climate change, and access to justice and remedies) are not guaranteed in relation to climate change decision-making in Canada.

1. Canada is financing climate change

Canada’s current government has promised to end oil and gas subsidies, but has so far failed to do so. Canada currently subsidies the oil and gas industry over $3 billion a year.[[45]](#footnote-45)

1. Corporate power and regulatory capture in Canada

Corporate interests have swayed law-making time and time again in Canada. The most recent example is the development of. Bill C-69, which “represented a change to modernize how projects such as pipelines, hydro dams and mines are reviewed”.[[46]](#footnote-46) Industry lobbied hard to ensure that Bill C-69 was watered down to remove necessary environmental protections.[[47]](#footnote-47) Many of the amendments to the Bill are word-for-word what was asked for by energy lobby groups, including the Canadian Association of Petroleum Producers.[[48]](#footnote-48)

***Question 8 – Response***

We are not aware of any specific legislative or regulatory protections that are provided to vulnerable populations. One way to address this gap would be to legislate a substantive right to a healthy environment in Canada, including a stable climate, along with associated procedural rights. Vulnerable populations should be also be given access to free or low-cost supports, including legal advice and representation, to ensure they are aware of their rights and can enforce them.

In relation to Indigenous peoples specially, Canada needs to implementing UNDRIP and include Indigenous peoples in decision-making. Canada should also provide funding to support Indigenous-led initiative and solutions grounded in traditional knowledge to addressing climate change.[[49]](#footnote-49)

***Question 9 – Response***

There are no laws specifically focused on the rights of environmental or human rights defenders in Canada. However, we have the *Charter or Right and Freedoms*, which outlines general human rights provided to all Canadians, including the right to freedom of expression and the right of association.[[50]](#footnote-50)

The federal government recently removed restrictions placed on Canadian charities by the previous government which created perceived and real barriers to environmental organizations abilities to lobby for environmental protections in Canada.[[51]](#footnote-51)

However, the previous federal government’s legacy of attempting to silence environmentalists (e.g. having police monitor their activities, restricting their funding sources, and framing them as environmental radicals threatening Canada’s national security), is continuing in the province of Alberta.[[52]](#footnote-52)

The recently elected Alberta Premier has stated that environmental groups peddle misinformation about the oil industry and use foreign funds to wage public-relations and legal fights against oil and gas development.[[53]](#footnote-53) In his acceptance speech, Premier Kenney singled out environmental organizations stating that “I have a message to those foreign funded special interests ….Your days of pushing Alberta around with impunity just ended.”[[54]](#footnote-54) He went on to assert that the government will “use every means at our disposal to hold you to account.”[[55]](#footnote-55) This includes committing $30 million to fund a “war room” that will “push back" against environmental groups.[[56]](#footnote-56) The provincial government also plans to hold a public enquiry “into the foreign source of funds behind the campaign to landlock Alberta energy.”.[[57]](#footnote-57) As a result, a climate of fear and concern in the environmental community regarding the ability to exercise their rights and conduct their work as a result of the recent election has developed.

Strategic Lawsuits Against Public Participation (SLAPPs) are meritless lawsuits brought forward in an effort to silence citizens from speaking on an issue. These suits threaten citizens’ rights of association and freedom of expression. SLAPPs are on the rise in Canada. [[58]](#footnote-58) There is anti-SLAPP legislation to help protects citizens from being exposed to meritless lawsuits in one province, British Columbia, but legislation is needed nation-wide.[[59]](#footnote-59)

Sincerely,



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