

The Challenge of Federalism for Canadian Climate Policy

Kathryn Harrison
University of British Columbia

Climate Governance Policy Paper



The Forum of Federations, the global network on federalism and multilevel governance, supports better governance through learning among practitioners and experts. Active on six continents, it runs programs in over 20 countries including established federations, as well as countries transitioning to devolved and decentralized governance options. The Forum publishes a range of information and educational materials. It is supported by the following partner countries: Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Pakistan and Switzerland.

The Challenge of Federalism for Canadian Climate Policy

Kathryn Harrison

University of British Columbia

January 2023

Acknowledgement

We are grateful to the Government of Québec for providing the funding that has made this paper possible, spearheaded by the Secrétariat du Québec aux relations canadiennes, who have been such enthusiastic supporters and collaborators. This generous funding has supported the project on Climate Governance and Federalism: a Forum of Federations comparative policy analysis.

© Forum of Federations, 2023
ISBN: 978-1-988781-00-6

Climate Governance Policy Paper
The Challenge of Federalism for Canadian Climate Policy
By Kathryn Harrison, University of British Columbia

For more information about the Forum of Federations and its publications, please visit our website: www.forumfed.org.



Forum of Federations
75 Albert Street, Suite 411
Ottawa, Ontario (Canada) K1P 5E7
Tel: (613) 244-3360
Fax: (613) 244-3372
forum@forumfed.org

Suggested citation for this publication:
Kathryn Harrison, The Challenge of Federalism for Canadian Climate Policy
(Forum of Federations, Climate Governance Policy Paper, 2023)

The Challenge of Federalism for Canadian Climate Policy

Kathryn Harrison
University of British Columbia
January 2023

Climate Federalism in Canada¹

Federalism is a complex institution that offers both advantages and disadvantages for climate policy (Fenna, Jodoin and Setzer 2023). On the one hand, it creates opportunities for policy innovation and learning; potential for one order of government to act when the other has not; and opportunities for provinces or states to devise policies tailored to their unique economic or environmental circumstances and citizen preferences. On the other hand, overlapping jurisdiction can yield intergovernmental conflict and, at the limit, a “joint decision trap” in which policymaking grinds to a halt (Sharpf 1988). Left to their own devices, provinces may show little concern about pollutants like greenhouse gases that flow beyond their borders, and may be reluctant to regulate pollution as they engage in competition for investment and jobs.

Which of these dynamics prevails depends on the politics of climate policy at a given place and time, and the division of powers in a particular federation. Climate change is especially challenging in the Canadian federation for three compounding reasons. First, Canada’s federation is among the most decentralized in the world, which presents particular challenges for climate policy. Canada’s constitution grants provincial governments ownership of public lands, called “Crown lands”, which comprise 80 percent of the territory within their borders (Neimanis 2013) — though ownership is contested in many cases by Indigenous nations that never ceded their ancestral lands. Provincial governments thus control most natural resources, including subsurface fossil fuels and sites for generation of hydroelectricity. Canadian provinces have jealously guarded ownership of those resources as a source of both government revenue and economic development.

Second, fossil fuel resources are distributed very unevenly across the country: 80 percent of Canada’s oil and 66 percent of its gas are produced in a single province, Alberta. Moreover, lacking hydro-electric potential, the main oil-producing provinces of Alberta and Saskatchewan historically have relied on coal for electricity generation. The combined result is huge variation in the carbon intensity of provincial economies, from over 60 tonnes of carbon dioxide per person annually in Alberta and Saskatchewan to 10 tonnes per person per year in hydro-rich Quebec. Those provinces dependent on fossil fuel production for both domestic consumption and export not only are more threatened by climate action, but simultaneously empowered by Canada’s constitution to continue to develop those resources.

Third, the combination of parliamentary government, single member plurality electoral systems, and a federal system with only 10 provinces has given rise to a practice known as “executive federalism”, in which the Prime Minister and the Premiers or their Ministers regularly meet to discuss areas of overlapping jurisdiction. An informal norm of consensus decision making has long prevailed in the field of environmental and resource policy.

1 This commentary draws from Harrison (forthcoming).

These challenges have played out differently in three distinct periods, reflecting shifts in public concern and the climate ambitions of the federal government of the day.

The Joint Decision Trap (1990–2007)

The first period, from 1990 to 2007 epitomised the joint decision trap. A succession of Conservative and Liberal federal governments adopted ambitious national emissions reduction targets, most notably a 1992 commitment in Rio to return Canada’s emissions to 1990 levels by 2000, and a 1997 Kyoto Protocol commitment to reduce growing emissions to 6 percent below 1990 levels by 2008 to 2012. However, policy development was bogged down in federal-provincial negotiations. As Canada’s Environment Minister in the mid-1990s, Sheila Copps (2004), recalled, “it became clear that the rule of ‘consensus’ in the environmental agenda would mean moving to the lowest common denominator. There was no way that Alberta would agree to any reduction in fossil-fuel emissions”.

After negotiation of the Kyoto Protocol, the federal and Alberta governments co-chaired a joint process that failed to reach consensus after four and a half years of federal-provincial negotiations, at which point the federal government unilaterally released a national plan that was rejected by all provinces. Although the federal government proceeded to ratify the Kyoto Protocol in 2002, it never implemented any of the regulatory measures needed to meet Canada’s emissions target before the federal Liberal government lost the 2006 election. In the absence of meaningful federal or provincial policies, Canada’s emissions steadily increased to 27 percent above 1990 levels by 2007, driven primarily by emissions from oil and gas production and transportation.²

Truncated Leadership and Innovation (2007–2015)

The shift to the second period was driven by two changes: election of a Conservative federal government at best ambivalent about climate action, and a surge in public attention culminating in 2007 to 2008, at which point climate change was the issue most frequently identified by Canadians as ‘top of mind’. That prompted some provincial governments to take matters into their own hands. Innovative policies included British Columbia’s revenue-neutral carbon tax and Quebec extending cap-and-trade beyond industrial sources to household heating and motor vehicles in partnership with California. However, not all noteworthy climate actions during this period were innovative. The Ontario government eschewed carbon pricing in favour of traditional regulation to phase out coal fired electricity, thus contributing the single largest drop in Canada’s greenhouse gas emissions to that time.

Indeed, the issue was less how to devise policies to reduce greenhouse gas emissions than having the political courage to do so, knowing that effective climate policies can increase the cost of consumer prices and hinder the competitiveness of carbon-intensive industries. In response, four provinces (BC, Manitoba, Ontario, and Quebec) committed to act together, joining seven US states in development of a cross-border emissions trading program called the Western Climate Initiative. Their intentions soon were extended nationally by the newly-elected Obama Administration, which called on the US Congress to pass cap-and-trade legislation. That prompted the government of Canada to follow suit, promising to join a Canada-US trading scheme. However, when the US Senate failed to pass cap-and-trade legislation, that common resolve quickly unraveled. Canada withdrew its commitment to emissions trading, and one by one all provinces and states except Quebec and California suspended plans for emissions trading.

2 <https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/sources-sinks-executive-summary-2022.html>

The second period exhibited some of the strengths of federalism: policy innovation; actions by provinces in response to the demands of their own electorates; and provincial action in a vacuum of federal inaction. However, policy innovations did not spread to other provinces, and leadership by some provinces did not reassure others sufficiently to follow suit. As a result, emissions reductions by the leaders were overwhelmed by continued emissions growth by laggards, most notably in the oil-producing provinces. Canada's emissions continued to increase to late 2008, when the global financial crisis led to a temporary emissions decline.

Federal Unilateralism (2015–2022)

The third period was ushered in by two critical elections in 2015. The left-of-centre Alberta NDP formed government for the first time ever, a result of vote splitting between two conservative parties. In anticipation of COP21 in Paris and a federal election expected to yield a change in government, the Alberta NDP government quickly devised a new climate plan that included extending the province's carbon price on industry to households; increasing the Alberta carbon price to match BC's carbon tax; phasing out coal-fired power by 2030; and capping oil and gas production emissions at 100 MT, 50 percent above current levels. Although the province's emissions were expected to continue increasing to 2030, commitments to a broad-based carbon tax and a cap on oil and gas emissions by an oil-dependent province were celebrated internationally.

Alberta's climate plan opened the door for the Liberal federal government formed after the 2015 federal election. In the election, the Liberals had promised to extend carbon pricing Canada-wide (though at an unspecified level), in partnership with the provinces. At the time, BC had a carbon tax, Quebec was engaged in emissions trading with California, Ontario was committed to joining that trading system in 2018, and Alberta had a hybrid carbon pricing scheme. In a rare moment of federal-provincial consensus on climate, between 2016 and 2017 all provinces but Saskatchewan signed on to the Pan-Canadian Framework, which committed among other actions to establish a Canada-wide carbon price to reach \$50 per tonne of carbon dioxide by 2022.

Underlying that moment of consensus was a subtle but significant shift in Canadian environmental federalism. In the fall of 2016, the Prime Minister announced that if any provincial government did not meet the federal government's expectations with respect to the level and scope of carbon pricing, the federal government would impose a carbon price in that province. The federal government's hard line, a sharp departure from the long-standing norm of federal-provincial consensus, was critical to gaining agreement of most provinces to establish their own carbon pricing schemes. Moreover, when governments subsequently elected in Alberta and Ontario reneged on that commitment, and Saskatchewan, New Brunswick, and Manitoba failed to comply with the federal benchmark, the federal government followed through on its threat — implementing a federal "fuel levy" with rebates to households in five of ten Canadian provinces in 2019 and 2020. The other five provinces continued or established their own policies deemed by the federal government to meet its carbon pricing benchmark.

The federal government's action was challenged as unconstitutional by the provinces of Alberta, Saskatchewan, and Ontario. In 2020, however, the Supreme Court ruled that the carbon pricing regime was a legitimate exercise of federal authority. British Columbia was the only province that intervened in support of the federal law. Even Quebec, a provincial climate leader, joined the constitutional challenge, consistent with the Francophone province's longstanding defence of provincial autonomy. Critical to the Court's reasoning was that although provincial governments had clear authority to regulate greenhouse gas emissions within their borders, measures

implemented by provincial climate leaders could be and, indeed, had been undermined by the inaction of other provinces.

In this period, the federal government took two further actions to advance climate policy unilaterally. In December 2020, it released a new climate plan that committed to a steady increase in the Canada-wide carbon price from \$50 per tonne of CO₂ in 2022 to \$170 per tonne in 2030. Provincial governments were neither afforded a veto nor even forewarned. The federal government also acted to close loopholes in its original benchmark for provincial carbon pricing that had allowed some provinces to undermine the carbon price, for instance, by setting facility-specific rather than sectoral baselines for large emitters or rebating consumers' carbon taxes at the pump.

In 2021, the federal government passed carbon budget legislation, the Net Zero Emissions Accountability Act, which called on the federal Minister of Environment and Climate Change to ensure that Canada had a credible and regularly updated plan to meet its 2030 Paris Agreement target and longer-term goal of net zero by 2050. Although the law directs the Minister to consult with the provinces, she or he is not required to gain their consent. Indeed, should provincial governments not be willing to undertake actions needed to meet national emissions targets, under the new law it is the responsibility of the federal Minister to employ federal authority to do so.

After decades of ambitious targets with little or no follow through that allowed steady emissions growth, the third period finally saw significant climate policy development in Canada, including adoption of federal methane regulations, a low carbon fuel standard, regulations to phase out coal-fired electricity nationally by 2030, and carbon pricing. The federal government also matched tighter US tailpipe standards, as previous governments had done, though it would be difficult not to do given the tight integration of Canadian and US auto manufacturing. Although Canada has yet to see a reduction in its total emissions, there has been a levelling off and independent assessors have concluded that the most recent federal climate plan, released in 2022, could credibly be expected to meet Canada's updated Paris Agreement target to reduce emissions to 40 percent below 2005 levels by 2030 — though with no room for slippage (Sawyer et al. 2022).

Fundamental to that newfound ambition was the federal government's rejection of the norm of federal-provincial consensus and willingness to impose federal climate policies over the objections of provincial governments. To be sure, the federal government continues to express a preference for provincial governments to act in the first instance, including on its signature policy of carbon pricing. However, the government of Canada no longer allows provincial governments what has effectively been a veto over climate action. As the goal has shifted from federal-provincial consensus to climate action, Canada has belatedly begun to make progress in mitigating climate change.

Conclusion

Climate policy in Canada is challenging for reasons unrelated to federalism. Not only does Canada produce fossil fuels for export and host other fossil fuel-intensive industries, but Canadians drive the least fuel-efficient vehicles in the world and live in among the largest houses, typically heated by fossil fuels. Actions to reduce emissions threaten both incumbent industries and Canadian voters' reliance on abundant and inexpensive fossil fuels.

Canadian federalism has exacerbated these challenges, however. Provinces endowed with fossil fuels have long relied on those publicly-owned resources as a source of both government

revenue and political support via job creation. Not surprisingly, the provinces most dependent on fossil fuels have been most resistant to action to reduce Canada's emissions, let alone fossil fuel production for export. Federal-provincial agreement on actions to mitigate climate change has been elusive for three decades.

Against this backdrop, Canada has seen both the negative and positive dynamics of climate federalism. Some provinces have adopted innovative policies, including emissions trading and carbon taxes. Others have shown leadership in unilaterally adopting policies to reduce their emissions during a period of federal government inaction. However, provincial leaders have been short of followers, and their hard-fought emissions reductions have been undone by emissions growth in other provinces. For twenty-five years, an informal norm of federal-provincial consensus stymied federal action. It was only after 2015 that the federal government demonstrated willingness to forgo intergovernmental consensus, thus opening the door to belated adoption of a host of promising climate policies.

On balance, how do the advantages and disadvantages of federalism for Canadian climate policy compare? Some have argued that although provincial leadership after 2007 did not spread to all provinces, it nonetheless laid the foundation for Canada-wide action by the federal government after 2015. Yet if not for resistance from some provinces combined with a norm of intergovernmental consensus, it is likely the federal government would have initiated stronger action on climate change two decades earlier, before emissions surged in fossil fuel-producing provinces, thus exacerbating the challenge all Canadians face today. Just as global action on climate demands binding commitments through international treaties, the challenge of cross-boundary pollution cannot be left to constituent units within a federation such as Canada's, where some provinces are economically dependent on fossil fuel production.

References

- Cops, S. 2004. *Worth Fighting For*. Toronto: McClelland and Stewart.
- Fenna, A, S. Jodoin and J. Setzer (2023). "Climate Governance and Federalism: an introduction". In Alan Fenna, Sébastien Jodoin, and Joana Setzer, eds, *Climate Governance and Federalism: a Forum of Federations comparative policy analysis*, 1–13. Cambridge: Cambridge University Press.
- Harrison, K. (2023). "Climate Governance and Federalism in Canada." In Alan Fenna, Sébastien Jodoin, and Joana Setzer, eds, *Climate Governance and Federalism: a Forum of Federations comparative policy analysis*, 64–85. Cambridge: Cambridge University Press.
- Neimanis, V.P. 2013. "Crown Land | The Canadian Encyclopedia." *The Canadian Encyclopedia*.
- Sawyer, D, B. Griffin, D. Beugin, F. Förg, and R. Smith. 2022. "Independent Assessment: 2030 Emissions Reduction Plan," Ottawa: Canadian Climate Institute.
- Scharpf, F. W. 1988. "The Joint-Decision Trap: lessons from German federalism and European Integration." *Public Administration* 66 (3): 239–78.

Author

Kathryn Harrison is Professor of Political Science at the University of British Columbia. Before entering academia, Harrison worked as an engineer in the oil industry and a policy analyst for Environment Canada and the United States Congress. She has published widely on Canadian and US climate policy. Harrison is currently chair of the Mitigation Expert Advisory Panel of the Canadian Climate Institute, and a member of the British Columbia Climate Solutions Council.

ISBN: 978-1-988781-00-6



Forum of Federations
75 Albert Street, Suite 411
Ottawa, Ontario (Canada) K1P 5E7
forumfed.org