

Governance Implications in the Net-Zero Transition

Temitope Tunbi Onifade

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Canada Climate L'Initiative canadienne de droit climatique

About the Canada Climate Law Initiative

The Canada Climate Law Initiative (CCLI) is Canada's climate governance knowledge mobilization and policy hub. Using our academic rigour and active partnerships, we bring together knowledge, leading practice, and trusted insights to advise Canadian businesses and governments on how to respond to today's urgent climate risks and opportunities through effective climate governance. CCLI is led by three principal investigators, Dr. Janis Sarra and Dr. Carol Liao from the Peter A. Allard School of Law, University of British Columbia, and Professor Cynthia Williams from the Osgoode Hall Law School, York University. It is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at the Oxford University, United Kingdom.

CCLI acknowledges that the UBC Point Grey campus is situated on the traditional, ancestral and unceded territory of the x^wməθk^wəÿəm (Musqueam).

About the Author

Temitope Onifade is a researcher at Canada Climate Law Initiative. He has contributed to several projects, including "Connecting Canada's Climate Policy Network" and "6 Months to COP 26: 26 Canadian Climate Champions." Previously, he was a researcher at Commonwealth Climate and Law Initiative, where he co-authored "The Emergence of Foreseeable Biodiversity-related Liability Risks for Financial Institutions: A Gathering Storm?" Also, he taught law and practiced business law. As a scholar-practitioner, he has contributed to Canadian state and non-state low-carbon programs and the United Nations climate policy process. Mainly funded by the Vanier Scholarship and the International Doctoral Fellowship, his PhD at UBC explores state-business-civil society interactions in low-carbon regulation. He is a grateful recipient of over 40 other awards and grants from international organizations, governments, NGOs, and universities.

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Executive Summary

Canada ranks highly among the developed countries that have provided government support to the fossil fuel sector, but this situation is changing. To address the climate emergency, Canada has legally committed to achieving net-zero carbon dioxide (CO₂) and other greenhouse gas (GHG) emissions by 2050. How our federal, provincial, and territorial governments spend public dollars to meet this net-zero target is critically important as Canada finances its recovery from the COVID-19 pandemic. This report serves as a source of information to guide Canadian policymakers, business leaders, pension fiduciaries, and civil society members in their efforts to align fossil fuel subsidies with the country's net-zero policy targets. It includes recent information on our government's international policy commitments at the United Nations sponsored Twenty-Sixth Conference of the Parties (COP 26) that held from October to November 2021, federal ministerial mandates in December 2021 and other national responses as of February 2022 and forecasts other implications in Canada.

The author finds that Canada has federal, provincial, and territorial subsidies, but governments do not report enough data. However, based on recent data from governments and the International Institute for Sustainable Development (IISD), the leading research organization analysing data on fossil fuel subsidies in Canada, there is a conservative estimate: the combined federal, provincial, and territorial fossil fuel subsidies in Canada total at least \$4.8 billion annually in 2018 and 2019, and most were given by provincial and territorial governments. Federal subsidies tend to take the form of grants, but provincial and territorial subsidies are often from tax programs such as waivers and breaks as well as uncollected or under-collected resource rents or royalties.

From the available data, we see some patterns of fossil fuel subsidies in Canada. The federal government gives more subsidies to producers than consumers to incentivize the extraction of fossil fuels and/or reduce their emissions, and some subsidies have recently shifted focus from exploration to infrastructure development for production and export of Canadian fuels abroad. Subsidies that reduce emissions make oil, gas, coal, and fossil fuel products less GHG intensive and/or expand natural gas production to reduce the reliance on oil. Many provincial and territorial governments give consumption subsidies, although provinces such as Alberta and British Columbia have significant production subsidies as well. Consumption subsidies include tax exemptions for the use of fossil fuels such as gasoline, coal, natural gas, diesel, and propane.

Given Canada's race to net-zero, these federal, provincial, and territorial subsidies now have more negative than positive implications for Canadian society. The report classifies and discusses four governance implications: government transparency, climate policy effectiveness, climate justice, and risk exposure. While government transparency and some aspects of climate policy effectiveness and climate justice are better known, the risk exposure of companies, investments and fiduciaries have hardly been acknowledged. The report contributes on these four implications.

First, Canadian governments across levels do not report fossil fuel subsidies transparently to enable companies, financial institutions, and Canadian civil society members to adequately evaluate the costs and benefits. We do not fully understand how governments spend public dollars in subsidies.

Second, some fossil fuel subsidies cause more global warming and climate change, while others aim to reduce GHG emissions by promoting the use of low-carbon technologies such as renewable energy, energy efficiency and, controversially, carbon capture and storage. Fossil fuel subsidies therefore have two major implications for climate policy: the impact on GHG emissions reduction and on the finance of low-carbon technologies. How fast and well Canada transitions is at stake.



Third, fossil fuel subsidies disproportionately impact societal stakeholders that are most vulnerable to policies, corporate actions, and investment decisions in the fossil fuel industry. Canadian society, especially low-income people and communities who bear the consequences of the social externalities of subsidies, workers and communities relying on the fossil fuel economy, and Indigenous Peoples and communities suffering the consequences of oil extraction, are impacted.

Fourth, businesses, investments and governments are increasingly exposed to risks in the race to netzero. Government of Canada has signed the COP 26 Statement on International Public Support for the Clean Energy Transition and the Glasgow Climate Pact. In doing so, Canada commits to ending new direct public support for the international unabated fossil fuel energy sector by the end of 2022 and diverting funding to clean energy and phasing out some fossil fuel subsidies by 2023. Canadian developments to implement these latest policy commitments increase corporate and investment risk exposure, and governments can expect more litigation checking their policies and other actions.

Given these far-reaching implications, the report offers extensive recommendations to support Canada's fossil fuel subsidy reforms. Because governments have the most important role to play in reforming subsidies, most of the ideas seek to help them enhance information, promote policy targets, enable stakeholder evaluation, address vulnerabilities, and limit exposure to litigation risks. Governments at both federal and provincial/territorial levels should: adopt the Auditor General of Canada's definition of subsidy for government direct and indirect support given to the fossil fuel industry, in line with international best practice; prepare and release detailed periodic inventories of subsidies, identifying those that are inefficient; provide information on subsidies supporting net-zero GHG emissions; report annually on risk management measures; review and revise tax, royalty and other legislation and policies relating to fossil fuel subsidies; and frame energy subsidies, including renewables and other sources to benefit from a shift from fossil fuel to alternative sustainable energy subsidies, with the concept of climate justice. The fossil fuel subsidy phase-out should specifically include collaboration at all levels of government to protect workers and communities dependent on the oil and gas sector by developing a pan-Canadian just transition program that retrains fossil fuel workers, integrates fossil fuel-dependent communities into new low-carbon economic activity, and partners with Indigenous Peoples in the transition to net-zero.

These recommendations for governments can guide business involvement in Canadian policy, but the report also offers ideas for corporate and investment fiduciaries to mitigate their subsidy risk exposure in Canada's transition. Corporate and investment fiduciaries should deliberate on the risks of fossil fuel subsidies and opportunities related to low-carbon transition through engagement, planning, disclosure processes, and risk management.

Additionally, the report makes recommendations for civil society members, acknowledging how their actions could impact business, investment, and fiduciaries. Indigenous Peoples, fossil fuel workers, and other vulnerable groups have the immediate opportunity to question fossil fuel subsidies through engagement with governments and pension funds, climate litigation and, in the medium term, by orchestrating actions that support the phasing out of fossil fuel subsidies.

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List of Abbreviations

ADR alternative dispute resolution

ASCM Agreement on Subsidies and Countervailing Measures

BIPOC Black, Indigenous and People of Colour

BC British Columbia

CCLI Canada Climate Law Initiative CRA Canada Revenue Agency

CNEAA Canadian Net-Zero Emissions Accountability Act

COVID-19 Corona Virus Disease 2019

GATT General Agreement on Tariffs and Trade

GHG Greenhouse Gas

GGPA Greenhouse Gas Pollution Pricing Act

GDP gross domestic product

G20 group of 20 G7 group of 7

IPCC Intergovernmental Panel on Climate Change

IEA International Energy Agency

IISD International Institute for Sustainable Development

IMF International Monetary Fund

LNG liquefied natural gas NCP national contact point

NDCs nationally determined contributions
NGO non-governmental organization

OECD Organization for Economic Co-operation and Development

OPEP Organization of Petroleum Exporting Countries
OPEC Organization of Petroleum Exporting Countries

OBPS output-based pricing system
PRA Prudential Regulatory Authority
SDG sustainable development goal

SDTC Sustainable Development Technology Canada

UN United Nations

TCFD Task Force on Climate-Related Financial Disclosures
UNCTAD United Nations Conference on Trade and Development

UK United Kingdom UN United Nations

UNEP United Nations Environment Program

US United States

WTO World Trade Organization
WWF World Wildlife Fund

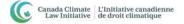


1. Introduction

There have always been debates about whether and how governments should support coal, oil, and gas producers, suppliers and consumers in Canada and other fossil fuel economies. Fossil fuel "subsidy" is a common label used to describe this support, especially those conferring financial benefit. However, among other factors, the demands of the climate emergency and the need to meet sustainable development goals have called into question whether subsidies should remain in place. While there is not yet full consensus on the urgency of eliminating subsidies, the Government of Canada has decided to phase them out by 2023.

Canada started making plans to phase out some fossil fuel subsidies before the Pittsburgh Summit of the Group of 20 (G20) in 2009. However, the Pittsburgh Summit moved the fossil fuel subsidy phase-out issue from a popular debate and domestic issue to an international policy agenda. At the summit, Canada agreed with other G20 countries to "Rationalize and phase out over the medium-term inefficient fossil fuel subsidies that encourage wasteful consumption." Subsequently, at the North American Leaders Summit in 2016, Prime Minister Justin Trudeau initially committed Canada to a deadline of 2025, now adjusted to 2023, making the latter date Canada's "medium-term" for phasing out "inefficient fossil fuel subsidies." Unfortunately, the Pittsburgh Summit and Canada's Department of Finance do not define how fossil fuel subsidies could be "inefficient", leaving room for government discretion on which fossil fuel subsidies should be phased out. Nonetheless, Canada has agreed to provide an inventory of fossil fuel subsidies for an international peer review with Argentina under the G20 process, which could potentially apply a meaning based on international best practices. However, this process is behind schedule, partly because of the Corona Virus Disease 2019 (COVID-19) pandemic, and the Government of Canada might not include provincial fossil fuel subsidies in the data reported for peer review.

⁹ Vanessa Corkal and Philip Gass, "Unpacking Canada's Fossil Fuel Subsidies: Their size, impacts and why they must go" (Winnipeg: International Institute for Sustainable Development [IISD], 2020) https://www.iisd.org/articles/unpacking-canadas-fossil-fuel-subsidies-faq#howmuch; Mia Rabson, "One Year On, Most Oil-and-Gas Bailout Money Has Moved, Federal



¹ Sarah Dobson and Amin Asadollahi, Fossil Fuel Subsidies: An Analysis of Federal Financial Support to Canada's Oil Sector (Calgary: Pembina Institute, 2014).

² Group of 20 (G20), *Leader's Statement: The Pittsburg Summit* (Toronto: University of Toronto G20 Information Centre, 2009) Paragraph 29, online: http://www.g20.utoronto.ca/2009/2009communique0925.html

³Prime Minister of Canada, "Leaders' Statement on a North American Climate, Clean Energy, and Environment Partnership" (29 June 2016), online: Government of Canada https://pm.gc.ca/en/news/statements/2016/06/29/leaders-statement-north-american-climate-clean-energy-and-environment.

⁴ Prime Minister of Canada, "Minister of Environment and Climate Change Mandate Letter" (16 December 2021) Government of Canada, online: Government of Canada https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter; Prime Minister of Canada, "Deputy Prime Minister and Minister of Finance Mandate Letter" (16 December 2021), online: Government of Canada https://pm.gc.ca/en/mandate-letters/2021/12/16/deputy-prime-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letters/2021/12/16/deputy-prime-minister-and-minister

⁵ Office of the Auditor General of Canada, *Report 7 — Fossil fuel Subsidies* (Government of Canada, 2017); Office of the Auditor General of Canada, *Report 3—Tax Subsidies for Fossil Fuels — Department of Finance Canada* (Ottawa: Government of Canada, 2019), online: https://www.oag-bvg.gc.ca/internet/English/parl cesd 201904 03 e 43309.html>.

⁶ Department of Finance Canada, "Canada and Argentina to Undergo Peer Reviews of Inefficient Fossil Fuel Subsidies" (14 June 2018), online: Government of Canada https://www.canada.ca/en/department-finance/news/2018/06/canada-and-argentina-to-undergo-peer-reviews-of-inefficient-fossil-fuel-subsidies.html.

⁷ Jolson Lim, "Morneau Asked to Wrap Up Fossil Fuel Subsidy Review, As Advocates Worry Phase-Out Plan is Stalling" (*iPolitics*, 18 December 2019), online: https://ipolitics.ca/2019/12/18/morneau-asked-to-wrap-up-fossil-fuel-subsidy-review-asadvocates-worry-that-phase-out-plans-are-stalling/; Mia Rabson, "Review of Federal Fossil Fuel Subsidies Appears To Be Behind Schedule (The *Globe and Mail*, 14 November 2019), online: https://www.theglobeandmail.com/canada/article-review-of-federal-fossil-fuel-subsidies-appears-to-be-behind-schedule-2/>.

⁸ Palak Mangat, "Progress on Effort to Review Fossil Fuel Subsidies 'Slightly Slower' Due to Pandemic, Says Official" (The *Hill Times*, 22 March 2021), online: https://www.hilltimes.com/2021/03/22/progress-on-effort-to-review-fossil-fuel-subsidies-slightly-slower-due-to-pandemic-says-official/290111.

Recently at the Twenty-Sixth Conference of the Parties (COP 26) to the United Nations Framework Convention on Climate Change (UNFCCC), Prime Minister Justin Trudeau made Canada's most significant commitment to withdrawing public support that helps oil and gas companies to expand their business abroad by the end of 2022, announcing that the government would divert funding and other resources to the clean energy transition. To support this commitment, Canada signed the Statement on International Public Support for the Clean Energy Transition and joins the ambition to phase out "inefficient fossil fuel subsidies" under the Glasgow Climate Pact. Partly in response to these international commitments and election promises, the Prime Minister issued ministerial mandates in December 2021 asking his ministers to accelerate the phasing out of subsidies to target 2023, ¹⁰ and the Bank of Canada, financial intuitions and other stakeholders are responding to the risks that come with these new commitments and preceding policy developments. However, these latest international and national commitments also have some limitations. For instance, they are vague about the exact sources of subsidies covered and largely exclude provincial and territorial subsidies.

Reporting on fossil fuel subsidies is fundamental to these Pittsburgh G20 summit, COP 26 and national commitments. Reporting helps to track progress on how governments are phasing them out to address the concerns of sustainable development, climate emergency, and other needs. Along this line of thinking, Canada agreed to report on fossil fuel subsides per unit of gross domestic product (GDP), based on measurable indicators for tracking progress on the United Nations (UN) Sustainable Development Goals (SDG), specifically to measure SDG 12: ensuring sustainable consumption and production patterns. The benchmark for reporting is within the context of ensuring sustainable consumption and production patterns under SDG indicator 12.c, ¹¹ which aims to:

rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts.

The UN agency that sees to the implementation of SDG 12, the United Nations Environment Program (UNEP), has published its official guidance for reporting in line with SDG indicator 12c, titled "Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals." The guidance proposes a "method that unites the approaches used by leading institutions and reviewed by experts from 16 countries and seven international authorities." 13

Canada's federal, provincial, and territorial governments have been taking steps to meet the international policy commitments under the G20 and SDG frameworks. The federal government has started measurable reporting. For instance, the Department of Finance's 2020 Report on Federal Tax Expenditures has a section on "Tax Expenditures Supporting the Fossil Fuel Sector." However, the

¹⁴ Department of Finance Canada, *Report on Federal Tax Expenditures: Concepts, Estimates and Evaluations 2020* (Ottawa: Government of Canada, 2020), online: < https://www.canada.ca/en/department-finance/services/publications/federal-tax-expenditures/2020.html>.



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Government Says" (*The National Post*, 15 November 2019), online: https://nationalpost.com/pmn/news-pmn/canada-news-pmn/one-year-later-most-oil-and-gas-bailout-money-has-moved-federal-government-says>.

¹⁰ Prime Minister of Canada, "Minister of Environment and Climate Change Mandate Letter supra note 4; Prime Minister of Canada, "Deputy Prime Minister and Minister of Finance Mandate Letter" supra note 4.

¹¹ Tara Laan and Vanessa Corkal, *International Best Practices: Estimating Tax Subsidies for Fossil Fuels in Canada* (IISD, 2020), online: https://www.iisd.org/publications/tax-subsidies-canada>.

¹² United Nations Environment Program (UNEP), Organization for Economic Co-operation and Development (OECD), and IISD, *Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals* (Nairobi: UNEP, 2019).

¹³ Laan and Corkal supra note 11.

information in the report is incomplete, since fossil fuel subsidies do not only come from tax.¹⁵ Provincial and territorial governments also report some subsidies, but do not provide as much information as the federal government. In fact, many of their subsidies are not costed.¹⁶ Hence, whether government reporting efforts help to track SDGs, evaluate climate policy, and measure other policy targets is another issue. So far, the quality of the information these governments provide on fossil fuel subsidies does not enhance the ability to measure policy targets.

Arising from these broader problems of inadequate reporting and, by extension, slowing down actions to phase out "inefficient fossil fuel subsidies," the specific problem this report tackles is that inadequate information and other government actions and inactions on fossil fuel subsidies have implications for the sort of governance that aligns with the net-zero transition. Also called climate neutrality, net-zero requires striking a balance between anthropogenic CO₂ and other GHGs released into and taken out of the atmosphere over a specified period. Being a problematic concept, for instance in allowing emissions in the first place and failing to emphasize there are winners and losers in the low-carbon transition, net-zero is a concept that has come to stay and should be fine-tuned through governance practices that mitigate its challenges. Governance in this context is defined broadly to embrace the public and private conceptions, including the actions and inactions such as those from policymaking and regulation, of federal, provincial, and territorial governments, corporate and investment fiduciaries, and civil society actors. To achieve net-zero targets, private and public actors should be embracing certain types of governance practices, but government actions and inactions on fossil fuel subsidies impact these practices.

Meanwhile. almost every study addressing fossil fuel subsidies in Canada touches on the implications of inadequate government information and other actions and inactions for the governance of climate change, but they do not discuss them in detail as relating to the country's net-zero target. Understanding these implications and addressing them would enhance knowledge and actions on Canada's governance in the net-zero transition. The knowledge might empower actions by governments, policy makers, the fossil fuel industry, corporate and investment fiduciaries, civil society, and other stakeholders, for instance, giving them ideas about reforms and what they should do to support and protect themselves in the net-zero transition, which would ultimately force the phasing out of most, if not all, fossil fuel subsidies.

Some people may argue that inadequate government information and actions on fossil fuel subsidies make sense because the G20 and SDG commitments to report on fossil fuel subsidies have more political than legal backing. Although potentially enforceable under international law, general principles of law, other international obligations, and policy processes, ¹⁷ G20 commitments are currently not regarded by member states as legally binding. Also, while the SDGs are grounded in international law, ¹⁸ they are not intended to be legally enforceable. Nonetheless, the G20 and SDG fossil fuel subsidy commitments support Canada's other legally binding international ¹⁹ and

¹⁹ Canada is a signatory to the Paris Agreement, legally committing the country to achieving its long-term global warming goal of "well below 2°C" and the aspirational goal of 1.5°C, and has submitted the Pan-Canadian Framework on Climate Change as part of its nationally determined contributions (NDCs).



¹⁵ The report does not cover all tax subsidies. More importantly, it also fails to cover non-tax subsidies.

¹⁶ Ibid

¹⁷ Suyash Paliwal, "The Binding Force of G-20 Commitments" (2014) 40 Yale Journal of International Law Online, online: https://cpb-us-w2.wpmucdn.com/campuspress.yale.edu/dist/8/1581/files/2016/09/paliwal-the-binding-force-of-g-20-commitments-2h1zooz.pdf. s

¹⁸ Rakhyun E. Kim, "The Nexus Between International Law and the Sustainable Development Goals" (2016) 25(1) Review of European Community and International Environmental Law 15.

domestic²⁰ climate policy commitments, among other objectives such as energy security and international trade. With this understanding, Canada has intended to meet its climate policy commitments, and many Canadians expect the efforts to intensify in the net-zero transition. Since a 2015 mandate of the Prime Minister resulting from the work of government of the time, both offices of the Minister of Environment and Climate Change and the Minister of Finance have been working together to identify and phase out some fossil fuel subsidies in pursuit of broader climate policy objectives. The Department of Environment and Climate Change is tasked with the duty of identifying, analysing, and advising the Minister of Environment and Climate Change on federal non-tax fossil fuel subsidies that could be "inefficient," while the Department of Finance Canada has the duty to identify, analyse and advise the Minister of Finance on tax measures²¹ that qualify as subsidies.²² The respective ministers make final decisions on non-tax and tax subsidies.

Altogether, given the overall significance of fossil fuel subsidies for international and domestic climate policy commitments and other policy objectives, especially the pressing demands of meeting Canada's net-zero targets, what are the implications of Canada's fossil fuel subsidies, including actions and inactions on them, for governance in the net-zero transition? This question is particularly important for Canada, being a country with a significant history of fossil fuel dependence.

A review of representative literature, documentary analysis of policies, doctrinal analysis of Canadian and international laws, and direct observation of state party negotiations, plenaries, panels, and press briefings at COP 26 relevant to fossil fuel subsidies in Canada help to answer this question. The bodies of representative literature include those providing data on fossil fuel subsidies in Canada, identifying the major challenges these subsidies create, and prescribing how to reform them. Most publications providing data and identifying the challenges of fossil fuel subsidies are from the International Institute for Sustainable Development (IISD), the leading research organization and one of the top international organizations providing and analysing data on fossil fuel subsidies in Canada. Several other publications from the IISD, specialized UN agencies, the Intergovernmental Panel on Climate Change (IPCC), Canada Climate Law Initiative (CCLI) and other organizations inform the ideas for the governance reforms. The bulk of policies and laws comes from intergovernmental organizations and the Government of Canada. Most of the intergovernmental organizations are specialized agencies of the UN, although some policies and laws also come from non-UN organizations such as the Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO) and the Organization of the Petroleum Exporting Countries (OPEC). The COP 26 information is mostly from the speech of Canada's Prime Minister, Justin Trudeau, at the World Leaders Summit, his subsequent press briefings, and the multiple plenaries and panels on how to finance aspects of the net-zero transition, where the Minister of Environment and Climate Change, the Honourable Steven Guilbeault, participated. The author observed and assessed these activities in person or through the COP 26 Platform, the online conference hub, as a delegate, and then crosschecked the information with Canada's Glasgow Climate Conference Readout provided by the Government of Canada to Canadian delegates after COP 26.

Based on these information sources and their analysis, this report suggests that, although Canada's governments have not taken adequate actions and provided enough information on fossil fuel subsidies, a synthesis of the available data (collected government data and expert estimates) and an

²² Office of the Auditor General of Canada "Report 3" supra note 5.



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²⁰ Canada has fragmented domestic legal instruments in pursuit of climate policy objectives. For instance, at the federal level, we have the Greenhouse Gas Pollution Pricing Act 2018, designed to mitigate climate change through the pan-Canadian application of pricing mechanisms to greenhouse gas emission sources, and the new Canadian Net-Zero Emissions Accountability Act 2021, designed to implement Canada's target of net-zero greenhouse gas emissions by 2050 and Canada's international commitments in respect of mitigating climate change.

²¹ Office of the Auditor General of Canada "Report 7" supra note 4.

original governance (private and public) evaluation of fossil fuel subsidies reveal more negative than positive implications for government transparency, climate policy effectiveness, climate justice, and climate-related risk exposure in the net-zero transition. The evidence from the available quantitative data shows that Canada still provides abundant fossil fuel subsidies, most recently seen in COVID-19 recovery packages. These subsidies undermine climate policy and justice and increase exposure to climate-related risks in the net-zero transition. Meanwhile, although Canada announced at COP 26 to stop public support for fossil fuel business abroad and agreed to phase out fossil fuel subsidies, these commitments have gaps identified under section 3.2.4. and 5 of this report. To align with Canada's net-zero target now enshrined in the Canadian Net-Zero Emissions Accountability Act (CNEAA) 2021, the report makes recommendations on actions that Canada's federal and provincial governments, corporate and investment fiduciaries, and civil society actors should take to contribute to closing these governance gaps. It organizes these actions into those to be taken in the short-term and medium-term.

Four sections follow this introduction. Section 2 addresses well-known issues around defining and calculating fossil fuel subsidies based on the available data and identifies the recent estimates at the federal, provincial, and territorial levels in Canada. Section 3 turns to the governance implications of fossil fuel subsidies in Canada, using four evaluation criteria: government transparency, effectiveness of climate policy, climate justice, and risk exposure. Section 4 makes recommendations on how governments, corporate and investment fiduciaries, and civil society could and should address some of the challenges arising from the governance implications of fossil fuel subsidies in the net-zero transition. Section 5 concludes.

2. Policy Framework of Fossil Fuel Subsidies in Canada: Definition and Data

Providing an overview of the issues around defining and calculating government support for the fossil fuel sector based on the available data helps to set the context for the policy framework governing fossil fuel subsidies in Canada. According to Laan and Corkal, government payment and other forms of financial support policies for the fossil fuel industry may be called "interventions, incentives, concessions, or subsidies." ²⁴ Of these terms, subsidy is now the standard concept for describing most payments and other financial support given to fossil fuel producers or consumers, although there may be other beneficiaries along the value chain. ²⁵ However, fossil fuel subsidy may mean many things, depending on who defines it, and could be distinguished from other forms of public finance, for instance government loans. Defining fossil fuel subsidy is difficult mostly because of interwoven technical and political challenges of the concept of subsidy. ²⁶

2.1. Technical and Political Problems of Defining Subsidies

International policy organizations point us to the technical problem, mainly the challenge of determining what subsidy means and how to know it when we see it. The OECD identifies the difficulty that arises in deciding the baseline, determining the effects, and measuring the scale of subsidies,²⁷

²⁷ OECD, Environmentally Harmful Subsidies: Policy Issues and Challenges (Paris: OECD, 2003).



²³ Lourdes Sanchez and others, *Achieving a Fossil-Free Recovery* (Winnipeg: IISD, 2021), online: https://www.iisd.org/system/files/2021-05/achieving-fossil-free-recovery.pdf.

²⁴ Laan and Corkal supra note 11, 8.

²⁵ Jun Rentschler and Morgan Bazilian, "Reforming Fossil Fuel Subsidies: Drivers, Barriers and the State of Progress" (2017) 17 (7) Climate Policy 891.

²⁶ Thijs van de Graaf and Harro van Asselt, "Introduction to the special issue: energy subsidies at the intersection of climate, energy, and trade governance" (2017) 17 International Environmental Agreements 313.

which are details that a definition should tell us or lead us towards. The International Energy Agency (IEA) also identifies technical issues, especially the difficulty in estimating subsidies.²⁸ While acknowledging these technical problems, UNEP and the IEA promote²⁹ definitions from OECD³⁰ and IEA,³¹ which rely on the leading definition in the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).³² There are several other definitions based on varied contexts, for instance from the International Monetary Fund (IMF),³³ UNEP,³⁴ UNCTAD,³⁵ the World Bank and Organization of Petroleum Exporting Countries (OPEC),³⁶ but most also reflect the WTO ASCM definition as this report will show.

The WTO ASCM,³⁷ which Canada endorsed along with other members of the WTO,³⁸ therefore provides the most generally accepted legal definition of subsidies across countries, although Canada has not officially adopted this definition for the purpose of determining what fossil fuel subsidies mean at home. Article 1(1.1) states:

For the purpose of this Agreement, a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where: (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); (ii) government revenue that is otherwise due is forgone or not collected (e.g. fiscal incentives such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods; (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or (a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and (b) a benefit is thereby conferred.³⁹

From this definition, we can extract two cumulative elements of what amounts to a subsidy. First, it must confer a benefit, as set out in subsection (b) above. This instrumental element is constant, no

³⁹ Agreement on Subsidies and Countervailing Measures (ASCM) < https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.



²⁸ International Energy Agency (IEA), Carrots and Sticks: Taxing and Subsidizing Energy (Paris: IEA, 2006).

²⁹ UNEP Division of Technology, Industry and Economics and IEA, *Reforming Energy Subsidies on the Energy that Undermine* the Pursuit of Sustainable Development: An Explanatory Summary of the Issues and Challenges in Removing or Modifying (Paris: UNEP and IEA, 2002) 9.

³⁰ OECD, Environmentally Harmful Subsidies: Policy Issues and Challenges. (Paris: OECD, 2005) 191; UNEP, Reforming Energy Subsidies: Opportunities to Contribute to the Climate Change Agenda" (UNEP, 2008) 11

³¹ IEA, World Energy Outlook: Looking at Subsidies: Getting the Prices Right (IEA, 1999) 43. See also IEA, Carrots and Sticks: Taxing and Subsidising Energy (Paris: IEA, 2006).

³² World Trade Organization (WTO), *WTO Agreement on Subsidies and Countervailing Measures: Overview* (Geneva: WTO, 1994), online, https://www.wto.org/english/tratop e/subs e.htm>.

³³ David Coady, Ian Parry, Nghia-Piotr Le, and Baoping Shang, *Global Fossil Fuel Subsidies Remain Large: An Update Based on Country-Level Estimates* (Washington, DC: International Monetary Fund, 2019), online: https://www.imf.org/media/Files/Publications/WP/2019/WPIEA2019089.ashx>.

³⁴ UNEP Division of Technology, Industry and Economics and IEA supra note 29.

³⁵ United Nations Conference on Trade and Development (UNCTAD), *International Classification of Non-Tariff Measures* (Geneva: UNCTAD, 2019) 46 https://unctad.org/system/files/official-document/ditctab2019d5_en.pdf>.

 ³⁶ IEA, OPEC, OECD and World Bank, Analysis of the Scope of Energy Subsidies and Suggestions for the G-20 Initiative (2010),
 online: World Bank

< https://documents1.worldbank.org/curated/en/959281468160496244/pdf/760740WP0G200S00Box374334B00PUBLIC0.pdf >.

³⁷ WTO supra note 32.

³⁸ Canada joined the WTO on 1 January 1995. WTO, "Members and Observers," online: https://www.wto.org/english/thewto-e/whatis-e/tif-e/org6 e.htm>

matter the source of subsidy. Second, focusing on the sources, a subsidy is a financial contribution by a government or any public body within Canada, which may include those outlined in subsections (i) to (iv) in the quotation above, and/or could take the form of income or price support based on Article XVI of the General Agreement on Tariffs and Trade (GATT) 1994. From this provision, the exact sources of subsidies can vary.

The OECD, IEA, UNEP, IMF, UNCTAD, OPEC and the World Bank see subsidies in different ways that suit their unique contexts, 40 but outrightly adopt or impliedly reflect parts of this definition of the WTO ASCM. OECD defines subsidies as "a result of government action that confers an advantage on consumers or producers [of energy], in order to supplement their income or lower their costs."41 IEA defines energy subsidy to include fossil fuels, renewables, and other energy sources as "any government action that concerns primarily the energy sector and that lowers the cost of energy production, raises the price received by energy producers or lowers the price paid by energy consumers." 42 UNEP defines energy subsidy as "any government action that concerns primarily the energy sector that lowers the cost of energy production, raises the price received by energy producers or lowers the price paid by energy consumers."43 IMF defines producer subsidies to involve receiving either direct or indirect support that increases profitability than it would otherwise be the case and consumer subsidies as involving the payment of prices below the costs of supplying energy. 44 It then distinguishes pre-tax (based on the difference between what consumers actually pay for using fuel and the corresponding opportunity cost that accrues from supplying the fuel) and the broad post-tax (reflecting the difference between what consumers pay as fuel prices and how much they would pay if those prices reflect full supply costs and the taxes reflect environmental costs and revenue requirements) consumer subsidies.⁴⁵ UNCTAD defines subsidies and other forms of support as a "measure or practice by any level of government that involves a financial transfer attributable to an identifiable beneficiary or group of beneficiaries that creates or could potentially create an advantage for those beneficiaries."46 IEA, OPEC, OECD and the World Bank jointly adopt the WTO ASCM definition. ⁴⁷ The convergence of these definitions on the broad approach of the WTO ASCM definition makes it the international best practice that Canada should follow in determining what amounts to fossil fuel subsidies.

The IISD connects this technical problem of defining subsidy to the political problem that the lack of a Canadian definition and estimation of fossil fuel subsidies causes. In an IISD study, Laan and Corkal assert that "[v]ested interests have sought to narrow the definition of subsidies to exclude tax expenditures benefiting the sector; they have advocated estimation methods that would minimize subsidy estimates, and, in some cases, they state that subsidies to the sector simply do not exist." This contribution suggests that, although subsidies may provide economic benefits to a whole country, how it is defined and estimated ultimately rests on political decisions about winners and losers in a fossil fuel economy.

⁴⁰ See Benjamin K Savacool, "Reviewing, Reforming, and Rethinking Global Energy Subsidies: Towards a Political Economy Research Agenda" (2017) 135 Ecological Economics 150; Jacob Skovgaard, "The Devil Lies in the Definition: Competing Approaches to Fossil Fuel Subsidies at the IMF and OECD" (2017) 17 International Environmental Agreements: Politics, Law and Economics 341.s

⁴¹ OECD, Environmentally Harmful Subsidies: Policy Issues and Challenges. (Paris: OECD, 2005) 191

⁴² IEA supra note 31.

⁴³ UNEP Division of Technology, Industry and Economics and IEA supra note 29.

⁴⁴ Coady, Parry, Sears and Shang supra note 33.

⁴⁵ Ibid.

⁴⁶ UNCTAD supra note 35.

⁴⁷ IEA, OPEC, OECD and World Bank supra note 36.

⁴⁸ Laan and Corkal supra note 11, 2.

⁴⁹ OECD, Overview of Key Methods Used to Identify and Quantify Environmentally-Harmful Subsidies with a Focus on the Energy Sector" (2012), online: < https://www.oecd.org/env/outreach/EAP(2012)2_NP_Subsidies%20report_ENG.pdf>.

Despite these technical and political challenges, some areas of debate about fossil fuel subsidies are increasingly less contentious. Whether the concept of subsidy is proper for describing the support given to fossil fuel industries and how narrow or broad it should be understood are some areas that do not raise serious arguments or significant oppositions. First, the concept of subsidy is becoming less problematic, when compared to alternative concepts such as interventions, incentives, and concessions. Unlike the concept of subsidy that has received so much elucidation, these alternatives are still too broad and vague when applied to fossil fuels. Also, the WTO ASCM definition works for fossil fuels, 50 as a resource subject to competition and other market variables in international trade, hence, usually the starting point for understanding what fossil fuel subsidies mean. 51 As a signatory to the agreement, Canada endorses this definition. Second, although the alternative concepts are too broad, what constitutes a subsidy should also not be too narrowly defined.⁵² Previously, the most popular way subsidies were understood,53 largely because of the influence of neoclassical economic thinking, is a narrow definition that tends to merely cover the direct budgetary transfers to an energy producer or consumer. However, realizing the diverse broader societal implications of fossil fuel subsidies, for instance the promotion or obstruction of some social and economic objectives, the disruption of markets, and the creation of negative externalities, the international best practice is to define subsidies broadly to cover "other types of government interventions that affect prices or costs, either directly or indirectly."54

In Canada, while there are still ideas supporting a narrower economic than broader social definition,⁵⁵ most stakeholders, including the Officer of Auditor General of Canada,⁵⁶ increasingly take the position that Canadian governments should define subsidies broadly for various reasons, most notably to reflect negative externalities and align with international best practices. Accordingly, IISD shows how the WTO ASCM definition applies to Canada and adopts a broad lens in understanding fossil fuel subsidies in the country.⁵⁷

Guided by this broad conception, IISD uses the inventory approach of the OECD, which involves identifying the forms of or programs detailing government support in Canada, rather than the pricegap approach of the IEA, which would merely compare prices in Canada to world reference prices, to estimate fossil fuel subsidies in the country.⁵⁸ Note that there are other approaches across international organizations.⁵⁹ Based on the inventory approach, the IISD is of the view that fossil fuel subsidies in Canada include not only direct budgetary transfers but also other indirect sources. Most of the subsidies come in the form of indirect, forgone revenues from tax exemptions and royalties, rather than direct budgetary payments to producers or consumers. Forgone revenues are earnings that would have come to a government if it had not decided to let it go in support of the industry, for

⁵⁹ Savacool supra note 40; Skovgaard supra note 40.



⁵⁰ ASCM, Article 1(1.1) supra note 39.

⁵¹ OECD, Measuring support to energy—Version 1.0. (Paris: OECD: 2010), online: < https://www.oecd.org/env/45339216.pdf>.

⁵² Compare Coady, Parry, Sears and Shang supra note 33.

⁵³ See UNEP Division of Technology, Industry and Economics and IEA supra note 29; IEA supra note 28.

⁵⁴ Ibid

⁵⁵ Kenneth J. McKenzie and Jack M Mintz, *The Tricky Art of Measuring Fossil Fuel Subsidies: A Critique of Existing Studies* (2011) 4(14) School of Public Policy Research Papers, online: https://www.policyschool.ca/wp-content/uploads/2016/03/mckenzie-mintz-fossil-fuel.pdf; Lennie Kaplan and Marke Milke, *Analyzing Claims about Oil and Gas Subsidies (*(2020 April 27), online: Canadian Energy Centre https://www.canadianenergycentre.ca/analyzing-claims-about-oil-and-gas-subsidies/.

⁵⁶ Office of the Auditor General of Canada, "Report 3" supra note 5.

⁵⁷ The institute gives three reasons for doing so: the negative impacts on government budgets, incentives for fossil fuel production and consumption that exacerbate greenhouse gases and air pollution, and the diversion of COVID-19 recovery benefits to the fossil fuel industry, reducing resources available to address the climate and biodiversity crises. Laan and Corkal supra note 11.

⁵⁸ van de Graaf and van Asselt supra note 26.

instance, tax programs such as tax waivers and breaks and non-tax programs such as uncollected or under-collected economic rents often in the form of royalties. Tax and royalty breaks are therefore distinct forms of foregone revenues: "royalty is the government portion of the economic rent received for the economic stake arising from ownership, while tax serves as a symbol of political membership with its accustomed fiscal obligation." Governments across Canada's federal, provincial, and territorial levels give tax exemptions, royalty breaks and other subsidies for fossil fuel production, consumption, and the reduction of GHG emissions intensity.

2.2. Data on Federal, Provincial and Territorial Subsidies

Canada's federal, provincial, and territorial governments provide some fossil fuel subsidies directly through their finance departments. Direct subsidies such as grants have gone towards the development of infrastructure or improvement of technology in the oil and gas industry. ⁶² Canada's governments also give subsidies through the tax system and other forgone revenues. For instance, the Canada Revenue Agency (CRA) administers tax provisions specifically applicable to the oil, gas, and mining sectors, which ultimately lead to the reduction of the income tax that should otherwise go to the federal government. ⁶³ Additionally, Sustainable Development Technology Canada (SDTC), an agency of the federal government, has used its program called SDTC Priority Technology Area to support innovation in unconventional oil and gas. ⁶⁴ Supporting fossil fuel innovation leads to reduced fossil fuel production costs. However, diverting funding meant for "sustainable development" towards oil and gas innovation, especially at a time when the oil and gas industry was profitable, is questionable. SDTC should have used that funding to develop renewable energy technologies and incentivize their market penetration.

Nonetheless, there is inadequate quantitative information on the diverse fossil fuel subsidies across federal, provincial, and territorial levels in Canada. For instance, at the federal level, the Office of the Auditor General of Canada noted in 2019 that the Department of Finance had an incomplete assessment of inefficient fossil fuel subsidies, which led it to give inadequate advice to the Minister of Finance. Nonetheless, studies use available data to estimate recent combined federal, provincial, and territorial fossil fuel subsidies, and tend to cover diverse years. For instance, the Institute for Energy Economics and Financial Analysis reports direct and indirect subsidies estimated at \$320 million from the Government of Canada, its agencies and the Alberta government in the first half of 2019 to support the Trans Mountain Pipeline project, covering operational deficits and costs of financing a \$5 billion investment the Canadian government made for the project. 66

Making the best of the limited available data, the most recent detailed study that fully focuses on the Canadian context is from the IISD.⁶⁷ IISD researchers use available policies with quantitative data to arrive at a highly conservative estimate of fossil fuel subsides in Canada: at least a total of \$4.8 billion

⁶⁴ Touchette and Gass supra note 61.

⁶⁷ Laan and Corkal supra note 11.



⁶⁰ Temitope Tunbi Onifade (2017) "Alberta, Canada, Royalty Review and Its Lessons for Resource Economies" 35(2) Journal of Energy and Natural Resources Law 171, 178.

⁶¹ See Yanick Touchette and Philip Gass, *Public Cash for Oil and Gas: Mapping Federal Fiscal Support for Fossil Fuels* (Winnipeg: IISD, 2018).

⁶² Vanessa Corkal, Julia Levin and Philip Gass, Canada's Federal Fossil Fuel Subsidies in 2020 (Winnipeg: IISD, 2020).

⁶³ Ibid.

 $^{^{\}rm 65}$ Office of the Auditor General of Canada "Report 3" supra note 5.

⁶⁶ Tom Sanzillo and Kathy Hipple, *Trans Mountain Pipeline Financials Suggest Taxpayer Dollars at Risk* (2019), online: Institute for Energy Economics and Financial Analysis < https://ieefa.org/wp-content/uploads/2019/11/Trans-Mountain-Pipeline-Financials-Suggest-Taxpayer-Dollars-at-Risk_November-2019.pdf>.

per year in 2018 and 2019 across Canadian federal, provincial and territorial levels.⁶⁸ Two-thirds of this combined federal and provincial total, 67% estimated at \$3.2 billion, is in the form of forgone revenue, mostly based on the tax system. However, due to insufficient data, the estimate does not cover most federal tax deductions, some provincial measures, and other methods of subsidization. Thus, the IISD⁶⁹ and other commentators⁷⁰ suggest the actual amount of fossil fuel subsidies may be higher, with dire implications for climate policy and other objectives.

Altogether, having no adequate official data from the federal, provincial, and territorial governments makes estimates unavoidable. For instance, without the estimates from IISD and other sources, it would be difficult to make any valid normative judgement about how and why governments spend public dollars in fossil fuel subsidies in Canada. However, available estimates are based on piecemeal policies, from and covering diverse years and with varying purposes, that only tell a part of the story. Still, given the climate emergency, the limited government data and the estimates based on them are enough to evaluate the implications for governance in the transition to net-zero.

2.2.1. Federal Government Subsidies

Federal government subsidies for fossil fuels take various forms, including direct grants and forgone tax revenues. Largely to incentivize private enterprise, these subsidies are usually directed to producers rather than consumers. Also, they have been used to incentivize the extraction of oil, gas, and coal, and/or to reduce their emissions, although they have recently focused on the expansion of natural gas production. Additionally, some subsidies have shifted focus from exploration to infrastructural development for production and export of Canadian fossil fuels abroad. Such subsidies tend to export the burden of emissions from Canada to other countries through Canadian fossil fuels, but appropriate emissions accounting should be able to track this strategy.

However, the federal government provides inadequate data on all fossil fuel subsidies, especially forgone revenue. For instance, Canada's 2020 Report on Federal Tax Expenditures identifies seven tax expenditures but sets out financial data for just two.⁷⁴ As a result, although IISD identifies 10 federal tax policy programs that benefit fossil fuels, only two of them contain financial data.⁷⁵

Nonetheless, relying on studies with quantitative data, IISD estimates the direct spending portion of federal fossil fuel subsidies as at least \$600 million in 2019-2020⁷⁶ and puts this figure within context, 77 while there are multiple programs individually estimated for 2017-2018⁷⁸ and 2018-2019. 79 Although there is yet to be a comprehensive analysis of the latest 2020-2021 data at the time of writing, \$32 million of the 2019-2020 figure, making up 5% of quantified subsidies, is in the form of forgone revenue. 80 Hence, estimated federal forgone revenues are low, especially when compared

⁸⁰ Laan and Corkal supra note 11.



⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Jeremy Mccrea, "On the Oil and Gas Industry, Taxpayers Need a Bailout" (*The Globe and Mail*, 12 May 2020), online: https://www.theglobeandmail.com/business/commentary/article-on-the-oil-and-gas-industry-taxpayers-need-a-bailout/.

⁷¹ See Corkal, Levin and Gass supra note 62.

⁷² Touchette and Gass supra note 61.

⁷³ Corkal, Levin and Gass supra note 62.

⁷⁴ Laan and Corkal supra note 11.

⁷⁵ Corkal, Levin and Gass supra note 62.

⁷⁶ Ibid.

⁷⁷ Vanessa Corkal, Federal Fossil Fuel Subsidies in Canada: COVID-19 Edition (Winnipeg: IISD, 2021).

⁷⁸ Yanick Touchette and Philip Gass, *Public Cash for Oil and Gas: Mapping Federal Fiscal Support for Fossil Fuels* (Winnipeg: IISD, 2018).

⁷⁹ Corkal, Levin and Gass supra note 62.

to the data at the provincial level. Besides having smaller forgone revenues, the yearly figures for federal fossil fuel subsidies have also been dropping. IISD explains it is difficult to know what is causing the decline but could be because of "concerted measures to reduce subsidies, a lag in reporting, or reduced industrial activity during the pandemic. It is possible all three of these factors influence this decline." Nonetheless, as the federal estimates mainly cover direct spending, they have exclusions, including COVID-related federal initiatives. Altering either of these variables (type of spending and COVID-related initiatives) would change the data. For instance, federal fossil fuel subsidies jump to at least \$1.91 billion for 2020, representing over 200 percent increase from the 2019 levels, when measures during COVID-19 such as the federal funding to support orphan and abandoned wells and federal financing of Newfoundland's offshore oil industry are accounted for. **Search**

IISD's estimates might seem to be on the high side, but there are alternative data sources that put them into perspective. For instance, a recent report from Environmental Defence Canada covering broader public support finds that the federal government either announced or gave at least nearly \$18 billion to the oil and gas sector, including \$3.28 billion through direct subsidy programs and \$13.47 billion through public financing under the platform of Export Development Canada in 2020.⁸³ Reflecting a different approach, the subsidy portion of this estimate is much less conservative than that of the IISD.

Although we can debate these figures, a conclusive point that jumps out from the data is that not all subsidies are created equal. Of the policies providing the data on fossil fuel subsidies, some target making the extraction of oil, gas, coal and other fossil fuel products less GHG intensive while others expand natural gas production to reduce the reliance on oil. Separating the data on these subsidies from the data on subsidies that increase or intensify emissions helps to add nuance into their evaluation. Still, the problem is complicated as even subsidies that supposedly make fossil fuel extraction less GHG intensive might also create or allow significant emissions. Subsidies supporting carbon capture and storage illustrate this point. Carbon capture and storage is a technology that is risky when considering the urgency of the climate emergency,84 and has been less understood, untested at scale, uncertain and, invariably, controversial.⁸⁵ Also, fossil fuel companies appear to currently dominate the incentives for carbon capture and storage, which partly slows down their need for urgent emissions reduction and transition and might be used to reduce costs and increase production. For these reasons and others, some stakeholders are sceptical of the Government of Canada's proposed carbon capture and storage tax credit. 86 Led by Christina Hoicka, leading Canadian scientists and scholars, among other members of civil society, have challenged this proposal,87 claiming that, "as well as undermining government efforts to reach net-zero by 2050, the introduction

⁸¹ Corkal supra note 77.

⁸² Ibid.

⁸³ Environmental Defence Canada, *Paying Polluters: Federal Financial Support to Oil and Gas in 2020* (Toronto: Environmental Defence Canada, 2021).

⁸⁴ Kevin Anderson and Glen Peters, "The Trouble with Negative Emissions" (2016) 354: 6309 Science 182.

⁸⁵ Temitope Tunbi Onifade, "Hybrid Renewable Energy Support Policy in the Power Sector: The Contracts for Difference and Capacity Market Case Study" (2016) 95 Energy Policy 390.

⁸⁶ Government of Canada, "Investment Tax Credit for Carbon Capture, Utilization, and Storage" (3 December 2021)
https://www.canada.ca/en/department-finance/programs/consultations/2021/investment-tax-credit-carbon-capture-utilization-storage.html>.

⁸⁷ See, for example, Robert Tuttle, "Canadian Scientists Urge Rejection of Carbon Capture Tax Credit" (*Bloomberg*, 19 January 2022) https://www.bnnbloomberg.ca/canadian-scientists-urge-rejection-of-carbon-capture-tax-credit-1.1710220; Robert Tuttle, "More than 400 academics urge Canada to Ditch Carbon Capture Tax Credit" (*Bloomberg News*, 20 January 2022) Financial Post https://financialpost.com/commodities/energy/academics-urge-canada-to-ditch-carbon-capture-tax-credit-letter; Mia Rabson, "Hundreds of Academics ask Freeland to Scrap Carbon Capture Tax Credit" (*CTV News*, 20 January 2022) ">https://www.ctvnews.ca/climate-and-environment/hundreds-of-academics-ask-freeland-to-scrap-carbon-capture-tax-credit-1.5747401>">https://www.ctvnews.ca/climate-and-environment/hundreds-of-academics-ask-freeland-to-scrap-carbon-capture-tax-credit-1.5747401>">https://www.nationalobserver.com/2022/01/20/news/are-canadas-carbon-capture-plans-pipe-dream>.

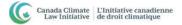
of this tax credit would contradict the promise made by ... government to Canadians during the election period to eliminate fossil fuel subsidies by 2023 as well as our international commitments under the Paris Agreement."88

In any event, federal tax subsidies such as those proposed to support carbon capture and storage are not as common as direct grants to support emissions reduction. Based on data collected from government sources and estimated data from IISD, many of the subsidies supporting the reduction of emissions are in the form of direct grants rather than forgone revenues through the tax system at the federal level. Table 1 below synthesizes some of the latest data. Although enough to illustrate that some subsidies are beneficial for emissions reduction, the list is not exhaustive. Without adequate government reports on the data, it is difficult to provide a comprehensive list of policy programs setting out fossil fuel subsidies that support emissions reduction.

Table 1: Estimates of Fossil Fuel Subsidies Supporting Emissions Reduction in Canada⁸⁹

Program	Budget Commencement Year	Total Amount of Subsidy in \$ in the Budget Commencement Year	Recent Fiscal Year	Amount of Subsidy in \$ (millions) in the Fiscal Year
Clean Growth Program	2017	155 million	Fiscal Year (FY) 2019/2020	10
Energy Innovation Program	2021	24 million	FY 2018/2019	29.3
Electric Vehicle and Alternative Fuel Infrastructure Deployment Initiative	2016	96.4 million over six years	FY 2019/2020	4.2
Low Carbon Economy Fund	2017	2 billion	FY 2019/2020	62.3
Liquefied Natural Gas (LNG) Canada Investment	2019	275 million	FY 2019/2020	275
SDTC	2001	100 million	FY 2019/2020	22.5
Investing in Canada Plan	2016	180 billion	FY 2019/2020	121.6
Strategic Innovation Fund's Net Zero Accelerator	2020	3 billion over five years	FY 2019/2020	59
Emissions Reduction Fund	2020	750 million	FY 2020/2021	750

⁸⁹ The program names, recent fiscal year and amount of subsidy in the fiscal year are partly from Corkal, Levin and Gass supra note 62. The commencement year and total amount are from the author's original data collection.



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⁸⁸ Christina Hoicka, "Letter from scientists, academics, and energy system modellers: Prevent proposed CCUS investment tax credit from becoming a fossil fuel subsidy" (19 January 2022) < https://cehoicka.lab.yorku.ca/files/2022/01/Letter-from-Academics-re-CCUS-tax-investment-credit_January-2022-4.pdf?x98920>.

The table outlines some of the subsidies that make the extraction of oil, gas, coal, and other fossil fuels less GHG intensive and/or expand natural gas production to reduce reliance on oil. These subsidies aim to contribute to the reduction of emissions. The table excludes programs that are old, too broad, or focus mainly on renewable energy rather than the fossil fuel sector. Older programs might have contributed to and created the foundation for emissions reduction in the fossil fuel sector but may not be adding much to the current efforts for net-zero transition. For instance, ecoEnergy Innovative Initiative, designed to provide funding of up to \$268 million for research, technology development and demonstration projects planned for five years, ran between 2011 and 2017. Although significant for the period of 2010 to 2020, it does not have much transformational significance for the net-zero journey from 2020 to 2030. Also, programs that mainly focus on other issues are too broad and varied to consider significant for reducing emissions in the fossil fuel sector. For instance, the table excludes Indigenous Natural Resource Partnerships, which gives funding of \$12 million to increase the participation of Indigenous communities and organizations in oil and gas infrastructure development in Alberta and/or BC (indigenous participation may lead to emissions reduction), and Western Economic Diversification Canada (now divided into two agencies: Pacific Economic Development Canada in British Columbia and Prairies Economic Development Canada in Alberta, Saskatchewan and Manitoba), which is a broader program working to diversify the economy of western Canada and improve the lives of western Canadians. Although these programs have implications for emissions reduction, this is not their focus.

Significantly, while these emissions reduction programs may have good intentions, how they are designed and implemented impact their outcomes. For instance, the Reports of the Commissioner of the Environment and Sustainable Development to the Parliament of Canada released in 2021 finds that "Natural Resources Canada did not design the Onshore Program of the Emissions Reduction Fund to ensure credible and sustainable reductions of greenhouse gas emissions in the oil and gas sector or value for the money spent." ⁹⁰

2.2.2. Provincial and Territorial Government Subsidies

Provinces and territories give consumption and production subsidies. Acknowledging peoples-based titles over natural resources, 91 most provincial and territorial governments give consumption subsidies 92 through tax exemptions for the use of fossil fuels such as coal, gasoline, natural gas, diesel, and propane at respective provincial and territorial levels. 93 Also incentivizing private enterprise like the federal government, they give royalty subsidies, 94 which increase the share of companies in resource revenues. 95 However, not all of their tax and royalty subsidies are costed in the budgets. 96 Like the federal government, they fail to provide adequate information on these subsidies.

⁹⁰ Office of the Auditor General of Canada, *Report 4: Emissions Reduction Fund- Natural Resources Canada* (Office of the Auditor General of Canada, 2021).

⁹¹ Temitope Tunbi Onifade, "Peoples-based Permanent Sovereignty over Natural Resources: Toward Functional Distributive Justice?" (2015) 16(4) Human Rights Review 343; Temitope Tunbi Onifade, "Regulating Natural Resource Funds: Alaska Heritage Trust Fund, Alberta Permanent Fund, and Government Pension Fund of Norway" 6(2) Global Journal of Comparative Law 138; Temitope Tunbi Onifade (2017) "Alberta, Canada, Royalty Review and Its Lessons for Resource Economies" 35(2) Journal of Energy and Natural Resources Law 171.

⁹² Yanick Touchette and Philip Gass, *Public Cash for Oil and Gas: Mapping Federal Fiscal Support for Fossil Fuels* (IISD, 2018).

⁹³ Corkal and Gass supra note 9.

⁹⁴ For a discussion of royalty, see Onifade, "Alberta, Canada, Royalty Review and Its Lessons for Resource Economies" supra note 91.

⁹⁵ Ibid.

⁹⁶ Looking at a random sample of provincial sources would reveal that provincial governments provide even less quantitative information than the federal government. There are numerous provincial laws and policies that allow for tax cuts and underpaid royalties, but provincial governments may not provide detailed information about what these cost in dollars.

Nonetheless, studies again provide estimates. IISD researchers draw on multiple policy documents and studies to estimate fossil fuel subsidies across provinces and territories. Their results, summarized in Table 2, show that Alberta, BC, Ontario, Québec and Saskatchewan have the largest individual estimates, while Manitoba, Nunavut, New Brunswick, Newfoundland and Labrador, and Prince Edward Island have a smaller combined total amount of subsidies. Unlike the federal level, the combined percentage of quantified subsidies in forgone revenues based on available data is more than those from direct sources. For instance, Alberta, BC, Ontario, Québec and Saskatchewan have 64%, 85%, 84%, 92%, and 100% revenue forgone, respectively. Table 2 extracts and presents the main findings across provinces.

Table 2: Estimates of Quantifiable Provincial and Territorial Fossil Fuel Subsidies in Canada 97

Jurisdictions	Active Tax Expenditure and Revenue Subsidy Programs with Forgone Revenues	Number of Programs Quantified with Foregone Revenues	Total Subsidy Estimates in \$ (million)	Forgone Revenue Estimates in \$ (million)	Data Year and Source for Estimates
Alberta	18	16	2,000	1,274	Financial Year (FY) 2018/2019
BC	48	9	830	707	FY 2018/2019
Ontario	9	9	700	585	FY 2018/2019
Québec	10	7	300	276	FY 2018/2019
Saskatchewan	9	3	205	205	FY 2018/2019
Manitoba	4	3	144	100	FY
Nunavut	2	0			2018/2019
New Brunswick	3	2			
Newfoundland and Labrador	10	10			
Prince Edward Island	2	1			

At the provincial and territorial levels, the estimate of total subsidies amounts to \$4.176 billion for 2018-2019. Of this total, forgone revenue is estimated at \$3,147 million. Thus, forgone revenue is approximately 75% of the total subsidy based on the estimates. However, the data sources do not share the same assumptions. While reaching a reliable quantitative generalization is difficult, the data shows the trend of fossil fuel subsidies across provinces and territories, serving as the baseline for the author's qualitative evaluation of their implications.

⁹⁷ The data is extracted from Laan and Corkal supra note 11. Note also that IISD has recently studied fossil fuel subsidies in Canada's main fossil fuel producing provinces: Alberta, British Columbia, Saskatchewan, and Newfoundland and Labrador. The study shows that these provinces gave at least \$2.5 billion in 2020/2021 and 1.5 billion in 2021/2022 based on fiscal year calculations as of December 2021. The researchers suggest that these provincial subsidies serve as barriers to Canada's ambition to phase out fossil fuel subsidies by 2023 and conflict with the targets of the Paris Agreement. See Janetta McKenzie, Estan Beedell and Vanessa Corkal, *Blocking Ambition: Fossil Fuel Subsidies in Alberta, British Columbia, Saskatchewan, and Newfoundland and Labrador* (Winnipeg: IISD, 2022).



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3. Governance Implications of Fossil Fuel Subsidies in Canada: An Evaluation

Fossil fuel subsidies have numerous implications. Subsidies are efficient where there are market imperfections that create suboptimal outcomes, for instance, supporting emerging industries that cannot fairly compete with established ones or an industry facing difficult times, ⁹⁸ or reducing the burden of costs that transfer to low-income citizens. ⁹⁹ However, as times change, emerging factors such as maturity and competitiveness of an industry, the need to eventually phase out fossil fuel production to address climate change, the demands of pressing public values such as human security and social justice, and the existence of alternative social services may make subsidies economically inefficient. Illustrating specific problems that could be traced to these factors, Rentschler and Bazilian suggest that fossil fuel subsidies "dis-incentivize investments, innovation and efficiency, escalate fiscal burdens, crowd out funds for health, education and other public infrastructure, incentivize corruption, aggravate air pollution and reinforce poverty and income inequality." ¹⁰⁰ There is no exhaustive list or classification of implications, but this report identifies two dominant, broad but interwoven, categories, grouped as the governance and economic implications. However, this classification is not intended to cover the field.

3.1. Overview of Governance and Economic Implications

This report adopts a broad governance lens¹⁰¹ that embraces both state/public legal regulation through command and control regulation,¹⁰² market regulation and litigation, and non-state/private¹⁰³ governance by business,¹⁰⁴ mainly at industry and firm levels, and civil society, which has historically and conceptually evolved to mean the social space where people interact and contribute to governance autonomously from the government.¹⁰⁵ In other words, governance is not only something governments do, for instance through policymaking activities such as lawmaking and the regulation of markets, but also what non-state actors do, for instance through corporate and interorganizational network decision-making. Using this lens, governance implications include those arising from the actions (including making policies) and inactions of federal, provincial, and territorial governments, corporate and investment fiduciaries, and civil society actors. Informed by the economic theories of regulation,¹⁰⁶ economic implications include how government actions and inactions impact jobs, private incomes, standard of living, government revenues, markets, market behaviour, and other economic variables.

¹⁰⁶ George J. Stigler, "The Theory of Economic Regulation" (1971) 2(1) The Bell Journal of Economics and Management Science 3; Richard A. Posner, "Theories of Economic Regulation" (1974) 5 The Bell Journal of Economics and Management Science 335.



⁹⁸ Dobson and Asadollahi supra note 1.

⁹⁹ David Coady, Ian WH Parry, Louis Sears and Baoping Shang, How Large are Energy Subsidies (IMF, 2015).

¹⁰⁰ Rentschler and Bazilian supra note 25, 892.

¹⁰¹ R.A.W. Rhodes, "The New Governance: Governing without Government" (1996) 44(4) Political Studies 652.

¹⁰² Robert Baldwin, Colin Scott and Christopher Hood, *A Reader on Regulation* (Oxford: Oxford University Press, 1998); Robert Baldwin and Martin Cave, *Understanding Regulation* (Oxford: Oxford University Press, 1999).

¹⁰³ Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action (Cambridge: Cambridge, 1990); Robert Ellickson, *Order Without Law* (Cambridge, MA: Harvard, 1991).

¹⁰⁴ Anil K. Gupta and Lawrence J. Lad, "Industry Self-Regulation: An Economic, Organizational, and Political Analysis" (1983) 8(3) Academy of Management Review 416; David A Garvin, "Can Industry Self-regulation Work" (1983) 25(4) California Management Review 37.

¹⁰⁵ John Keane, "Despotism and Democracy: The Origins and Development of the Distinction between Civil Society and the State, 1750-1850" in Keane, ed, *Civil Society and the State: New European Perspectives* (London: Verso, 1988); Jean Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge: MIT Press, 1992); Boris DeWiel, "A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx" (1997) 6 Past Imperfect 3; Matthias Finger, "NGOs and transformation: Beyond Social Movement Theory" in Matthias Finger and Thomas Princen, *Environmental NGOs in World Politics: Linking the Local and the Global* (London: Routledge, 1994).

Until recently, governance implications have attracted more attention than economic implications in the Canadian discourse on fossil fuel subsidies. Canadian stakeholders¹⁰⁷ and researchers¹⁰⁸ have appeared to be more concerned about the governance implications of fossil fuel subsidies in the country, and the concerns of most of them suggest that they oppose fossil fuel subsidies. Economic implications have also greatly concerned Canadians but, until recently, have been emphasized more in international (e.g. regarding international trade) than national (e.g. regarding jobs and incomes, standard of living, government revenues, and energy security) debates on fossil fuel subsidies. This report provides an overview but does not get into the details of the economic implications.

3.1.1. Governance Implications

There are several governance issues related to fossil fuel subsidies. Although Canadian studies have touched on many governance implications, they have not devoted their attention to discussing them in detail. The most recurring themes are about government transparency¹⁰⁹ and the effectiveness of climate policy.¹¹⁰ To a lesser degree, the consequences for climate justice, especially externality¹¹¹ and just transition¹¹² issues, also receive some attention. Although addressed within the context of fossil fuel governance, the risk exposure of corporate and investment fiduciaries and governments arising from fossil fuel subsidies have rarely been explored. The report will discuss these implications in detail below under subsection 3.2. evaluating the governance implications.

3.1.2. Economic Implications

Two sector-specific economic issues, energy security¹¹³ and trade,¹¹⁴ come up in almost every contribution. There are other economic implications of fossil fuel subsidies that have been studied, for instance, impacts of financial incentives on government budgets when considered against the backdrop of changes in the industry, as we have seen in Canada's oil and gas sector where previously emerging companies that needed incentives eventually grew into giant corporations;¹¹⁵ impacts on investment decisions of companies at certain stages of projects;¹¹⁶ impacts on other economic considerations such as production, consumption and employment in the low-carbon transition, as most recently explored by the Canadian Institute of Climate Choices, focusing on four criteria: transition consistency, value for money, employment outcomes and policy fit in pursuit of these

¹¹⁶ Laan and Corkal supra note 11.



¹⁰⁷ See, eg., Office of the Auditor General of Canada "Report 3" supra note 5; Office of the Auditor General of Canada "Report 7" supra note 5.

¹⁰⁸ Laura Merrill, Melissa Harris, Liesbeth Casier and Andrea M Bassi, *Fossil-Fuel Subsidies and Climate Change* (Winnipeg: IISD, 2015).

 $^{^{109}}$ See for example, Laan and Corkal supra note 11.

¹¹⁰ See for example, Merrill, Harris, Casier and Bassi supra note 108; Laura Merrill, Andrea M. Bassi, Richard Bridle and Lasse T. Christensen, *Tackling Fossil Fuel Subsidies and Climate Change: Levelling the Energy Playing Field* (Copenhagen: Nordic Council of Ministers, 2015); Tyeler Matsuo and Tobias S. Schmidt, "Hybridizing Low-Carbon Technology Deployment Policy and Fossil Fuel Subsidy Reform: A Climate Finance Perspective" (2017) 12 Environmental Research Letters 014002; IISD, *Raising Ambition through Fossil Fuel Subsidy Reform: Greenhouse Gas Emissions Modelling Results from 26 Countries* (IISD, 2019).

¹¹¹ Corkal, Levin and Gass supra note 62.

¹¹² Task Force: Just Transition for Canadian Coal Power Workers and Communities, *What We Heard* (Ottawa: Government of Canada, 2019), online https://publications.gc.ca/collections/collection_2019/eccc/En4-362-2019-eng.pdf.

¹¹³ Tom Moerenhout and Tristan Irschlinger, *Exploring the Trade Impacts of Fossil Fuel Subsidies* (Winnipeg: IISD, 2020), online: https://www.iisd.org/system/files/publications/trade-impacts-fossil-fuel-subsidies.pdf

¹¹⁴ Jean-Marc Burniaux, Jean Chateau and Jehan Sauvage, *The Trade Effects of Phasing Out Fossil-Fuel Consumption Subsidies* (Paris: OECD, 2011), online:s

; Tom Moerenhout, "Trade Impacts of Fossil Fuel Subsidies" (2020) 19(S1) World Trade Review S1.

¹¹⁵ Dobson and Asadollahi supra note 1.

preceding criteria¹¹⁷; and other economic impacts on citizens, such as where there are foreseen economic costs to them but no clear alternatives as revealed in the Swiss Referendum.¹¹⁸ However, these cross-cutting issues can be discussed within the context of sector-specific issues in energy or trade, where relevant, but this report does not get into the details.

Energy security and trade issues are connected in complex ways. For instance, subsidies that lead to increasing consumption may cause domestic energy shortage and create the need for more importation (energy insecurity) while also reducing the fossil fuel available for export (trade); and subsidizing fossil fuels may lead to cheaper resources, which triggers their supply and, sometimes, smuggling into other countries with greater potential for higher investment returns (trade) while reducing domestic supply (energy security). Nonetheless, trade implications appear to be more complex than the energy security issues. Both implications are more serious in less developed oil economies in Africa, Asia and the Middle East, when compared to Canada. However, they also raise serious concerns in Canada.

Most energy security issues result from, among other factors, increased reliance on imports due to the pattern of rising demand that comes with subsidizing energy resources. Subsidizing fossil fuels makes them cheaper to use and may create multiple economic challenges. Of these challenges, a notable one is that consumers get used to cheap energy and develop the tendency to be inefficient, as opposed to when they are expensive. The outcome is a vicious cycle of more demand for energy, which a country may not be able to meet domestically, making it necessary to import more. For instance, Iran is a popular example of a country that has relied on importation for its gasoline needs, spending billions to meet the rising demand for the country's heavily subsidized fuel.

A basic idea behind the trade implication is that fossil fuel subsidies affect the competitiveness of industries in diverse ways across stages of the value chain, leading to significant impacts, ¹¹⁹ especially the determination of who wins or loses out on market share. ¹²⁰ For instance, the subsidies underwrite inefficiencies in the oil and gas sector and in sectors using oil and gas as an input in Canada, making them cheaper and more competitive in foreign markets despite being expensive to produce at home, and transferring costs to Canadian taxpayers. However, there is no exhaustive list of impacts. In an IISD study, Moerenhout and Irschlinger identify some of the most prominent ones: increasing the share of domestic crude fossil fuel products and refined energy carriers in international markets; displacing imports of crude fossil fuel products and refined energy carriers, and reducing their competitiveness; displacing the imports of crude and refined energy products serving as input for non-energy products and reducing the competitiveness of alternatives; increasing the international share of domestic non-energy products relying on crude and refined energy products as inputs; and displacing the imports of third-country non-energy products that rely on crude and refined energy products as inputs, and reducing the competitiveness of alternatives.

3.2. Evaluating Governance Implications: Transparency, Effectiveness, Justice and Risk

Governance implications can be divided into four categories: the implications of government transparency, effectiveness of climate policy, climate justice, and exposure of fiduciaries and governments to risks. These implications cut across the private and public dimensions of governance.

¹²⁰ Moerenhout supra note 114.



¹¹⁷ Rachel Samson, Peter Phillips and Don Drummond, *Cutting to the Chase on Fossil Fuel Subsidies* (Ottawa: Canadian Institute for Climate Choices, 2022) https://climatechoices.ca/wp-content/uploads/2022/02/Fossil-fuels-ES-English-FINAL-no-WM.pdf

 $^{^{118}}$ Prince Michael of Liechtenstein, "An Important Lesson from the Swiss Referendum on the CO_2 Law" (23 June 2021), online: Geopolitical Intelligence Services https://www.gisreportsonline.com/an-important-lesson-from-the-swiss-referendum-on-the-co2-law,politics,3547.html.

¹¹⁹ Moerenhout and Irschlinger supra note 113.

3.2.1. Governments Are Not Transparent About Fossil Fuel Subsidies

Government transparency comes up in almost every debate about fossil fuel subsidies. Since Canadian governments do not report enough details, especially quantitative data, on fossil fuel subsidies, there is inadequate information for evaluating how they use public resources, pursue the Canadian political commitments to phasing out fossil fuels and subsidies supporting them, and make progress on legal and policy objectives such as climate action, energy security, and trade.

Federal, provincial and territorial governments have all failed to have reliable and adequate disclosure. ¹²¹ Taking a federal example, the Office of the Auditor-General of Canada has found that the Department of Finance provides inadequate information on tax expenditures, ¹²² including those constituting fossil fuel subsidies. ¹²³ In a 2019 report, it submits that "the Department of Finance Canada's Assessments to identify inefficient tax subsidies for fossil fuels were incomplete, and that advice it provided to the Minister was not based on all relevant and reliable information." ¹²⁴

Inadequacy of information impacts how government, citizens, businesses, fund managers, investors, and other stakeholders could evaluate costs, benefits, and other implications. First, arising from the observation of the Auditor-General of Canada above, it undermines parliamentary oversight¹²⁵ and the quality of advice given to government.¹²⁶ Second, the availability and quality of information on fossil fuel subsidies also affect how Canadians, including state and non-state actors, account for externality costs of emissions,¹²⁷ particularly in holding governments accountable and making valid judgements. The Office of the Auditor-General summarizes these key implications while addressing its finding on inadequate tax-based information¹²⁸:

This finding matters because a properly designed tax expenditure report is critical to provide parliamentarians and Canadians with comprehensive and consolidated information on tax expenditures and what these expenditures are accomplishing. Also, in our opinion, Parliament requires comprehensive and consolidated information to effectively exercise its oversight of tax-based expenditures and understand total government spending.

Having realized there is a transparency issue, there is a deeper question: what exactly undermines transparency? The root problems are about deciding what amounts to subsidies and the quality of the information governments provide. To address these problems, Canada's governments should adopt standard definition, classification, and reporting methodologies. Regarding the definition and classification of subsidies, Canada should learn from existing sources in Canada as shaped by international best practices, adapting them to the local context, rather than reinventing the wheel. As for the information reported by governments, the Office of the Auditor General of Canada, numerous other stakeholders, and researchers generally agree that Canada's governments should improve on reporting, including tax expenditures and other policies that reduce government revenue

 $^{\rm 125}$ Office of the Auditor-General Canada supra note 122.

¹²⁸ Office of the Auditor-General Canada supra note 122.



¹²¹ Corkal and Gass supra note 9; Mia Rabson supra note 9; McKenzie, Beedell and Corkall supra note 97.

¹²² Office of the Auditor-General Canada, *Report 3—Tax-Based Expenditures* (Government of Canada, 2015), online: https://www.oag-bvg.gc.ca/internet/english/parl_oag_201504_03_e_40349.html.

¹²³ Office of the Auditor General of Canada "Report 3" supra note 5.

¹²⁴ Ibid.

¹²⁶ Office of the Auditor-General Canada "Report 3" supra note 5.

¹²⁷ Ian W.H. Parry, Dirk Heine, Eliza Lis and Shanjun Li, Getting Energy Prices Right: From Principle to Practice (Washington, DC: International Monetary Fund, 2014), online: < https://www.elibrary.imf.org/view/books/071/21171-9781484388570-en/front-1.xml>.

due to support given to fossil fuel producers and consumers, ¹²⁹ but they have no consensus on a standard reporting model.

A. Defining and Classifying Fossil Fuel Subsidies in Canada

Like many other countries, Canada neither has an agreed definition nor classification of subsidies. ¹³⁰ All approaches depend on the interpretation of what qualifies as subsidies and assumptions behind the data. Nonetheless, what is clear is that the definition and classification of fossil fuel subsidies should be broad enough to cover diverse forms of government support that confer a benefit. The WTO, UN Conference on Trade and Development (UNCTAD), and UNEP point to the ever-widening sources of subsidies and related support, which also determine how broad the definition and classification would be, as depicted in Figure 1.

Figure 1: Sources of Fossil Fuel Subsidies in Canada¹³¹

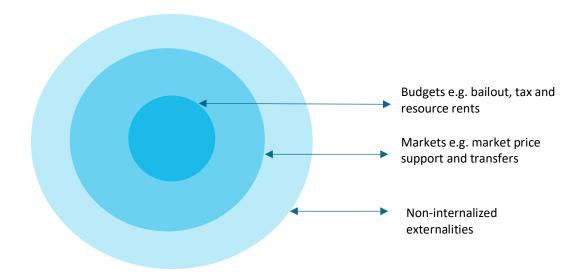


Figure 1 shows the economic sources that fossil fuel subsidies come from within Canada: budgets, markets, and non-internalized externalities. Budgetary sources include direct allocations, for instance through grants and COVID-19 recovery support packages, and forgone revenues, for instance tax breaks and royalties. Market sources could take the form of market price support and transfers. Non-internalized externalities cannot be fully costed, since there is no agreed model for estimating them, but include the long-term, uncertain impacts of continued emission of GHGs through fossil fuel projects funded with subsidies. Comparing the three broad sources, budgetary sources depend more on fiscal policy, while the last two rely on regulation, for instance the regulation of the market to promote favourable market price as well as regulatory failures that allow externalities. For instance, regulatory failures that allow externalities in Canada have included inadequate laws, excessive industry discretion, slow policy alignment to the latest science, flexible implementation of industry

¹²⁹ Laan and Corkal supra note 11.

¹³⁰ Ibid.

¹³¹ Source: Original design based on an adaptation of the OECD Model. See OECD supra note 49.

standards, and limited public participation and engagement.¹³² Governments are increasingly addressing these regulatory failures, largely driven by factors such as stronger scientific consensus on the climate emergency, widespread pressure from civil society, and the emergence of financially material climate-related risks and the business case for climate action.

Definition of Fossil Fuel Subsidy: The Office of the Auditor General of Canada acknowledges the cumulative elements of the definition of fossil fuel subsidies¹³³ discussed under section 2 of this report, and the IISD rightly explains that the definition covers direct transfer of funds such as grants and loans, government revenue forgone such as fiscal incentives like tax credits, goods or services other than general infrastructure provided by government, and price support such as below-market fuel prices.¹³⁴

The lack of consensus on the definition of fossil fuel subsidies might have been hindering governments from reporting enough data and taking other adequate actions. However, the WTO ASCM definition, which remains the international best practice and has been adapted by the Auditor General of Canada, offers a way forward for Canada. In applying this definition, Canada should understand subsidies as conferring a benefit but potentially from multiple, broad sources in line with the ASCM definition and Figure 1.

Classification of Fossil Fuel Subsidies: Embracing the WTO ASCM definition,¹³⁵ UNEP, OECD and IISD propose the most recognized methodology that classifies subsidies into three main categories within the context of sustainable development indicator 12.c.1 on "Amount of fossil fuel subsidies per unit of GDP (production and consumption)": direct transfer funds; induced transfers (price support); and tax expenditure, other revenue forgone and under-pricing of goods and services. Although there are other classifications, ¹³⁷ Canada's methodology should reflect the broad scope of UNEP's classification, which has also become the international best practice.

B. Quality of Information

Even where governments define and estimate fossil fuel subsidies, the quality of the information provided for evaluating their actions, including policies, is another issue. Canadian governments sometimes provide inadequate information about where subsidies go.¹³⁸ For instance, there are surprising allegations that Government of Canada does not provide detailed information about who has received a \$1.6 billion subsidy for Alberta, and for what activities.¹³⁹ Also, governments may

¹³⁹ Mia Rabson, "\$1.6B oil-and-gas bailout hasn't had much of an impact, companies say" (*CTV News*, 18 November 2019), online: https://edmonton.ctvnews.ca/1-6b-oil-and-gas-bailout-hasn-t-had-much-of-an-impact-companies-say-1.4690771; Rabson supra note 9.



¹³² See David Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003); Jason MacLean, "Striking at the Root Problem of Canadian Environmental Law: Identifying and Escaping Regulatory Capture" (2016) 29 Journal of Environmental Law and Practice 111.

¹³³ Office of the Auditor General of Canada "Report 3" supra note 5.

¹³⁴ Laan and Corkal supra note 11.

¹³⁵ ASCM supra note 39.

¹³⁶ UNEP, OECD and IISD supra note 12.

¹³⁷ See Doug Koplow and John Dernbach, "Federal Fossil Fuel Subsidies and Greenhouse Gas Emissions: A Case Study of Increasing Transparency for Fiscal Policy" (2001) 26 Annual Review of Energy and Environment 361; OECD, OECD Companion to the Inventory of Support Measures for Fossil Fuels 2018 (Paris: OECD Publishing, 2018); Jocelyn Timperley, "Explainer: The Challenge of Defining Fossil Fuel Subsidies" (12 June 2017), online: Carbon Brief https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://www.carbonbrief.org/explainer-the-challenge-of-defining-fossil-fuel-subsidies>">https://w

¹³⁸ Commissioner of the Environment and Sustainable Development, *Report of the Commissioner of the Environment and Sustainable Development* (Ottawa: Office of the Auditor General of Canada, 2012); Yanick Touchette, "G20 Subsidies for Oil, Gas and Coal Production: Canada" (London, Washington and Winnipeg: Overseas Development Institute, Oil Change International and IISD, 2015); Laan and Corkal supra note 11.

identify the recipient industry without specifying the companies and/or projects that benefit from subsidies. Where this is the case, it becomes difficult to track and evaluate subsidies.

There are at least two factors impacting the quality of information. First is incomplete data. Incomplete data may arise for several reasons, for instance the challenges of defining and estimating subsidies. Even where governments provide abundant information on subsidies, they may not provide enough quantitative information. For instance, the Government of Canada now lists tax expenditures but does not provide quantitative financial data for most, and provinces and territories do not cost some of their significant tax breaks and royalty subsidies. 140 Illustrating this problem in a recent report, IISD finds that only 50% of the 128 policies on forgone revenue in the fossil fuel sector were quantifiable. 141 If the remaining half were to be quantifiable, then subsidies would be higher. 142 While quantifying subsidies is not necessary for debating them or calling for reforms, especially through qualitative insights, it would enhance how we evaluate policies. 143 At the least, one would be able to make reliable judgments. Second is the lack of political will that largely results from corporate influence. Until recently, when the pressure of the climate emergency and the need to achieve net-zero transition targets started mounting and propelling governments into more active regulation, Canada's federal, provincial, and territorial regulation of the fossil fuel industry has traditionally suffered from weak enforcement, 144 mostly because of the influence of the industry on government officials and processes. Reacting to this experience, scholars suggest that Canada's fossil fuel industry regulation suffers from regulatory capture¹⁴⁵ and other types of regulatory failure.¹⁴⁶ Government officials have traditionally relied more on industry self-regulation, for instance, selfmonitoring and voluntarism, ¹⁴⁷ and have been influenced by fossil fuel industry lobbyists. ¹⁴⁸ Although these realities might also be contributing to incomplete data, this lack of political will leads to intentional exclusion of information on fossil fuel subsidies. UNEP illustrates this problem, claiming that governments tend to keep fossil fuel subsidies off budget to limit the access of pressure groups that may challenge them. 149

Whether due to incomplete data, political will or other reasons, the knowledge gap arising from inadequate or poor quality of information has compelled several calls for transparency, most notably from the IISD but also several other non-state actors and the Auditor General of Canada, on fossil fuel subsidies. The CCLI joins in making this call.

¹⁴⁹ UNEP Division of Technology, Industry and Economics and IEA supra note 29.



¹⁴⁰ Laan and Corkal supra note 11.

¹⁴¹ Ibid.

¹⁴² Laan and Corkal supra note 11.

¹⁴³ Laan and Corkal supra note 11.

¹⁴⁴ See Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (Vancouver: UBC Press, 1996); Boyd supra note 132; Stepan Wood, Georgia Tanner & Benjamin J Richardson, "What Ever Happened to Canadian Environmental Law?" (2010) 37(4) Ecology LQ 981.

¹⁴⁵ MacLean supra note 132. For a discussion of regulatory capture, see Stigler supra note 106; Cameron Hepburn, "Environmental Policy, Government, and the Market" (2010) 26(2) Oxford Review of Economic Policy 117. For other regulatory failure, see Frank W Geels, "Regime Resistance against Low-Carbon Transitions: Introducing Politics and Power into Multi-Level Perspective" (2014) 31(5) Theory, Culture & Society 21.

¹⁴⁶ Harrison supra note 144; Wood, Tanner and Richardson, supra note 144; Nigel Bankes, Sharon Mascher & Martin Olszynski, "Can Environmental Laws Fulfill Their Promise? Stories from Canada" (2014) 6(9) Sustainability 6024; Jason MacLean, Meinhard Doelle and Chris Tollefson, "The Past, Present, and Future of Canadian Environmental Law: A Critical Dialogue" (2015) 1 Lakehead LJ 79; Sustainable Canada Dialogues, *Acting on Climate Change: Solutions from Canadian Scholars* (Montreal: Sustainable Canada Dialogues, 2015).

¹⁴⁷ Wood, Tanner and Richardson supra note 144.

¹⁴⁸ Mia Rabson, "Senators Bowing to Oil Industry Pressure to Gut Assessment Bill, Environmentalists Say" (*CBC News*, 14 May 2019), online: https://www.cbc.ca/news/canada/calgary/environment-oil-and-gas-c69-1.5135332.

3.2.2. Fossil Fuel Subsidies Undermine the Effectiveness of Climate Policy

Climate policy concerns are not given as much detailed analysis as transparency in the existing literature, but they come up almost as much. Debates about how fossil fuel subsidies affect climate policy tend to focus on the implications for Canadian federal, provincial, and territorial climate mitigation objectives and the low-carbon agenda — IISD studies and others focusing more on the economics of fossil fuel subsidies tend to measure these implications based on the normative criteria of effectiveness and efficiency, but this report focuses mainly on effectiveness, which has more to do with governance, than efficiency, which is conventionally more about economic maximization.

Energy subsidies have implications for climate policy mostly because of how they affect the level and composition of energy production and consumption. ¹⁵⁰ While some subsidies that support fossil fuels cause more global warming and climate change, others aim to reduce emissions, global warming, and climate change, including supporting investment in low-carbon technologies, for instance energy efficiency, renewable energy and, controversially, carbon capture and storage. Accordingly, there are two major implications of fossil fuel subsides for climate policy: impact on emissions reduction, and on the finance of low-carbon technology.

First, subsidizing the production and consumption of fossil fuels ensures that emissions continue and causes other problems, for instance, diverting investments away from alternative government projects. Rationalities for how these problems arise depend on whether fossil fuel subsidies are for consumption or production. We can illustrate both. Consumption subsidies may contribute to emissions by making the price of oil, gas, and coal cheaper, reducing the incentives to conserve energy and ultimately increasing emissions. Additionally, by driving down the price of oil, gas, and coal, they reduce the returns on producer investment. Production subsidies contribute to emissions by cushioning the fossil fuel industry from the pressure of market forces, and reducing the incentives to lower cost, invest in energy efficiency and other low-carbon pathways, and innovate for better and cleaner alternative energy systems. For instance, subsidizing coal has reduced the low-carbon transition pressure, hampered innovation, and caused other problems for that industry across countries. 151

Second, fossil fuel subsidies to consumers and producers indirectly affect climate policy by diverting government revenues that could be used for mitigating emissions and financing low-carbon technologies. The more governments spend on subsidies, the less budgetary and other government allocations that are likely to be available for climate mitigation and the development of low-carbon energy technologies.

Thus, removing fossil fuel subsidies would have multiple positive impacts, although there might also be negative impacts. Reflecting the two major implications, on emissions reduction and the finance of low-carbon technologies, some positive impacts include: contributing to a reduction of global GHG emissions between 6% to 13% by 2050, which is considered an underestimation; ¹⁵² freeing up government funds for low-carbon energy development; ¹⁵³ and making low-carbon energy become more competitive against fossil fuels. Although there are potential unwanted impacts such as increased costs of fossil fuels for people and the difficulty that fossil fuel industry start-ups may experience, changing circumstances might make these impacts less likely. For instance, Canada's transition away from fossil fuels creates room for alternative energy sector innovation, development,

¹⁵³ Ibid.



¹⁵⁰ See ibid.

¹⁵¹ Ibid.

¹⁵² Merrill, Harris, Casier and Bassi, supra note 108.

and other opportunities. Yet, the loss of jobs remains an important negative impact. Swapping from fossil fuel subsidies to alternative sustainable energy subsidies¹⁵⁴ is a way to address the impacts on jobs and other challenges in the net-zero transition.

A Clean Energy Canada report gives ideas about how to redirect government spending in alternative low-carbon energy technologies. Based on quantitative data and modelling, the report provides an assessment of how the transition to a clean energy economy would impact GDP, investment, and employment.¹⁵⁵ It defines clean energy economy as "technologies, services and resources that increase renewable energy supply, enhance energy productivity, improve the infrastructure and systems that transmit, store and use energy and delivery of key energy services while reducing carbon pollution." Breaking down the findings, the consulting firm that prepared the report, Navius Research, observes that the clean energy economy received an average investment of \$30.8 billion between 2010 and 2017, generated \$56.3 billion of GDP and employed 298,000 workers in 2017, represents 3% of Canada's total GDP and 2% of jobs, and is growing faster than the overall economy. Subject to economic variables, a cursory look at this trend suggests that redirecting fossil fuel subsidies into sustainable alternative energies such as renewables is likely to have great results, including more clean jobs, higher contribution to GDP and faster economic growth.

A. Emissions from Fossil Fuels

Based on a working scorecard, the Overseas Development Institute, IISD, Natural Resources Defence Council and Oil Change International show that "Canada is the largest provider of fiscal support to oil and gas production (per unit of GDP) in the G7" ¹⁵⁸ albeit noting that all Group of 7 (G7) countries do not score strongly on fossil fuel phase out indicators, having provided new oil and gas exploration and production finance since the Paris Agreement came into force in 2016. ¹⁵⁹ Another scorecard ranks Canada highest, among the OECD countries in the G20, in the scale of government support for oil and gas exploration, production, refining, and transportation. ¹⁶⁰

Federal, provincial, and territorial policies and programs relevant to fossil fuel subsidies show at least two ways Canada encourages the oil and gas industry to continue emitting through government support. First, policies have different levels of exemptions that allow fossil fuel industries to not reduce emissions and/or continue emitting. Second, government practices in framing what qualifies as "inefficient" fossil fuel subsidies follow methodologies that do not fully reflect carbon footprint. Despite these shortcomings mostly applicable to the oil and gas sector, government has made progress on cutting back coal subsidies.

¹⁶⁰ Anna Geddes, Ivetta Gerasimchuk, Balasubramanian Viswanathan, Angela Picciariello, Bronwen Tucker, Alex Doukas, Vanessa Corkal, Mostafa Mostafa, Joachim Roth, Anissa Suharsono and Ipek Gencsu, *Doubling Back and Doubling Down: G20 Scorecard on Fossil Fuel Funding (Winnipeg: IISD, 2020)*.



¹⁵⁴ Richard Bridle, Shruti Sharma, Mostafa Mostafa and Anna Geddes, Fossil Fuel to Clean Energy Subsidy Swaps: How to Pay for an Energy Revolution (Winnipeg: IISD, 2019)

¹⁵⁵Navius Research Inc, *Quantifying Canada's Clean Energy Economy: An Assessment of Clean Energy Investment, Value-Added and Jobs* (Vancouver: Clean Energy Canada, 2019).

¹⁵⁶ Ibid 4.

¹⁵⁷Noel Melton, Barbar Moawad, Michael Wolinetz and Jotham Peters, "Quantifying Canada's Clean Energy Economy" (2019), online:https://www.naviusresearch.com/publications/clean-energy-economy/.

¹⁵⁸ Vanessa Corkal and Philip Gass, *The (Public) Cost of Pollution: Ontario's Fossil Fuel Subsidies* (Winnipeg: IISD, 2019) 1; Touchette and Gass supra note 61.

¹⁵⁹ Most of the data from Government of Canada, IISD and others support this. For instance, see Table 2.

Exemptions from Carbon Pricing: Government of Canada released the Pan-Canadian Approach to Pricing Carbon Pollution in 2016.,¹⁶¹ outlining a benchmark that provincial and territorial carbon pricing systems should meet. The Pan-Canadian Approach forms part of the Pan-Canadian Framework on Clean Growth and Climate Change (Pan-Canadian Framework), adopted by most provincial premiers in 2016 and released in 2017. After reviewing provincial and territorial systems in 2018, the federal government announced its intention to implement a federal carbon pollution pricing backstop system from 2019, in whole or part within provinces and territories that had requested it or lacked pollution pricing system that aligned with the federal benchmark in the Pan-Canadian Approach.¹⁶² That federal carbon pollution pricing backstop would have two components: a carbon levy applied to fossil fuels, and an output-based pricing system for industrial facilities emitting above a determined threshold, with an opt-in opportunity for smaller facilities that emit below the said threshold.¹⁶³

The federal carbon pricing backstop is now outlined in the Greenhouse Gas Pollution Pricing Act (GGPPA) 2018. The Act implements a federal carbon pollution pricing system with the two backstop components: a fuel charge system and an Output-Based Pricing System (OBPS). Part 1 creates the fuel charge system administered by CRA. ¹⁶⁴ As of 9 August 2021, the fuel charge applies in Ontario, Manitoba, Saskatchewan, Alberta, Yukon, and Nunavut. ¹⁶⁵ Charges apply to fuel and combustible waste, carriers (air, marine, rail, and road), and in some special circumstances. Part 2 creates the Output-Based Pricing System (OBPS), a regulatory trading system administered by Environment and Climate Change Canada. As of 9 August 2021, the system applies in Ontario, New Brunswick, Manitoba, Prince Edward Island, Saskatchewan, Yukon, and Nunavut. ¹⁶⁶ Persons responsible for facilities covered under the OBPS "are required to compensate for GHG emissions that exceed an annual facility emissions limit." ¹⁶⁷ Also, pursuant to other provisions of the GGPPA, the Minister of the Environment issues surplus credits to persons responsible for covered facilities that emit GHGs in a quantity that is below the facility's emissions limit. Judging from these two mechanisms, the GGPPA incentivizes emissions reduction.

However, the GGPPA has gaps that allow continued emissions. It does not apply to all emitters and emissions. Both the fuel charge program and the OBPS illustrate this problem. The fuel charge program exempts some fossil fuel consumption sources, including registered fuel carriers or distributors (including air, marine, and rail), registered emitters for fuel issued at a covered facility, registered users of specific fuel in a non-covered activity, farmers and fishers using fuel for eligible farming and fishing activities respectively, greenhouse operators under specific circumstances, and power plants that generate electricity for remote communities in specific circumstances. The scope of the OBPS allows voluntary participation and has exemptions. The program ensures industrial emitters have a price incentive to reduce GHG emissions and drive innovation, while preventing "carbon leakage," a situation in which facilities move across jurisdictions to avoid paying and

¹⁶⁹ Output-Based Pricing System Regulations SOR/2019-266.



¹⁶¹ Environment and Climate Change Canada, "Pan-Canadian Approach to Pricing Carbon Pollution" (2016), online: Government of Canada https://www.canada.ca/en/environment-climate-change/news/2016/10/canadian-approach-pricing-carbon-pollution.html.

¹⁶² Environment and Climate Change Canada, *Greenhouse Gas Pollution Pricing Act: Annual Report for 2019* (Ottawa: Government of Canada, 2020).

¹⁶³ Environment and Climate Change Canada, *Technical Paper on Federal Carbon Pricing Backstop* (Ottawa: Government of Canada 2017)

¹⁶⁴ Canada Revenue Agency, "Fuel Charge Relief" (21 February 2019), online: https://www.canada.ca/en/ revenue-agency/services/tax/excise-taxes-duties-levies/fuel-charge/relief.html>.

¹⁶⁵ Greenhouse Gas Pollution Pricing Act 2018, Part 1, Schedule 1.

¹⁶⁶ Ibid, Part 2, Schedule 1.

¹⁶⁷ Environment and Climate Change Canada, Overview: Output-Based Pricing System Regulations Under the Greenhouse Gas Pollution Pricing Act (Ottawa: Government of Canada, 2019) 1.

¹⁶⁸ Corkal, Levin and Gass supra note 62.

maintaining competitiveness to mitigate the risk of decreased domestic production.¹⁷⁰ Yet, it does not cover businesses considered to be small, although they could participate voluntarily.¹⁷¹

Like these federal charge exemptions, there are also tax and royalty exemptions across provinces. We can illustrate with Ontario and BC. Ontario has tax exemptions and/or reductions for transport fuels, unlicensed construction, farm equipment, home heating, railway, power take-off equipment, aviation, and others. The BC government has several tax and royalty allowances, reductions and/or credits, for instance Producer Cost of Service, Natural Gas Allowance, Gas Cost Allowance, Infrastructure Royalty Credit Program, Deep Well Royalty Credit Program, Natural Gas Deep Well ReEntry Credit, Low Productivity Well Royalty Reduction, Marginal Well Royalty Reduction, and Net Profit Royalty Program. These provinces and others appear to use exemptions to promote their competitiveness and encourage industries, but they have the serious consequence of encouraging continued emissions.

Narrow Framing of "Inefficient" Subsidies: The narrow framing of subsidies leads to the exclusion of some sources of emissions, creating more externalities. The Office of the Auditor General¹⁷⁴ explains that the practices of the Department of Finance that determine "inefficient" tax subsidies for fossil fuels have focused almost exclusively on fiscal and economic considerations, rather than the broader economic, social, and environmental sustainability issues. ¹⁷⁵ Also, most provinces and territories pay less attention to the need for broader framing of subsidies. Both levels of government and economy are still largely influenced by neoclassical economic thinking, which focuses on financial value but largely excludes other important social values. Expanding the framing across these levels means more subsidies are likely to be considered "inefficient," as eventually defined by Canada's governments or on a case-by-case basis, leading to the reduction of emissions.

Qualified Progress on Coal Subsidies: Despite the challenges, there is good news regarding subsidies for coal. Canada ranks third overall among the G7 countries making progress in ending government support, through public finance, for coal mining in the country as well as for international public finance of coal-fired power. The Commendably, Canada played a leadership role in championing coal phase-out in the lead up to and at COP 26, including announcing up to \$1 billion to support developing countries to transition from coal-fired electricity to clean power. Canada eventually committed to a provision on "accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition" in the Glasgow Climate Pact. The Deciding what coal and inefficient fossil fuel subsidies are "unabated" and "phase-down" provide layers of ambiguity and administrative discretion, since countries will have to define them within the context of their national circumstances. Still, having these provisions will likely lead to more emissions reduction than otherwise.

¹⁷⁷ Glasgow Climate Pact, Paragraph 20.



¹⁷⁰ Environment and Climate Change Canada supra note 161.

¹⁷¹ Department of the Environment, Regulatory Impact Analysis Statement (5 June 2021), online: https://gazette.gc.ca/rp-pr/p1/2021/2021-06-05/html/reg1-eng.html.

¹⁷² Corkal and Gass supra note 158.

¹⁷³ Vanessa Corkal and Philip Gass, *Locked in and Losing out: British Columbia's Fossil Fuel Subsidies* (Winnipeg: IISD, 2019); Corkal, Levin and Gass supra note 62.

¹⁷⁴ Office of the Auditor General "Report 7" supra note 5.

¹⁷⁵ Office of the Auditor General of Canada "Report 3" supra note 5.

¹⁷⁶ Canada's coal transition is slightly ahead of oil and gas, but Canada is championing the phase-out of coal internationally. Canada was among the countries that wanted coal phase-out at COP 26.

However, we should exercise caution. When compared to the rankings on public support for other major fossil fuels, Canada is performing better than most other G7 countries in reducing support for coal, but not doing as well as many other G7 and G20 countries in cutting back support for oil and gas. The Overseas Development Institute, IISD, Natural Resources Defence Council and Oil Change International illustrate this point by ranking Canada as the "largest provider of fiscal support to oil and gas production (per unit of GDP) in the G7," and Geddes and others rank Canada highest, among the OECD countries in the G20, in the scale of government support for oil and gas exploration, production, refining, and transportation. 179

B. Financing Low-carbon Technologies

Renewable energy and energy efficiency, the two most viable low-carbon energy technologies, ¹⁸⁰ do not attract as much subsidies as fossil fuels at the global level. Merrill explains that fossil fuel subsidies to consumers are "four times the level of subsidies going into renewables and four times the level of private investment into energy efficiency." ¹⁸¹

Like fossil fuel subsidies, renewable energy, energy efficiency, and other low-carbon technology subsidies are inadequately reported in Canada, but available data aligns with what we find at the global level, suggesting they are much fewer than fossil fuel subsidies. The bulk of the limited estimated low-carbon subsidies seem to go to energy efficiency as show in Table 1. Low-carbon technology subsidies include Accelerated Capital Cost Allowance, business income tax incentives under Classes 43.1 and 43.2 in Schedule II of the Income Tax Regulations, Emerging Renewable Power Program (ERPP) worth \$200 million, and, more controversially, the \$220 million to fund highly energy-efficient gas turbines for LNG Canada. 182

The political will of successive governments has impacted the progress on low-carbon technology subsidies. For instance, a notable source, the ecoENERGY program for energy efficiency and renewable energy, was not sustained and extended by the Harper government, ¹⁸³ but the Trudeau government has created many low-carbon technology support programs.

Although there are yet to be comprehensive comparisons of fossil fuel and alternative sustainable low-carbon energy subsidies in Canada at the time of writing, an IISD study finds that fossil fuel subsidies make oil, gas, and coal development attractive while undermining the attractiveness and competitiveness of renewable energy. ¹⁸⁴ In essence, the more fossil fuel subsidies around, the less low-carbon energy subsidies we are likely to have.

3.2.3. Fossil Fuel Subsidies have Underrecognized Dimensions of Climate Justice

Climate justice receives very little attention compared to government transparency and climate policy implications in the existing studies. Although most analyses mention the challenge of externalities that result from fossil fuel subsidies, they do not associate them with civil society concerns, where

¹⁸⁴ Touchette and Gass supra note 61.



¹⁷⁸ Corkal and Gass supra note 158, 1; Touchette and Gass supra note 61.

¹⁷⁹ Geddes and others supra note 160.

¹⁸⁰ Onifade supra note 85.

¹⁸¹ Merrill, Bassi, Bridle and Christensen supra note 108.

¹⁸² Innovation, Science and Economic Development Canada, "Government of Canada Confirms Support for Largest Private Investment in Canadian History" (24 June 2019), online: Government of Canada < https://www.canada.ca/en/innovation-science-economic-development/news/2019/06/government-of-canada-confirms-support-for-largest-private-investment-in-canadian-history.html>.

¹⁸³ Geoff Stiles, "Fossil Fuel Incumbents and the Case for Green Subsidies" (25 October 2014), online: Broadbent Institute <Fossil fuel incumbents and the case for green subsidies - Broadbent Institute>.

people are disproportionately impacted by fossil fuel subsidies and might take action to challenge government and industry actions and inactions. Some people and communities in the civil society space are vulnerable because they are exposed to the disproportionate impacts of fossil fuel development backed by subsidies, including climate-related impacts, and lack adequate resources, including money, technologies and legal representation, to protect themselves.

Canadian citizens, Indigenous Peoples, workers, and communities relying on fossil fuels fall into this vulnerable civil society space. Numerous Canadians, especially low-income people, disproportionally bear the externalities of fossil fuel subsidies, even if they enjoy cheaper fuels supported by those subsidies, and many of them may not have options to mitigate or adapt to impacts, for instance relocating elsewhere to run from impacts. Fossil fuel subsidies have severe consequences for workers and communities reliant on the fossil fuel industry, including slowing down their ability to transition smoothly. While Indigenous Peoples also benefit from fossil fuel subsidies by accessing cheaper energy products, they also suffer from differential climate impacts resulting from continued government support for the fossil fuel industry. These implications are discussed in detail below.

Climate justice is the leading framework for thinking about these differential implications for vulnerable stakeholders. However, diverse attempts to conceptualize these challenges and others using the climate justice framework¹⁸⁵ do not agree on many things. Nonetheless, they share the idea that governments should protect and support vulnerable civil society stakeholders. Of the well-recognized vulnerable stakeholders — including children and future generations, workers, women, the elderly, and Black, Indigenous and People of Colour (BIPOC) in the US and similar groupings in other jurisdictions — within the national climate justice discourse, ¹⁸⁶ the stakeholders most implicated by fossil fuel subsidies in the Canadian context are Indigenous Peoples and fossil fuel workers. However, Canadian civil society at large, especially low-income people and communities, also bears the consequences of externalities.

A. Negative Social Externalities Borne by Civil Society

Fossil fuel subsidies benefit most Canadians, for instance, by reducing the cost of fossil fuels that they use and supporting industries that create wealth in Canada's economy. However, by financing continued fossil fuel production even when times have changed, fossil fuel subsidies have negative externalities that impact some Canadians more than others.

Global studies provide the broader context for understanding these externalities in Canada. In one global study, Coady and others identify externalities such as damage to the environment and human

¹⁸⁶ Temitope Tunbi Onifade, "Climate Justice under the Paris Agreement: Framework and Substance" (2021) 15(3) Carbon & Climate Law Review 233.



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¹⁸⁵ Henry Shue, "The Unavoidability of Justice" in Andrew Hurrell and Benedict Kingsbury (eds), *The International Politics of the Environment* (Oxford: Oxford University Press, 1992); Henry Shue, "Subsistence Emissions and Luxury Emissions" (1993) 15 Law and Policy 39; Kenny Bruno, Joshua Karliner and China Brotsky, *Greenhouse Gangsters vs. Climate Justice* (San Francisco: Transnational Resource and Action Centre, 1999); Jouni Paavola and W. Neil Adger, *Justice and Adaptation to Climate Change* (Norwich: Tyndall Centre for Climate Change Research, 2002); Jethro Pettit, "Climate Justice: A New 'Social Movement for Atmospheric Rights' (2004) 35(3) IDS Bulletin 102; Chukwumerije Okereke, "Climate Justice and the International Regime" (2010) 1 Wiley Interdisciplinary Reviews: Climate Change 462; Margot A Hurlbert, "Evaluating Climate Justice- Attitudes and Opinions of Individual Stakeholders in the United Nations Framework Climate Change Convention Conference of the Parties" (2011) 8(4) Journal of Integrative Environmental Sciences 267; Royal Irish Academy, *The Geography of Climate Justice: An Introductory Resource* (Dublin: Royal Irish Academy, 2011); Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford: Oxford University Press, 2014); David Schlosberg and Lisette B. Collins, "From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice" (2014) 5(3) Wiley Interdisciplinary Reviews: Climate Change 59; Brian Tokar, "Movements for Climate Justice" in Matthias Dietz and Heiko Garrelts (eds), *Routledge Handbook of Climate Change Movement* (Routledge 2014) 131, 134.

impacts such as premature deaths from local air pollution, exacerbating congestion and other side effects of continued use of fossil fuels financed through subsidies, as well as fiscal impacts on society such as public debt, higher tax burdens, and diversion of public finance from other productive areas such as health, education, and infrastructure. ¹⁸⁷

IISD narrows the discussion to Canada, acknowledging similar externalities. For instance, in an IISD study, Corkal, Levin, and Gass identify "costs associated with environmental impacts (e.g., air, water and land pollution), impacts on human health, and social impacts such as traffic congestion and road safety." ¹⁸⁸ Although this IISD contribution and others ¹⁸⁹ set out numerous externalities, they do not fully characterize them based on who bears the cost. Looking closely at the externalities, we can think of them in terms of the social spaces, particularly the sectors and actors, that are most affected within a governance triangle.

Figure 2: Fossil Fuel Subsidy Triangle¹⁹⁰

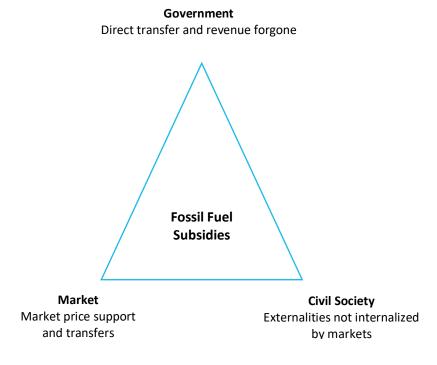


Figure 2 shows that government, market, and civil society bear the costs of fossil fuel subsidies. Government sources constitute the largest, most obvious state source of fossil fuel subsidies, seemingly higher than markets and externalities. Backed by government regulation, market sources are also another significant state source, presumably more than externalities. Accruing to various stakeholders in society, externalities appear to be the least important source. However, since not all externalities are known or costed, learning more about them may reveal that they are actually larger than government and market sources.

¹⁹⁰ Source: Original design.



¹⁸⁷ Coady, Parry, Sears and Shang supra note 99.

¹⁸⁸ Corkal, Levin and Gass supra note 62.

¹⁸⁹ Laan and Corkal supra note 11.

Using three broad, widely recognized social spaces — government, market, and civil society — as a lens, it becomes clear that fossil fuel subsidy externalities arise from and have differential impacts in a fossil fuel governance triangle. Market actors, especially fossil fuel producers and consumers, externalize the costs of fossil fuel subsidies. Governments enable them by allowing regulatory capture, wherein the industry acquires an inappropriate amount of control over regulatory choices and uses it for the benefit of its members; ¹⁹¹ and then support them through direct transfers and revenue forgone. Civil society, especially vulnerable groups such as BIPOC and low-income people, who likely benefit the least from fossil fuel subsidies, disproportionately bear the social costs of emissions, for instance the impacts of continued emissions on human health, ¹⁹² water, land, and infrastructures, and the diversion of substantial amounts from government budgets that would otherwise enhance adaptation to climate impacts and address other pressing challenges.

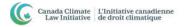
B. Just Transition for Workers and Communities

Fossil fuel subsidies have the potential to slow down industry transition in the pursuit of net-zero. Receiving financial support may give the misleading impression that fossil fuel industries are managing the transition well when they are not. As coal firms have experienced, oil and gas firms may suffer, for instance from financial distress caused by stranded assets, losing value, or closing in transition. These outcomes would impact workers and communities that depend on such industries. To address these outcomes head on, industries and governments should be more proactive than reactive in making transition efforts, including fossil fuel subsidy reforms.

Starting out as a reactive movement but now a proactive policy agenda, "just transition" is a concept for guiding the mitigation of the impacts of industry transition on workers and communities that depend on fossil fuels. This concept should inform subsidy reforms. Although estimates vary, "150,000 and 200,000 people work directly in fossil fuel production and hundreds of thousands more depend on the sector" in Canada. Just transition frames ideas that minimize the potential harm to these workers and communities in the unavoidable shift away from fossil fuels. Fossil fuel transition policies take diverse approaches to just transition, but many of them follow the lead of the International Labour Organization identifies actions that could be targeted, including green skills development, supporting small and medium enterprises, and managing new occupation safety and health risks that come with the transition for vulnerable workers and communities. Piggot, Boyland, Down, and Torre provide examples of just transition programs with elements of these actions in Canada, China, Spain, and Scotland. Mertins-Kirkwood and Duncalfe review international practices to arrive at actions that could work in Canada.

Canada's federal government already acknowledges and embraces just transition, including planning to enact a Just Transition Act and launching a Just Transition Engagement process to get feedback on

¹⁹⁸ Mertins-Kirkwood and Duncalfe supra note 193.



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¹⁹¹ Stigler supra note 106.

¹⁹² Sandy Buchman, *Climate Change is More than Just Economics (iPolitics*, 25 September 2019), online: https://ipolitics.ca/2019/09/25/climate-change-is-more-than-just-economics/>.

¹⁹³ Hadrian Mertins-Kirkwood and Clay Duncalfe, *Roadmap to a Canadian Just Transition Act: A Path to a Clean and Inclusive Economy* (Ottawa: Canadian Centre for Policy Alternatives, 2021) 7.
¹⁹⁴ Ibid 9.

¹⁹⁵ International Labour Organization, *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All* (International Labour Organization, 2015)

¹⁹⁶ See International Labour Organization, *Promoting Decent Work in a Green Economy: ILO Background Note to Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (International Labour Organization, 2011)

¹⁹⁷ Georgia Piggot, Michael Boyland, Adrian Down and Andreea Raluca Torre, *Realizing A Just and Equitable Transition Away from Fossil Fuels* (Stockolm Environment Institute, 2019).

this proposed legislation, but has not applied it specifically to subsidy reforms. According to the Minister of Natural Resources, the Honourable Seamus O'Regan Jr, natural resource workers who helped build the current Canadian economy would also build the new low-carbon economy consistent with the net-zero transition. Their "skills, determination and ingenuity... will get us to net-zero and ensure our continued prosperity." The Minister of Employment, Workforce Development and Disability Inclusion, the Honourable Carla Qualtrough, is of the view that the just transition engagement process "will provide Canadian workers with an opportunity to inform our recovery plan as we emerge from the pandemic." Reflecting international practices, retraining workers and supporting communities impacted are central to the Canadian approach to just transition, but there are several other ideas, including conducting research, engaging diverse stakeholders and communities, raising public awareness, and developing resources to facilitate knowledge-sharing. To align subsidy reforms to just transition, subsidies should be diverted from fossil fuels to support these just transition practices in Canada.

Regardless of these approaches and actions, many Canadians are interested in ensuring just transition is also equitable, with the implication that the reform of subsidies in just transition should be equitable. Just transition policies should be "equitable so that equity-deserving groups — such as women, Indigenous Peoples, racialized individuals, people with disabilities and youth — are able to benefit from new jobs and opportunities." Fossil fuel subsidy reforms under the just transition agenda should consider the impacts on and address the needs of these vulnerable groups and others, meaning that governments should consider how reforming subsidies could enhance their lives.

Since the coal phase out program is ahead of the oil and gas phase out agenda, the work of Canada's federal government on just transition from coal might offer lessons to inform current and future reforms of oil and gas subsidies. For instance, the Government of Canada has set up the Task Force on Just Transition for Canadian Coal Power Workers and Communities, giving it the mandate to provide knowledge, options, and recommendations for how to address the impacts of the shift away from coal on workers and communities in the coal industry. This task force has issued its report. 205 Reflecting this status of coal transition, Government of Canada has also been taking steps to phase out coal subsidies. For instance, it has been advocating for the removal of government support for coal and touching on the just transition implications through its leadership roles in the Power Past Coal Alliance; and has signed the Glasgow Climate Pact to phase down unabated coal, with the implications for subsidies supporting it, at COP 26. With time, Government of Canada will take concrete steps to address just transition implications for oil and gas²⁰⁶ beyond the general commitments on fossil fuels, for instance under the G20 process and the Glasgow Climate Pact. Learning from the modest experience with just transition from coal and the specific steps taken on coal subsidies should make the just transition from oil and gas and the subsidy reforms that should come with it easier and faster as the political will increases.

²⁰⁶ See also Touchette and Gass supra note 61.



¹⁹⁹ Natural Resources Canada, "Canada Launches Just Transition Engagement" (20 July 2021), online: Government of Canada https://www.canada.ca/en/natural-resources-canada/news/2021/07/canada-launches-just-transition-engagement.html.

²⁰⁰ Natural Resources Canada supra note 192.

²⁰¹ Ibid.

²⁰² Tamara Krawchenko and Megan Gordon, *How Can We Manage a Just Transition? A Comparative Review of Policies to Support a Just Transition from Carbon Intensive Industries* (Institute for Integrated Energy Systems, University of Victoria, 2021).

²⁰³ Estan Beedell and Vanessa Corkal, *Building Momentum for a Just Transition in Canada: Perspectives from Civil Society* (IISD, 2021).

²⁰⁴ Natural Resources Canada supra note 199. See also Estan Beedell and Vanessa Corkal ibid.

²⁰⁵ Task Force on Just Transition for Canadian Coal Power Workers and Communities, *A Just and Fair Transition: For Canadian Coal Power Workers and Communities* (Her Majesty the Queen in Right of Canada, 2019).

Canadian provinces and territories are also taking steps on just transition, although they have no uniform blueprint for designing just transition policies. Nonetheless, suitable just transition programs, including energy subsidy reforms, should build on their strengths and reflect their circumstances. For instance, Alberta, having relied more on financial and technological solutions to low-carbon transition, has programs such as Coal Workforce Transition Fund and Coal Community Transition Fund, 207 while BC, where there seems to be a richer environment of social mobilization when compared to Alberta, could adopt a "green social contract" as a package deal, including using the Resource Training Organization to promote apprenticeships for green skills. 208 Regardless of the just transition program options, Canadian provinces and territories should reflect the national aspiration for equity. Vulnerable groups, for instance children, women, and BIPOC, should be empowered to move Canada into an equitable low-carbon future.

C. Justice for Indigenous Peoples

Fossil fuel subsidies have been put in place for energy affordability, to boost economic activities that contribute to royalties, taxes, and infrastructural finance, and might have other benefits considered to be positive, which Indigenous Peoples and low-income communities benefit from. The degree to which Indigenous Peoples benefit would vary across specific Indigenous communities. For instance, governments use subsidies to subsidize energy consumption, benefiting Indigenous Peoples that may have limited financial capacity, so removing fossil fuel subsidies may lead to increased cost of energy and the social unrest that comes with it. Scholars²⁰⁹ identify these sorts of problems across other countries.

Yet, fossil fuel subsidies have serious negative implications for Indigenous Peoples. Fundamentally, they support continued resource extraction and climate change, impacting Indigenous Peoples' livelihoods and ways of life. Removing such subsidies may mean less resource extraction and climate change. Illustrating this point, Human Rights Watch carried out a study looking at the impacts of climate change and the failure to address it— for instance by failing to remove fossil fuel subsidies supporting oil and gas extraction— on Indigenous Peoples in Northern Ontario, Northwestern BC, and Northern Yukon between June 2018 and December 2019. The study finds mostly negative implications such as food poverty and insecurity, which result into poor health and disrupt cultures. The more fossil fuel subsidies persist, the more oil and gas extraction and climate impacts they would support, leading to the loss of lands that should be cultivated for food and creating disruption of traditional food sources such as those for hunting and fishing. To address some of these problems, Indigenous communities develop resilience. For instance, they create projects to bridge the justice gap, including food sharing networks. However, such projects "require resources and capacity which many communities cannot access given government funding complexities, especially as needs increase with rising temperatures." 212

²¹² Ibid 5.



²⁰⁷ Georgia Piggot, Michael Boyland, Adrian Down and Andreea Raluca Torre, *Realizing A Just and Equitable Transition Away from Fossil Fuels* (Stockolm Environment Institute, 2019).

²⁰⁸ Karen Cooling, Marc Lee, Shannon Daub and Jessie Singer, *Just Transition: Creating a Green Social Contract for BC's Resource Workers* (Canadian Centre for Policy Alternatives, 2015).

²⁰⁹ See Michèle Breton and Hossein Mirzapour, "Welfare Implication of Reforming Energy Consumption Subsidies" (2016) 96 Energy Policy 232; Franziska Funke and Laura Merrill, "How Reforming Fossil Fuel Subsidies Can Go Wrong: A Lesson from Ecuador" (IISD, 24 October 2019) https://www.iisd.org/gsi/subsidy-watch-blog/how-reforming-fossil-fuel-subsidies-can-go-wrong-lesson-ecuador.

²¹⁰ Human Rights Watch, "My Fear is Losing Everything": The Climate Crisis and First Nations' Right to Food in Canada (Human Rights Watch, 2020).

²¹¹ Ibid.

Indigenous Peoples should not bear the disproportionate costs of resources and capacity needed to develop resilience. Instead, governments and businesses developing projects on Indigenous lands should invoke legislation and make contracts that take these costs away from Indigenous Peoples. For instance, governments could spend more money and employ experts to address the complexity of public funding and other barriers through Indigenous consultations that incorporate jointly made decisions and support Indigenous Peoples' capacity to negotiate better Impact Benefit Agreements that favour them and address other barriers to this benefit sharing model in Canada.²¹³

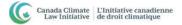
Another problem is that fossil fuel subsidies take away potential funding for adaptation, considered especially important for Indigenous Peoples. Across the G7, international funding for adaption languishes, when compared to funding for fossil fuel subsidies. Reflecting this international trend, Canadian governments appear to give much more funding through fossil fuel subsidies, including those for mitigating emissions from fossil fuel production, than for the adaptation of Indigenous Peoples to climate impacts. Canada's governments do not provide an inventory comparing fossil fuel subsidies and adaptation funding, making any direct comparison misleading, but recent give-aways during COVID-19 illustrate the point. For instance, while the Government of Canada gave \$54.9 million in climate action funding, covering several adaptation projects, for 58 community-based climate action projects (including both Indigenous and non-Indigenous) in 2021, 215 conservative estimates from the IISD show that the same government spent at least \$1.91 billion in fossil fuel subsidies from 2020 to 2021. 216

Removing or reducing fossil fuel subsidies could mean more available funding going into adaptation efforts. Redirecting some of the funding going into fossil fuel subsidies to adaptation is likely to have mostly positive implications for Indigenous Peoples, for instance boosting their resilience and adaptative capacity.

3.2.4. Fossil Fuel Subsidies and Public Support Expose Companies, Investments and Governments to Risks

Companies, pension funds, other corporate and investment fiduciaries, and governments face climate-related risks, including those arising from persisting fossil fuel subsidies. Companies and investors often rationalize these risks in terms of financial materiality for their business,²¹⁷ but they

²¹⁷ For an explanation of financial materiality, see Asset Management Working Group of the United Nations Environment Program Finance Initiative, *The Materiality of Climate Change: How Finance Copes with the Ticking Clock* (Genève: United Nations Environment Program Finance Initiative, 2009); Gail E Henderson, "The Materiality of Climate Change and the Role of Voluntary Disclosure" (2009) 46 Osgood Hall Law School Comparative Research in Law and Political Economy Research Paper Series < https://www.esginvestor.net/tcfd-view-of-materiality-no-longer-adequate-unep-fi-chief/>;Centre for International Environmental Law, *Trillion Dollar Transformation: Fiduciary Duty, Divestment, and Fossil Fuels in the Era of Climate Risk* (Washington, DC: Centre for International Environmental Law, 2016). A dual view of materiality, called "double materiality," is emerging, looking at not only the impact of climate change on business but also of business decisions on climate change. See European Commission Communication, *Guidelines on Non-financial Reporting: Supplement on Reporting Climate-related Information* (20 June 2019); Commonwealth Climate and Law initiative, Climate Governance Initiative and Canada Climate Law Initiative, *Primer on Climate Change: Directors' Duties and Disclosure Obligations* (Oxford, Geneva and Vancouver: Commonwealth Climate and Law initiative, Climate Governance Initiative Law Initiative, 2021); Elena



²¹³ Brad Gilmour and Bruce Mellett, "The Role of Impact and Benefits Agreements in the Resolution of Project Issues with First Nations" (2013) 51(2) Alberta Law Review 385; Chris Hummel, "Behind the Curtain: Impact Benefit Transparency in Nunavut" (2019) 60(2) Les Cahiers de droit 367.

²¹⁴ Kristen Lyons, "How the Pursuit of Carbon and Fossil Fuels Harms Vulnerable Communities" (*The Conversation*, 4 December 2016) < https://theconversation.com/how-the-pursuit-of-carbon-and-fossil-fuels-harms-vulnerable-communities-69364>.

²¹⁵ Environment and Climate Change Canada, "\$54.9 Million in Climate Action Funding for 58 Community-Based Climate Action Projects" (*Government of Canada*, 4 June 2021), online: https://www.canada.ca/en/environment-climate-change/news/2021/06/549-million-in-climate-action-funding-for-58-community-based-climate-action-projects.html.

²¹⁶ Corkal supra note 77.

are now also acknowledging them as systemic risks. ²¹⁸ Meanwhile, governments have long recognized climate risks as systemic.

The United Kingdom Prudential Regulatory Authority (PRA)²¹⁹ and the former Governor of the Bank of England, Mark Carney,²²⁰ make a pioneering contribution classifying three financially material risks: physical, transition and liability risks. Focusing on the insurance sector, this taxonomy is widely accepted,²²¹ and constitutes the precedent for subsequent taxonomies on climate-related business and financial risks beyond the insurance sector. For instance, the Financial Stability Board adopts the three categories,²²² although it also notes that physical and transition risks are the major high-level financial risks, while liability risks are particularly relevant to the insurance sector.²²³ Liability risks arise from insurance claims within the context of the PRA taxonomy.

Following the precedents set by the PRA and Mark Carney, the Task Force on Climate-Related Financial Disclosures (TCFD) provides what has become the global dual classification of climate risks, including those arising from fossil fuel subsidies, in business and finance.²²⁴ The business and finance world now understands climate-related risks mainly in two categories: transition risks (policy and legal, technology, market, and reputation), and physical risks (acute and chronic). For instance, the Bank for International Settlements²²⁵ and the Bank of Canada²²⁶ adopt this approach.

Unlike the business sector, governments do not have an influential global typology of financially material or systemic risks that cover those arising from fossil fuel subsidies. Having such a typology is taken for granted, perhaps because they have always been at the forefront of climate policy and have seen climate change more as an environmental problem than a financial problem. They have developed assessments using science rather than finance in climate policy. For instance, Canada's past national risk assessments²²⁷ have mostly focused on the science of climate change. However, this focus is changing. The Government of Canada, Central Bank of Canada and other regulators and agencies are paying more attention to the financial implications of climate change. For instance, Government of Canada's latest risk assessment discusses financial risks²²⁸ and the Central Bank of Canada has recently turned its attention to climate risks²²⁹ and what they mean for Canada's financial stability.²³⁰

²³⁰ Erik Ens and Craig Johnston, *Scenario Analysis and the Economic and Financial Risks from Climate Change* (Ottawa: Bank of Canada, 2020).



Johansson, "TCFD View of Materiality No Longer Adequate — UNEP FI Chief" (11 February 2021) ESG Investor https://www.esginvestor.net/tcfd-view-of-materiality-no-longer-adequate-unep-fi-chief/>.

²¹⁸ Commonwealth Climate and Law initiative, Climate Governance Initiative and Canada Climate Law Initiative ibid.

²¹⁹ Bank of England Prudential Regulatory Authority, *The Impact of Climate Change on the UK Insurance Sector* (London: Prudential Regulatory Authority, 2015).

²²⁰ Mark Carney, Governor of the Bank of England and Chairman of the Financial Stability Board, 'Breaking the Tragedy of the Horizon – Climate Change and Financial Stability', (Speech at Lloyd's of London, London, September 29, 2015), at 4, *available at*: Mark Carney: Breaking the tragedy of the horizon - climate change and financial stability (bis.org).

²²¹ Randy Bauslaugh, *Climate Change: Legal Implications for Canadian Pension P;an Fiduciaries and Policy-Makers* (McCarthy Tetrault, 2021).

²²² Financial Stability Board, *The Implications of Climate Change for Financial Stability* (Basel: Financial Stability Board, 2020).

²²⁴ Task Force on Climate-Related Financial Disclosures, *Recommendations of the Task Force on Climate-Related Financial Disclosures* (Task Force on Climate-Related Financial Disclosures, 2017).

²²⁵ Basel Committee on Banking Supervision, *Climate-related risk drivers and their Transmission Channels* (Bank for International Settlements, 2021).

²²⁶ Erik Ens and Craig Johnston, *Scenario Analysis and the Economic and Financial Risks from Climate Change* (Ottawa: Bank of Canada, 2020).

²²⁷ For instance, Elizabeth Bush and Donald S. Lemmen, eds, Canada's Changing Climate Report (Government of Canada, 2019).

²²⁸ Fiona J. Warren and Nicole Lulham, eds, Canada in a Changing Climate: National Issues (Government of Canada, 2021).

²²⁹Bank of Canada, Financial System Review (Ottawa: Bank of Canada, 2019) https://www.bankofcanada.ca/2019/05/financial-system-review-2019/#Vulnerability-5-Climate-change.

Given the variety and interconnectedness of physical, transition, liability, and other climate risks as they face companies and investments, fiduciaries, governments and their agencies, and other stakeholders, this report cannot cover the field. Nonetheless, based on the literature and the work of CCLI, the climate-related risks that appear to be the most significant for the focus of this report, especially for companies, pension funds, asset managers, and governments, are transition, liability and, specifically, litigation risks. Fossil fuel subsidies also create physical risks in supporting the industries with assets exposed to natural climate hazards and disasters. However, because these physical risks are more obvious and are receiving adequate treatment in the broader literature on climate-related risks, this report excludes them.

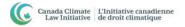
A. Transition and Liability Risks Facing Companies, Investments and Fiduciaries

Transition and liability risks relating to subsidies, especially those arising from low-carbon policies, technologies and markets, and litigation relating to them, are the most likely to impact companies, investment portfolios, asset managers, and other fiduciaries. Low-carbon policy, technology and market risks are either evident or imminent in Canada, especially if we consider recent Government of Canada policy commitments at COP 26 and at home.

Canada's COP 26 commitments on withdrawing fossil fuel support for businesses operating abroad will increase the transition and liability risks of industries accepting fossil fuel subsidies. Government of Canada is withdrawing public support, including subsidies, that enables oil and gas companies to expand their business outside Canada by the end of 2022 and will be diverting funding and other resources to the clean energy transition. Backing these commitments, Canada signed the Statement on International Public Support for the Clean Energy Transition. ²³¹ As per this statement, Canada will "prioritise [...] support fully towards the clean energy transition" "end new direct public support for the international unabated fossil fuel energy sector by the end of 2022, except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement" and "encourage further governments, their official export credit agencies and public finance institutions to implement similar commitments into COP27 and beyond." Although with room for administrative discretion in determining what is "unabated" and applying the exceptions, these policy commitments will likely lead to loss of income, and eventually markets, for oil, gas and coal mining companies that use public support, including subsidies, for their business abroad.

Perhaps more significantly, Canada has now subjected the country to relatively ambitious commitments as a signatory to the Glasgow Climate Pact, which, unlike the Statement on International Public Support for the Clean Energy Transition that uses the broader term "public support," specifically mentions fossil fuel subsidies. While the Pittsburgh Summit commitment in 2009 moved the fossil fuel subsidy phase-out issue from a popular debate and domestic issue to an international policy agenda, ²³² the Glasgow Climate Pact now makes it a global climate policy agenda backed by law under the Paris Agreement. The Pact incorporates the commitment to accelerate "efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition." ²³³ As Canada has already shown commitment to achieving net-zero by enacting the CNAA and making other laws to drive climate targets, our government will make more efforts to implement this global policy agenda

²³³ Glasgow Climate Pact 2021, Paragraph 20.



²³¹ UK Presidency, Statement on International Public Support for the Clean Energy Transition https://ukcop26.org/statement-on-international-public-support-for-the-clean-energy-transition/

²³² Group of 20 (G20), *Leader's Statement: The Pittsburg Summit* (Toronto: University of Toronto G20 Information Centre, 2009) Paragraph 29 https://www.g20.utoronto.ca/2009/2009communique0925.html

in this decade. Subsequent Canadian policies to implement the Glasgow Climate Pact will prescribe less subsidies and eventually ensure they are phased out.

Also, Canada's government support for climate risk stress testing and the Bank of Canada's commitments to it will turn some fossil fuel subsidies from assets to liabilities. The Basel Committee on Banking Supervision defines stress testing as "the evaluation of a financial institution's financial position under a severe but plausible scenario,"234 and a scenario analysis, a model often used for critical strategic business thinking involving looking at alternative conditions that may alter the assumptions behind "business as usual", 235 helps to determine what is "plausible scenario." Climate Minister Steven Guilbeault endorsed and advocated this emerging idea of climate risk stress testing at COP 26, and the Bank of Canada embraced it as part of its commitments to COP 26.236 Taking a step further, the bank has worked with the Office of the Superintendent of Financial Institutions and six federally registered financial institutions to complete a pilot project on how to use scenario analysis to assess transition risks in the Canadian economy.²³⁷ To fulfill its mandate of keeping inflation low and stable, fostering a predictable and efficient financial system, and demonstrating financial policy leadership, the bank will consider and take actions on traditional risk categories affecting Canada's financial economy, including credit, market, liquidity, operational and reputational risks. The bank's response to these risks will influence Canada's economy and up the ante on public and private financing. For instance, through its regulatory oversight of financial market infrastructure (e.g. payment, clearing and settlement systems), policy development and research functions, the bank will eventually contribute policy ideas and frameworks that commercial banks and other financial institutions will draw on to increase their criteria for managing credit systems.

The federal government has also responded to its international commitments at home. The recent mandate letters issued by the Prime Minister to the Minister of Environment and Climate Change and the Minister of Finance best indicate federal policy direction going forward. To implement the federal government's legal and policy commitments, the Prime Minister directs both ministers to work together to accelerate Canada's G20 commitment to eliminate fossil fuel subsidies, moving the date from 2025 to 2023, and work out plans to phase out public financing of the fossil fuel sector. ²³⁸ The mandate letters contain several general statements about taking actions to reach net-zero targets and specific policy directives on fossil fuel subsidies. For instance, the Minister of Environment and Climate Change will work "with the Deputy Prime Minister and Minister of Finance, and with the support of the Minister of Natural Resources" to achieve fossil fuel subsidy phase-out by 2023, while the Minister of Finance will also work "with the Minister of Environment and Climate Change, and with the support of the Minister of Natural Resources, to [...] eliminate flow-through shares for oil, gas and coal projects." ²⁴⁰

Additionally, as transition and liability risks emerging from the latest international and domestic policy commitments of the Government of Canada and the Bank of Canada intensify, all sectors and stages of the value chain will respond in predictable and unpredictable ways. For instance, we can expect

²⁴⁰ Prime Minister of Canada, "Deputy Prime Minister and Minister of Finance Mandate Letter supra note 238.



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²³⁴ Basel Committee on Banking Supervision, *Climate-related Risk Drivers and their Transmission Channels*, (Bank for International Settlements, 2021) vi; Basel Committee on Banking Supervision, *Climate-related Financial Risks -Measurement Methodologies* (Bank for International Settlements, 2021b) .

²³⁵ Basel Committee on Banking Supervision, "Climate-related Risk Drivers and their Transmission Channels."

²³⁶ Bank of Canada, "Bank of Canada Announces Climate Change Commitments for COP 26" https://www.bankofcanada.ca/2021/11/bank-canada-announces-climate-change-commitments-for-cop26/>

²³⁷ Bank of Canada and Office of the Superintendent of Financial Institutions, *Using Scenario Analysis to Assess Climate Transition Risk: Final Report of the BoC-OSFI Climate Scenario Analysis Pilot* (Ottawa: Bank of Canada, 2022)

²³⁸ Prime Minister of Canada, "Minister of Environment and Climate Change Mandate Letter" supra note 4; Prime Minister of Canada, "Deputy Prime Minister and Minister of Finance Mandate Letter" supra note 4.

²³⁹ Prime Minister of Canada, "Minister of Environment and Climate Change Mandate Letter" ibid.

operating, project and compliance costs to rise, uncertainty around market valuation, increase in credit impairment and stranded assets, and loss of competitive position and markets due to increased costs, but this list of implications is not exhaustive. The responses will intensify transition risks, as can be illustrated with insurance.

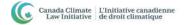
The insurance sector will respond to the increasing risks they will be bearing as policies on subsidies change. Higher transition risks that insurance companies face due to new policy and market changes triggered by unpredictable and unfavourable fossil fuel subsidy policy change will likely correlate to higher claims, which in turn will trigger higher premiums determined based on the degree of risk exposure. Just like we are seeing how physical risks such as heatwaves, wildfires, flooding, the destruction of an entire town and others in BC, ²⁴¹ and other wide-ranging risks in Ontario, Alberta²⁴² and other provinces impact insurance premiums, ²⁴³ fossil fuel subsidy transition risks will likely do the same. Although insurance companies tend to be slow in understanding the significance of such transition risks for their business, somewhat like they have experienced with physical risks in Canada, ²⁴⁴ they will eventually catch up. Property insurers are already updating their risk modelling, ²⁴⁵ and other insurers will follow.

Unlike these foregoing transition and liability risks that we already see or know will cause loss in Canada, litigation risks of fossil fuel subsidies have not materialized in the country. However, they have appeared elsewhere, making them foreseeable in Canada. Among the best-known examples is the case of Client Earth v. Enea²⁴⁶ in Poland.²⁴⁷ The litigant, ClientEarth, is a non-profit environmental law organization and shareholder in the defendant's Polish utility, Enea SA. ClientEarth sued Enea under the Polish Commercial Companies Code asking for an annulment of a resolution that consents to the construction of a coal-fired power plant. The grounds include that climate-related transition risks such as rising carbon prices, increasing competitiveness of cheaper renewables, and the impact of European Union energy reforms on state subsidies for coal power under the capacity market would harm the economic interests of the company. The court found the company resolution authorizing construction of the power plant to be legally invalid. Although the court's decision is not based on the ground alleging the impact of European subsidy reforms on government subsidies for coal power, the case illustrates that such allegations will come up more as governments increasingly commit to phasing down and phasing out subsidies.

Although not specifically identifying fossil fuel subsidy risks, leading Canadian researchers looking at climate-related financial risks already warn about the foreseeability of litigation risks challenging the private sector²⁴⁸ that might accommodate subsidy claims. As part of Government of Canada's latest national risk modelling, researchers identify grounds such as failure to properly disclose, failure to adapt infrastructures in response to physical risks, and active contribution to climate change and

²⁴⁷ Climate Litigation Chart http://climatecasechart.com/climate-change-litigation/non-us-case/clientearth-v-enea/; UNEP and Sabin Centre for Climate Change Law, Global Climate Litigation Report: 2020 Status Review (Nairobi: UNEP, 2020).

²⁴⁸ Janis Sarra and Cynthia Williams, Directors' Liability and Climate Risk: Canada - Country Paper (Oxford: Commonwealth Climate and Law Initiative, 2018).



²⁴¹ Aaron D'Andrea, "B.C. Flooding: How will Insurance Companies Manage as Climate Risks Get Worse?" (*Global News,* 17 November 2021) https://globalnews.ca/news/8380209/bc-flooding-home-insurance-climate-change/>.

²⁴² "Climate Change has Caused Ontario and Alberta Home Insurance Rates to Increase by 64 Per Cent and 140 Per Cent, respectively: RATESDOTCA < https://www.newswire.ca/news-releases/climate-change-has-caused-ontario-and-alberta-home-insurance-rates-to-increase-by-64-per-cent-and-140-per-cent-respectively-ratesdotca-813234492.html>.

²⁴³ Brenna Owen, "Climate Change is Changing How Insurance Industry Assesses Risks" (*The Globe and Mail*, 16 August 2021) < https://www.theglobeandmail.com/business/article-canadian-insurers-are-updating-risk-models-as-climate-change-driving/>.

²⁴⁴ D'Andrea supra note 241.

²⁴⁵ Brenna Owen, "Property Insurers Update Risk Modelling as Canada Braces for Climate Impacts" (*CBC News*, 15 August 2021) < https://www.cbc.ca/news/canada/british-columbia/property-insurance-climate-change-1.6141901>.

damage, ²⁴⁹ providing a lens for thinking about potential subsidy claims against business. Publicly traded companies may become liable under securities laws for failure to disclose or non-disclosure of material climate risks in respect of subsidies they receive. Based on the evolution of Canada's securities law on climate change till date, litigation challenging failure to properly disclose is the most likely to accommodate claims challenging fossil fuel subsidies. For instance, Canadian Securities Administrator's proposed climate-related disclosure requirements may eventually provide backing for lawsuits challenging the failure of publicly traded companies to properly disclose fossil fuel subsidy risks.

B. Foreseeable Litigation Risks Facing Governments

Pioneered in the US, climate-related cases have challenged government actions, for instance laws and specific legal principles, standards and processes, agency permits, and other administrative procedures. Such causes could have, in principle, challenged government actions and policies on fossil fuel subsidies. However, earlier cases were less specifically about climate causes, although they laid the foundation for subsequent legal and civic climate actions. For instance, in City of Los Angeles and City of New York v. National Highway Transportation Safety Administration, ²⁵⁰ a group of cities, states, and environmental organizations brought two petitions seeking a review of Rules of the National Highway Traffic Safety Administration, and the court held that they had standing to sue on global warming grounds, albeit denying their petition on the merits. Building on the earlier efforts, recent cases in the US are more specific about climate change. For instance, in Juliana v US, ²⁵¹ which is pending, young plaintiffs brought an action claiming that the federal government violates their constitutional rights by causing dangerous CO₂ to accumulate. Again, these litigants could, in principle, have expanded their grounds to challenge fossil fuel subsidies. The list of cases keeps growing. Up to 1,387 cases had been filed before courts in the country as of May 2021. ²⁵² Following the trend these cases are setting, future cases will challenge fossil fuel subsidies.

Several other jurisdictions have followed the leadership of the US. Within the same time frame leading up to May 2021, 454 cases had been filed within 39 other countries and 13 international or regional courts and tribunals. ²⁵³ So far, Urgenda Foundation v. Kingdom of the Netherlands ²⁵⁴ remains the top, high profile case outside the US, but others ²⁵⁵ have followed. Sarra, ²⁵⁶ UNEP, ²⁵⁷ Setzer and Higham, ²⁵⁸ and others variously review and characterize these cases. Although cases are also increasing in Canada in line with the global litigation trend, none has focused on challenging government actions and inactions on fossil fuel subsidies. However, we already have a foundation that will support such cases when they eventually emerge.

²⁵⁸ Setzer and Higham supra note 250.



²⁴⁹ Warren and Lulham supra note 228.

²⁵⁰ Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot* (London: Centre for Climate Change Economics and Policy and the Grantham Research Institute on Climate Change and the Environment, 2021).

 $^{^{251}}$ [2015] HAZA C/09/0045668. Juliana v US is one of the most high-profile cases in the US.

²⁵² Setzer and Higham supra note 250.

²⁵³ Ibid.

²⁵⁴ [2015] HAZA C/09/00456689.

²⁵⁵ For example, Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd., Future Generations v. Ministry of the Environment Tribunal Appeal No. Net 196 of 2016; Friends of the Irish Environment CLG v. Gov't of Ireland 2017 No. 793 JR; Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7; PSB et al. v. Brazil (on Amazon Fund) ADO 59/DF; Victoria Segovia v. Climate Change Commission 806 Phil. 1019; Private Corporation for the Development of Aysen, et al. v. Environmental Evaluation Service of Chile R-42-2017.

²⁵⁶ Janis Sarra, From Ideas to Action: Governance Paths to Net Zero (Oxford: Oxford University Press, 2020).

²⁵⁷ UNEP and Sabin Centre for Climate Change Law supra note 247.

Focusing on this Canadian foundation, Chalifour and Earle tell us there could be public and private law actions and diverse potential claimants with varying grounds, and their analysis accommodates grounds potentially addressing fossil fuel subsidies, although they only explore those pursuant to the right to life, liberty, and security of the person under Section 7 of the Canadian Charter of Rights and Freedom. Canadian climate cases often challenge governments for failure to protect members of society, and giving fossil fuel subsidies is likely to constitute one such ground, although claims are subject to the common law "public nuisance rule" and Canadian "public interest standing". While most widely reported Canadian cases do not yet expressly challenge governments on fossil fuel subsidies, climate litigants frame their claims to accommodate such grounds, for instance in ENVironnement JEUnesse v. Canada, Eal La Rose v Her Majesty the Queen, Lho'imggin et al v Her Majesty the Queen in Canada, Ecology Action et al. v. Minister of Environment and Climate Change. A wave of cases will follow in this decade of the race to net-zero. Having already acknowledged climate litigation, Canadian governments should brace themselves for the litigation wave to come, including those challenging fossil fuel subsidies.

These current Canadian cases have trends that make claims on fossil fuel subsidies foreseeable. For instance, they accommodate grounds for challenging government support for the fossil fuel industry, are initiated by vulnerable stakeholders in Canada or non-governmental organizations representing them, and rely on constitutional provisions, claiming that government actions or inactions violate their rights, or challenging government failure to take adequate action. Following these trends, citizens, Indigenous Peoples, other vulnerable groups, and environmental organizations will eventually challenge fossil fuel subsidies given by Canada's federal, provincial, and territorial governments under the Charter of Rights and Freedom, while adding various climate- and low-carbon specific legal flavours from recent legislation such as the GGPPA 2018 and the CNEAA 2021.

Taking the foreign and Canadian cases into consideration, predicting that climate litigants will increasingly challenge fossil fuel subsidies in Canada is reasonable. At least three reasons support this view. First, fossil fuel subsidies sustain many of the climate-related problems that litigants already challenge across existing cases, making it a ripe litigation ground. Although it could be a central claim, it could also be included as a ground of argument in pleadings. Second, developments in other jurisdictions, most notably Australia, the US and the UK, inspire Canadian policies and actions, including the wave of litigation. US and Australia have the highest number of climate-related cases, some of which challenge fossil fuel subsidies, ²⁶⁶ making their influence on Canadian climate litigation pace very likely. Third, Canada is one of the countries giving the most in oil and gas subsidies. Giving more of these subsidies makes climate litigation targeting Canadian governments very likely.

²⁶⁶ David Hasemyer, "Fossil Fuels on Trial: Where the Major Climate Change Lawsuits Stand Today" (*Inside Climate News*, 17 January 2020) < https://insideclimatenews.org/news/17012020/climate-change-fossil-fuel-company-lawsuits-timeline-exxon-children-california-cities-attorney-general/?nowprocket=1>.



²⁵⁹ Nathalie J. Chalifour and Jessica Earle, "Feeling the Heat: Climate Litigation under the Canadian Charter's Right to Life, Liberty, and Security of the Person" (2018) 42 Vermont Law Review 689.

²⁶⁰ Adam Driedzic, "Proving the Right to Be Heard: Evidentiary Barriers to Standing in Environmental Matters" In Allan E. Ingelson, (ed), *Environment in the Courtroom* (Calgary: University of Calgary Press, 2019) 582.
²⁶¹ (2018) 500-06-000955-183.

²⁶² (2019) T-1750-19.

²⁶³ (2020), online: https://climate-laws.org/geographies/canada/litigation_cases/lho-imggin-et-al-v-her-majesty-the-queen-264 (2020 FC 663.

²⁶⁵ Warren and Lulham supra note 228.

4. Canada's Fossil Fuel Subsidies in the Net-Zero Transition: Recommendations for Actions

The IPCC paints a grim picture of climate change in its report released in August 2021, and the World Meteorological Organizations (WMO) shares some of the evidence of impacts in its report released in October 2021. ²⁶⁷ The Glasgow Climate Pact, in seeking to provide details for implementing the Paris Agreement, welcomes both reports²⁶⁸ as part of the best available science.²⁶⁹ sounds the alarm bell that we already have around 1.1 °C of global warming to date and see the impacts in every region of the world, 270 and stresses the need for urgent action. 271 Global warming will already exceed the long-term goal of getting CO₂ emissions "well below 2°C" and the aspirational goal of 1.5°C until at least around 2050.²⁷² However, to avoid exceeding these global average emissions reduction policy targets under the Paris Agreement, we need deep cuts in GHGs in the coming years and decades, especially between now and 2030. Based on climate models, reaching peak emissions where global net anthropogenic CO2 emissions decline by about 45% levels from 2010 levels by 2030 is necessary if we are to achieve net-zero by 2050.273 Under the Paris Agreement, net-zero CO₂ emissions "are achieved when anthropogenic CO₂ emissions are balanced globally by anthropogenic CO₂ removals over a specified period."274 Accordingly, emissions reduction pathways should align with the objective of achieving net-zero around 2050. The IPCC explains that such pathways would help the world avoid or limit overshoot. 275

However, countries' climate pledges, called Nationally Determined Contributions (NDC), are not on their way to meeting the "well below 2°C" and 1.5°C targets under the Paris Agreement, ²⁷⁶ even if supplemented by very challenging increases in the scale and ambition of emissions reductions after 2030. ²⁷⁷ The IPCC tells us that the pledges follow cost-effective pathways that could merely meet a target of 3°C by 2100, but we can only avoid overshoot and reliance on future, largely unpredictable, large-scale use of CO₂ removal technologies such as carbon capture and storage if global CO₂ emissions decline well before 2030, reaching about 45% levels from 2010 levels by 2030 to put us on the pathway to net-zero by 2050. ²⁷⁸ Also, the Emissions Gap Report of UNEP cautions that, although political ambition is increasing, state commitments and actions are not enough for emissions to peak by 2030 and head for net-zero by 2050. ²⁷⁹ The IEA adds that, while governments have increased their pledges to cover 70% of global CO₂ emissions, there are no adequate near-term implementation policies and measures to achieve net-zero by 2050, so we can expect to achieve 22 billion tons of CO₂ emissions by 2050, which will lead us to a 2.1°C temperature rise by 2100. ²⁸⁰ Given how far the

²⁸⁰ IEA, Net Zero by 2050: A Roadmap for the Global Energy Sector (Paris: IEA 2021).



²⁶⁷ World Meteorological Organization, *State of the Climate in 2021: Extreme Events and Major Impacts* (Geneva: World Meteorological Organization, 2021), online: https://public.wmo.int/en/media/press-release/state-of-climate-2021-extreme-events-and-major-impacts.

²⁶⁸ Glasgow Climate Pact, Paragraph 2.

²⁶⁹ Ibid, Paragraph 1.

²⁷⁰ Ibid, Paragraph 3.

²⁷¹ Ibid, Paragraph 4.

²⁷² Intergovernmental Panel on Climate Change (IPCC), "Summary for Policy Makers" In Valérie Masson-Delmotte and others, eds, Climate Change 2021: The Physical Science Basis (Cambridge: Cambridge University Press, In Press [2021]).

²⁷³ IPCC, Global Warming of 1.5 °C: Summary for Policymakers (Geneva: IPCC, 2018).

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ United Nations Framework Convention on Climate Change (UNFCCC) Secretariat, "Aggregate Effect of the Intended Nationally Determined Contributions: An Update, Synthesis Report by the Secretariat" (2 May 2016) FCCC/CP/2016/2; Joeri Rogelj and others, "Paris Agreement Climate Proposals Need a Boost to Keep Warming Well Below 2°C" (2016) 534 Nature 631.

²⁷⁷ IPCC supra note 273.

²⁷⁸ Ibid.

²⁷⁹ United Nations Environment Program (UNEP), Emissions Gap Report 2019: Executive Summary (Nairobi: UNEP, 2019).

world still needs to go to meet emissions reduction targets and their implications, actions taken in this decade are thus critical for deciding whether emissions would peak by 2030 and head for net-zero by 2050.

Countries are not on the same level in their response to this climate emergency, as depicted above, and in the race to achieve net-zero by 2050. Nonetheless, there are leaders and laggards. For instance, the UK established itself as a relative leading developed country by announcing earlier that it would end all support for overseas fossil fuel projects, with very limited exceptions, at the Climate Ambition Summit it co-hosted with the United Nations and France in partnership with Italy and Chile in 2020.²⁸¹ Following the announcement, Canada and other countries have also committed to ending public support for unabated fossil fuel sectors at COP 26, among other promises. However, Canada's net-zero regime does not yet fully align with this ambition to end unabated fossil fuel subsidies.

4.1. A Snapshot of Canada's Policy Regime for the Net-Zero Transition

Canada is rising to the challenge of net-zero transition, but not at the rate that aligns with the climate emergency and our net-zero target. Based on a domestic contextualization of the IPCC definition, ent-zero in Canada means when "anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere over a specified period." Canada has made international and national emissions reduction policy commitments and enacted new laws to frame and implement them to contribute to net-zero. Chalifour and Earle summarize the policy regime for Canada's international and national policy responses to climate change. However, recent policy commitments and laws seek to align Canada's governance towards the net-zero transition more specifically.

Thus, Canada currently has several international, federal, provincial, and territorial policies and laws driving the country's net-zero climate commitments. Most of these instruments share the thread of state regulation by using accountability (target setting, reporting and assessment) and involving businesses through market mechanisms. While recent efforts have sought to bring civil society members into the fold, for instance through public participation, they have not measured up to the level that would make the impact immediate and decisive. Meanwhile, although business and civil society actors also contribute to the public governance of the net-zero transition, they constitute social subsystems with their own internal rationalities (e.g mode of communication, operating principles), 285 potentially putting them at an arms-length from governments even where they benefit from public finance and other resources and rely on the state machinery such as courts. Thus, involving these subsystems in public policymaking, Canada's governments have not fully leveraged the opportunity to orchestrate them to maximize their contributions to meeting net-zero targets.

4.1.1. International Regime

Canada is a signatory to the UNFCCC and the Paris Agreement. Government of Canada commits the country to achieving the aspirational goal of 1.5°C under the Paris Agreement and has submitted the Pan-Canadian Framework as part of its NDC. Canada's previous NDC set a target of reducing GHG

²⁸⁵ Gunther Teubner, "Substantive and Reflexive Elements in Modern Law" (1983) 17 Law and Society Review 239.



²⁸¹ Prime Minister's Office, "PM Announces the UK Will End Support for Fossil Fuel Sector Overseas" (12 December 2020), Government of United Kingdom online: https://www.gov.uk/government/news/pm-announces-the-uk-will-end-support-for-fossil-fuel-sector-overseas.

²⁸² IPCC supra note 273, 26.

²⁸³ Preamble to the Canadian Net-Zero Emissions Accountability Act, s.c. 2021, c.22.

²⁸⁴ Chalifour and Earle supra note 259.

emissions by 30% below 2005 levels by 2030, but Prime Minister Trudeau announced a target of 40-45% reductions below 2005 levels by 2030 at the Leaders Summit on Climate in April 2021. 286 Canada's new commitment aligns with the Paris Agreement's so called "ratchet mechanism", 287 the idea that successive national commitments should be progressive, for instance under Articles 3, 4 and 9, in the net-zero transition. Going by what the IPCC and the Paris Agreement prescribe, these commitments are not adequate to achieve global and Canadian net-zero targets. However, they provide a baseline for evaluating the status quo and making recommendations to drive ambition and action up.

4.1.2. Domestic Regime

The Pan-Canadian Framework is the central policy blueprint for climate and low-carbon policy and action in Canada. Developed with the provinces and territories and allegedly in consultation with Indigenous Peoples, it is Canada's plan to meet emissions reduction targets, grow the economy, and build climate resilience. The framework mainly relies on state regulation, including market-based and command-and-control regulation. Carbon pricing is its main mechanism of market regulation. Classic command-and-control could be seen in the complementary actions, for instance tightening energy efficiency standards and codes, and in supporting the enactment of statutes. However, the review of the progress component of the Pan-Canadian Framework also exhibits elements of experimentalist governance, which involves recursive goalsetting backed by state oversight. 288

Seeking to implement aspects of the Pan-Canadian Framework, Government of Canada has thus enacted two of Canada's most important climate legislation: GGPPA 2018 and CNEAA 2021. While the GGPPA seeks to implement the carbon pricing pillar of the framework, the CNEAA seeks to implement aspects of the pillar on complementary mechanisms, especially reporting and oversight. Declared by the Supreme Court of Canada in 2021 as constitutionally valid, ²⁸⁹ the GGPPA seeks to apply pricing mechanisms to GHG emission sources. Essentially, it engages the market to tackle climate change. The CNEAA aligns Canada's climate accountability system with achieving Canada's domestic and international net-zero targets by 2050. It regulates the setting of emissions reduction targets based on best available science and promotes transparent, accountable, and immediate ambitious climate actions.

Some provincial and territorial governments have also enacted climate laws and regulations, sometimes long before the federal government, while others have been lagging. For instance, one of the most proactive climate policy provincial governments, BC, has the Climate Change Accountability Act 2007 and Carbon Tax Act 2008, while Alberta, among the provinces where climate policy has faced the most barriers in the country, has the Climate Change and Emissions Management Act 2003, the earliest climate legislation in Canada. Provinces and territories without legally backed pricing systems now have a backup in the form of the federal backstop, outlined in the GGPA.²⁹⁰

²⁹⁰ For background reading on carbon pricing ideas that inspired the federal backstop, see Environment and Climate Change Canada supra note 163.



²⁸⁶ Prime Minister of Canada, "Prime Minister Trudeau Announces Increased Climate Ambition" (22 April 2021) < https://pm.gc.ca/en/news/news-releases/2021/04/22/prime-minister-trudeau-announces-increased-climate-ambition>.

²⁸⁷ Sophie Yeo, 'Timeline: How Countries Plan to Raise the Ambition of their Climate Pledges' (19 January 2016), online: Carbon Brief https://www.carbonbrief.org/timeline-the-paris-agreements-ratchet-mechanism.

²⁸⁸ Charles F. Sabel and Jonathan Zeitlin, "Experimentalist Governance" in David Levi-Faur, ed., The Oxford Handbook of Governance (Oxford: Oxford, 2011).

²⁸⁹ Saskatchewan et al v. Canada 2019 SKCA 40, 2021 SCC 11.

4.2. Fossil Fuel Subsidies in the Net-Zero Transition: Taking Actor-centred Actions

Until recently, fossil fuel subsidy reform has not been playing a significant role in enhancing Canada's governance in the net-zero transition. ²⁹¹ To complement recent efforts, this report makes short-term and medium-term recommendations for Canadian governments, corporate and investment fiduciaries, and civil society actors in aligning fossil fuel subsidies with governance that is consistent with the net-zero policy targets. The urgency of the climate emergency impacts the definition of short-term and medium-term. Short-term actions should be taken immediately and have effect as soon as possible, for instance in the next few months in 2022. Medium-term timeframe covers actions that should have impacts by 2023 when Canada now plans to phase out "inefficient" fossil fuel subsidies. Actions beyond 2023 should be considered long-term. These timeframes are consistent with the new timeline in the federal ministerial mandates issued in December 2021 and puts Canada on the path to aligning with the net-zero transition calendars of the IPCC and the UNFCCC which set 2030 as the year for emissions to peak.

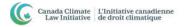
Most of the recommendations are for subsidy reforms by Canada's federal, provincial, and territorial governments. While some of the ideas will support immediate actions to phase out "inefficient" fossil fuel subsidies as already planned for 2023 and deal with the impacts of that phaseout process, most will help to address the challenges beyond 2023, including the implications of subsidies that make it into the list of those considered "efficient" or pass any of the several legal and policy provisos and exceptions. Some ministers, departments, and agencies are equipped to address the bulk of the governance challenges more than others. They are already doing work that they can build on.

At the federal level, the Minister of Finance is the most important actor, followed by the Minister of Environment and Climate Change before other ministers and departments. These ministers are supported by their respective departments: Department of Finance Canada and the Environment and Climate Change Canada. The Ministry of Finance has already reviewed several tax provisions giving preferential treatment to the fossil fuel industry. ²⁹² Environment and Climate Change Canada has also been working to identify non-tax subsidies. ²⁹³ Actions to implement the recommendations should build on their constitutional roles and ongoing work.

For the provinces and territories, several ministers and departments perform similar responsibilities, but there is yet to be widespread collaboration with their federal counterparts to tackle the multiscalar challenge of using subsidy reforms to address climate change in the net-zero transition. Their operations vary across provinces and territories, meaning comparative generalizations would have to carefully account for contexts. Nonetheless, we can generalize that all should leverage their constitutional foundations, build on their ongoing work to implement relevant recommendations, and collaborate with their federal counterparts.

There are also recommendations to help corporate and investment fiduciaries manage their risk exposure through engagement, planning and disclosure processes, and empower civil society actors through litigation and orchestration. Corporate and investment fiduciaries should deliberate on costs and benefits and target beneficiaries (pension and trusts) and stakeholders (investors, creditors, etc.) through engagement, strategic and financial planning, and reporting. These processes might be able to help them avoid or reduce risk exposure. Governments, companies, pension funds, asset managers, and other corporate and investment fiduciaries should also understand that civil society groups such as Indigenous Peoples, other vulnerable Canadians such as BIPOC, and environmental

²⁹³ Office of the Auditor General of Canada, Report 4—Non-Tax Subsidies for Fossil Fuels—Environment and Climate Change Canada (Ottawa: Government of Canada, 2019), online: https://www.oag-bvg.gc.ca/internet/English/att e 43318.html>.



²⁹¹ Corkal supra note 77.

²⁹² Touchette and Gass supra note 61.

non-governmental organizations will continue to question fossil fuel subsidies through litigation and orchestration. These civil society members already champion climate justice causes, but litigation and orchestration might enhance their impact. Adopting some of the recommendations directed to governments and the business and finance communities provides an opportunity to mitigate these civic risks.

4.2.1. Federal, Provincial and Territorial Governments: Reforming Fossil Fuel Subsidies

Federal, provincial, and territorial governments have been working to reform fossil fuel subsidies. Taking urgent, short-term steps to align fossil fuel subsidies to net-zero targets would help. They should start with the low-hanging fruits: adopting an existing official conception of fossil fuel subsidy, preparing, and releasing detailed periodic inventories, providing information on subsidies that support net-zero targets, and covering fossil fuel subsidies in annual reports on risk management measures. In the medium-term, they should commit to other actions that are likely to require more efforts and time. Such actions include reviewing tax and royalty statutes, regulations and other legislation and policies relevant to fossil fuel subsidies and framing the reform of energy subsidies with the concept of climate justice. These recommendations are listed in Table 3 and discussed in detail below.

Table 3: Recommendations for Actions on Fossil Fuel Subsidies in Canada

Federal, Provincial and Territorial	Recommendations
Actors	
Ministers of finance, departments of finance and/or revenue agencies	 Adopt the Auditor General of Canada's conception of fossil fuel subsidy as informed by international best practice Prepare and release detailed periodic inventories of fossil fuel subsidies Provide information on energy subsidies supporting net-zero emissions Cover fossil fuel subsidies and support in annual reports on risk management measures Review and revise legislation and policies relevant to fossil fuel subsidies Frame energy subsidy reforms with the concept of climate justice
Ministers and departments of environment, climate change and/or energy	 Provide information on energy subsidies supporting net-zero emissions Cover fossil fuel subsidies and support in annual reports on risk management measures Review and revise legislation and policies relevant to fossil fuel subsidies Frame energy subsidy reforms with the concept of climate justice: create social plans to limit the impacts of fossil fuel subsidy reform on low-income Canadians, and support workers and communities through just transition programs.
Ministers and departments of employment and/or labour	Frame energy subsidy reforms with the concept of climate justice: support workers and communities through just transition programs

Ministers and departments of Indigenous affairs	Frame energy subsidy reforms with the concept of climate justice: work with Indigenous Peoples to address their needs in subsidy reforms
Ministers and departments of service, welfare and/or health	Frame energy subsidy reforms with the concept of climate justice: create social plans to limit the impacts of fossil fuel subsidy reform on low-income Canadians

A. Adopt the Auditor General of Canada's Conception of Fossil Fuel Subsidy (short-term)

Even though the WTO ASCM definition and UNEP classification of subsidies have become international best practices, Canada has not adopted a uniform definition or classification of subsidies. Even researchers have debated definitions to fit their purposes, leading to accusations for adapting definitions to support the fossil fuel industry.²⁹⁴ Understandably, adopting international definitions and classifications without taking the Canadian context into consideration would be misleading. Relying on international definitions from the WTO, IEA, IMF and the World Bank and reflecting the classification of UNEP, the Office of the Auditor General of Canada provides a solution.

The Office of the Auditor General of Canada adopts a broad conception of fossil fuel subsidies by embracing the common idea across international definitions and classifications: subsidies provide an advantage²⁹⁵ or benefit to the fossil fuel sector. The approach of the office recognizes that Canadian fossil fuel subsidies must be defined and classified broadly to cover budgetary, market and non-internalized externality sources. Meanwhile, relying on the definition of the WTO and reflecting the classification of UNEP, the Office of the Auditor General of Canada provides a Canadian precedent that takes the country's context into consideration. While lacking an official Canadian definition and classification has meant that federal and provincial governments could apply whatever favours their circumstances from time to time, it is no longer an excuse because the Office of the Auditor General of Canada provides an official Canadian solution.

Led by the federal Minister of Finance, the Department of Finance should adopt the broader conception of the Office of the Auditor General of Canada as a model for the entire country, defining subsidies to confer a benefit but acknowledging that they could come from diverse, broad sources illustrated in Figure 1. The provincial ministers and departments of finance should also follow the lead of their federal counterpart.

B. Prepare and Release Detailed Periodic Inventories of Fossil Fuel Subsidies (short-term)

The Government of Canada provides information on fossil fuel subsidies and does so more than provinces and territories. However, there is no detailed annual or other periodic inventory of fossil fuel subsidy policies and programs from federal, provincial, and territorial governments. The peer review with Argentina could potentially apply the international best practice in creating an inventory for Canada's "inefficient" fossil fuel subsidies, serving as a building block for the Government of Canada to release detailed periodic inventories of policies and programs providing such subsidies. ²⁹⁶ UNEP's official guidance, "Measuring Fossil Fuel Subsidies in the Context of the Sustainable

²⁹⁶ Touchette and Gass supra note 61.



²⁹⁴ Laan and Corkal supra note 11.

²⁹⁵ Office of the Auditor General of Canada "Report 3" supra note 5.

Development Goals", ²⁹⁷ is available as a choice framework that Argentina can follow, if it decides to apply an inventory method in the peer review with Canada, and releasing inventories every six months might be better than annually, given the limited timeframe for phasing out "inefficient fossil fuel subsidies" in 2023. Ultimately, having inventories in Canada could help structure the enormous spending that comes with the economic recovery from COVID-19. ²⁹⁸

Regardless of the outcome of the peer review, the federal Minister of Finance, Finance Canada and their counterparts within provinces and territories should release periodic inventories of fossil fuel subsidies within their jurisdictions, defining and identifying those that are "inefficient." Even after the official phaseout of "inefficient" subsidies in 2023, they should continue to release inventories for the "efficient" subsidies, subsidies redirected to other areas such as renewable energy, energy efficiency and just transition, and other subsidies previously associated with fossil fuels that make it beyond that deadline. Providing inventories would contribute to closing the transparency gap.

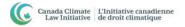
Where governments do not have the in-house expertise to define, calculate and fully understand the implications of subsidies, there is already an abundance of expert estimation of subsidies that governments could draw on, most notably from the IISD. This CCLI report also adds the qualitative, governance lens to that existing, mostly quantitative work.

C. Provide Information on Energy Subsidies Supporting Net-Zero Emissions (short-term)

There are knowledge gaps on the fossil fuel subsidies that support emissions reduction, making it difficult to track progress on how Canada is moving towards net-zero. Fossil fuel subsidy programs supporting low-emissions innovation in the oil and gas industry embrace low-carbon transition, although opponents' question many of them. Some of them enhance extraction processes while others reduce GHG emissions at the extraction site, 299 for instance those under the federal government's Energy Innovation Program— including the Clean Energy Technology component's Carbon Capture, Use and Storage Stream, and the Oil and Gas Clean Technology component— and SDTC Priority Technology Areas supporting unconventional oil and gas projects. However, studies do not clearly separate and estimate the subsidies supporting low-carbon innovation from those that are not. As a result, identifying the fossil fuel subsidies that support net-zero emissions is difficult. Also, there is no detailed data comparing fossil fuel subsidies with alternative sustainable energy subsidies. For this reason, it is not clear how much federal, provincial, and territorial governments subsidies for the fossil fuel sector could be redirected to renewable energy and other alternative sustainable energies. These knowledge gaps do not allow for adequate analysis of progress on net-zero emissions transition.

To close these knowledge gaps, federal, provincial, and territorial departments of environment, climate change and/or energy could enhance information on how fossil fuel subsidies support net-zero transition. They should start by commissioning studies that would provide inventories of fossil fuel subsidies supporting net-zero pathways, including low-emissions fossil fuel and renewable subsidies. If the ministries of finance resort to creating fossil fuel subsidy inventories, they could work with the ministries of environment, climate change and/or energy to have a section that reports on subsidies supporting net-zero emissions.

²⁹⁹ Touchette and Gass supra note 61.



²⁹⁷ United Nations Environment Program (UNEP), Organization for Economic Co-operation and Development (OECD), and IISD, Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals (Nairobi: UNEP, 2019).

²⁹⁸ Laan and Corkal supra note 11.

 Cover Fossil Fuel Subsidies and Support in Annual Reports on Risk Management Measures (shortterm)

Government of Canada has a legal duty to report on key measures that the federal public administration takes to manage financial climate risks and opportunities under section 23 of the CNEAA 2021. The Minister of Finance would cooperate with the designated minister, the Minister of Environment and Climate Change, to prepare the report. This report should include information on fossil fuel subsidy phase out leading to 2023, where previous fossil fuel subsidies are redirected beyond 2023, and other related forms of public support.

Provinces and territories should also emulate this practice. Their ministers of finance and environment, climate change and/or energy should cooperate to design and implement programs for reporting annually on risk management measures, including information on fossil fuel subsidies.

E. Review and Revise Legislation and Policies Relevant to Fossil Fuel Subsidies (medium-term)

Canada's legislation and policies across federal, provincial, and territorial levels should promote the aspirations of Canadians on the net-zero transition, and the organizations and persons they regulate should align with net-zero. For instance, the legislation and policies should prioritize climate change as the most important issue of public concern to Canadians and adjust rules and standards relevant to subsidies to contribute to the solution, and the regulated organizations and persons should respond to these adjustments, including taking steps to phase out "inefficient" subsidies by the planned set federal date of 2023. Canada's legislation and policies relating to tax, royalty, crown corporations, export development, and other areas impacting the fossil fuel industry should be reviewed and revised, positioning subsidy reforms and phase-out as key agendas. We can illustrate with tax.

When Canada wanted to incentivize the corporate sector in 2007, the Government of Canada decided to reduce corporate income tax. That decision made sense at a time that many Canadians and other people and places around the world considered the global financial crisis to be the most pressing global challenge. Climate change is now the most pressing global challenge. We need the laws and policies that impact subsidies revised to reflect this reality.

Based on inputs from other stakeholders, most importantly the departments of environment and/or climate change, federal and provincial departments of finance and revenue agencies should propose the review of tax and royalty legislation to ensure they align with Canada's net-zero targets. For instance, tax legislation review at the federal level would involve Canada's Minister of Finance, Department of Finance Canada, Minister of National Revenue, and the CRA, and royalty legislation review at the provincial level would involve the finance department, for instance Treasury and Finance Board in Alberta, with possible input from the minister and department of energy and others. Federal and provincial parliaments can then use the resources from the relevant departments and/or agencies to carry out amendments.

F. Frame Energy Subsidy Reforms with the Concept of Climate Justice (medium-term)

Canadian governments have largely thought about energy subsidies in neoclassical, profit-centred terms based on cost-benefit analysis, but climate justice provides an alternative way of thinking about subsidies. Framing energy subsidies with climate justice implies putting vulnerable people and communities at the centre of reforms. For instance, a central question should be: what would subsidy reforms mean for Indigenous Peoples, workers and communities that have relied on fossil fuels, and low-income Canadians who bear the externalities? Federal, provincial, and territorial governments



should work together and/or independently create social plans to mitigate the impacts of fossil fuel subsidies and their reforms on vulnerable people, workers, and communities through just transition programs, and work with Indigenous Peoples to learn about and address their needs during subsidy reforms.

Create Social Plans to Limit the Impacts of Fossil Fuel Subsidy Reform on Low-income Canadians: Federal, provincial, and territorial governments should mitigate the potential negative impacts of fossil fuel subsidy reforms on people with limited financial capacity to cope with increased energy costs in the net-zero transition. Governments should create social safety nets to support Canadians that are most impacted.

The ministries of finance and revenue agencies should work with multiple departments, depending on the type of social services. The most likely departments are those in charge of energy, service, welfare, and health. For instance, a federal program would likely involve Finance Canada, Service Canada and Health Canada.

Support Workers and Communities through Just Transition Programs: There are lessons from coal phase-out programs in Canada, Europe, and China that could inform specific steps for reforming fossil fuel subsidies and minimizing its potential impacts on communities, workers and others dependent on oil and gas. 301 First, like it has done for coal transition, the Government of Canada should develop a just transition program analyzing the impacts of the fossil fuel subsidy reforms and eventual phase out on workers and communities dependent on the oil and gas sector. However, it should collaborate with provinces and territories to develop a pan-Canadian just transition program to ensure reasonable progress across the country. Second, the just transition program should identify options for mitigating the impacts of subsidy reforms. For instance, it could create a dedicated just transition fund that those impacted could get. Third, regardless of the options, Canada's just transition program should make plans to retrain fossil fuel workers and integrate fossil fuel-dependent communities into the planning of short- and long-term national net-zero economy, for instance through skills development programs. Fourth, for procedural fairness, the program should engage and carry along affected workers and communities. 302 Of these four broad ideas, retraining fossil fuel workers and integrating fossil fuel-dependent communities into the net-zero economy constitute the most important features of just transition around the world. Any just transition program in Canada should have them as key strategies.

However, where should government get funding for a just transition program? In addition to any budgetary allocation, some of the subsidies going to fossil fuels should be redirected to the just transition program, to benefit workers and communities impacted. For instance, they could be used to finance options such as the creation of a dedicated fund, or skills development programs. IISD develops a similar idea, providing justifications for using fossil fuel subsidies for just transition. ³⁰³ First, fossil fuel subsidies are enormous enough to be significant for financing just transition. Even if not enough, they reduce the need for other significant sources for financing just transition. Second, there are no other dedicated sources of significant funding for just transition. Canada's climate finance is not yet significant enough for even low-carbon energy, making it unlikely to have enough reserve for just transition.

³⁰³ Philip Gass and Daniella Echeverria, Fossil Fuel Subsidy Reform and the Just Transition: Integrating Approaches for Complementary Outcomes (Winnipeg: IISD, 2017).



³⁰⁰ Funke and Merril supra note 209.

³⁰¹ Ivetta Gerasimchuk, Laura Merrill, Richard Bridle, Phil Gass, Lourdes Sanchez, Lucy Kitson, Peter Wooders, "Stories for Success for the UNFCCC Talanoa Dialogue- Fossil Fuel Phase-out And a Just Transition: Learning from Stories of Coal Phase-outs" (Winnipeg: IISD, 2017), online: https://www.iisd.org/gsi/policy-briefs/fossil-fuel-phase-out-and-just-transition-learning-stories-coal-phase-outs>.

³⁰² Ibid.

Across levels, the departments of finance are in the central position to work with the department of labour and/or employment and welfare to address just transition issues. For instance, federal Ministers of Finance and Labour, and their respective departments, Finance Canada and Employment and Social Development Canada, should work closely to implement just transition recommendations at the federal level. However, specific programs may involve other ministries, including those working on environment, climate change and/energy. The exact ministers and departments would be dictated by the actual program.

Work with Indigenous Peoples to Address their Needs in Subsidy Reforms: Federal, provincial, and territorial governments should involve Indigenous Peoples in reforming fossil fuel subsidies. First Ministers directed governments "to work together and with meaningful involvement of Indigenous Peoples to implement the Pan-Canadian Framework and report back on progress." Such collaboration could take many forms and serve diverse purposes. For instance, the Office of the Prime Minister of Canada has worked with the representatives of the National Leaders of the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council to create "three distinctions-based senior bilateral tables based on recognition of rights, co-operation, and partnership. Throughout 2018, these tables have built a structured, collaborative approach for ongoing engagement with Indigenous Peoples in the implementation" of the Pan-Canadian Framework. This type of collaboration is an opportunity to work together to address Indigenous interests in the reform of fossil fuel subsidies.

Beyond just Indigenous involvement, Human Rights Watch makes several recommendations that could enhance Indigenous interests in fossil fuel subsidy reforms. To implement these ideas and others, governments should be driven not only by the mindset of achieving policy objectives, pursuing state-centred conceptions of justice, "doing good", or achieving other normative ends defined by the state, but also by the mission of respecting the self-determination of Indigenous Peoples. First, COVID-19 stimulus packages should support a just transition towards renewable energy across Indigenous communities. Rather than directing stimulus packages to fossil fuel subsidies, governments should target projects that create justice for Indigenous communities. Such projects should not be defined by governments alone, but instead in cooperation with specific Indigenous Peoples, since Indigenous preferences may vary from one group to another. For instance, government representatives and Indigenous representatives could come together to identify projects that are important to Indigenous Peoples. Second, governments should empower Indigenous Peoples. A starting point is to provide capacity building, for instance giving Indigenous communities financial and technical support to address climate impacts. Fossil fuel subsidies could be diverted to finance this support. However, Indigenous Peoples vary in what they want, meaning that there should be no presumptions that finance, technologies and other capacities that governments usually provide are enough.

Implementing this recommendation on working with Indigenous Peoples would require the collaboration of the departments of finance with the departments responsible for Indigenous affairs. For instance, at the federal level, Indigenous and Northern Affairs Canada could work with Indigenous communities to identify their challenges, opportunities and priorities in reforming fossil fuel subsidies, and the Department of Finance would handle financial flow for engagement activities, incorporating Indigenous ideas in policy outputs, and implementing the outcome of the collaboration.

³⁰⁵ Environment and Climate Change Canada, "Pan-Canadian Framework on Clean Growth and Climate Change Second Annual Report: Section 8" (8 August 2019), online: Government of Canada https://www.canada.ca/en/environment-climate-change/services/climate-change/pan-canadian-framework-reports/second-annual-report/section-8.html.



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³⁰⁴ Pan-Canadian Framework on Clean Growth and Climate Change: First Annual Synthesis Report on the Status of Implementation—December 2017 (Environment and Climate Change Canada, 2017) i.

4.2.2. Corporate and Investment Fiduciaries: Planning, Engagement and Disclosure

Corporate and investment fiduciaries should protect themselves by showing that they have acted in the best interest of beneficiaries and in consideration of stakeholders. They could achieve protection through engagement and strategic planning on the risks of fossil fuel subsidies, COVID-19 recovery planning to convert risks to opportunities, and disclosure of the risks associated with fossil fuel subsidies. These actions could be accommodated within their existing structures. Therefore, they should be implemented in the short term.

A. Engage Beneficiaries and their Representatives on the Risks of Fossil Fuel Subsidies (short-term)

Corporate and investment fiduciaries engage with corporate boards, officers and, depending on jurisdictions, beneficiaries, to have dialogues on how they could have more competitive investments. Sarra gives an example of Ontario Teachers' Pension Plan, Canada's biggest single profession pension plan, which engages its boards and management to encourage actions of portfolio companies to reduce GHGs and address climate change. Orporate and investment fiduciaries should engage to enlighten beneficiaries, stakeholders and their representatives about the transition and liability risks associated with receiving fossil fuel subsidies. Doing so would mitigate their risk exposure and serve as evidence of due diligence in acting in the best interest of beneficiaries.

B. Add Fossil Fuel Subsidies to Items Covered in Strategic Planning (short-term)

Corporate and investment fiduciaries should deliberate on the risks and opportunities³⁰⁷ that come with receiving fossil fuel subsidies. They should then incorporate their deliberations and decisions into their strategies, plans and other decision-making processes, for instance business and/or investment plans and risk management. Taking this step is another way to show they have acted in the best interest of beneficiaries.

C. Use COVID-19 Recovery Plans to Convert Corporate and Investment Risks to Opportunities (short-term)

COVID-19 recovery creates opportunities to redirect fossil fuel subsidies into emissions reduction projects and skills development, turning them from risks into opportunities. 308 As much as possible, fossil fuel companies and investments should divert the subsidies they receive for COVID-19 recovery into energy efficiency, renewable energy and other emissions reduction projects. They should also use some of the funding to retrain fossil fuel workers for the net-zero economy. Taking these steps make them pro-active in the net-zero transition. They also put themselves in the position to benefit from the profitable low-carbon economy in the long term.

D. Disclose Fossil Fuel Subsidies to Mitigate Risk Exposure (short-term)

Corporate boards and officers, investment trustees, officers, managers and advisors, and other fiduciaries should report on the transition and liability risks that come with accepting fossil fuel subsides. They should include fossil fuel subsidies in their climate reporting based on the Canadian model of the TCFD if it becomes available, 309 or, alternatively, report based on the original TCFD

³⁰⁸ World Economic Forum, *The Global Risks Report 2021* (16th ed, World Economic Forum, 2021)

³⁰⁹ See Environment and Climate Change Canada, *Final Report of the Expert Panel on Sustainable Finance: Mobilizing Finance for Sustainable Growth* (Ottawa: Government of Canada, 2019).



³⁰⁶ Sarra supra note 256.

³⁰⁷ See ibid

model. Disclosing the risks to their beneficiaries and other stakeholders has the potential of mitigating their exposure to beneficiaries' legal action and liabilities that may arise in case of loss.

4.2.3. Civil Society Actors: Empowering Vulnerable Stakeholders

Governments and businesses should know that Indigenous Peoples, community groups, NGOs, and other relevant civil society actors will likely bring legal action against governments and fiduciaries on fossil fuel subsidies anytime soon. Attribution science has emerged to link climate change to impacts, making it easier to prove causation and liability, which has been the biggest challenge in climate litigation, to justify their claims. However, due to the challenge of locus standi, which is subject to the common law "public nuisance rule" and Canadian "public interest standing" rules in Canadian law, and the more serious challenge of justiciability, it civil society lawsuits against companies, investments and their fiduciaries are less promising than non-fiduciary actions against governments.

Beyond the courtroom, there is also a medium-term promise of using new governance tools to regulate companies, investments, and their fiduciaries. Several theoretical ideas advance these tools, for instance polycentric governance, regime complex and smart regulation. Serving as a bridge between theory and practice, the concept of orchestration could deliver the promise of these theoretical ideas. Although it does not preclude working with the state, it offers ways civil society actors could organize to regulate corporate and investment actors without relying on government ministries, departments, and agencies.

A. Challenging Fossil Fuel Subsidies through Climate-Related Litigation (short-term)

Indigenous Peoples and other civil society actors will likely challenge fossil fuel subsidies in courts since they do not need novel claims to do so in climate-related cases. However, where they are not corporate and investment beneficiaries, they stand a better chance suing governments than corporations, asset managers, and fiduciaries, based on what the current cases tell us, although the field is moving fast and the risks are rising. These risks of civil society claims should drive governments and industries to take actions to reduce their risk exposure. For instance, governments could reduce their risks by phasing out all fossil fuel subsidies or at least reforming them as advised in Table 3, while industries could protect themselves by reducing their reliance on subsidies and/or through planning, engagement, and reporting.

Learning from the existing arguments in current climate cases challenging governments, specific grounds for challenging fossil fuel subsidies in courts might include, or at least touch on, failure to adopt adequate GHG emissions reduction targets and phase out "inefficient" fossil fuel subsidies to meet such targets, failure to meet legal commitments under the global climate regime and Canadian law by supporting fossil fuel development, failure to properly assess the risks of supporting fossil fuel development, and failure to take sufficient steps to address climate change and ensure climate recovery by phasing out "inefficient" fossil fuel subsidies. Research³¹² also suggests types of government conduct litigants could challenge, for instance specific decisions, constellation of decisions, actions or inactions, and positive duty.

B. Orchestrating Actions that Support the Phasing Out of Fossil Fuel Subsidies (medium-term)

³¹² Ibid.



³¹⁰ Driedzic supra note 260 at 582.

³¹¹ Chalifour and Earle supra note 259.

Abbott and Snidal³¹³ originally develop the concept of orchestration as a tool available to governments and intergovernmental organizations that have the political will to regulate within the transnational space, including within the global climate regime.³¹⁴ However, civil society actors can also orchestrate by using a variety of "measures designed to convene, empower, support, and steer public and private actors engaged in regulatory activity."³¹⁵ Orchestration does not rely on governments, ³¹⁶ making it a promising strategy where governments are not doing enough to phase out fossil fuel subsidies. Although the conditions enhancing orchestration may vary,³¹⁷ civil society actors might use facilitative rather than mandatory orchestration, given their lack of authority to compel other actors. Facilitative orchestration essentially seeks to coordinate actions that enhance objectives, for instance convening, negotiating, legitimating, ratifying, publicizing, partnering, supervising, and otherwise interacting with initiatives and programs that regulate fossil fuel subsidies.

There are numerous examples of orchestration around, including those operating within countries. Chan, Ellinger and Widerberg³¹⁸ discuss some of them that could help move the world towards the Paris Agreement's aspirational goal of 1.5°C, endorsed by the IPCC and others as the way to reach peak emissions by 2030, achieve net-zero by 2050, and avoid overshoot. Building on what they are already doing across these existing initiatives to leverage the growing knowledge on orchestration, Indigenous groups, communities relying on fossil fuels, other vulnerable stakeholders, NGOs, and other non-state and subnational actors will eventually take advantage of their collective strength to challenge fossil fuel subsidies and bypass recalcitrant governments where they can. For instance, initiatives such as fossil fuel divestment and Carrotmob "buycotts" allow civil society actors to regulate the behaviour of companies and investors regarding fossil fuel subsidies without relying on governments, making them available tools to challenge fossil fuel subsidies.

Hence, governments, corporations, investment managers, and other fiduciaries should be aware of orchestration as a subtle method of regulating fossil fuel subsidies. Orchestration has the potential to trigger and mobilize other remedies, for instance where activists orchestrate others for class action and civic activism. Moreover, the fact that orchestration could trigger other remedies makes it a highly ubiquitous and promising method of regulation to watch out for. Corporate and investment fiduciaries should protect themselves by taking actions that mitigate their exposure, some of which are recommended in this report.

5. Conclusion

Canada is financing its recovery from the COVID-19 pandemic. This recovery presents an opportunity for the country to address the climate emergency. We should think about how Canada's federal,

³¹⁹ Carrotmob is a non-profit organization based in San Francisco, California, in the US. It uses "buycotts," a type of consumer activism, by organizing people to commit to shopping-sprees in favour of low emitting businesses, for instance those using clean energy, bringing the latter substantial returns.



³¹³ Kenneth W. Abbott and Duncan Snidal, "Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit" (2009) 42 Vanderbilt Journal of Transnational Law 501.

³¹⁴ Kenneth W. Abbott, "The Transnational Regime Complex for Climate Change" (2012) 30 (4) *Environment & Planning C: Government & Policy* 57; Kenneth W. Abbott, "Strengthening the Transnational Regime Complex for Climate Change" (2014) 3(1) Transnational Environmental Law 57.

³¹⁵ Abbott and Snidal supra note 313, 510.

³¹⁶ For instance, Sander Chan and Pieter Pauw, A Global Framework for Climate Action (GFCA) - Orchestrating Non-State and Subnational Initiatives for More Effective Global Climate Governance (Bonn: German Development Institute, 2014).

³¹⁷ For instance, Thomas Hale and Charles Roger, "Orchestration and Transnational Climate Governance" (2014) 9 The Review of International Organizations 59.

³¹⁸ Sander Chan, Paula Ellinger and Oscar Widerberg, "Exploring National and Regional Orchestration of Non-State Actors for <1.5°C World" (2018) 18 International Environmental Agreements: Politics, Law and Economics 135.

provincial, and territorial governments spend public dollars in this recovery to finance our legal and policy commitments to achieving peak emissions by 2030 and net-zero emissions by 2050. Achieving net-zero puts us on a path to avoiding or at least limiting overshoot.

What are the implications of fossil fuel subsidies for private and public governance in this transition? The report suggests that, although Canada's governments have not taken adequate actions and provided enough information on fossil fuel subsidies, a synthesis of the available data and an original governance evaluation of fossil fuel subsidies reveal more negative than positive implications for government transparency, climate policy, climate justice, and climate-related risk exposure in the net-zero transition. From the data synthesis, governance evaluation and the recommendations that follow, we become familiar with some of the key issues around the handling of fossil fuel subsidies that policy makers, corporate and investment fiduciaries, and civil society actors should address to enhance Canada's net-zero transition.

Based on the data collected from governments and estimates from experts, the report finds that the information on fossil fuel subsidies in Canada is insufficient. Current data analyses are based on diverse policy sources and years that make comparison and generalization difficult. Nonetheless, highly conservative estimates, most of which are based on the work of the IISD, are available at the federal, provincial, and territorial levels. Based on the estimates, combined federal, provincial, and territorial fossil fuel subsidies in Canada make up at least a total of \$4.8 billion per year in 2018 and 2019. Federal fossil fuel subsidies were at least \$600 million in 2019-2020, while combined provincial and territorial subsidies were \$4.176 billion in 2018-2019. There are other estimates, meaning there is no uniform data source. Given that these figures are based on insufficient government information, they do not support confident quantitative generalizations.

Nonetheless, we can derive reasonable qualitative generalizations on which government level provides data and, based on that data, the patterns of fossil fuel subsidies in Canada. The report outlines five key points on these data and/or subsidy patterns. First, federal government provides more quantitative data than provincial and territorial governments. However, governments at both levels lack detailed inventories. Second, Canadian fossil fuel subsidies are largely in the form of direct grants and indirect forgone revenues based on taxes and royalties. Regardless of the source, most of them are forgone revenues based on the tax and royalty systems rather than direct grants at an aggregate level, and the federal government has a smaller rate of quantified subsidies in forgone revenues than provinces and territories. Third, Canada's federal government gives more fossil fuel subsidies to producers than consumers to incentivize the extraction of fossil fuels and/or reduce their emissions. The federal government subsidies have recently shifted focus from exploration to infrastructural development for production and export of Canadian fuels abroad. Fourth, unlike the federal government, provincial and territorial governments give much more consumption subsidies through tax exemptions for the use of fossil fuels when compared to the federal government, in addition to production subsidies that tend to be high in some provinces. Also, more than the federal government, provinces and territories give abundant royalty subsidies. Fifth, and the finding that is of the most interest to CCLI, is that fossil fuel subsidies have governance implications. Canadian stakeholders address many governance implications of subsidies, but pay less attention to their international dimensions, for instance how they affect international politics and policy.

Informed by the mandate of the CCLI, this report, unlike most of the others before it, narrowly explores the public and private governance implications in detail, classifying and evaluating four of them: government transparency, climate policy effectiveness, climate justice, and climate-related risk exposure. Most of these evaluation criteria have more to do with climate governance.



Government transparency, also the only implication that has more to do with issues broader than climate governance, is the most popular implication that other studies address, but the report gets into the nitty-gritty. The basic idea across contributions is that federal, provincial, and territorial governments do not report fossil fuel subsidies in a transparent way. While delving into the question of what undermines transparency — specifically, the two well know issues: fossil fuel subsidy has no agreed definition and/or classification, and governments provide inadequate information about them— like other contributions, it digs deeper to address the question of why there is a lack of transparency, shedding light into the reasons governments might not be transparent about fossil fuel subsidies in Canada.

Climate policy comes up lesser than transparency but more than climate justice. The crux is that some fossil fuel subsidies cause more global warming and climate change, while others reduce GHG emissions by promoting the use of low-carbon technologies, most importantly renewable energy and energy efficiency. Fossil fuel subsidies therefore have two major implications for climate policy: impact on GHG emissions reduction, and on the finance of low-carbon technologies. The report explores these impacts in Canada, illustrating them with policy programs and actions.

Climate justice does not receive as much attention, although it comes up more than risk exposure. The central idea on climate justice is that fossil fuel subsidies disproportionately impact some societal stakeholders that are most vulnerable to policies, corporate actions, and investment decisions in the fossil fuel industry. Canadian society, especially low-income people, bear the consequences of many social externalities, but workers and communities relying on the fossil fuel economy and Indigenous Peoples and communities suffering disproportionate consequences of continued fossil fuel extraction should be singled out for their differential vulnerabilities.

Risk exposure is by far the least known governance implication. Fossil fuel subsidies create financially material risks for corporations and investment portfolios that receive them, and government stakeholders that regulate them also face risks. Companies and their boards, pension boards, asset managers, and other fiduciaries are exposed to actual or imminent transition and liability risks and foreseeable litigation risks, while governments mainly face foreseeable litigation risks. Based on the trends across the ongoing cases, the report predicts possible grounds and target defendants for litigating causes on fossil fuel subsidies.

The Government of Canada and Bank of Canada have made commitments relating to COP 26 that would address some of these implications. However, their commitments and the responses of financial institutions and industries might only partly address climate policy and risk exposure implications. For instance, removing public support for Canadian oil, gas, and coal companies operating abroad, climate risk stress testing, and the resulting rising insurance premiums and other financial sector signals would likely help to reduce emissions, force a reduction of corporate and investment exposure to transition and liability risks when fiduciaries become proactive, and help to free government funding up and encourage its diversion to clean technologies. However, the government commitments are far from adequate.

First, reinforcing the lack of transparency, the Government of Canada's COP 26 announcements and ministerial mandates are not clear about the exact sources of fossil fuel support to phase out. Given that there are multiple sources of fossil fuel subsidies, including forgone revenues, among other forms of support, failing to identify the sources leaves room for administrative secrecy and discretion that could allow some subsidies supporting foreign fossil fuel business survive the reforms.

Second, the COP 26 commitments and ministerial mandates do not clearly cover provincial and territorial oil and gas subsidies. Royalties and other provincial and territorial subsidies constitute the



bulk of government subsidies not related to COVID-19, making federal government commitment grossly inadequate. Therefore, these subsidies have implications such as encouraging the possession of Indigenous lands for oil and gas operations, denying them food sources and other natural resources, and causing pollution that intensifies the environmental and social consequences they already suffer. Also, Canadians will continue to bear the costs of the externalities of fossil fuel operations and fossil fuel workers and communities may be behind in the transition. To reconcile these subsidies and their reforms with the interest of most Canadians, oil and gas industries operating in the country should only continue to benefit from public dollars for operations that fully advance renewable energy and energy efficiency development. These companies should rebrand as energy companies and lead us towards a profitable low-carbon future.

Third, the international and domestic commitments on fossil fuel subsidies are riddled with caveats and exceptions that will encourage too much administrative discretion and create uncertainties in government reform and phase-out of subsidies. The best-known caveat from the G20 Pittsburgh commitment is the qualification of subsidies to be phased out with the term "inefficient," now inherited by the Glasgow Climate Pact and Canadian national policies. The Statement on International Public Support for the Clean Energy Transition also introduces an exception of "limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement" to the objective of ending new direct public support for the international "unabated" fossil fuel energy sector by the end of 2022. How do we determine such consistent, excepted circumstances, and what qualifies as "unabated" fossil fuel? Such caveats and exceptions ultimately give governments room to interpret them to suit their purposes, including those dictated by special interests that capture government regulation, and the Government of Canada may be tempted to take advantage of the language. To mitigate this problem, we need a definitive legal provision that makes it clear that Canada will phase out all foreign and domestic fossil fuel subsidies, while addressing the implications through suitable net-zero policies, for instance, those introducing just transition programs.

Altogether, Canada's commitments at COP 26 and at home will likely reduce national contribution to emissions and climate injustice while reducing the exposure of Canada's oil, gas, and coal companies to climate-related risks abroad, including litigation by the countries and communities hosting Canadian oil, gas, and coal companies. They also support climate policy objectives rooted in Canadian law and the Paris Agreement and reduce the exposure of governments to litigation. However, they have significant gaps. Ultimately, they do not fully address the challenges of transparency and climate justice in Canada and are not significant and definitive enough to make Canadian climate policy effective at the rate needed to achieve peak emissions by 2030 and net-zero by 2050.

The report makes comprehensive recommendations for short-term and medium-term actions that Canadian governments, companies, pension funds, their fiduciaries, and civil society members should take in addressing the governance implications, including filling the gaps in Canada's COP 26 and domestic commitments, to align fossil fuel subsidies with Canada's net-zero target. Given that the IPCC has said that emissions should peak around 2030 and reach net-zero around 2050, short-term actions should be immediate, while medium-term actions should have an impact by 2023 to ensure fossil fuel subsidies help in achieving peak emissions by 2030. Because governments have the most important role to play in addressing the governance gaps in the handling of fossil fuel subsidies, there are six recommendations for them, mainly about reforming fossil fuel subsidies to enhance information, enable stakeholder evaluation, promote policy targets, address vulnerabilities, and limit their exposure to litigation risks. In the short term, policy makers should adopt the Auditor General of Canada's conception of subsidy for government direct and indirect support to the fossil fuel industry as informed by international best practice, prepare and release detailed periodic inventories of fossil fuel subsidies while defining and identifying those that are "inefficient," provide information



on subsidies supporting net-zero GHG emissions, and cover fossil fuel subsidies and public support in annual reports on risk management measures. They should review and revise tax, royalty and other legislation and policies that have to do with fossil fuel subsidies, and frame energy subsidies, including deciding renewable and other sources to benefit from a shift from fossil fuel to alternative sustainable energy subsidies, with the concept of climate justice in the medium term.

There are four key recommendations for corporate and investment fiduciaries, envisaging how engagement, planning and disclosure processes could mitigate their risk exposure. Corporate boards and officers, pension and other investment trustees, officers, advisors, and other corporate and investment fiduciaries should engage beneficiaries and other stakeholders and their representatives on the risks of fossil fuel subsidies, add fossil fuel subsidies to items covered in strategic planning, use COVID-19 recovery plans to turn risks to opportunities, and disclose fossil fuel subsidies to mitigate risk exposure in the short-term.

Finally, there are two recommendations acknowledging the opportunities civil society actors have, but which also pose risks to companies, pension funds, investors, and other corporate and investment interests and fiduciaries. Indigenous Peoples, fossil fuel workers, other vulnerable groups, and NGOs will challenge fossil fuel subsidies through climate litigation anytime from now, and they have the option of orchestrating actions that support the phasing out of fossil fuel subsidies in the medium-term and other follow-up actions. Corporate and investment fiduciaries should mitigate their exposure to these potential civic actions, for instance by taking some of the steps recommended in this report.



Vancouver, BC V6T 1Z1 wwww.ccli.ubc.ca | ccli-info@allard.ubc.ca