

The View from Canada

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I am delighted to be writing what I understand is the first “Views” column by someone other than the chair of the ABA Section of Environment, Energy, and Resources (Section). I recently commenced my one-year term as chair of the National Environmental, Energy and Resources Law Section (NEERLS), the Canadian Bar Association’s version of the Section. Members of NEERLS and the Section have enjoyed a very strong collaborative relationship, one that has produced, among other things, four very successful joint Section/NEERLS conferences. Claudia Rast has graciously invited me to contribute to this column as one further step in enhancing our already rich cross-border dialogue.

Our last joint conference with the Section was held in Ottawa this past spring on cross-border climate change and air issues. We had several very strong Canadian/American panels and our best attendance yet. What was powerfully evident at the event was how much we can learn from each other in this area. Until roughly two years ago, the environment was an issue that often ranked in the top ten in public opinion polls in Canada, but virtually never cracked the top three election issues. It has now become one of the principal distinguishing issues for Canada’s federal political parties. A similar focus is also evident at the provincial level, where we are greeted nearly every week with announcements of new climate-change-related initiatives, each one positioned as a more aggressive response to the warnings of climate science.

Unfortunately, although widely acknowledged to be moving in the right general direction, our politicians are arguably losing sight of the fundamental importance of a coordinated government response nationally as well as regionally across North America. One result has been an increasingly fractious debate about how aggressive our emissions cuts should be and whether instruments such as taxes can be sensibly used to help price carbon. Two of our least fossil-fuel-dependent provinces, Quebec and British Columbia, have both weighed in on the latter issue by implementing car-

bon taxes, and the official federal opposition Liberal party recently staked its election hopes on a proposed national carbon tax. Our prime minister responded to the proposed national carbon tax with unusual vehemence, calling it “crazy” and indicating “it will actually screw everyone across the country.”

The debate on appropriate emissions cuts is nearly as shrill, with all the federal opposition parties agreeing the government’s soon-to-be implemented cuts to the emissions intensity (as opposed to absolute emissions) of major industry sectors are not aggressive enough. Several provinces have also proposed their own absolute emissions caps, in part to pave the way for integration with North American regional plans like the Western Climate Initiative. Our federal government, this time through the Environment Minister, responded in June to one such joint provincial proposal (from Ontario and Quebec) by describing it as a “rogue initiative.” Alberta, Canada’s most fossil-fuel-based economy, has raised the possibility of a constitutional challenge to any attempt by the federal government to impose a national program inconsistent with its interests.

The good news for Americans is that Canada is already an early testing ground for policy initiatives that are still being debated in the United States. Hopefully, we Canadians will get it right the first time, but the “mistakes to avoid” column may be a lot longer if our politicians continue to focus on scoring short-term political points rather than building consensus for an integrated long-term plan. In any event, there will be much for NEERLS and the Section to talk about and learn in this area in the foreseeable future. I hope you will join us in the discussion!

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