

## “Decolonizing” Clean Energy Policy in Canada?

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**CANADA IS CURRENTLY IN THE** midst of two of the most challenging issues in the contemporary era: addressing the global climate change crisis by transitioning to a low carbon economy; and working to “decolonize” Canadian laws and policies, ideally by implementing the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the Truth and Reconciliation Commission of Canada’s *Calls to Action*.

### SEEKING CLIMATE JUSTICE

Building on Canada’s ratification of the Paris Climate Change Agreement in 2016, the federal government developed the Pan-Canadian Framework on Clean Growth and Climate Change (2016). Given that energy production and use in Canada accounts for over 80% of Canada’s greenhouse gas emissions, the Pan-Canadian Framework places significant emphasis on promoting renewable energy<sup>1</sup> to meet the carbon-reduction goals set by the Paris Agreement.

Of course, this is not simply a federal initiative. Provinces and territories will work to develop their own policies and programs to facilitate the low carbon transition, bolstered by federal support (Government of Canada, 2016). And while there may not be consensus amongst provincial and territorial governments regarding how best to reduce carbon emissions in Canada, all but Saskatchewan have officially endorsed the Pan-Canadian Framework (Government of Canada, 2019). These significant commitments have already resulted in a cascade of policy and programming related to renewable energy – a trend which is most likely to continue.

**As provinces and territories work to develop policies to promote clean energy, they will also need to come to terms with the fact that climate change and renewable energy are fundamentally Indigenous rights issues.**

The wording of the Pan-Canadian Framework itself recognizes this and makes several references to working with Indigenous peoples as well as reiterating the commitment to support UNDRIP including an explicit reference to free, prior and informed consent (FPIC).

### THE RESURGENCE OF INDIGENOUS RIGHTS

Given that Indigenous peoples’ territories are disproportionately subject to resource development and energy production, those communities are truly “on the front lines of climate change” (UNESCO, 2015). This is especially the case in Canada as First Nations, Métis, and Inuit are often the first to feel the impacts of climate change on their livelihoods, health, and well-being (AFN, 2006; ITK, 2016; MNC: 2011). This is true even when governments work to address climate change by promoting renewable energy projects that can often have negative impacts on Indigenous lands, economies, health, and autonomy (Ansar et al. 2014; Cizek 2004). Large-scale hydro developments are a significant source of these violations.<sup>2</sup>

**All too often, as past experiences confirm, Indigenous rights and well-being are sacrificed in favour of renewable energy development priorities.**

In recent years, however, Indigenous resurgence, coinciding with the Idle No More Movement, a proliferation of legal victories, and the TRC's *Calls to Action* have pushed Canadians in general and policy-makers in particular to consider Indigenous rights in policy development. With energy initiatives, much of the focus has been consulting with Indigenous people and accommodating any infringements on rights.

**Additionally, given the rise in Indigenous entrepreneurship in renewable energy sectors, as well as the disproportionate amount of diesel energy generation in remote Indigenous communities (Natural Resources Canada, 2011), Indigenous peoples may play a key role in Canada's transition to a low carbon economy.**

As such, we are currently witnessing a significant increase in Indigenous participation and partnership in renewable energy development across Canada (Henderson C, 2013; Lipp & Bale, 2018).

**INDIGENOUS INCLUSION IN RENEWABLE ENERGY POLICY (OR LACK THEREOF)**

The ever-growing number of policies and programs emerging across Canada, along with the consistent change in the policy landscape due to election cycles, makes it challenging to provide an exhaustive account of how Indigenous people are included in renewable energy policy and projects. However, a recent review, prepared by Judith Lipp and Sarah Bale for the TREC Renewable Energy Co-op (2018), provides an excellent point of entry for the policy analysis as it surveys a total of 57 provincial and territorial renewable energy programs across Canada.

While Lipp and Bale's approach provides a descriptive account of the policy context and potential benefits and challenges to undertaking projects with Indigenous leadership and/or participation, our analysis is a more critical assessment of how well Indigenous rights are reflected in policy and programming. We include key factors that we believe reflect an awareness of or minimum commitment to Indigenous rights: i) whether Indigenous peoples are mentioned or targeted in the wording; ii) whether Indigenous rights are mentioned at all; and iii) whether consultation with Indigenous people was evident. Further, our analysis focuses on both the process by which policy and programming is developed along with the outcomes or the actual content of the policy and programming.

**In this regard, it is overwhelmingly clear that provincial/territorial policy and programming related to renewable energy in Indigenous contexts is in dire need of significant overhaul.**

The problems centre on two key concerns. First, in terms of outcomes, renewable energy policy and programming fails to acknowledge Indigenous contexts as unique and demonstrates a widespread neglect and/or ignorance of Indigenous issues and Indigenous rights. Second, in terms of process, even when Indigenous peoples are recognized and specified as potential stakeholders, partners, or beneficiaries, this is mostly in terms of tokenistic recognition that rarely impacts the policy and programming development process.

At the most basic level – that of acknowledging Indigenous peoples at all – 37 out of the 57 policies or programs mentioned Indigenous peoples as potentially impacted or as potential stakeholders, partners, or beneficiaries.

**Of course, this also means that over one third of renewable energy policies, programs and legislation completely excludes Indigenous people all together.**

More concerning is the fact that there are a scant eight incidents of policy and programming that make any reference at all to Indigenous rights. Out of these eight references, only two, Alberta's Climate Leadership Plan and Ontario's Green Energy Act, make direct reference to UNDRIP and Section 35 Aboriginal and Treaty rights respectively. The other six identify Indigenous rights generally and acknowledge the provinces' commitment to honouring them.

This is a remarkable finding.

**To restate – given our sample, only 14% of provincial and territorial renewable energy policy and programming impacting Indigenous peoples in Canada make any reference whatsoever to Indigenous rights.**

#### **IS INDIGENOUS PARTICIPATION MEANINGFUL?**

This leads directly to the second of the two key concerns we mention above – that recognition is mainly tokenistic and has little to no impact on policy and programming development processes. Put another way, it is one thing to build-in some mention of UNDRIP, TRC or Aboriginal and Treaty rights into policy or program wording; it is quite another to develop and implement policy and programming in ways that substantively respect and enable the exercise of Indigenous rights.

As one may expect, the issue of consultation, given the recent inclusion of FPIC in the Pan-Canadian Framework, is prominent. Again, it is notable that, out of the 57 pieces surveyed (and 37 that explicitly target Indigenous stakeholders, partners, or beneficiaries), only ten indicate that Indigenous peoples were consulted or participated in the development of the policy or program (though none of these mention FPIC). The remaining 47 pieces either did not outline the participation process or did not clearly identify Indigenous people as part of this process. Moreover, where consultation is mentioned, it appears to be for the purposes of *validation* of pre-existing policies and programs, as opposed to meaningful inclusion. For instance, in the development of Alberta's Climate Leadership Plan, Indigenous peoples and organisations, rather than being part of the co-creation of the plan, were only invited to “provide input on Alberta's Climate Leadership Plan” after it was already created, through online survey and by written submission (Government of Alberta, 2017).

**As this overview clearly demonstrates, Indigenous rights and perspectives are by and large, excluded from processes and content related to renewable energy policy and programming across the country.**

While there has been some optimism that clean energy development may offer an opportunity for reconciliation (see, for example, Sayers & Mather, 2017; Nathwani, 2017), that is not borne out in practice.

We do not see FPIC, substantive inclusion, barely a mention of Aboriginal and treaty rights, nothing at all on co-management or land restitution. Indeed, Indigenous people seem to be an after-thought of renewable energy policy development. This is not surprising considering the emphasis remains on development, which, in itself compromises Indigenous jurisdiction and can become assimilative if Indigenous rights are not placed front and centre.

#### **AN UNCERTAIN FUTURE**

The current lack of recognition of Indigenous rights in provincial and territorial energy policy threatens to promote the status quo whereby policies impacting Indigenous peoples are virtually indistinguishable from policies designed for and by non-Indigenous Canadians and governments. Of course, this results in harm. While there has been discursive broad support by provinces and territories for reconciliation as expressed by the TRC's *Calls to Action* and to a lesser extent UNDRIP, it does not appear to translate into policy. Although it is becoming clear that Indigenous people will continue to play increasingly significant roles in clean energy development in Canada, at the time of writing, there is little evidence that Indigenous rights and perspectives will lead the development of clean energy policy moving forward.

## ENDNOTES

<sup>1</sup>In order to maintain consistency, we use the term ‘renewable energy’ throughout. In this case we rely on the definition provided by Lipp & Bale who define renewable energy as energy produced by “resources that are naturally replenished on a human time scale, such as sunlight, wind, hydro or running water (waves, tides, rivers), geothermal (using the internal heat of the earth), or biomass (plant matter) (2018: 3). Occasionally relevant policies use ‘clean energy’ and ‘renewable energy’ interchangeably.

<sup>2</sup>See, for example, issues surrounding projects in Labrador (Muskrat Falls), Quebec (James Bay Project), Manitoba (Keeyask), and British Columbia (Site C) (Hoffman & Martin, 2012; Martin & Hoffman, 2011; McLachlan, 2014; Waldram 1987, 1993; Weis & Ilinca 2010).

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# PROVINCIAL & TERRITORIAL RENEWABLE ENERGY POLICIES AND PROGRAMMING

✓ Presence of Indigenous content

✗ Absence of Indigenous content

| PROVINCE / TERRITORY              | POLICY   | IDENTIFICATION OF INDIGENOUS STAKEHOLDERS | UNDRIP / SECTION 35 / TRC CONTENT | INDIGENOUS INVOLVEMENT IN POLICY DESIGN PROCESS |
|-----------------------------------|--|---|-----------------------------------|---|
| <b>ALBERTA</b>                    | Climate Leadership Plan                              | ✓   | ✓                                 | ✓   |
|                                   | Renewable Electricity Program                        | ✓   | ✗                                 | ✗   |
|                                   | Alberta Indigenous Solar Program                     | ✓   | ✗                                 | ✗   |
|                                   | Alberta Indigenous Green Energy Development Program  | ✓   | ✗                                 | ✗   |
|                                   | Alberta Indigenous Community Energy Program          | ✓   | ✗                                 | ✗   |
|                                   | Alberta Indigenous Green Employment Program          | ✓   | ✗                                 | ✗   |
| <b>BRITISH COLUMBIA</b>           | Clean Energy Act                                     | ✓   | ✗                                 | ✗   |
|                                   | BC Energy Plan: A Vision for Clean Energy Leadership | ✓   | ✓                                 | ✗   |
|                                   | First Nations Clean Energy Business Fund             | ✓   | ✗                                 | ✗   |
|                                   | BC Indigenous Clean Energy Initiative                | ✓   | ✗                                 | ✗   |
|                                   | Clean Energy Strategy for First Nations and BC       | ✓   | ✗                                 | ✗   |
| <b>MANITOBA</b>                   | Climate Change and Green Economy Action Plan         | ✓   | ✗                                 | ✗   |
|                                   | Clean Energy Strategy                                | ✓   | ✓                                 | ✗   |
|                                   | Pay As You Save (PAYS)                               | ✗   | ✗                                 | ✗   |
| <b>NEW FOUNDLAND AND LABRADOR</b> | Climate Change Action Plan                           | ✗   | ✗                                 | ✗   |
|                                   | Northern Strategic Plan for Labrador                 | ✓   | ✓                                 | ✓   |
|                                   | Net Metering Policy Framework                        | ✗   | ✗                                 | ✗   |
|                                   | Biogas Electricity Generation                        | ✗   | ✗                                 | ✗   |

|                              |  |   |   |   |
|------------------------------|--|---|---|---|
| <b>NEW BRUNSWICK</b>         | Community Energy Policy  | ✓ | ✗ | ✗ |
|                              | Electricity from Renewable Resources Regulation - Electricity Act              | ✓ | ✗ | ✗ |
|                              | Locally-owned Renewable Energy Projects that are Small Scale Programs (LORESS) | ✓ | ✗ | ✗ |
| <b>NORTHWEST TERRITORIES</b> | Northwest Territories Solar Energy Strategy 2012-2017                          | ✗ | ✗ | ✗ |
|                              | Community Renewable Energy Program (CREP)                                      | ✓ | ✗ | ✗ |
|                              | Northwest Territories Energy Action Plan 2013                                  | ✓ | ✗ | ✓ |
|                              | Business Renewable Energy Fund (BREF)  | ✗ | ✗ | ✗ |
|                              | Residential Renewable Energy Fund (RREF)                                       | ✗ | ✗ | ✗ |
|                              | Alternative Energy Technologies Program (AETP)                                 | ✓ | ✗ | ✗ |
|                              | Net Metering   | ✗ | ✗ | ✗ |
|                              | A Greenhouse Gas Strategy for the Northwest Territories 2011-2015              | ✓ | ✗ | ✓ |
|                              | Paths to a Renewable North; A Pan-Territorial Renewable Energy Inventory       | ✓ | ✗ | ✗ |
|                              | A Vision for the Northwest Territories Power System Plan                       | ✓ | ✗ | ✗ |
| <b>NOVA SCOTIA</b>           | Mi'kmaq Energy Strategy  | ✓ | ✗ | ✗ |
|                              | Electricity Act  | ✗ | ✗ | ✗ |
|                              | Our Electricity Future, Nova Scotia's Electricity Plan (2015-2040)             | ✓ | ✓ | ✗ |
|                              | Solar for Community Buildings Pilot Program                                    | ✓ | ✗ | ✗ |
|                              | Enhanced Net Metering  | ✗ | ✗ | ✗ |
|                              | Marine Renewable Energy Strategy   | ✓ | ✓ | ✓ |
| <b>NUNAVUT</b>               | Ikummatiit   | ✓ | ✗ | ✓ |
|                              | Nunavut Energy Management Program  | ✗ | ✗ | ✗ |

|                             |  |           |          |          |
|-----------------------------|--|-----------|----------|----------|
| <b>ONTARIO</b>              | Green Energy Act                                     | ✓         | ✓        | ✗        |
|                             | Feed-in-Tariff Program                               | ✗         | ✗        | ✗        |
|                             | Aboriginal Community Energy Plan                     | ✓         | ✗        | ✗        |
|                             | Large Renewable Procurement (LRP)                    | ✗         | ✗        | ✗        |
|                             | Aboriginal Energy Partnerships Program               | ✓         | ✗        | ✗        |
|                             | Education and Capacity Building Program              | ✓         | ✗        | ✗        |
|                             | Net Metering   | ✗         | ✗        | ✗        |
| <b>PRINCE EDWARD ISLAND</b> | Energy Framework and Renewable Energy Strategy       | ✓         | ✗        | ✓        |
|                             | Prince Edward Island Energy Strategy                 | ✗         | ✗        | ✗        |
|                             | Renewable Energy Act                                 | ✗         | ✗        | ✗        |
| <b>QUEBEC</b>               | 2030 Energy Policy                                   | ✓         | ✗        | ✓        |
| <b>SASKATCHEWAN</b>         | SaskPower Electricity Initiative                     | ✓         | ✗        | ✗        |
| <b>YUKON TERRITORY</b>      | Independent Power Production Policy                  | ✓         | ✓        | ✓        |
|                             | Rural Electrification and Telecommunications Program | ✗         | ✗        | ✗        |
|                             | Micro-generation Program                             | ✗         | ✗        | ✗        |
|                             | Residential Renewable Energy Initiative              | ✗         | ✗        | ✗        |
|                             | Good Energy Program                                  | ✗         | ✗        | ✗        |
|                             | Energy Strategy                                      | ✓         | ✗        | ✓        |
| <b>TOTAL</b>                | <b>57</b>  | ✓=36 ✗=21 | ✓=8 ✗=49 | ✓=9 ✗=46 |