

Proposals for the Canadian Just Transition Act

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Overview

Climate change is here. Canada must quickly and dramatically reduce emissions and transition our economy out of the volatile and challenging social and environmental impacts of high-carbon industries. An economy that meets the challenges of climate change – one that is low-carbon, regenerative and circular – is possible if we plan and take action to achieve it.

This requires a “just transition” centred on those most affected by the shift away from high-emitting industries, including workers, communities and those disproportionately negatively affected by industrial development. These people must be included in decision-making, have support in accessing decent work, share evenly in the benefits of climate action and be shielded equally from any adverse impacts from robust climate action as the economy transforms. The low-carbon economy – and the process of getting there – must work for everyone.

While Canada is taking important steps to reduce emissions – including the passage of the *Canadian Net-Zero Emissions Accountability Act* (“NZEAA”) in 2021 and the release of the Emissions Reduction Plan in 2022 – further action is necessary to realize a just transition to a low-carbon economy.

A legal framework is central to planning and implementing an orderly, just and equitable transition to a low-carbon economy in Canada. Jurisdictions around the world that are leading the just transition – New Zealand, Scotland, Spain and the European Union – all have legislation grounding their just transition efforts. This brief canvases best practices from these jurisdictions and builds off the IISD report *Making Good Green Jobs the Law: How Canada can build on international best practice to advance just transition for all*¹ to make recommendations for federal just transition legislation here in Canada.

The federal legislation should establish a “top-down” and “bottom-up” scheme to be carried out by a newly-created federal just transition institution as well as regional and sectoral partners. This scheme would be guided by an independent advisory body, grounded in tripartite-plus and nation-to-nation engagement and informed by the International Labour Organization’s (ILO) guidelines on the just transition.²

The top-down approach involves a **national just transition strategy** that articulates a vision and objectives for the just transition in Canada, forecasts potential challenges and opportunities arising from the low-carbon transition and outlines federal measures to ensure the transition is just. The strategy is drafted by the federal government with guidance from the advisory body and engagement with tripartite-plus partners.

The bottom-up approach involves the creation of **regional and sectoral just transition plans** by those who are (or will be) directly affected by the transition. These plans would be drafted and implemented by **just transition agencies** in each province and territory and through **just transition agreements** between the Minister and sub-national and Indigenous governments, impacted sectors, employers, organized labour, workers and civil society. The plans enable federal funding to be used for region/sector-specific initiatives that align with the national strategy and just transition principles.

1 Corkal, V. (2022) *Making Good Green Jobs the Law: How Canada can build on international best practice to advance just transition for all*, International Institute for Sustainable Development, accessed 3 Oct 2022 online: <https://www.iisd.org/system/files/2022-01/green-jobs-advance-canada-just-transition.pdf> (“*Making Good Green Jobs the Law*”)

2 International Labour Organization (2015) *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, accessed 19 Oct 2022 online: https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf

An **independent advisory body** would provide guidance to the federal government on the development of the national strategy, and to just transition agencies, on just transition agreements and on other matters it deems necessary. This body would advance tripartite-plus and nation-to-nation engagement with Indigenous peoples. Its membership must be regionally representative of organized labour and workers, impacted sectors (including employers), Indigenous peoples, transition experts, marginalized peoples and civil society.

The federal government must name a **Minister for Just Transition** and establish a dedicated **just transition institution** to effectively carry out this legislated scheme. Under the direction of the Minister, a new stand-alone Department of Just Transition or a just transition “secretariat” under an existing department would draft the national strategy, provide technical and legal support to participants in just transition agreements, and coordinate a whole-of-government approach to the transition across federal departments. This institution must have adequate personnel and resources to execute its tasks.

The legislation should also establish a mechanism to review the Emissions Reduction Plan in NZEAA and other relevant federal legislation to ensure alignment with the just transition principles and the national strategy, and to mitigate any adverse social, cultural, economic and environmental impacts that arise from federal climate policies. This is important to ensure climate action in Canada is taken in a just and equitable manner and does not undermine other social, cultural, economic or environmental goals.

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Important terms related to the just transition*

Social dialogue is the foundation of cooperation between public bodies and social partners. It refers to “negotiation, consultation or information sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy.”¹ In the context of just transition, this includes “adequate, informed and ongoing consultation” with affected partners and stakeholders, as per the ILO’s Guidelines on a Just Transition.

Tripartite partners refers to the three primary social partners in the just transition: governments (including Indigenous governments in nation-to-nation relationships), employers and workers. These partners cooperate and engage in dialogue on labour standards, policies and programs via consultation, negotiation and information exchange. A tripartite approach to just transition policy development ensures cooperation between partners, increased participation from those affected, and improved governance.

Tripartite-plus occurs when tripartite partners choose to open dialogue and engagement with other important stakeholders and civil society groups.² It is a way of gaining wider consensus and ensuring equitable processes that engage communities historically excluded from policy-making and the economy.

Decent work is a term that describes work opportunities that provide, among other things, fair income, equality of opportunity and agency for people’s decision making about their own lives. The ILO’s Decent Work Agenda³ has four pillars: employment creation, social protection, rights at work and social dialogue.

*Adapted from the IISD report: Making Good Green Jobs the Law, p.3

1 ILO (2013) *National Tripartite Social Dialogue*, accessed 19 Oct 2022 online: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_231193.pdf

2 Engin, E.M. (2018) *Bipartite, Tripartite, Tripartite-Plus Social Dialogue Mechanisms and Best Practices in the EU Member States*, accessed 19 Oct 2022 online https://www.ilo.org/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-ankara/documents/publication/wcms_666546.pdf

3 ILO (2022) *Decent Work*, accessed 19 Oct 2022 online: <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

1. Purposes and Principles

The legislation should articulate social, economic and environmental principles to guide the transition to a low-carbon economy.

What principles should be included?

The just transition is an opportunity to re-shape the Canadian economy, but in a manner that helps advance broader economic, social and environmental objectives. These include facilitating the achievement of Canada’s climate targets, mitigating transition impacts on workers and communities, creating decent, low-carbon jobs, sharing the benefits of the transition broadly, advancing Indigenous reconciliation, addressing inequalities, and establishing a circular, regenerative economy that benefits all. As this legislation contemplates actions by a broad number of actors – all levels of Canadian governments, Indigenous governments, employers, organized labour, workers and civil society – over several decades, it is important to ensure that these actions are all directed towards the same objectives.

Examples from other jurisdictions

The European Union’s regulation to establish a just transition fund has a long preamble that sets out the functions of the fund, including supporting the EU’s climate objectives, mitigating the adverse effects of the climate transition by supporting the most affected territories and workers concerned, and promoting a balanced socio-economic transition.³

Scotland’s climate legislation sets out five “just transition principles” and requires the Minister to consider these principles in drafting the national climate plan:

- i Support environmentally and socially sustainable jobs;
- ii Support low-carbon investment and infrastructure;
- iii Develop and maintain social consensus through engagement with workers, trade unions, communities, NGOs, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate;
- iv Create decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy; and
- v Contribute to resource efficient and sustainable economic approaches which help to address inequality and poverty.”⁴

In preparing the climate plan, Scotland’s legislation also requires the Minister to consider the “climate justice principle”, that is, taking climate action in ways that help to address inequality and support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects.⁵

³ Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund, accessed 15 Sept 2022 online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1056>, (“EU Just Transition Fund Regulation”).

⁴ Scotland, *Climate Change (Emissions Reduction Targets) (Scotland) Act 2019*, accessed 22 Sept 2022 online: <https://www.legislation.gov.uk/asp/2019/15/enacted> (“Scottish Climate Act”), s.35(22) and s.35C.

⁵ *Scottish Climate Act*, s.35(22) and (23)

Why legislate social and environmental principles?

Establishing principles in the legislation will provide clarity to tripartite-plus partners engaged in the just transition and ensure consistency over time in guiding the work conducted under this legislation. If principles that advance social and environmental purposes are omitted from this legislation, there is a risk that the national strategy and regional and sectoral planning could be focused narrowly on economic interests, such as generating jobs, without addressing broader social and environmental issues.

Recommendations

To ensure that the just transition legislation, and the actions that flow from it, are directed towards the creation of an equitable and robust low-carbon economy, the legislation should:

1.1 Establish the following “just transition principles”:

- a Advance the achievement of the emissions targets in NZEAA as well as the adaptation goals in Canada’s national climate adaptation strategy;
- b Address the economic, social, cultural, and environmental impacts of a transition to a low carbon economy, including those on workers in industries impacted by actions to reduce emissions, and ensure those most impacted by high-carbon emitting activities and climate change benefit from the transition;
- c Support workers and communities impacted by the transition by creating opportunities for and access to decent, fair and high-value work for all;
- d Prioritize the needs and voices of Indigenous communities and other marginalized groups;
- e Democratize, decentralize, and diversify investment in low-carbon infrastructure and supporting energy sovereignty within Indigenous and other marginalized communities;
- f Ensure that Indigenous peoples are centred in the transition and advance reconciliation with Indigenous peoples while respecting and upholding their rights, including those affirmed by s.35 of the Constitution Act, 1982 and articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- g Develop and maintain social consensus through deliberative engagement with workers, trade unions, communities, Indigenous peoples, NGOs, business and industry representatives and such other persons as the Minister considers appropriate; and
- h Support place-based, local and regenerative economies that enable ecological and social well-being for current and future generations;
- i The above principles could be broken down into more detailed, specific ones. Further elaboration of these principles should be undertaken based on engagement with Indigenous and sub-national governments, impacted sectors (including employers), organized labour, workers, and civil society and other relevant stakeholders.

2. National Just Transition Strategy

The legislation should require the Minister to publish, every five years, a national just transition strategy that is informed by and incorporates guidance from an independent advisory body and broad consultation.

The low-carbon transition will affect different parts of Canada in different ways and at different times. The federal government will not drive the transition on its own, and is unable to address all of the impacts that will arise. However, it can – and should – be proactive in developing a strategy that articulates a national-level vision and objectives for a just transition in Canada, forecasts challenges and opportunities along the way, and sets out measures that the federal government will take to realize the vision and objectives. The alternative is to have no plan whatsoever, and experience tells us that when economic transitions occur with no plan for workers or communities, entire regions of the country can be devastated.

This national strategy is also a place for the government to outline the steps it will take to ensure other relevant government plans, initiatives and agencies – such as the emissions reduction plan under NZEAA, the work of regional economic development agencies, and the regional energy and resource tables – work in coordination to advance the just transition. This includes coordination with and support for provincial/territorial agencies undertaking just transition initiatives.

This strategy will give other governments in Canada, employers, organized labour, workers and the public an idea of how the low carbon transition might affect Canada. The strategy will outline Canada’s assessment of the potential impacts of the low-carbon transition, with as much specificity as possible (e.g. timelines, regions, sectors, scope) including an assessment of who is likely to be most impacted. This will enable these governments, employers, organized labour, workers and the public to take action to implement the just transition as per their respective authority, expertise and interests and in line with the federal vision and proposed federal measures.

Examples from other jurisdictions

In response to just transition provisions in its climate legislation, Scotland has developed a National Just Transition Planning Framework that identifies social, economic and environmental “National Just Transition Outcomes” and outlines a process for the development of sector-specific just transition plans to drive decarbonization and help achieve these outcomes.⁶

Spain’s climate legislation requires certain ministers to develop, every five years, a national just transition strategy that must include:

- i Identification of the regions, sectors, communities and groups of people vulnerable to the impacts of the low-carbon transition;
- ii Analysis of the opportunities for the creation of economic activities and employment linked to the transition;
- iii Measures the Spanish government will undertake to drive economic activity, employment and occupational training for the just transition;

⁶ Scottish Government (2021) *Just Transition: A Fairer, Greener Scotland – Scottish Government response to the report of the Just Transition Commission*, accessed 23 Sept 2022 online: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/09/transition-fairer-greener-scotland/documents/transition-fairer-greener-scotland/transition-fairer-greener-scotland/govscot%3Adocument/transition-fairer-greener-scotland.pdf> (“*Scottish Response to JTC Report*”), pp.29, 31. Scotland’s National Just Transition Outcomes: 1) Citizens, communities and place, 2) Jobs, skills and education, 3) Fair distribution of costs and benefits, 4) Business and Economy, 5) Climate adaptation and resilience, 6) Environmental protection and restoration, 7) Decarbonization and efficiencies, and 8) Furthering equality and human rights implementation and preventing new inequalities from arising.

- iv Instruments to monitor the labour market during energy transition; and
- v The framework for the development of regional just transition agreements.^{7 8}

New Zealand's climate legislation requires a national emissions reduction plan that includes a strategy to mitigate the impacts that climate action will have on employees and employers, regions, Indigenous communities and wider communities.⁹ New Zealand's Emissions Reductions Plan sets out five just transition objectives for this strategy and outlines key policies and actions to achieve these objectives.¹⁰

Who is involved?

The legislation should require the Minister of Just Transition to draft the national strategy upon the guidance of an independent advisory body and direct engagement with organized labour, workers, employers, relevant governments (including Indigenous governments), civil society and other relevant stakeholders. This tripartite-plus engagement is necessary to generate social consensus and reflect the diverse perspectives of – and issues facing – Canada. In practice, the newly-created just transition institution (see Section 5) will undertake the work of drafting and engagement.

A 5-year timeframe

The legislation should require the strategy to be updated (or redrafted) every five years to allow the government to reassess the transition landscape and keep the strategy up-to-date. Five years creates some overlap and consistency between successive governments, but allows new governments to adapt to changing circumstances. This timeframe prioritizes just transition action over the near term, but the strategy should also consider longer-term actions to align with broader trends and Canada's emissions targets on the way to net-zero in 2050. Both Spain and New Zealand require new national strategies every five years.

Why legislate a national strategy?

Legislating a requirement for a just transition strategy (and associated contents and processes) signals to Canadians that this government is committed to the just transition. The form of that commitment is a mandated schedule of planning and updating the national vision, receiving input from Canadians, and implementing measures to advance the transition. This establishes certainty about the transition in Canada, as well as supporting good governance and decision making by public and private actors.

Recommendations

To establish a national vision and overarching objectives to guide the just transition in Canada, the legislation should:

2.1 Require the Minister, having regard to the just transition principles established under this legislation, to develop a Just Transition Strategy by early 2024 that:

⁷ Spain, *Law on Climate Change and Energy Transition*, Spanish version accessed 22 Sept 2022 online: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-8447 (“Spanish Climate Law”) article 27.

⁸ Government of Spain (2019) *Just Transition Strategy – draft*, Spanish version accessed 15 Sept 2022 online: https://www.miteco.gob.es/images/es/5bor-radorestrategiatransicionjusta_tcm30-487304.pdf (“Spanish Just Transition Strategy”)

⁹ New Zealand, *Climate Change Response (Zero Carbon) Amendment Act 2019*, accessed 22 Sept 2022 online: <https://www.legislation.govt.nz/act/public/2019/0061/latest/whole.html#LMS183772> (“New Zealand Climate Act”) s.5ZG(3)(c).

¹⁰ New Zealand Government (May 2022) *Aotearoa New Zealand's First Emissions Reduction Plan*, accessed 15 Sept 2022 online: <https://environment.govt.nz/assets/publications/Aotearoa-New-Zealand's-first-emissions-reduction-plan.pdf>, p.60. New Zealand's just transition objectives: 1) Seize the opportunities of the transition; 2) Support proactive transition planning; 3) Enable an affordable and inclusive transition; 4) Build the evidence base and tools to monitor and assess impacts; and 5) Encourage informed public participation.

- a Sets out the social, economic and environmental objectives the federal government must achieve within the lifespan of the strategy;
- b Identifies the regions, sectors, industries, workers and people vulnerable over the short, medium and long term to the process of achieving Canada's emissions targets and the broader transition to a low-carbon economy;
- c Assesses the opportunities over the short, medium and long term for the creation of economic activity and employment linked to the just transition;
- d Assesses opportunities to redress historical and ongoing impacts of high-emission industrial activity on Indigenous and other marginalized communities and ensures they benefit from the transition;
- e Articulates the measures – policies, plans, actions, research, supports, training and standards – the Minister will undertake/implement to advance a just transition as well as the associated costs of implementing these measures;
- f Sets out the timelines and trajectories over which the impacts and opportunities from the low-carbon transition are expected to arise and federal measures to help address these impacts and advance these opportunities will be implemented;
- g Explains how the strategy will coordinate with the NZEAA emissions reduction plan and other national economic and environmental policies and strategies and ensure that these also advance the just transition;
- h Ensures Indigenous rights are respected and upheld, including Aboriginal rights under s.35 of the Constitution Act, 1982 and UNDRIP;
- i Describes the indicators and monitoring mechanisms the Minister will use to evaluate the implementation of the measures and progress to the objectives in the strategy.

2.2 Require the Minister, in developing the national strategy, to:

- a Obtain guidance from the independent advisory body;
- b Consult with Indigenous peoples in order to ensure the strategy affirms and protects their Aboriginal and Treaty rights and the rights protected under UNDRIP;
- c Engage with relevant governments, organized labour, workers and employers in line with the principle of social dialogue; and
- d Engage with civil society and the broader public.

2.3 Require the Minister to lay a report before Parliament every two years on its progress in implementing the national strategy, including implementation of measures, progress to the objectives, and use of funds;

2.4 Require the Minister to update the strategy every five years to accommodate changes to climate policy, global market forces and the progression of the just transition in Canada;

2.5 Establish mechanisms to ensure oversight of progress and meaningful accountability;

The interim just transition strategy Canada is currently drafting would operate only until the legislated strategy is completed, and would serve as a platform for the legislated strategy.

3. Regional and Sectoral Just Transition Planning

The legislation should create mechanisms to enable just transition planning and implementation by tripartite-plus partners at the regional and sectoral level.

To achieve a just transition that is effective and socially acceptable, it is imperative that Indigenous and sub-national (provincial, regional and municipal) governments and other tripartite-plus partners (organized labour, workers, employers and civil society) be part of planning and implementing the low-carbon transition in the regions and sectors in which they live and work.

This briefing proposes two mechanisms for this type of participation to occur: just transition agencies and regional/sectoral just transition agreements. These mechanisms work together and have the same objective: to create spaces for non-federal tripartite-plus partners to draft and implement just transition plans at the regional and sectoral level using federal funding and in alignment with the legislated just transition principles and the national strategy.

We outline these mechanisms below, with the caveat that both require additional analysis to determine their effectiveness.

Mechanism 1

The legislation would establish a **just transition agency** in each province and territory that would develop and implement a just transition plan for that province/territory. The plan would be developed via engagement with tripartite-plus partners in that province/territory to ensure the plan reflects local circumstances and would be implemented in alignment with the jurisdiction of participating partners. Each agency would be governed by its own board of directors composed of representatives of local tripartite-plus partners that includes marginalized communities, workers and Indigenous peoples. The plan must align with the just transition principles and the national just transition strategy, and be informed by relevant guidance from the independent advisory body.

The *federal Economic Development Agency of Canada for the Regions of Quebec Act* provides a model for these agencies and their functions. It establishes a federal agency for the purposes of promoting the sustainable development and diversification of the economy of regions of Quebec.¹¹ It also permits the minister to create advisory and other committees and to enter into agreements with the Government of Quebec, agencies of that government, or any other entity or person. The *Canada Marine Act* provides a model for the board of directors for the agencies.¹² It establishes a board for the oversight of port authorities, with directors appointed by the federal government, the province and municipalities.

Mechanism 2

The legislation would permit Indigenous and sub-national governments and other tripartite-plus partners to enter into **just transition agreements** with the federal government. Under the agreement, the participating tripartite-plus partners would prepare and implement a **just transition plan for their region or sector**, consistent with their jurisdiction.

¹¹ *Economic Development Agency of Canada for the Regions of Quebec Act*, SC 2005, c 26.

¹² *Canada Marine Act*, SC 1998, c 10, s.14.

The federal *Species at Risk Act* includes a similar mechanism to facilitate action to protect species at risk. The Act permits the minister, following due consultation, to enter into conservation agreements with any government in Canada, organization or person to benefit a species at risk or enhance its survival in the wild. The Act also enables funding agreements to contribute towards costs of programs and measures in the conservation agreements.¹³

Examples from other jurisdictions

A number of jurisdictions facilitate just transition planning at the regional or sectoral level:

- **Spain's** climate legislation requires the Spanish government to enter into just transition agreements with its regional governments based on the framework outlined by the national just transition strategy.¹⁴
- **European Union (EU)** regulation requires member states to draft “territorial just transition plans” if they wish to receive EU funding for just transition initiatives.¹⁵ The geographic scope of the plans is similar in size to a regional municipality in Canada.
- **New Zealand** has developed just transition plans for two regions to-date (Taranaki and Southland) in response to the planned closure or phase-out of local industrial activities.
- In **Scotland**, the government has responded to just transition requirements in its climate legislation by undertaking to “co-design and co-deliver” just transition plans for specific sectors of the economy.¹⁶

The contents of the plans

The legislation should specify the key elements that the plans must include in order to ensure the plans align with the national just transition strategy and objectives, and to establish consistency among plans. Scotland provides a good example of what these elements could be, as it requires its sectoral just transition plans to include:

- i Context. An analysis of the distribution of benefits and risks of the transition, links to existing policies and strategies, and the identification of key stakeholders;
- ii Vision. Identify the outcomes that the plan seeks to achieve, aligned with the national just transition outcomes. Interim goals and indicators are required to evaluate progress;
- iii Action plan. Identify, assesses and sequence the actions required to achieve the vision, including key barriers and enablers; and
- iv Monitoring & reporting. An explanation of how progress toward the outcomes will be monitored and reported on.¹⁷

¹³ *Species at Risk Act*, SC 2002 c 29, (“*Species at Risk Act*”) ss.11–13.

¹⁴ *Spanish Climate Law*, articles 27(e) and 28

¹⁵ *EU Just Transition Fund Regulation*, article 11.

¹⁶ *Scottish Climate Act*, s.35(20).

¹⁷ *Scottish Response to JTC Report*, p.42.

Spain has legislated similar requirements for its regional just transition agreements,¹⁸ while the European Union has legislated very specific contents for member states to include in the “territorial just transition plans” that they must prepare to access EU funding for just transition initiatives.¹⁹ The federal Species at Risk Act also states the types of measures that conservation agreements should include.²⁰

Participation in planning

Both mechanisms create space for Indigenous and sub-national governments and representatives from organized labour, workers, employers or civil society to participate in just transition planning. In Mechanism 1, these tripartite-plus partners can participate via representation on the board of directors, engaging with the agency in plan development, and entering into agreements with the agency to undertake just transition initiatives themselves.

In Mechanism 2, these partners would approach the Minister to enter into an agreement and then form a “lead group” amongst themselves that would undertake broad engagement to develop the plan, draft the plan, and spend funding as part of implementing the plan. In New Zealand, the lead group for regional just transition plans is composed of representatives from local business, trade unions, Māori, community groups, educators, local government and the New Zealand government.²¹

Ideally, all relevant governments, organizations and persons in a region or sector would participate in the agency or agreement. However, neither option requires all tripartite-plus partners to participate in order to proceed. In any event, the plans created by an agency or via an agreement – and the work to implement those plans – must align with the jurisdiction of the partners that do participate.

Federal participation

In Mechanism 1, the Minister is responsible for the agencies while in Mechanism 2, the Minister is a signatory to each agreement. In both instances, non-federal partners have governance authority and are responsible for implementation. The just transition institution would provide technical and legal support where necessary. It would also provide the oversight necessary to identify and address any overlap or conflicts, and support collaboration where there are connections between the work undertaken by different agencies/agreements.

Engagement with the advisory body

The advisory body could provide guidance to the agencies on how to implement the transition in each province/territory. The advisory body could also provide guidance for regional or sectoral just transition agreements if requested by the Minister.

¹⁸ *Spanish Climate Law*, Article 28. The just transition agreements must include: an assessment of the state of vulnerability of the affected geographical area or group; commitments of the parties to the agreement, including companies benefiting from transition support measures; measures to implement the transition and achieve the objectives established in the agreement; and a timetable for the adoption of the measures, with measurable targets and monitoring mechanisms.

¹⁹ *EU Just Transition Fund Regulation*, article 11.2.

²⁰ *Species at Risk Act*, s.11(2).

²¹ Venture Taranaki (2022) *Taranaki 2050 Roadmap*, accessed 21 Sept 2022 online: <https://www.taranaki.co.nz/assets/Uploads/Like-No-Other/Taranaki-2050-Roadmap.pdf> (“Taranaki 2050 Roadmap”)

Funding

Specific federal funding is critical for realizing a just transition in Canada, although it is not the only source of potential funding. In Mechanism 1, federal funding would flow directly to the agencies, which spend it implementing their just transition plans. In Mechanism 2, parties to a just transition agreement can enter a funding agreement with the Minister to ensure that participants have capacity to participate in the planning process and to implement the regional/sectoral plan. In both cases funding can come from new or existing federal funding streams, and other partners may be expected to contribute funding or in-kind services.

Reporting

The legislation should require the agency and/or parties to just transition agreements to publish an annual report that describes the implementation of the measures in the plan, progress towards the targets and the use of any federal funding. This is an important accountability measure to help ensure funds and resources are being used appropriately.

Comparison of the mechanisms

Mechanism 1 is a more certain, standardized and broad approach: create an agency in each province/territory and provide funding. The federal government can move ahead on its own schedule to create each agency, and only one agency is required for each province/territory. This allows the Minister to take a relatively standardized approach and focus their capacity on each agency. However, deadlock within an agency could stall action in a whole province/territory.

In contrast, Mechanism 2 is a more ad-hoc, flexible and localized approach: wait for interested parties to approach the federal government to establish an agreement, with the incentive of receiving federal funding to implement it. Waiting for tripartite partners to initiate agreements could delay the transition (depending on regional/sectoral interest and federal incentives) and the potential for a greater number and diversity of agreements could spread the Minister's capacity more thinly. However, multiple independent agreements would not impact each other's progress, making it more likely that at least some just transition initiatives move forward.

Recommendations

To enable just transition planning by those closest to and most directly affected by the transition, we recommend that the legislation:

3.1 Establish mechanisms – just transition agencies in each province/territory and regional/sectoral just transition agreements – to enable Indigenous and sub-national governments, organizations and persons to participate in the development and implementation of just transition plans for their region or sector;

3.2 Similar to the requirements for plans under NZEAA, set out the contents of a regional or sectoral plan to ensure that participants are working together to achieve the goal of a just transition to a low-carbon economy, including:

- a An assessment of the socio-economic circumstances of each region or sector, identifying the challenges and opportunities arising from the low-carbon transition that are specific to the region or sector;
- b Measures to address the challenges and opportunities associated with the just transition in that region or sector;
- c A timetable for adopting the measures;
- d Measurable objectives and targets (that are aligned with Canada's emissions targets, just transition principles and national just transition objectives) for the plan to achieve, as well as monitoring mechanisms;
- e A plan for engaging with relevant Indigenous communities, industry, unions, civil society and the public;
- f An explanation of how the plan will uphold Aboriginal rights affirmed by s.35 of the Constitution Act, 1982 and Indigenous rights articulated in UNDRIP;
- g An explanation of how the plan will mitigate transition impacts on Indigenous and other marginalized communities and redress historical and ongoing impacts of high-emission industrial activity on these communities; and
- h An explanation of how the plan supports Canada's emissions targets and aligns with the national just transition strategy and other regional and sectoral just transition plans.

3.3 Permit the Minister to provide funding to agencies and/or enter into funding agreements with parties to just transition agreements to develop and implement just transition plans;

3.4 Require that the just transition agencies and/or parties to just transition agreements report publicly each year on the implementation of their plans, including measures, progress toward targets and the expenditure of funds received.

4. Just Transition Minister and Institution

The federal government should name a minister of the just transition and establish a new just transition institution within the government to implement the just transition legislation and coordinate the whole-of-government approach to the just transition.

To effectively implement the just transition in Canada, the federal government needs a dedicated minister to implement the legislation and otherwise champion the cause within government. This establishes an easily identifiable person who is responsible for coordinating the transition and who is readily accessible to Parliament, tripartite-plus partners and the public for purposes of engagement and accountability. The legislation would set out the powers, duties and functions of the minister, thereby establishing greater certainty about the role of the federal government in the just transition, which supports more transparent and accountable governance.

The minister will need their own office and staff to do the work required by the legislation. This briefing proposes two options for this institution:

Option 1

The legislation would establish a new Ministry of Just Transition. Legislating the establishment of a new ministry may be preferable because it elevates the importance of the just transition in federal decision-making. A ministry is a more permanent and future-proof entity that will persist regardless of changes in government or bureaucratic structure. Given the number of ministries involved in the transition, it may be better to create a new ministry to coordinate their involvement in the transition than ask an existing ministry to add this function to its existing work.

Option 2

The legislation would establish a just transition secretariat within an existing ministry. Establishing a secretariat within a ministry such as NRCan or ESDC is another way to provide the minister with the necessary capacity to implement the just transition legislation. If the government proceeds with a secretariat instead of a ministry (or until a ministry is established), the secretariat must have the capacity to effectively implement the legislation. It must also have adequate authority and channels of communication to coordinate and collaborate with other ministries involved in the transition.

Examples from other jurisdictions

Jurisdictions that are implementing the just transition around the world have dedicated ministers, ministries, and/or secretariats:

- Spain has a Ministry for the Ecological Transition and the Demographic Challenge (and an associated Minister) that is responsible for developing and implementing legislation and policy regarding climate change, environmental protection, the national energy policy and the transition to a more productive and ecological society.²² This ministry is like Canada's ECCC but with a mandate that includes the just transition. Spain has a separate Ministry of Labour.
- Spain's "Just Transition Institute" is an office within the Ministry for Ecological Transition that provides technical, legal and financial support for the development and implementation of the just transition agreements.²³
- Spain has also established an "Inter-ministerial Commission for Climate and Energy Transition" to monitor and evaluate the implementation of its national strategy. The commission is composed of senior officials from multiple ministries, has decision-making powers and can create working groups to address specific objectives, policies or actions in the strategy.²⁴
- Scotland has a Minister of Just Transition, Employment and Fair Work with responsibilities that include just transition planning and delivery, overseeing the work of the Just Transition Commission, and coordinating the sectoral just transition plans and monitoring framework.²⁵
- Scotland has a Just Transition Engagement Team within the Climate and Energy Directorate under the responsibility of the Minister for Just Transition, Employment, and Fair Work.²⁶

²² Spanish Government (n.d.) Ministry for the Ecological Transition and the Demographic Challenge: Functions and structure (translated), accessed 12 Oct 2022 online: <https://www.miteco.gob.es/en/ministerio/funciones-estructura/>

²³ Spanish Just Transition Strategy, pp.38-39.

²⁴ Spanish Just Transition Strategy, p.38.

²⁵ Scottish Government (2022) *Minister for Just Transition, Employment and Fair Work*, accessed 12 Oct 2022 online: <https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/minister-for-just-transition-employment-and-fair-work/#:~:text=Richard%20Lochhead%20was%20appointed%20Minister,Fair%20Work%20in%20May%202021.>

²⁶ Conversation with staff from the Scottish Just Transition Engagement Team, Sept 21, 2022.

- New Zealand has a “Just Transition Unit”, an office within the Ministry of Business, Innovation, and Employment that coordinates the work of the just transition. It works across government, portfolio, and agency boundaries and supports regions that are undergoing transition planning.²⁷

The role of the just transition institution

This institution would lead all federal government work on just transition, including such functions as drafting the national strategy, establishing just transition agreements and providing technical and legal support to participants, and implementing federal transition measures. Its activities would be informed by guidance from the advisory body.

The new just transition institution would also coordinate the whole-of-government approach to the just transition with relevant federal ministries (including, but not limited to NRCan, Labour, ESDC, ECCC and ISED), and must have the necessary authority to do so. The minister could do this by creating a forum for senior staff (e.g. deputy ministers) from relevant ministries to convene, discuss and make decisions about the transition. The institution must have adequate capacity (staff, expertise, and budget) to be able to effectively execute its tasks. The capacity of the institution must account for the diversity of peoples, regions and economic activity across Canada, including that of Indigenous nations, laws and knowledge.

Recommendations

In order to facilitate the effective implementation of the just transition in Canada, we recommend that the federal government:

- 4.1 Name a Minister of Just Transition to implement the just transition legislation;
- 4.2 In the legislation, set out the duties of the minister to include drafting and implementing the national strategy, facilitating just transition agreements, engaging with the advisory body, engaging with tripartite-plus partners, and coordinating the whole-of-government approach to the just transition;
- 4.3 Establish a new institution – a new ministry or a secretariat in an existing ministry – to implement the just transition legislation and coordinate the whole-of-government approach to the transition. This institution is the responsibility of the Minister of Just Transition;
- 4.4 Ensure the institution (whether ministry or secretariat) has the staff, resources and budget to effectively carry out its mandate.

5. Independent Advisory Body

The legislation should establish an advisory body to provide independent expertise and oversight to the just transition process. The legislation would also set out the composition of the body and its tasks.

An independent advisory body, established for the specific purpose of advancing the just transition, is important to provide the federal government with impartial guidance and oversight on the progress of the transition. It will facilitate social dialogue about the transition by virtue of the discussions that will

²⁷ New Zealand Government (2022) *Just Transition*, accessed 3 Oct 2022 online: <https://www.mbie.govt.nz/business-and-employment/economic-development/just-transition/the-just-transition-partnership-team/>

occur among the diverse members of the advisory body and also by engaging with tripartite partners (including Indigenous nations), civil society organizations and the general public. This engagement will help gather information about what Canadians want to see in a just transition, identify challenges, opportunities, and solutions, and build social consensus and acceptance around the pathways chosen to implement the just transition.

The advisory body must have an effective working relationship with NZAB to ensure their actions are complementary and allow discussion and collaboration in areas of shared interest.

Examples from other jurisdictions

Leading jurisdictions around the world engaged in the just transition have established an independent advisory body.

- **New Zealand's** climate legislation established a Climate Change Commission to provide advice to the government (as well as monitor and report on progress) in relation to both climate change policy and the just transition.²⁸
- **Scotland** established a Just Transition Commission, though not in legislation.
- **Germany** established the "Coal Commission" in 2018 to make recommendations about how to phase out the coal industry.

The role of the advisory body

To ensure that work of the advisory body supports the other elements of the legislation (national strategy and regional/sectoral planning), the legislation should outline the functions of the advisory body. This will also ensure clarity and consistency around the role of the body, both now and in future.

- **New Zealand's** climate legislation sets out the functions of the Commission and outlines the matters the Commission must consider in carrying out its functions.²⁹
- **Scotland's** Just Transition Commission has a mandate to advise the government on the development of sectoral just transition plans and approaches to monitoring and evaluation, undertake meaningful engagement with those most likely to be impacted by the transition, engage and collaborate with experts, and publish an annual report on Scotland's progress.³⁰
- **Germany's** Coal Commission had a mandate to develop an action plan with measures to address the gap to the 2020 target for the energy sector, measures to meet the 2030 target for the energy sector, and a plan for phasing out the coal industry (including a completion date and necessary legal, economic, social and structural measures).³¹

All of these commissions were/are expected to consult broadly with the public and key stakeholders.

²⁸ *New Zealand Climate Act*, s.5A-1.

²⁹ *New Zealand Climate Act*, s.5J, 5M & s.5ZC(vii).

³⁰ Scottish Government (n.d) *Just Transition Commission - Overview*, accessed 7 Sept 2022 online: <https://www.gov.scot/groups/just-transition-commission/>

³¹ E3G (2019) *The German Coal Commission - A role model for transformative change?*, Accessed 7 Sept 2022 online: https://www.e3g.org/wp-content/uploads/E3G_2019_Briefing_German_Coal_Commission.pdf

Membership

The membership of the body should reflect the nature and objectives of the just transition: regional and sectoral implementation, tripartite-plus engagement, supporting workers and communities dependent on high-emissions industries, advancing reconciliation with Indigenous peoples, and ameliorating impacts on marginalized groups. The legislation should require membership from across Canada, Indigenous peoples, organized labour, workers, employers and civil society, including marginalized groups and representatives of future generations. To ensure that the body is appropriately qualified, the legislation should also require members to have expertise and knowledge relevant to the just transition. The membership of Scotland and Germany's just transition commissions is not legislated but provides good examples of diversity and expertise.^{32 33} New Zealand requires its Climate Change Commission to have expertise and knowledge related to the just transition. The NZEAA also requires members of NZAB to have certain expertise and knowledge, though it does not make reference to the just transition.³⁴

Capacity

The advisory body should have capacity to carry out its functions effectively. The Scottish Just Transition Commission is supported by its own secretariat and incurs expenses.³⁵

Government responsiveness

The legislation should require the Minister to report on whether and how the government has implemented the body's guidance- and if not, why not. Such transparency helps the public to understand the government's response to the body's guidance, legitimizes the advisory body as a key part of the just transition, and supports government accountability. This should be legislated to ensure that successive governments remain accountable to this body.

While the commissions of New Zealand, Scotland, and Germany all made recommendations, they appear to have been largely (if not completely) accepted by their respective governments. The Government of Scotland responds directly to reports from its commission.

Recommendations

To establish an advisory body that is independent, effective and acceptable to Canadians, we recommend that the legislation:

5.1 Establish an independent advisory body to provide the federal government with guidance on the just transition in Canada;

32 Scotland's Just Transition Commission is composed of: academia (3), economics (2), the energy industry (2), green industry (3) unions (3), environmentalists (1), and social justice advocates (1). See: Government of Scotland (July 2022) *Just Transition Commission: member biographies*, accessed 15 Sept 2022 online: <https://www.gov.scot/publications/just-transition-commission-member-biographies/>

33 Germany's Coal Commission included representatives from: energy sector (4), coal mining regions (7), business & industry (5), enviro associations (3), unions (3), scientific community (5), parliament (3), and administration (1). There were no youth reps, which has been cited as a possible reason why youth were the most vocal opponent of the outcomes. See: E3G (2019) *The German Coal Commission – A role model for transformative change?*, Accessed 7 Sept 2022 online: https://www.e3g.org/wp-content/uploads/E3G_2019_Briefing_German_Coal_Commission.pdf

34 *New Zealand Climate Act*, s.5H(1) requires "technical and professional skills, experience and expertise in the environmental, ecological, social, economic, and distributional effects of climate change and policy interventions."

35 Scottish Government (2022) *Just Transition Commission*, accessed 3 Oct 2022 online: <https://www.gov.scot/groups/just-transition-commission/>; Scottish Government (2021) *Costs incurred by the Just Transition Commission: FOI release*, accessed 3 Oct 2022 online: <https://www.gov.scot/publications/foi-202100224091/>

5.2 Ensure that the advisory body has the requisite diversity to reflect the purpose of the just transition by including:

- a Regional representation to incorporate perspectives from across Canada;
- b Organized labour and workers to speak to the needs of workers;
- c Employers;
- d Indigenous peoples to include Indigenous knowledge in advice and planning and to help ensure that the transition mitigates the social inequalities facing Indigenous peoples;
- e Academics with expertise in economy-wide labour transitions;
- f Educators with expertise in program design and emerging technologies; and
- g Civil society (such as youth, environment, social justice) to ensure that broad societal perspectives are present and marginalized groups are represented.

5.3 Ensure that the advisory body is adequately qualified to provide guidance to the government by specifying that the members, collectively, must have knowledge and expertise related to the just transition;

5.4 Specify the functions of the advisory body, including:

- a Provide guidance to the federal government about the development and implementation of the national just transition strategy;
- b Provide guidance to just transition agencies or to participants in just transition agreements;
- c Conduct engagement with those directly affected by the transition;
- d Engage in research, social dialogue and consultation, and draft publications on transition issues of its choosing;
- e Collaborate effectively with the Net Zero Advisory Body;
- f Report to the government, at the request of the Minister, on matters related to the just transition; and
- g Report annually to the public on the status of the just transition in Canada and progress towards the objectives in the national just transition strategy.

5.5 Require the Minister to respond to guidance received from the advisory body within a reasonable period of time and explain whether the government's actions in implementing the just transition deviated from the guidance of the advisory body and why.

6. Centering Indigenous Peoples

The legislation, and the advancement of the just transition in Canada generally, should establish a central role for Indigenous peoples in planning and implementing the just transition.

For the transition to a low-carbon economy in Canada to be truly “just”, the involvement of Indigenous peoples must go beyond being consulted. Indigenous governments must be leading partners in the transition and have the capacity to participate effectively. Indigenous laws, governance structures and knowledge must find expression in the national just transition strategy and in regional and sectoral just

transition plans. Indigenous rights, self-determination and sovereignty over their territories must be recognized and respected. The transition must address the historic role of Canadian governments and the private sector in creating dependency on fossil fuels in Indigenous communities. Further, the transition must repair the negative impacts of fossil fuel and resource extraction on Indigenous lands, waters and communities and support the role of traditional and cultural practices (some of which may exist outside the wage-economy) in economic diversification.

Examples from other jurisdictions

New Zealand provides useful examples of how a jurisdiction is involving Indigenous peoples in the just transition:

- New Zealand’s climate legislation requires the Minister to develop a strategy to mitigate the impacts of climate action on “iwi and Māori”, amongst other groups.³⁶
- In its report to the government with advice on the development of the Emissions Reduction Plan, the Climate Change Commission drafted separate chapters with distinct recommendations for the just transition in relation to the Māori and to New Zealand as whole.³⁷
- The Emissions Reduction Plan includes separate chapters for the Māori Transition and for the general Equitable Transition, creating objectives and actions for each. The plan recognizes the unique considerations that are relevant to the Māori in participating in the low-carbon transition.³⁸
- The iwi/Māori are considered one of the seven “pou” (pillars) that must be included in the local “lead group” that undertakes regional just transition planning.

While these examples may not be directly applicable to the just transition in Canada (due to differing historical, cultural and legal contexts), at the very least, New Zealand provides an example that acknowledges that the low-carbon transition will not affect Indigenous peoples in the same manner as non-Indigenous peoples and that additional, Indigenous-specific actions must be taken to support the inclusion of Indigenous peoples in the transition.

Recommendations

The federal government should engage in social dialogue with Indigenous governments and consult with Indigenous peoples, organizations, academics and legal experts to ensure that this legislation reflects Indigenous perspectives and interests. At a minimum, the legislation should:

6.1 Include just transition principles that reflect the importance of protecting and advancing the expression of Indigenous rights (Aboriginal and Treaty rights and rights under UNDRIP) and

³⁶ *New Zealand Climate Act*, s.5ZG(3)(c). In Maori, “iwi” means extended kinship group, tribe, nation, people, nationality, race, and often refers to a large group of people descended from a common ancestor and associated with a distinct territory.

³⁷ New Zealand Climate Change Commission (2021) *Ināia tonu nei: a low emissions future for Aotearoa*, accessed 22 Sept 2022 online: <https://ccc-production-media.s3.ap-southeast-2.amazonaws.com/public/inaia-tonu-nei-a-low-emissions-future-for-Aotearoa/inaia-tonu-nei-a-low-emissions-future-for-Aotearoa.pdf>, see chapter 19. At p.326, the Commission made three overarching recommendations for the government work with the Maori to develop: 1) a strategy to ensure the principles of the Treaty of Waitangi are embedded in subsequent emissions reduction plans; 2) a mechanism to build authentic and enduring partnerships that result in equitable outcomes for Maori; and 3) a strategy, including timebound measures for progress, to advance a Maori-led approach to an equitable transition to a low-emissions society for Maori and the Maori economy.

³⁸ New Zealand (May 2022) *Towards a productive, sustainable, and inclusive economy. Aotearoa New Zealand’s First Emissions Reduction Plan*, accessed 22 Sept 2022 online: <https://environment.govt.nz/assets/publications/Aotearoa-New-Zealands-first-emissions-reduction-plan.pdf>. See chapter 4. At pp.52-53, the plan identifies the following actions that the government will take: 1) Creating a “platform” for Maori climate action that provides a governance presence and strategic advice for future climate mitigation and adaptation plans; 2) Create mechanisms for Maori community representatives to engage at national and local levels and provide input on climate policy and actions; 3) Support the development of a Maori climate strategy and action plan; and 4) Provide funding for Maori climate initiatives, boost capacity to shape climate policy, education, and action, and develop data and understanding of impacts and opportunities for Maori businesses.

ameliorating the social inequalities that Indigenous peoples face;

6.2 Require consultation with Indigenous peoples and the inclusion of Indigenous knowledge and laws in developing the national just transition strategy;

6.3 Ensure that Indigenous governments, organizations and peoples have opportunities to participate in just transition agencies and regional and sectoral just transition agreements;

6.4 Ensure funding is available for Indigenous governments, organizations and peoples to have capacity to participate in just transition agencies and agreements and carry out just transition initiatives in their communities; and

6.5 Include Indigenous peoples from across Canada on the independent advisory body.

7. Align federal climate plan and relevant federal legislation with the Just Transition

The legislation should establish a mechanism to identify and mitigate any adverse economic, social, cultural and environmental impacts that arise from the policies in the NZEAA emissions reduction plan. It should also enable the responsible minister to ensure that other relevant federal legislation and plans advance the just transition.

A key principle of the just transition is to minimize the negative impacts of actions to address climate change and ensure they do not land on those least able to bear them, for example, groups that currently face social inequalities or have faced historical marginalization.

The federal government has implemented this principle by making the carbon price revenue-neutral. However, for federal climate action more broadly to align with the just transition, this principle should be applied to the emissions reduction plan under NZEAA. This will ensure it considers and addresses the social, cultural, economic and environmental impacts of actions in this plan on employers, employees, regions, sectors, Indigenous peoples and marginalized groups. Mitigating these impacts will also help make federal climate action more politically and socially acceptable, reducing a key barrier to ambitious climate action.

Examples from other jurisdictions

Other jurisdictions have legislated the consideration of just transition considerations directly into their climate plans. For example:

- New Zealand’s climate legislation requires the Minister to create an emissions reduction plan that includes “a strategy to mitigate the impacts of climate action on employers, employees, regions, iwi and Maori, and wider communities”.³⁹
- Scotland’s climate legislation sets out five “just transition principles” and requires the Minister to consider these principles in drafting the national climate plan:
 - i support environmentally and socially sustainable jobs;
 - ii support low-carbon investment and infrastructure;
 - iii develop and maintain social consensus through engagement with workers, trade unions, communities, NGOs, representatives of the interests of business and industry and such

³⁹ New Zealand, *Climate Change Response (Zero Carbon) Amendment Act*, s.5ZG.

other persons as the Scottish Ministers consider appropriate;

- iv create decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy; and
- v contribute to resource efficient and sustainable economic approaches which help to address inequality and poverty.”⁴⁰
- Scotland’s climate legislation also requires the Minister to “explain how the policies and proposals in the national climate plan are expected to affect different regions and sectors of the economy, including employment” and “set out the proposals and policies for supporting the workforce, employers and communities in those sectors and regions”.⁴¹

Other federal legislation and actions. A range of other federal legislation, policies, and plans will also have a role in Canada’s transition to a low-carbon economy. It is important that the federal government ensure that all relevant federal legislation, policies and plans advance the transition in a manner that is just and equitable.

Recommendations

To ensure that federal laws, policies and plans help advance the just transition, we recommend the following:

7.1 Require the minister responsible for the just transition legislation to identify federal laws, policies and initiatives that are relevant to the low-carbon transition and to take steps to ensure they are aligned with the just transition principles and national strategy.

⁴⁰ *Scottish Climate Act*, s.35C.

⁴¹ *Scottish Climate Act*, s.35(20), (22), (24).