

# Driving Effective Carbon Markets in Canada

West Coast Environmental Law Response to Government of Canada Discussion Paper

January 2026

Thank you for this opportunity to comment on the federal discussion paper *Driving Effective Carbon Markets in Canada*.<sup>1</sup> West Coast Environmental Law is a non-profit group of environmental lawyers and strategists dedicated to safeguarding the environment through law. Since 1974, we have successfully worked with communities, non-governmental organizations, the private sector and all levels of government, including First Nations governments, to develop proactive legal solutions to protect and sustain the environment.

West Coast has advocated for effective carbon pricing regimes for decades. The *Greenhouse Gas Pollution Pricing Act*<sup>2</sup> is a critical tool for helping Canada set and meet ambitious climate targets and we are pleased to be able to recommend ways to help it operate more effectively and consistently across the country. At the same time, carbon pricing alone is not enough to ensure Canada reduces its carbon pollution in line with what science says is necessary to avoid catastrophic climate change.

The federal government's recent commitment to Alberta to not implement the proposed oil and gas emissions cap is a dangerous step backward on climate.<sup>3</sup> As we noted in our submission on the proposed cap, noting that Canada has missed every greenhouse gas emission reduction target it has set, oil and gas sector emissions continue to rise, and the Output Based Pricing System (OBPS) is not guaranteed to drive emissions down to where they need to be.<sup>4</sup> The fact that the decision to abandon the emissions cap followed the scrapping of the consumer carbon price and suspension of the zero-emissions vehicle mandate puts our climate targets even further out of reach. As the *2025 Progress Report on the 2030 Emissions Reduction Plan* finds, Canada is significantly off track to meeting its 2030 and 2035 targets and new measures are required to put us back on a credible trajectory.<sup>5</sup> We cannot put all our eggs in one basket.

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<sup>1</sup> Environment and Climate Change Canada, *Discussion Paper: Driving Effective Carbon Markets in Canada* (December 2025): <https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/carbon-pricing-benchmark-consultation/Discussion-Paper-Driving-Effective-Carbon-Markets-Canada.pdf>.

<sup>2</sup> SC 2018, c 12, s 186.

<sup>3</sup> Canada and Alberta, *Memorandum of Understanding between the Government of Canada and the Government of Alberta* (27 November 2025) at p 3: <https://open.alberta.ca/dataset/ceb83f4b-25ba-4781-b09d-5b6ac7725972/resource/1c9a9826-fd06-4150-ad54-5c2a94ea8383/download/exc-mou-goc-and-goa-energy-collaboration.pdf>.

<sup>4</sup> West Coast Environmental Law, *Securing a fair, effective and robust oil and gas emissions cap* (30 September 2022): [https://www.wcel.org/sites/default/files/publications/2022-09-30-wcel\\_submission\\_on\\_oil\\_and\\_gas\\_emissions\\_cap.pdf](https://www.wcel.org/sites/default/files/publications/2022-09-30-wcel_submission_on_oil_and_gas_emissions_cap.pdf); West Coast Environmental Law, *West Coast Environmental Law Submissions on Regulatory Framework for an Oil and Gas Sector Greenhouse Gas Emissions Cap* (5 February 2024): <https://www.wcel.org/sites/default/files/publications/2024-02-Submissions-OilandGas-Emissions%20Cap-Framework.pdf>.

<sup>5</sup> Environment and Climate Change Canada, *2025 Progress Report on the 2030 Emissions Reduction Plan* (December 2025): [https://publications.gc.ca/collections/collection\\_2025/eccc/en4/En4-460-1-2025-eng.pdf](https://publications.gc.ca/collections/collection_2025/eccc/en4/En4-460-1-2025-eng.pdf).

To the extent that Canada does rely on the OBPS as a main driver of its emissions reductions, it is crucial that the benchmark work as intended: as a mechanism for ensuring a minimum standard of GHG price stringency that applies consistently in all provinces and territories (PTs).<sup>6</sup> As the Supreme Court of Canada found in *References re Greenhouse Gas Pollution Pricing Act* (GGPPA), the inconsistent application of the OBPS could undermine the efficacy of the scheme and result in the failure of the nation as a whole to address the climate crises.<sup>7</sup>

While we appreciate the importance of the questions set out in the Discussion Paper, we understand that other expert organizations, such as the David Suzuki Foundation, International Institute for Sustainable Development, Pembina Institute and Environmental Defence Canada will be providing responses to those questions. As legal experts, we focus this submission on how to reduce discretion in determining whether the OBPS applies in PTs in order to reduce opportunities for political considerations to interfere with what ought to be a legally-binding test.

To that end, we recommend amending the GGPPA to constrain the Governor in Council's discretion respecting whether the OBPS applies in PTs. We also recommend considering making regulations to prescribe in more detail the benchmark standards that must be met in order for it to not apply.

**Recommendation 1: Amend the GGPPA to require the OBPS to apply when subnational pricing systems do not meet the benchmark standard.**

Currently, subsection 189(1) gives the Governor in Council (Cabinet) broad discretion to decide whether to add a PT to Part 2 of Schedule 1, which makes the OBPS apply. Subsection 189(2) offers the only constraint on this discretion by requiring Cabinet to "take into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions." This highly permissive approach means that Cabinet has broad discretion to not decide the OBPS applies in jurisdictions that do not meet the benchmark.

We welcome the Budget 2025 commitment to "promptly and transparently apply the federal backstop whenever a PT system falls below the benchmark."<sup>8</sup> To codify that commitment so that it is less vulnerable to shifting political winds, we recommend the following amendments:

- Amend subsection 189(1) to read: "For the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that are at least as stringent as the pricing mechanism established under this Part, the Governor in Council may, by order, amend Part 2 of Schedule 1 by adding, deleting or amending the name of a province or the description of an area."
- Amend subsection 189(2) to read: "In making an order under subsection (1), the Governor in Council shall take into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions, including by considering any regulations made under this Part."

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<sup>6</sup> *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 80.

<sup>7</sup> *Ibid* at para 183.

<sup>8</sup> Government of Canada, *Canada Strong: Budget 2025* at 107: <https://budget.canada.ca/2025/report-rapport/pdf/budget-2025.pdf>.

- Add a new subsection 189(1.1) as follows: “By the end of each calendar year, the Minister shall cause to be tabled in both Houses of Parliament a report describing the following for each province not listed in Part 2 of Schedule 1:
  - (a) whether the province’s pricing mechanism is as stringent as the pricing mechanism established under this Part, including how it meets the standards established in any regulations made under this Act;
  - (b) modelling comparing the emissions avoided or reduced as a result of the province’s pricing mechanism to the emissions that would have been avoided or reduced under the pricing mechanism established under this Part; and
  - (c) where a province’s pricing mechanism is not as stringent as the pricing mechanism established under this Part, detailed reasons for not making an order adding the name of the province to Part 2 of Schedule 1.
- Amend section 192 to add a new paragraph (r) as follows: “respecting minimum price stringency standards.”

Thank you for this opportunity to comment on the benchmark update. We would be happy to answer any questions you may have.

Regards,



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