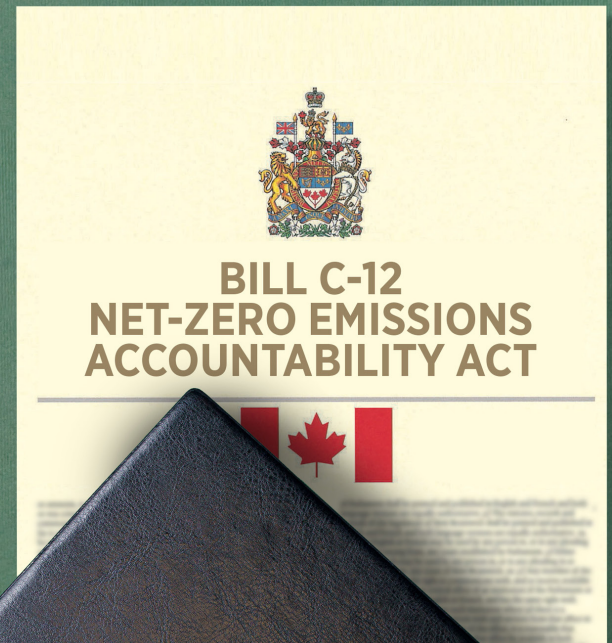


Is Canada's Net-Zero Emissions Accountability Act a Parliamentary Placebo?

By Andrew Roman



SUMMARY

- People given placebos in drug tests often feel better because they expect they will. Legislation can have a similar placebo effect. Canada's Net-Zero Emissions Accountability Act is an example: it makes people feel better despite being ineffective, unnecessary, and potentially harmful.
- The minister responsible has described the Act as setting “legally-binding targets.” That is incorrect. It legislates a target but doesn't bind anyone to meet it.
- Both the previous government and this one have set emissions targets without using legislation to do so, so this Act is unnecessary for that purpose.
- The Act will encourage lawsuits that will seek to enforce compliance with the target, which the government might not defend vigorously.
- A government media release says the Act provides transparency and accountability but that is also unnecessary because Canada's commitment to file such reports under the Paris Agreement already does that.
- Despite the promised transparency the Act is opaque on the single most important issue: the cost to Canadians of the rapid transition to net-zero emissions. Predictably, the rapid transition is inflationary and will make food, home heating, electricity, and transportation much costlier.
- Contrary to popular misconception, the Paris Agreement does not require any specific emissions reductions but allows each country to determine its own targets.
- China, India, and others (representing two thirds of the global population) have decided to increase their total emissions. Canada, prior to the COVID-19 lockdowns, was actually increasing its greenhouse gas emissions, making it unlikely that the country will meet the net-zero target.

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Introduction

In the pharmaceutical testing process, many of the test subjects receive an inactive substance—a placebo—but still report feeling better because they expect to feel better. Some politicians have adopted a similar strategy: they want to make people feel better and do so by enacting placebo legislation that sounds good, but is essentially symbolic, unnecessary, and possibly even harmful. Canada's recently enacted Bill C-12, the *Canadian Net-Zero Emissions Accountability Act* (hereafter, the *Accountability Act*) is unnecessary placebo legislation, with potentially harmful effects.

Why create placebo legislation?

Governments, including Canada's, have realized that like most non-lawyers, the majority of journalists do not take days to study a new statute or canvas legal experts; instead, they learn its salient points in the government's media release. And the public absorbs what journalists present. This has led to some new laws that are more like public relations statements than laws. Such legislation often has lengthy rhetorical preambles, vague or circular definitions,¹ and little substantive content. Media releases provide glowing descriptions of what these laws

¹ See, for example, *Impact Assessment Act*, SC 2019, c 28, s 1, which has a preamble of several clauses that merely state what the government of Canada recognizes, which would not be of any great assistance in statutory interpretation. It then goes on in the definition section, s 2, to define "Indigenous knowledge," which is given special statutory status in that Act, as: "Indigenous knowledge means the Indigenous knowledge of the Indigenous peoples of Canada." How will this definition help to determine whether the evidence to be presented by an Indigenous group's witness at a public hearing is or is not Indigenous knowledge in the statutory sense?

supposedly will accomplish. But their real purpose is political popularity.

The media release on the Accountability Act

On June 30, 2021, Canada's Department of Environment and Climate Change issued a media release on the *Accountability Act*, titled: "Government of Canada legislates climate accountability with first net-zero emissions law" (Environment and Climate Change Canada, 2021).

After summarizing the law's targets, the release explains that "The Act also provides accountability and transparency..." The release quotes the minister: "We promised to legislate net-zero emissions by 2050 and put in place legally-binding targets, and yesterday we delivered on that promise..." That statement is incorrect. Although the law does set the target, it doesn't legally bind the government to reach that target.

The Accountability Act's "purpose" clause

The *Accountability Act* includes a "purpose" clause to explain its purpose:

The purpose of this Act is to require the *setting*² of national targets for the reduction of greenhouse gas emissions based on the best scientific information available and to promote transparency and accountability in achieving those targets, in support of achieving net-zero-emissions in Canada by 2050 and Canada's international commitments in respect of mitigating climate change. (*Canadian Net-Zero*

² Setting only means setting the target, it doesn't mean achieving it.

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Emissions Accountability Act, SC 2021, c 22, s 4) [emphasis mine]

What is the real purpose of the Act?

The stated purpose in the purpose clause cannot be the real purpose for the government to enact this legislation.

This legislation is unnecessary for setting national targets

Without enacting any legislation the Harper government set CO₂ emissions reduction targets as government policy. Without enacting any legislation the Trudeau government accepted those targets—until recently. Why is this legislation needed now? It cannot be because such targets suddenly require legislation.

The Act probably has two political purposes. First, presenting these targets as a law enhances the government's image as a serious climate change fighter. And second, the legislation will encourage and facilitate numerous new lawsuits to try to enforce the government's compliance with its target, which also has political benefits.

Environmental advocacy groups, sometimes representing children,³ are bringing an increasing number of court cases in Canada to try to compel adoption of the plaintiffs' climate policies. If government targets are legislated such litigation becomes easier to win.⁴

³ See, for example, *La Rose v Canada*, 2020 FC 1008 (unsuccessful) and *Mathur v. Ontario*, 2020 ONSC 6918, brought by the environmental law firm Ecojustice, which was successful against Ontario's motion to strike out the case.

⁴ For example, the Netherlands Supreme Court, in its *Urgenda* decision (de Rechtspraak, 2020), upheld lower courts ordering the Dutch state to increase

Government defendants in such lawsuits may be glad to be sued, and may not defend them vigorously. A loss in court enables the government to (i) justify its actual achievements, albeit below the target, as realistic compared to the stronger claims in the lawsuits, and (ii) justify settling the litigation by taking legislative action such as increasing the carbon tax. This suggests a friendly relationship between the environmental advocates and the in-house government advocates of legislating net-zero by 2050.

This legislation is unnecessary to promote transparency and accountability

The government is seeking to “sell” this law by claiming it adds transparency and accountability to its reporting requirements. But the government should always be transparent and accountable and should not need to pass a new law whenever it decides it wants to become transparent and accountable.

The federal government is already committed to file reports (i) with the United Nations every two years on all major climate change measures undertaken by federal and provincial governments; and (ii) every five years on emissions reduction measures under the 2015 Paris Agreement. These reports are publicly available on the Environment and Climate Change Canada website. Therefore, without this legislation

its legislated 2020 target from a 20 percent reduction (versus 1990) to a 25 percent reduction. In 2020 the country's emissions of 175.8 million metric tons were only 9 percent lower than they were in 1990. When the *Urgenda* case was heard, on December 20, 2019, it was already obvious that the 25 percent target could not be reached just 12 months later. The court issued an order with which compliance was impossible. One can only hope that Canada's courts will not follow the Dutch example in making an unenforceable order that is essentially meaningless.

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there is already complete transparency, which creates accountability.

Regrettably, the information required under the Accountability Act will be opaque on the single most important issue: the cost to Canadians of the rapid transition to net-zero emissions. Without knowing the costs, year by year, there is no way to judge whether they are affordable and the benefits significant.

The benefits claimed in the government's media releases are (i) that Canada's greenhouse gas emissions will be reduced, and (ii) that this domestic reduction will reduce the adverse effects of climate change in Canada, particularly extreme weather. For reasons described below, this legislation is unlikely to achieve either of these benefits.

Both Canadian and global CO₂ emissions are continuing to rise rather than decline, and nothing Canada does with CO₂ emissions can significantly affect Canada's climate because CO₂ emissions spread all over the globe. They do not stop at the Canadian border.

For decades, Canadians have relied on hydrocarbons to heat and light their homes and transport themselves, their children, and their food and other goods. To eliminate all of these essential sources of energy in under 28 years is unprecedented. Embracing this radical change without disclosing its costs and risks is inconsistent with the professed objectives of greater transparency and accountability.

Pursuing the net-zero target at this rate will quickly make transportation, home heating, electricity, food, and shelter much costlier, and will particularly hurt low income consumers and smaller businesses. At the same time, China, India, and other developing countries are building numerous new coal-fired power plants

to give their nations inexpensive, high emitting energy—so they can sell low-priced goods (including solar panels and wind turbines) to Canadians. In effect, the developed countries are off-shoring production, jobs, and investment to developing countries that burn lots of coal, thereby increasing global CO₂ emissions. This is the law of unintended consequences in action.

University of Manitoba professor emeritus Vaclav Smil is a globally recognized authority on energy transitions. His many books and articles (for example, Smil 2018, 2019) have shown that historically, the time taken for new sources of energy to surpass just 25 percent of energy use in a country is typically 50 to 70 years. It takes many more decades than that for a form of energy to become a dominant energy source.

Professor Smil recently wrote:

The most important fact is that during those decades of rising concerns about global warming the world has been running towards fossil carbon, not moving away from it... emissions have nearly tripled in Asia, largely because the Chinese combustion of fossil fuels has almost quadrupled. As a result, global emissions of CO₂ increased by more than 60 per cent since 1992, setting yet another record in 2018...

Designing hypothetical roadmaps outlining complete elimination of fossil carbon from the global energy supply by 2050 is nothing *but an exercise in wishful thinking that ignores fundamental physical realities...* The complete decarbonization of the global energy supply will be an extremely challenging undertaking of an unprecedented scale and complexity that will not be accomplished – even in the case of sustained, dedicated and extraordinarily

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costly commitment – in a matter of a few decades. (Smil, 2020: 2, 4) [emphasis mine]

This legislation is unnecessary for Canada's Paris Agreement contribution

The Western media has generally misrepresented the Paris Agreement and it is widely misunderstood by Canadians. It has repeatedly—and incorrectly—been described as creating binding national commitments to reduce emissions so as to limit the global average temperature increase by 2100 to 2°C or lower. In fact, the Agreement doesn't do that. It permits each country to set its own “nationally determined contribution” (NDC). A country's NDC can be to *increase emissions*, which many nations, including China and India, have announced they will.

After 2015, as the 195 countries' NDCs were published, it became obvious that the 2°C goal cannot be reached (Tollefson, 2019). The OECD countries, most from the developed West, account for only approximately one third of global emissions. Most of the developing countries of Asia and Africa account for approximately two thirds of global emissions—and have promised to *increase* their emissions. Reductions in those nations would jeopardize their efforts to reduce their peoples' poverty, some 800 million of whom still have no access to electricity. The increased emissions in those countries cancel out the promised decreases elsewhere. Therefore, by 2050, there will probably be no global reduction in emissions.

Since 2010, most of the CO₂ emissions growth has been in the non-OECD countries (BP, 2020). Their NDCs have made any future reductions conditional upon massive funding from the OECD countries. On March 13, 2021, Pakistan's prime minister warned that developing countries would need to spend about US\$400 billion per annum in climate finance support to

shift developing countries toward low carbon development pathways (GWPF and BBC News, 2021, April 1). Yet developed countries have thus far failed to deliver even the \$100 billion a year they promised in 2016 under the Paris Agreement. India has called the West's 2050 net-zero targets “pie-in-the-sky.” India's energy minister recently said that poor nations want to continue using fossil fuels and the rich countries “can't stop it” (GWPF and BBC News, 2021, April 1). Also, as *Bloomberg Green* reported, at the November 2021 Glasgow COP26 climate talks, India demanded \$1 trillion in cash, just for itself, by 2030 – 10 times the \$100 billion annual total for all developing countries offered in Paris (but still not paid) (Rathi and Chaudhary, 2021, November 10).

There is a disconnect between the 2°C goal and what the 195 signatory nations have actually said in their NDCs. As Nobel prize-winning economist William Nordhaus wrote in the *American Economic Association Journal* of August 2018:

The reality is that most countries are on a business-as-usual (BAU) trajectory of minimal policies to reduce their emissions.... *The international target for climate change with a limit of 2°C appears to be infeasible with reasonably accessible technologies even with very ambitious abatement strategies.* (Nordhaus, 2018: 333–34) [emphasis mine]

Regardless of what Canada does, the Paris Agreement, like all the predecessor accords, is already, evidently, a failure.⁵

⁵ See the thermometer graph at <https://climateactiontracker.org/>. It shows how even the pledges of the various signatories won't keep warming below 2C, and their actual policies, thus far, are even worse.

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Confusion in Canadian government communications

Another federal government description (Canada, 2022) indicates that the government established an independent advisory group in 2021 to consult with Canadians and provide the government with advice on the best pathways to achieving net-zero emissions by 2050. If the net-zero target was merely a government policy, there would be no issue with it seeking policy advice. But this is not a mere policy. It is a law, one the minister said had set a “legally-binding” target. This begs the question: why did the government not get expert advice on how to achieve this target, and at what cost, *before* rather than after legislating it?

In trying to explain what net-zero means, the federal government states:

Achieving net-zero emissions means our economy either emits no greenhouse gas emissions or offsets its emissions, for example, through actions such as tree planting or employing technologies that can capture carbon before it is released into the air. This is essential to keeping the world safe and livable for our kids and grandkids. (Canada, 2022)

There are two problems with this paragraph. First, there is no technology that would enable the entire Canadian economy to emit no CO₂. Today, and for the foreseeable future, there are no battery or hydrogen-powered passenger jet aircraft, ocean-going cargo ships, large transport trucks, or farm tractors. Planting trees is neither a quick nor a long-term solution because it takes decades for them to grow to a substantial height, and, although they absorb CO₂ during their growth period, when they die they decompose, releasing the CO₂ they have

absorbed. As for carbon capture, although it is technically feasible on a small scale, it is not yet economic on anywhere near the scale that would offset Canada's reasonably foreseeable emissions (Rissman and Orvis, 2017, May 3). Nor is it possible to capture CO₂ “before” it is released into the air from the literally millions of sources in Canada – every home, every car, every office, and every factory would need to have some sort of carbon capture device, which does not yet exist, even on paper.

Second, the statement appears to equate Canada with the entire world. If Canada achieves net-zero emissions but much larger countries do not, will that really keep “the world safe and livable for our kids and grandkids” in Canada? Canada represents only 1.6 percent of global CO₂ emissions (Ritchie and Roser, 2020). The planet doesn't care where CO₂ is emitted, only the total matters. The other 98.4 percent will determine the global emissions.

Global CO₂ emissions are a collective action issue

Global CO₂ emissions are a collective action issue, not an individual nation issue. The CO₂ we emit doesn't stay above Canada, and the CO₂ other nations emit doesn't stay out of Canada. There is no CO₂ wall around the country. Therefore, if “keeping the world safe and livable for our kids and grandkids” requires net-zero emissions, that fact would require that the whole world have net-zero emissions. But the government's website doesn't acknowledge or explain that self-evident truth. It misleadingly implies that Canada's target alone can make the climate safe and livable for Canadians, even though most countries will increase their emissions. This inference is neither transparent nor demonstrates accountability.

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How realistic is Canada's net-zero target?

Canada's net-zero target is not very realistic. According to Canada's 2021 *National Inventory Report* (NIR) on greenhouse gas emissions submitted to the UN, our national emissions have been rising, not falling. In 1990 they were 600 Mt of carbon dioxide equivalent (MtCO₂e). By 2017 they had increased to 716 MtCO₂e, an increase of 19.3 percent.

By 2019, Canada's CO₂ emissions were up 21.7 percent over 1990 (Environment and Climate Change Canada, 2021). After the pandemic lockdowns further increases are likely in 2022 and beyond. That doesn't look like a rapid transition to net-zero.

By 2019, Canada was emitting 15.4 tonnes of CO₂ per capita per year, among the highest of any developed nation, including the US (Ritchie, 2019, October 4). How, exactly, will Canada go about reversing this trend and go from 15.4 tonnes per capita per year to net-zero over the next 28 years? The government has been silent about how it intends to achieve that goal, or what it would cost. Silence may be less embarrassing than admitting that it has no costed plan.

Perhaps we should not be too critical of the current government in Ottawa. It is by no means the only government enacting placebo legislation; neither is such legislation limited to climate change.

Bringing the entire planet to net-zero by 2050 would require a complete global energy transition to make all forms of energy electric. That is very unlikely to happen. According to British Petroleum's *Statistical Review of World Energy 2020*, hydrocarbons in 2019 represented 84 percent of both primary energy consump-

tion and CO₂ emissions globally; in Canada they were 87 percent. "Renewables" (mainly biomass, wind, and solar energy) accounted for just under 5 percent globally. How long will it take for this 5 percent to become 100 percent? On this issue, Vaclav Smil concluded in his book *Energy Transitions*:

As in the past, the unfolding global energy transitions will last for decades, not years, and modern civilization's dependence on fossil fuels will not be shed by a sequence of government-dictated goals. (2016, Introduction)

The October 2021 (US) Energy Information Administration also forecast global emissions increases:

If current policy and technology trends continue, global energy consumption and energy related carbon dioxide emissions *will increase through 2050* as a result of population and economic growth ...

- By 2050, global energy use in the Reference case [the most likely scenario] *increases nearly 50% compared with 2020* – mostly a result of non-OECD economic growth and population, particularly in Asia. (EIA, 2019) [emphasis mine]

Protesters blocking traffic or children taking a day off school to demonstrate with placards may provide drama, but they aren't helpful. Neither are governments setting distant targets they cannot explain how to meet.

Conclusion

Climate change—the change in the mean global temperature—is a global concern that is neither locally caused nor locally cured. Canada's Accountability Act and the government's extensive efforts to promote it wrongly assert

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that legislating the target will be a transparent and effective new law that will make the entire world safe and livable for our children and grandchildren. Useful, transparent laws generally do not say, in effect, “we intend to move towards accomplishing this goal in under 30 years, but we have no plan for how to do it, and we don’t know what it will cost.” The Accountability Act is essentially a public relations statement presented as a binding law.

Canada’s abrupt transition away from fossil fuels would drastically reduce our living standards (McKittrick and Aliakbari, 2014). Painfully high carbon taxes and massive increases in sales and income taxes would be needed to fund the extensive new electrical energy infrastructure. Just China (with a population of 1.447 billion) and India (with a population of 1.397 billion), whose combined populations account for 36 percent of the world’s 7.795 billion people and are 74.6 times the population of Canada, are rapidly increasing their emissions. How credible is Canada’s claim of “climate leadership” when most of the world isn’t following us? It is time for Canada’s government to begin to listen to Vaclav Smil and William Nordhaus and stop announcing that the Paris Agreement and our net-zero target will make Canada’s climate safe and livable for our children and grandchildren.

My critique of this particular statute should not be interpreted as suggesting that Canada should do nothing about the effects of climate change or extreme weather events. However, the appropriate response to these concerns is not to enact a law mandating an unreachable goal via an unspecified plan at an undisclosed cost. Furthermore, government websites should not present this law as being necessary for and providing transparency and accountability when that is simply not the case.

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Andrew Roman is a recently retired litigation lawyer who has presented at all levels of court and at the Supreme Court of Canada from 1973 to 2017. He has also advised and represented clients before numerous administrative tribunals on regulatory matters involving energy and environmental issues.

As a partner for 25 years in a major national law firm until his retirement, Mr. Roman's clients included governments and business corporations in Canada, Europe, and Japan. His work included international trade, competition law (mergers and trade practices), and several domestic and international class actions (including defending Walkerton).

Mr. Roman is the author of more than 90 published legal articles and a book, and taught as an adjunct faculty member at four Canadian law schools. His blog is at <https://andrewromanviews.blog/>.

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