

DELIVERED BY EMAIL

The Hon. Catherine McKenna
Minister of Environment and Climate Change
Environment and Climate Change Canada
200 Sacré-Coeur Boul., 2nd Floor
Gatineau, Quebec K1A 0H3

The Hon. Bill Morneau
Minister of Finance
Finance Canada
90 Elgin
Ottawa, Ontario K1A 0G5

February 12, 2018

Dear Ministers McKenna and Morneau,

Re: Legislative Proposals Relating to the *Greenhouse Gas Pollution Pricing Act*

Strong action to immediately reduce greenhouse gas (“GHG”) emissions is absolutely essential. The Canadian Environmental Law Association (“CELA”) has been advocating for a GHG emissions price for many years and we support the government of Canada’s decision to introduce a GHG pricing system across the country. The *Greenhouse Gas Pollution Pricing Act* has the potential to be a key piece of environmental legislation, but requires significant strengthening to fulfill its promise.

The purpose of GHG emissions pricing is to incentivize a change in corporate, government and individual behaviour by internalizing the price of GHG pollution. The current design of the *Greenhouse Gas Pollution Pricing Act* will not support an adequate change in behaviour because the price of GHG emissions is too low and large industrial emitters are exempted from paying any price for emissions except above a set emissions-intensity level.

The policy design of the *Greenhouse Gas Pollution Pricing Act* must incorporate environmental justice concerns and appropriately address the impact of climate change policy on low-income and vulnerable communities.

A. Background on Canadian Environmental Law Association

The Canadian Environmental Law Association (“CELA”) is a non-profit, public interest group established in 1970 to apply existing laws to protect the environment and advocate for environmental law reform. CELA is also an Ontario Legal Aid clinic representing low-income citizens and citizens' groups in environmental cases.

Canadian Environmental Law Association

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B. Legislative Proposals Relating to the *Greenhouse Gas Pollution Pricing Act*

(i) Purpose Clause

The *Greenhouse Gas Pollution Pricing Act* will be landmark environmental legislation in Canada. It would assist in its interpretation to include a purpose clause that stresses (1) the urgency of action to mitigate GHG emissions in Canada, (2) Canada's international GHG emissions reduction commitments, (3) the disproportionate impact of climate change on low-income and vulnerable communities, and (4) the priority to assist low-income and vulnerable communities in their transition to a decarbonized economy.

(ii) Low-Income and Vulnerable Communities

The draft bill must include a mandatory requirement to address the impacts of climate change and GHG emissions pricing on low-income and vulnerable communities in a purpose clause, subsection 164(2), and subsection 179(1).¹

Canada must ensure that the transition to a decarbonized society is just and equitable. The burdens of climate change are fundamentally unjust: vulnerable communities are responsible for the least GHG emissions, but are faced with the most severe effects of climate change.² As acknowledged by the Working Group on Carbon Pricing Mechanisms' Final Report, GHG pricing programs are known to be regressive in that any increase in the price for food, transportation or energy consumption constitutes a disproportionate share of a low-income person's income.³ Canada must protect low-income communities from the double burden of disproportionate climate impacts and regressive carbon pricing.

The Pan-Canadian Framework on Climate Change acknowledges the regressive nature of carbon pricing at page 8 by suggesting that carbon pricing policies should include "revenue recycling" to avoid a disproportionate burden on vulnerable groups and Indigenous Peoples.⁴ However, there is nothing in the draft bill to meet this goal. Although the federal government plans to

¹ Legislative Proposals Relating to the *Greenhouse Gas Pollution Pricing Act*, ss 164(2), 179(1) [*Draft Legislative Proposals*]

² Marc Lee, *Fair and Effective Carbon Pricing: Lessons from BC* (Vancouver: Canadian Centre for Policy Alternatives, February 2011) [*Fair and Effective Carbon Pricing*] Online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2011/02/CCPABC_Fair_Effective_Carbon_FULL_2.pdf>.

³ Government of Canada, Environment and Climate Change Canada, *Working Group on Carbon Pricing Mechanisms' Final Report*, (c2016), at s. 5.1.2, 27-28, [*Working Group, Final Report*] online: <http://publications.gc.ca/collections/collection_2016/eccc/En4-287-2016-eng.pdf>.

⁴ Government of Canada, Pan-Canadian Framework on Clean Growth and Climate Change, (b2016) at 8 and 50, [*Pan-Canadian Framework*] online: Government of Canada <<https://www.canada.ca/en/services/environment/weather/climatechange/pan-canadian-framework/climate-change-plan.html>>.

return proceeds from the GHG emissions pricing scheme to the provinces, there must still be a mandatory requirement to assist low-income and vulnerable communities in the legislation.

It is standard for GHG pricing schemes to address inequalities faced by low-income and vulnerable communities. British Columbia's GHG tax scheme includes a Low Income Climate Action Tax Credit.⁵ In Alberta, low and middle income citizens receive a rebate for costs associated with the carbon levy.⁶

(iii) Open-ended Authority to Enact Regulations Should be Removed

We urge the government to remove the provisions in the draft bill which grant open-ended authority to cabinet to create regulations, especially because the grants of authority do not appear to contemplate any clear objective. The draft bill leaves too much discretion to the federal government to pass regulations, which will not be subject to a rigorous public and Parliamentary review process. For instance, section 26 provides:

Subject to this Part, a prescribed person, a person of a prescribed class or a person meeting prescribed conditions must pay to Her Majesty in right of Canada a charge in respect of a type of fuel or combustible waste in the amount determined in prescribed manner if prescribed circumstances exist or prescribed conditions are met. The charge becomes payable at the prescribed time.⁷

This language is far too broad and has no meaning. The Explanatory Note confirms that no specific situation is being contemplated in section 26.⁸ That type of open-ended language is repeated in numerous places throughout the draft bill and should be removed.

(iv) Price on Greenhouse Gas Emissions is too Low

Schedule 4 sets the price of CO₂e for 2018 at \$10, rising to \$50 in 2022. The federal GHG pricing bill is intended to be a floor for carbon pricing across the country. At a minimum, the design of the bill and the price of CO₂e must take into account the significant uncertainty about whether reductions achieved by this policy, and other initiatives, will allow Canada to meet the Framework Convention on Climate Change's goal of limiting global climate change to 1.5°C.⁹ In

⁵ *Income Tax Act*, RSBC 1996, ch 215, s 8.1; Low Income Climate Action Tax Credit Regulation, BC Reg 135/2008, s 2; British Columbia, "Low Income Climate Action Tax Credit" online: Government of British Columbia <<http://www2.gov.bc.ca/gov/content/taxes/income-taxes/personal/credits/climate-action>>.

⁶ Alberta Government, *Carbon Levy and Rebates*, last viewed February 8, 2018 <<https://www.alberta.ca/climate-carbon-pricing.aspx#p184s3>>.

⁷ *Draft Legislative Proposals*, s 26, Explanatory Notes Relating to the *Greenhouse Gas Pollution Pricing Act* and Related Regulations, at 35 [*Explanatory Notes*]; see other examples at *Draft Legislative Proposals*, ss 5, 27, 41(2), 57(2), *Explanatory Notes*, at 24, 35, 46, 58

⁸ *Explanatory Notes*, at 35.

⁹ UNFCCC, Decision 1/CP.21 "Adopting the Paris Agreement" 26 January 2016; see also Kevin Anderson and Alice Bows, *Beyond 'dangerous' climate change: emission scenarios for a new world*, 369 *Phil Trans R Soc A* 20 (2011) at 20-44.

particular, Canada has not explained how it will make 44 mT of reductions from “additional measures such as public transit and green infrastructure, technology and innovation, and stored carbon”.¹⁰

We recommend that the bill include Canada’s GHG emissions targets, with flexibility to make the targets more stringent over time but not more lax; the price of CO₂e; a regular review process to ensure that the price is high enough to achieve Canada’s GHG emissions reduction goals; and the mandatory factors to be considered in coming to an appropriate decision about the price, including:

- Canada’s international commitments relating to GHG reductions;
- Regular evaluation of the success of Canada’s other environmental policies to reduce GHG emissions;
- Ongoing evaluation of offsets and their success in reducing GHG emissions in Canada; and,
- Ongoing evaluation of new emitters and their emission levels.

Subsections 165 and 180, which relate to the applicability of the bill to the provinces, GHG pricing mechanisms in the provinces, and the fuel charges being imposed, should also include mandatory consideration of these goals.¹¹

(v) **Output-based Pricing System**

CELA disagrees with the government’s proposal in Part 2 of the draft bill to only charge industrial emitters for emissions above the emissions-intensity standard for the type of covered activity and to provide surplus credits to industrial emitters who emit less than the applicable GHG emissions limit.¹² The government’s Technical Paper suggests that the output-based model seeks to minimize competitiveness and carbon leakage risks.¹³ However, this approach does not bear any relationship to leakage concerns, which differ greatly across sectors of the economy and whose significance has been overstated.¹⁴ This approach is better understood as a program-wide

¹⁰ *Supra note 4*, Pan-Canadian Framework, at 45.

¹¹ *Draft Legislative Proposals*, s165(2), (3), (4), 180

¹² *Draft Legislative Proposals*, ss 173, 174, *Explanatory Notes*, at 97.

¹³ Government of Canada, Environment and Climate Change Canada, *Technical Paper on the Federal Carbon Pricing Backdrop* (Quebec: Environment and Climate Change Canada, 2017) at 17, online: Government of Canada <<https://www.canada.ca/en/services/environment/weather/climatechange/technical-paper-federal-carbon-pricing-backdrop.html>>

¹⁴ *Supra note 3*, Working Group, Final Report, s 5.4, p 34; Chris Bastille et al, *Pricing Greenhouse Gas Emissions: Impact on Canada's Competitiveness* (February 2009) 280 CD Howe Institute Commentary 1, online: CD Howe Institute <https://www.cdhowe.org/pdf/commentary_280.pdf>; and Ecofiscal Commission, *Provincial Carbon Pricing and Competitiveness Pressures* (November 2015) at 3-4, online: Ecofiscal <<https://ecofiscal.ca/wp-content/uploads/2015/11/Ecofiscal-Commission-Carbon-Pricing-Competitiveness-Report-November-2015.pdf>>

subsidy for industrial emitters. It significantly undermines the goal of GHG emissions pricing to incentivize behaviour change by internalizing the cost of GHG pollution. All background studies or evidence relied upon for this decision should be disclosed.

(vi) Offsets Raise Equity Concerns and Should be Minimized

Section 185 of the draft bill provides for regulations regarding an offsets credit system.¹⁵ The contours of any proposed offsets program should be included in the bill. Offsets are notoriously difficult to design to ensure that real and permanent GHG emissions reductions are produced. We look forward to carefully reviewing the proposed offsets program.

In considering an offsets program, Environment and Climate Change Canada must prioritize human health, the prevention of toxic chemicals from entering the environment, and the protection of the habitat of species at risk and other ecologically significant ecosystems. Canada should ensure, at the very least, that offsets initiatives do not further burden low-income and vulnerable communities. Low-income and vulnerable communities already disproportionately suffer from high levels of air pollution. In California, facilities subject to cap and trade were located in neighbourhoods with higher proportions of residents of colour and residents living in poverty, and facilities that emit the highest levels of greenhouse gases were also more likely to be located in those communities.¹⁶ In Ontario, the Aamjiwnaang First Nation reserve in Sarnia is one of the most polluted places in Ontario, and is located near 40% of Canada's chemical industry.¹⁷ Offsets allow big emitters, such as those located near Aamjiwnaang First Nation reserve, to continue to emit GHGs and other toxins at their current level, or even at higher levels, because they can purchase cheap offsets to meet the requirements of the GHG pricing regime.

C. All Government Actions must Support Canada's Efforts to Meet GHG Reduction Targets

If the federal government is truly committed to mitigating our GHG emissions, all of its actions must support the goals of the *Greenhouse Gas Pollution Pricing Act* and the Pan-Canadian Framework on Clean Growth and Climate Change. Federal government actions to support infrastructure projects that will result in increased GHG emissions, such as approval for Kinder Morgan's Trans Mountain pipeline project, or to include investor-state dispute provisions and unenforceable environment chapters in trade deals, severely undermine any climate action.

¹⁵ *Draft Legislative Proposals*, s 185.

¹⁶ Lara J. Cushing et al, *A Preliminary Environmental Equity Assessment of California's Cap-and-Trade Program*, (Los Angeles: University of Southern California, 2016) at 2.

¹⁷ Environmental Commissioner of Ontario, *Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario* (Toronto: Office of the Environmental Commissioner of Ontario, 2017) at 121.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in blue ink that reads "Jacqueline Wilson". The signature is written in a cursive, flowing style.

Jacqueline Wilson
Counsel