

A Climate Accountability Law for a Safe and Brighter Future

Brief to the Standing Committee on Environment and Sustainable Development on how to strengthen Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*

May 2021

Introduction/Executive Summary

It is well beyond time for Canada to take ambitious action on climate change. The Paris Agreement commits all signatories to working to hold average global warming to 1.5°C. In 2018, the Intergovernmental Panel on Climate Change – the world’s preeminent climate authority – detailed how essential it is to keep global temperature rise to within 1.5 degrees in order to avoid the most catastrophic and irreversible impacts of climate change.¹ Canada is warming at a rate roughly double that of the rest of the world, and the rate in northern parts of the country is nearly three times the global average.

Meanwhile, Canada has missed every single climate target it has set. As one of the top 10 net emitters of greenhouse gases (GHGs) globally and one of the top per capita emitting countries, Canada disproportionately contributes to the climate crisis. As a result, we have an obligation, as well as an international commitment under the Paris Agreement, to do our fair share of reducing domestic and global emissions as quickly as possible.

Bill C-12 is a tentative step in the right direction, but it is too weak in its current form. We have dragged our heels for too long, and now is the time for action. Fortunately, the Bill can be strengthened into an Act that Canadians can be proud of.

We set out what we believe are the best practices for climate accountability legislation in our 2020 report, *A New Canadian Climate Accountability Act: Building the legal foundation to achieve net-zero emissions by 2050*.² While we stand by this work, we recognize that the drafters of Bill C-12 made some different choices and the priority now is to enact a law that ensures Canada can become a global leader in the fight against climate change.

This brief identifies the key elements of climate accountability laws found in our report and suggests how they can be met within the structures and approach taken by Bill C-12. In each case we explain why

¹ IPCC, 2018: Global Warming of 1.5°C. *An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press.

² Julia Croome et al, *A New Canadian Climate Accountability Act: Building the legal foundation to achieve net-zero emissions by 2050* (May 2020), available [here](#), [here](#) and [here](#).

the element is important and what amendments are required to achieve accountability. In Appendix A we spell out in more detail the specific sections of the Bill that need amending.

We are calling for amendments to Bill C-12, the *Net Zero Emissions Accountability Act*, that ensure the following:

1. **Early and ambitious action** – because we cannot afford to delay climate action any longer.
 - require that plans show what emissions will be for each year, including where emissions should be in 2025;
 - ensure that there is regular progress reporting starting in 2023; and
 - include early and ambitious climate action as a purpose of the Act.
2. **Mid- and long-term certainty** – because certainty and clarity respecting our mid- and long-term targets will let governments, businesses and the public plan accordingly.
 - Require five-year emissions targets and plans to be set ten years in advance, on a rolling basis; and
 - Enshrine a 2030 target that represents Canada’s fair share of domestic emissions reductions;
3. **Credible, effective plans and reports** – because achieving climate goals requires transparent plans that demonstrate how targets will be met, and regular reporting on progress.
 - Require plans to include detailed information and modelling on the federal and provincial measures relied upon to achieve the target, when they will be implemented and how much greenhouse gas emissions reductions each will deliver;
 - Require an annual report that includes updates on both progress and whether targets will be met; and
 - Require the Minister to specify additional actions that will be taken in the event that a target may not be, or has not been, met.
4. **Accountability** – because achieving real climate action can be politically challenging, climate accountability laws work when they require decision-makers to put long-term economic and planetary health ahead of short-term goals and party politics.
 - Require the Minister (or federal Cabinet) to ensure that emissions targets are met;
 - Require the Minister to demonstrate that the measures described in a plan will collectively meet the targets;
 - Ensure that at least 90% of efforts to achieve the net-zero target occur through absolute emissions reductions rather than negative emissions technologies or related technologies; and
 - Provide an explicit right of judicial review to the federal court where a legal duty has not been met.

5. **Science and expert advice** – because climate change and its implications can be complicated, and Canadians need to trust that decisions are being made on the basis of best available science and evidence, not on the basis of political trade-offs.
- Ensure that targets and plans are **based on** the best available scientific information;
 - Provide that the advisory body present its advice and reports to Parliament, rather than the Minister;
 - Require the advisory body’s advice to be based on the best available science respecting credible pathways to achieving net-zero emissions and upholding Canada’s Paris Agreement commitments;
 - Formalize the range of desired science, policy and Indigenous knowledge expertise of future advisory body members, and
 - Require the Minister to consider and respond publicly to the advice and reports of the advisory body with respect to targets, plans and reports.

Five Pillars of an Effective Climate Accountability Law – Bill C-12 Gap Analysis

These five pillars are based on an assessment of climate accountability legislation around the world, and in particular the UK *Climate Change Act, 2008* (UK CCA), which has served as a model for countries in the European Union, New Zealand and elsewhere. In this brief we have adjusted the framing of the pillars from the language we use in our longer report (*A New Canadian Climate Accountability Act*, the “Report”) to reflect Bill C-12 and the appointment of the Net-Zero Advisory Body, and to highlight critical gaps. However, the essential content remains the same.

The five pillars are:

1. Early and ambitious action
2. Mid- and long-term certainty
3. Credible, effective plans and reports
4. Accountability
5. Science and expert advice

These pillars are described below, along with an analysis of how Bill C-12 measures up against them, and recommended amendments to ensure that the Bill lives up to its potential to be an effective tool for ensuring Canada never misses another climate target and does its fair share to keep global temperature rise to within 1.5 degrees.

1. Early and ambitious action

Why it matters: Climate scientists warn that the world has to act immediately. Canada has a history of setting its greenhouse gas emission reduction targets a decade or more out and then failing to take the

near-term actions required to meet them. By failing to include a 2025 milestone year, Bill C-12 gives the impression of only requiring accountability for future governments. We cannot afford to delay climate action any further: Canada must bend its emissions curve sharply, and that means starting immediately.

What is required: A climate accountability law must require immediate action, as well as mid- and long-term action. In the Report we argued for rolling five-year carbon budgets, beginning from when the Act comes into force. After C-12 was introduced, we advocated for a 2025 target.

At a minimum, the Bill must:

- require that plans show what emissions will be for each year, including where emissions should be in 2025;
- ensure that there is regular progress reporting starting in 2023; and
- include early and ambitious climate action as a purpose of the Act.

2. Mid and long-term certainty

Why it matters: In addition to ensuring immediate ambition, net-zero legislation should provide enough certainty and clarity respecting our mid- and long-term targets that governments, businesses and the public can plan accordingly. Plans need to be long-term enough to provide for actions that take some time to implement or to achieve their goals, and to allow for “course correction” if they are not delivering their promised results. This is particularly essential in a federation, so that other levels of government have time to adapt their own climate actions to complement federal action.

What is required: Bill C-12 must ensure that ambitious targets and plans are set at least ten years in advance, to allow time to implement the plans, assess their effectiveness and achieve their targets.

Currently Bill C-12 provides for a mid-term target for 2030, but subsequent targets and plans would be only set five years in advance. For greater predictability and certainty, milestone targets should be set ten years in advance, and plans should be established on a rolling basis, also ten years in advance. For example, in 2025 the Minister should set a 2035 target and establish a new ten-year plan that updates the plan for 2025-2030 and provides new content for 2030-2035. Similarly, the Bill should require the Minister to set a 2040 target in 2030, along with a new ten-year plan.

For the first decade, including a strong 2030 target in the legislation itself could also provide certainty. Such a target should align with Canada’s fair share of domestic emissions reductions, and require Canada’s domestic emissions to be net zero by no later than 2050. As a wealthy country with high historic and per capita emissions, Canada’s targets should be significantly more ambitious than the global averages set as benchmarks by the IPCC of 45% global GHG reductions by 2030 and net-zero by 2050. Leading climate and environmental groups are calling for a 60% reduction in domestic emissions by 2030, as part of Canada’s fair share of the global effort to hold to the 1.5°C limit.

Thus, to ensure mid- and long-term certainty, climate accountability legislation should:

- Require five-year emissions targets and plans to be set ten years in advance, on a rolling basis; and

- Enshrine a 2030 target that represents Canada's fair share of domestic emissions reductions.

3. Credible, effective plans and reports

Why it matters: Transparent plans that demonstrate how targets will be met and reporting on progress are foundational to achieving those goals. Plans and reports must be detailed and provide all data, methodologies and assumptions relied on. Reporting should be annual, or at a minimum occur twice in each five-year period. Transparency works alongside the other elements of climate accountability legislation, allowing, for example, the advisory body to make informed comment on the adequacy of the report and other levels of government to contribute to achieving the milestone targets.

What is required: Bill C-12 currently requires plans to include some mandatory content but is light on the details. Plans must contain detailed information and modelling of the measures relied upon to achieve the milestone targets.

Canada's National Inventory Reporting under the United Nations Framework Convention on Climate Change has long reported not only on federal emissions, but also provincial, territorial and sectoral emissions. Climate mitigation is a shared responsibility between different levels of government and plans must be explicit about what reductions are predicted to occur at the provincial and territorial levels. As the Supreme Court of Canada recently pointed out in the carbon pricing reference case, without national coordination one province's actions can undermine the country's ability to achieve its targets. Requirements regarding transparency about predicted and actual provincial efforts would respect the constitutional division of powers while clearly signalling that climate action is a pan-Canadian responsibility. Plans should also predict what emissions reductions will occur at the sectoral level in order to provide a clear roadmap for the public, industry and decision-makers.

Reports should also ensure regular accountability. The ideal would be to combine both progress and assessment reports into a single annual report, but at a minimum there should be at least two progress reports during every five-year period. In addition to federal action, the reports should describe whether assumptions about emissions reductions from subnational and sectoral action have been or were accurate. Where targets could be, or have been, missed, reports should also require the federal government to set out the additional action it will take to get us back on track.

As such, climate accountability legislation should:

- Require plans to include:
 - an evidence-based estimate of the total combined greenhouse gas emissions reductions that the plan will deliver in the milestone years, and emissions reductions broken down for each sector and province,
 - a summary of the latest National Inventory Report, including provincial and sectoral emissions, and a projection of the emissions from each expected in the milestone years;
 - a description of the key emissions reduction measures expected to be undertaken by provincial and territorial governments,
 - a timetable for the implementation of each measure and strategy, and reasonable estimates of the greenhouse gas emissions reductions that they will deliver, and
 - modelling of the combined annual emissions reductions expected from the measures and strategies described in plan, including key assumptions and methodological approaches.

- Require an annual report that combines updates on progress as well as an assessment of whether targets will be met;
- Require progress and assessment reports to require the Minister to specify what additional actions will be taken in the event that a target may not be or has not been met, and an update on whether provincial and territorial predictions were accurate.

4. Accountability

Why it matters: Because achieving real climate action can be politically challenging, climate accountability laws work when they require decision-makers to put long-term economic and planetary health ahead of short-term profits. Canada has seen a history of finger-pointing for past missed targets, with federal politicians shifting responsibility to the provinces. It is essential that the federal government ultimately be accountable for coordinating provincial action and ensuring that as a country Canada achieves its climate goals.

What is required: Climate accountability must deliver the same types of accountability we expect in the financial realm – someone must be ultimately responsible for ensuring that all of the commitments add up. In contrast to the current text of Bill C-12, most climate accountability laws create clear obligations to ensure that targets are met. Bill C-12 does not currently even include a requirement that measures in plans add up to the reductions necessary to achieve targets, let alone that the target actually be met. Without clear expectations of how targets will be achieved and who is responsible, Canada is likely to continue missing its climate goals.

Accountability, in both the climate and financial realms, can also be undermined through weak rules that allow for accounting tricks that create the appearance of responsibility. Legislation should require efforts to meet these targets to maximize absolute reductions as opposed to relying on less certain measures like offsets and unproven technologies.

“Accountability” not only includes transparency measures that allow the public to understand when government climate action is weak, but also legal accountability, for example by clarifying that Canadians may take the government to court for failure to meet the requirements of the law. Despite differences between Bill C-12 and the former *Kyoto Protocol Implementation Act* (which was held by the Federal Court not to be judicially enforceable),³ for greater certainty we recommend a provision explicitly allowing for judicial review of plans, reports and failure to achieve targets.

To ensure accountability, the Bill should:

- Require the Minister (or federal Cabinet) to ensure that emissions targets are met;
- Require the Minister to demonstrate that the measures described in a plan will collectively meet the targets;
- Ensure that at least 90% of efforts to achieve the net-zero target occur through absolute emissions reductions, and

³ *Friends of the Earth v Canada (Governor in Council)*, 2008 FC 1183 (CanLII), [2009] 3 FCR 201.

- Provide an explicit right of judicial review to the Federal Court where a legal duty has not been met.

5. Science and expert advice

Why it matters: Climate change and its implications can be complicated, and Canadians need to trust that decisions are being made on the basis of clear science about what needs to be done to address climate change, not political trade-offs. Independent expert bodies have a demonstrated track record of depoliticizing emotive and polarized decisions, resulting in better governance.

What is required: Bill C-12 needs to be strengthened to put science at the heart of its decision-making and accountability structures. The advisory body created in Bill C-12 lacks a clear mandate to make recommendations on the basis of best available scientific evidence and its role in the Bill is much more limited than that of equivalent expert bodies in other climate accountability laws. The Bill should be amended to strengthen the advisory body's focus and expertise on science and its independence.

Best practice from other jurisdictions is to have advisory bodies that are independent from government in order to shield them from political influence and enhance their credibility as apolitical and objective. However, the advisory body under Bill C-12 is not independent from government: the Minister appoints its members, sets its terms of reference, receives its reports, and is responsible for providing it with sufficient resources to fulfil its mandate.

The Net-Zero Advisory Body was established outside of Bill C-12, and we make our recommendations in light of that body's extra-legislative mandate and composition. To best ensure that targets and plans are based on science and independent expert advice, climate accountability legislation should:

- Ensure that targets and plans are based on the best available scientific information (as opposed to just requiring that the Minister must consider such advice);
- Provide that the advisory body present its advice and reports to Parliament, rather than the Minister;
- Require the advisory body's advice to be based on the best available science respecting credible pathways to achieving net-zero emissions and upholding Canada's Paris Agreement commitments;
- Formalize the range of desired climate change science, other relevant physical and social sciences and Indigenous knowledge expertise of future advisory body members, and
- Require the Minister to consider and respond publicly to the advice and reports of the advisory body with respect to targets, plans and reports.

Conclusion

Bill C-12 is a critical opportunity to break Canada's cycle of setting unambitious climate targets and failing to meet them. Amendments are required for it to deliver as promised, and we have focused on amendments that would both deliver significant improvements and also be achievable. We summarize

those amendments in the appendix to this report. We would also like to take the opportunity to encourage the Standing Committee’s members to meaningfully consider these amendments while also ensuring that Bill C-12 completes third reading before Parliament rises in June. We thank the Committee for considering our brief, and each of the signatory groups would be pleased to have a witness appear before the Committee to expand further on our recommendations and answer questions.

Appendix – Table of proposed amendments

Pillar	Recommended amendments
1. Ensuring early and ambitious action	<p>A. Amend section 10(1) to require plans to include modelling of expected annual emissions reductions for the duration of the plan.</p> <p>B. Amend section 4 to include as a purpose immediate and ambitious action.</p>
2. Ensuring mid- and long-term certainty	<p>A. Amend section 7 to require targets to be consistent with an ambitious and credible path to net zero by 2050, and to represent Canada’s fair share of domestic reductions.</p> <p>B. Amend sections 7(4) and 9(4) to require targets and plans to be set at least ten years in advance, with each new plan updating the last 5 years of the previous plan.</p>
3. Requiring credible, effective plans and reports	<p>A. Amend section 10(1) to require plans to include:</p> <ul style="list-style-type: none"> i. a summary of Canada’s most recent official greenhouse gas emissions inventory, ii. a description of the key emissions reduction measures expected to be undertaken by provincial and territorial governments, iii. an evidence-based estimate of the total combined greenhouse gas emissions reductions that the plan will deliver in the milestone years, and emissions reductions disaggregated for each sector and province, iv. a timetable for the implementation of each measure and strategy, and reasonable estimates of the greenhouse gas emissions reductions that they will deliver, and v. modelling of the combined annual emissions reductions expected from the measures and strategies described in plan, including key assumptions and methodological approaches. <p>B. Amend sections 14(1) and 15(1) to require annual progress and assessment reports, or at a minimum to require at least two progress reports before 2030.</p> <p>C. Amend section 14(2) to require progress reports to include:</p> <ul style="list-style-type: none"> i. details of the additional measures that will be taken to increase the probability of achieving the plan’s target, in the event that the report shows the target may not be met, and

	<p>ii. an update on whether the provincial and territorial measures described in the plan are achieving their predicted emissions reductions.</p> <p>D. Amend section 15(2) to require (rather than simply permit) assessment reports to include what additional actions the Government of Canada will take to ensure that subsequent targets and the 2050 target are met.</p>
<p>4. Ensuring legal as well as public accountability</p>	<p>A. Add a requirement under section 7 for the Minister to ensure that all measures and strategies within federal authority are taken to ensure that each milestone target and the 2050 target are met.</p> <p>B. Amend sections 10(2) to require plans to <i>demonstrate</i> (rather than simply explain) how the measures and strategies <i>will</i> achieve milestone targets (in addition to helping to achieve the 2050 target).</p> <p>C. Amend section 6 to require that at least 90% of efforts to achieve the net-zero target must occur through absolute emissions reductions, and permit the Minister to set additional targets relating to greenhouse gas removals.</p> <p>D. Add a provision that states that an application for judicial review with respect to any obligation on the Minister under the Act may be made to the Federal Court, and that the Federal Court may grant any relief available to it under subsections 18(1) and 18.1(3) of the <i>Federal Courts Act</i>.</p>
<p>5. Ensuring targets and plans are based on science and independent expert advice</p>	<p>6. Amend section 8 to require the Minister to <u>base</u> targets on the best available science.</p> <p>7. Amend section 20(2) to state that the advisory body is established to provide independent advice that is based on the best available science respecting credible pathways to achieving net-zero emissions by 2050 in a manner that is consistent with the temperature goals of the Paris Agreement.</p> <p>8. Add a provision that sets out the qualification of future advisory body members, including expertise in climate change science, other relevant physical and social sciences (including economics), climate change policy, energy supply and demand, and relevant technologies, and Indigenous knowledge.</p> <p>9. Amend section 22(1) to require the Minister to make the advisory body's report public.</p> <p>10. Amend section 22(2) to require the Minister to publicly respond to <u>all</u> the advisory body's advice.</p>