

Briefing note:

Specifying requirements for assessments of climate-significant undertakings

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The federal *Impact Assessment Act* that is currently before Parliament has considerable potential as a vehicle for progress on climate change mitigation. It is sustainability-based and requires consideration of whether assessed undertakings would “hinder or contribute to” meeting Canada’s climate change commitments. However, the Act’s promising basic requirements are unlikely to be understood reliably or applied predictably unless accompanied by specific regulatory directions and policy guidance for application and compliance.

For assessment applications, the central requirement is for a clear and explicit set of climate-centred tests in decision making. Elaboration and application of these tests are needed to clarify how to evaluate the extent to which assessed undertakings would “hinder or contribute to” meeting Canada’s climate change commitments, as required under section 63(e) of the new law. While that clarification is most obviously needed for decision makers, the rules for decision makers will also guide proponents, assessment reviewers and other participants in assessment deliberations.

The major basic tests are summarized below in Box 1. The tests mobilize the several categories of tools outlined above to meet Canada’s *Paris Agreement* commitments. Because those tools have different strengths and roles, the tests should be taken as a package. Each of the tests needs some elaboration for practical application. However, the details are likely to be best informed by experience and, in any event, the details will have to be adjusted as pathways, pricing and carbon budget allocations evolve, and global requirements are tightened.

Box 1 Tests to be applied to determine whether a proposed undertaking would or would not contribute to meeting Canada’s international climate change mitigation commitments

The core test is that all projects and other proposed undertakings that, over their lifetime, may be GHG significant must

- contribute to meeting Canada’s international climate change mitigation commitments, and not hinder transition to GHG neutrality in time to meet those

commitments.¹

The international commitments currently established chiefly under the *Paris Agreement* require Canada to do its fair share

- to keep overall climate warming “well below 2°C” and to pursue efforts to limit the increase to 1.5°C above pre-industrial levels” (Article 2.1);
- to reach GHG neutrality by latest in the second half of this century “on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty” (Article 4.1.);
- to anticipate regular review and revision of signatories’ commitments to reflect progressively increasing nationally determined contributions that reflect each signatory’s “highest possible ambition” (Article 4.3, Article 14).

More specific tests that elaborate on the core test can be based on analyses using a variety of available tools that could be developed and specified further for Canadian application, and on existing Canadian policy guidance adjusted as needed to reflect our current and anticipated international commitments.

Tests based on particular analyses using a range of tools would, for example, require a proposed undertaking

- to contribute to the major transformations that are needed in key sectors – including energy, transportation, buildings, manufacturing and resources – to achieve GHG neutrality in Canada in time to meet our international commitments;
- to avoid any direct or indirect effects that would hinder timely transition to GHG neutrality;
- to fit on a credibly identified sectoral or regional pathway to meeting Canada’s international commitments;
- to be consistent with staying within a defensible GHG budget for Canada (and within the global GHG budget consistent with meeting international objectives), as further specified for a sector or region;
- to be viable if the GHG price needed to achieve timely transition to a GHG-neutral economy were internalized in the anticipated costs of the undertaking;
- to be viable if the full social cost of the GHGs properly attributable to the undertaking were internalized in the anticipated costs of the undertaking;
- to avoid, or compensate for, any addition to the costs of making a timely transition to GHG neutrality;
- to avoid, or provide legitimate new domestic offsets to neutralize, any properly attributable GHG emissions or sink impairments past the Canadian deadline for GHG neutrality entailed by Canada’s current international commitments; and
- to be consistent with ensuring that Canadian GHG mitigation and sink enhancement initiatives reflect “highest possible ambition” or best efforts and not

¹ This is a restatement of s.63(e) of the *Impact Assessment Act*, as proposed, as it applies to climate change mitigation. See Box 4.2, below.

impede more promising options.

Tests based on existing domestic policy guidance would need to favour openly developed and otherwise credible policies and would need to be updated regularly to recognize new guidance. However, in every case the guidance would have to be consistent with meeting Canada's international commitments.

For illustration, given current domestic policy guidance, a proposed undertaking would be required

- to be consistent with meeting Canada's current Nationally Determined Contribution (NDC), plus additional expectations to address the gap between the current NDC and the more demanding commitments of the *Paris Agreement*,* and to anticipate needs for increasing ambitions in future national commitments under that Agreement; and
- to be consistent with the requirements implied by the *Pan-Canadian Framework on Clean Growth and Climate Change*, plus additional expectations to address the gap between the Framework components and the current NDC, as well as the gap between the current NDC and the *Paris Agreement*.

As should be evident, specifying these tests through open and meaningfully participative strategic policy making, including application of legislated strategic assessment requirements, would be preferable to relying on case-by-case debates on the test requirements and implications. Also these tests would need to be applied to all activities and undertakings affecting prospects for meeting Canada's climate change mitigation commitments, including existing activities and undertakings and ones otherwise not subject to legislated assessment requirements.

These tests, simply stated, will not be sufficient by themselves. To support the tests, and ensure clear expectations and common understandings for meeting Canada's climate commitments under the new Act, a suite of regulatory and policy steps will be needed.

Essentially, these regulatory and policy steps must fill the gap between the *Paris Agreement* and assessments of particular projects and strategic undertakings. If the government moves to address the many gap-filling requirements listed above – for broad policy initiatives, appropriate tools and methods and learning and collaboration measures – developing guidance for assessments will be much easier. If not all those matters will be left for at least interim attention in regulations and policies under the new Act.

Among the priorities for specified requirements and guidance are the following:

- clarify how contributing to (and not hindering) meeting the commitments entails consistency with viable pathways towards GHG neutrality within the deadlines implicit in Canada's international commitments;
- clarify how assessments should incorporate

- contributing to just transitions to a low-GHG future,
- avoiding or offsetting GHG emissions or sink impairments past the Canadian deadline for GHG neutrality,
- avoiding entrenchment of climate-inappropriate structures, practices and dependencies,
- ensuring “best efforts” for GHG mitigation and sink enhancement, and
- favouring capacity to meet increasingly ambitious future national commitments;
- clarify how the climate change mitigation obligations are to be met in ways that also serve other sustainability-based purposes and criteria under the law, including through integration of climate-centred criteria in a more comprehensive set of sustainability-based criteria for assessment applications (e.g., in comparative evaluation of options for project and strategic undertakings, in assessment reviews and decision making, and in determination of approval conditions and monitoring priorities);
- specify requirements for all assessments to include comparative evaluation of alternatives as well as the proposed undertaking, with particular attention requirements and methods for comparisons to identify best options for contributing to meeting climate commitments;
- establish trade-off rules and processes affecting climate commitments, ensuring that climate trade-offs are avoided to the extent possible, subject to explicit limitations, supported by explicit public justification;
- ensure that the Project List, which identifies and delineates categories of projects to which the law-based assessment requirements apply, covers all projects that could have important consequences for meeting Canadian climate change mitigation commitments, with particular attention to
 - annual and lifetime attributable (direct and indirect) GHG emissions and/or sink impairments over a certain threshold, as well as those that extend beyond the deadline for GHG neutrality;
 - contribution to cumulatively significant GHG emissions or sink impairments that make specific mitigation commitments more difficult to meet, as well as the contribution to further entrenching fossil fuel dependency; and
 - projects playing significant roles in sectors that require transformation to ensure climate commitments are met.
- establish at the strategic level a similar list that identifies and delineates categories of policies, plans, programs and strategic issues that require assessment, including strategic undertakings that, individually or cumulatively, could have important consequences for meeting Canadian climate change mitigation commitments;
- specify processes for regional and strategic assessments, including the anticipated strategic assessment on meeting climate commitments, to ensure transparency and meaningful participation, apply sustainability-based criteria, compare a suitable range of alternatives, and be rigorous and worthy of public credibility;
- clarify means of responding to strategic assessment findings, including those on climate matters, though authoritative guidance for project level assessments;

- clarify how, while regulatory direction is being prepared, individual assessments are to evaluate the extent to which proposed undertakings and alternatives would hinder or contribute to meeting Canada’s climate commitments;
- set out detailed expectations and approaches to climate-related information and standards for evaluations, including best means for determining
 - which GHG emissions and sink effects are properly attributed to particular undertakings, including attention to lifecycle and lifespan direct, indirect and cumulative effects;
 - the extent of positive effects on anthropogenic GHG sink enhancement;
 - legitimate offsets for GHG emissions or sink degradation;
 - how to identify and compare the climate implications of alternatives;
 - how to use carbon pricing, social cost of carbon, costing of future stranded assets and entrenchment of GHG-emitting sectors, and other means of identifying the economic implications of climate-important undertakings;
 - contributions to the major transformations needed to achieve GHG neutrality, including means of ensuring just transition;
 - effects on intergenerational equity;
- clarify means of fostering and facilitating interjurisdictional collaboration, including joint climate-related strategic undertakings, joint assessments of climate-related undertakings, and joint monitoring, as well as government-to-government collaboration with Indigenous authorities; and
- extend opportunities for learning and adjusting climate assessment directions and guidance.

Elaborating the climate tests and the further regulatory and policy guidance involves a host of technical, analytical and political complexities. In many cases, addressing them credibly is certain to be difficult and time consuming. The federal government has indicated that it will be initiating a strategic assessment to examine how best to specify the implications of Canada’s climate change commitments for assessment of individual undertakings. If that assessment is given a suitably broad scope, expert independence and an open and transparent process, the results could serve well.

In the interim, however, the *Paris Agreement* commitments stand. Once the new *Impact Assessment Act* is proclaimed in force, its section 63(e) requirement will also stand. With or without detailed regulatory and policy guidance, decision makers will need to evaluate whether proposed undertakings will hinder or contribute to meeting Canada’s climate commitments.

For the interim period, basic initial working policy direction for climate-related evaluations and rationales should be possible. If credibly prepared, such interim guidance would make early application of the climate assessment requirements more consistent and predictable, less onerous, and less vulnerable to challenge. However, any interim working guidance would need to be built openly on a rigorously developed base that is adequate to the task of judging contributions to meeting the international commitments. Working specifications of the Box 1 tests would be a good start.

Application of the climate tests, increasingly elaborated in regulations and policy guidance under the new *Impact Assessment Act*, could play a major role in ensuring that assessment practice, including decision making, makes positive contributions to Canadian efforts to meet our *Paris Agreement* commitments.