

Torys' Video Podcast Series: Climate Change

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Canada's Emerging Legislative Patchwork

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Dennis Mahony discusses Canada's emerging patchwork of provincial, federal and international regulations related to climate change.



Edited transcript

There is corporate fatigue on the issue of climate change, and frankly there's been corporate fatigue on this issue for 10 or 15 years now. In 1992, the UN Framework Convention on Climate Change really embodied the international consensus that this was a problem – that it needed international action – and the hope was that that would translate into domestic action. In fact, in Canada it translated into lots of rhetoric and lots of corporate investment over different phases, and trying to get up to speed and understand and influence the outcome, but ultimately, until very recently, no action. And what we've been waiting for, for far too long, is now beginning to affect corporate Canada in a significant way. And that's the reason why our clients are now starting to pay attention – because in fact it is now real.

So looking at this from the 50,000 foot level and the regulatory patchwork we see emerging, two core developments are very clear. One is a series of emissions-reduction and trading regimes that are popping up across the country, and the other is a similar movement, but on the carbon taxes front.

Emissions Reduction and Trading

On the emissions-reduction and trading front, the most significant development over the last couple of years has been the proposed national plan by the federal government. We first saw that in significant detail in the spring of 2007, and in 2008 we got hundreds and hundreds more pages providing an outline of what was to come. That reduction regime would apply across Canada to roughly 700 facilities called Large Final Emitters – think large steel and pulp and paper operations, for example. Together those facilities account for roughly 50% of Canada's GHG (greenhouse gas) emissions, and this plan would call for an 18% reduction of GHG emissions from the facilities by the end of 2010 – which is coming up quickly—and then a 2% reduction per year thereafter.

A couple of observations about the plan have been controversial: one, is it's intensity-based, which means the 18% reduction is per unit of production – no percentage reduction is required on the aggregate of GHG emissions – and that has been controversial because most other jurisdictions are going to what they call a "hard" cap-and-trade, meaning there *is* a percentage requirement on the aggregate of emissions. There is also considerable controversy – and anybody who's been paying attention to the media would know – that Canada has been clear that it will not meet its Kyoto commitments, and this plan doesn't purport to do that. The reductions are not in fact significant enough to be able to do that, and the federal opposition has been quite critical, saying in fact that what it would put in place would be more stringent and it would be a hard cap-and-trade regime.

On the provincial front, some provinces have moved aggressively to try to stake their own territory. Alberta in particular already has an emissions-reduction and trading regime up and running. Its first compliance period was the end of 2007, so we're now into the second year of that regime. It's not just a proposal, and Alberta facilities are having to deal with it right now. It looks a lot like the federal plan, and those two plans would likely be able to live in harmony – not true of Alberta's neighbours to the west.

B.C. (British Columbia) is in the process now of implementing a hard cap-and-trade plan, with aggressive targets. Quebec and Ontario have also announced that they will be putting in place a joint cap-and-trade regime, with aggressive targets as well. Alberta has been vocal in opposition to that move, and the federal government in fact described it as a rogue initiative, so it's shaping up to be a fairly shrill debate.

Carbon Tax

The theory of carbon tax is one that's been in the academic journals for some time, and it makes a lot of sense at one level. In Canada's case, the mandatory emissions and reductions regime will get only at 50% of the GHG problem, so you have to try to get at the other 50%. A carbon tax is one way to do that. It makes sense to attach a price to carbon so people will feel less inclined to use it and they may go for alternative energy sources. So in theory it's made sense for a long time.

It was a bit of a surprise in 2007 for Quebec to introduce one. It is a modest tax, only applied to producers and is set to raise roughly \$200 million annually. B.C. in 2008 – just this past summer – implemented their own tax, which is much broader-based and in fact is said to raise roughly \$2 billion by the end of 2011.

It would be a fair observation to say this sounds like a mess, and I think it's true that we're in for a very bumpy ride over the next three to five years. The reality is that we're in uncharted waters. This is not a challenge that any society so far has faced successfully, and other countries are also in their experimental phases as well. So I think of it as a necessary period of experimentation. I'm hopeful that the politicians think of it that way as well, and that what they'll be looking for over time as a collective is a consensus – a national consensus – and that they'll show the ability to take a step back from time to time, and retool and adjust their policy proposals on the basis of what they're learning in practice, as opposed to looking only at short-term political gain. That's the way I think we'll get through this. **T**