



# CANADA

# 2030

## SUSTAINABILITY

### WHAT IF...

GOVERNMENTS AND COMPANIES ARE CHALLENGED IN  
COURTS OVER ALLEGED INACTION ON CLIMATE CHANGE?



Government  
of Canada

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Canada

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Canada 

## CANADA 2030 SERIES

Canada is experiencing significant social and technological changes that could disrupt many aspects of society. In this context, the next 10 to 15 years could be a transformative period for the relationship between Canada's government and broader society. This Insight is part of a series developed by Policy Horizons Canada on a variety of topics.

### WHO WE ARE

Policy Horizons Canada (Horizons) is a strategic foresight organization within the Public Service of Canada with a mandate to help anticipate emerging policy challenges and opportunities and to experiment with methods and technologies to support resilient policy development. Horizons is exploring plausible futures for Canada over the next 10 to 15 years in the areas of governance, sustainability, infrastructure, and the digital economy. With the active participation of experts from governmental and other organizations, Horizons identifies the key factors driving change, looks for potential surprises, explores plausible futures in the form of scenarios, and surfaces key emerging policy challenges and opportunities.

### VISUAL CONCEPT

The *Canada 2030* visual concept juxtaposes the past and the future in a subtle mix of colours, fonts, and imagery. The vibrant colour palette creates a safe space for the reader to open his or her mind. The main imagery found throughout the suite of products is rooted with the leaf of the sugar maple. The maple fruits, the samaras, gracefully fall throughout the Canadian landscape. They hold the potential of growing into trees and forever leaving their mark from coast-to-coast. Just like the Insights surfaced through the foresight methodology, they may one day be part of our reality. The traditional style of ink hatching accentuates the ribs of the leaves and evokes the system maps used in foresight. As we embark on Canada's 150<sup>th</sup> year, let us embrace our past and consider our plausible futures.

*This document does not attempt to predict the future. The purpose is to stimulate reflection and dialogue and support the development of public policy that is more robust and resilient across a range of plausible futures. The views contained in this document do not necessarily represent the views of Horizons, the Government of Canada or participating departments and agencies.*

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# WHAT IF...

*In recent years, many governments around the world have been charged for alleged inaction or insufficient action over climate change mitigation. Moreover, one of the largest oil companies in the world, Exxon Mobil, is facing investigations from attorney generals in various U.S. states for **lying to investors** about the risks of climate change. Successful lawsuits against governments and companies could lead to the decarbonisation of several sectors including energy, infrastructure, agriculture, transportation and finance.*

## WHAT'S CHANGING?

The legal “duty to care” principle could open the valve for massive lawsuits against governments worldwide for alleged inaction and weak mitigation strategies on climate change. Recently, a Dutch sustainability foundation called **Urgenda** and some 900 citizens have filed a lawsuit against their government for not taking sufficient measures to limit greenhouse-gas emissions (GHG). The Hague District Court agreed with the class action suit and considered the Dutch climate change policies unlawful, describing them as **hazardous negligence**. In its decision, the District Court took into account the recommendations made by the International Panel on Climate Change (IPCC), which indicated that developed countries must reduce their greenhouse-gas emissions by 25-40% compared to 1990 levels by 2020. The Dutch climate change policies would only achieve a GHG emissions reduction of 17%. The Court also recognized that the government “owes a duty of care to its current and future citizens for harm caused by climate change”<sup>1</sup> and for that reason has ordered the government to cut its emissions by at least **25%** by **2020**. While this ruling is the first successful climate change action based on tort law, the same legal arguments could be made in other jurisdictions, including **Canada**, as the “duty to care” principle is applicable in almost every legal system in the world.<sup>2</sup> Similar lawsuits have been launched against governments around the world:



The legal “duty to care” principle could open the valve for massive lawsuits against governments for alleged inaction on climate change



<sup>1</sup> Ecojustice, What the Dutch climate court win could mean for Canada, July 8, 2015, <http://www.ecojustice.ca/what-the-dutch-climate-court-win-means-for-canada/>; A similar case has also been filed in Belgium against the government, <http://blogs.law.columbia.edu/climatechange/2015/06/08/lawsuit-seeks-to-force-belgian-government-to-take-action-against-climate-change/>

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- Arguing that the State of Washington was not respecting its constitutional public trust obligations over future generations and its duty to protect the state's natural resources, [Our Children's Trust](#) convinced a judge to force the Washington State Department of Ecology to prepare an emissions reduction rule and make science-based recommendations to the state legislature on greenhouse gas reductions in 2017.
- Recently, a group of young people filed a climate change lawsuit against the Norwegian government for allowing oil companies to drill for new oil in the Arctic Barents Sea.
- Another group of young [Swedish people](#) filed a lawsuit against the Swedish government for the sale of coal assets to foreign investors, a decision that could increase European carbon emissions.
- In Switzerland, a group of [450 women](#) aged 65 and older submitted a legal petition against their government for its weak climate change policies. The group is arguing that extreme weather events such as heatwaves and droughts are having significant impacts on older people.

**Governments worldwide may not be the only entities targeted by climate change [lawsuits](#). Fossil fuel could become the next tobacco.**

- In the United States, [20 states' attorneys general](#) have launched an unprecedented investigation action against major petroleum companies, including Exxon Mobil, Chevron, BP and Shell. This investigation was launched after the publication of a [report](#) which shows major oil companies knew about the impacts of carbon emissions on global warming long before the scientific community and orchestrated a campaign of doubt and denial about climate change. The attorneys general's investigation will evaluate if Exxon Mobil's scientific research on global warming was consistent with the company's statements to investors on the subject.<sup>3</sup>
- The Conservation Law Foundation has [filed a suit](#) against Exxon Mobile for its climate deceit, gross negligence and violations of federal pollution regulations.
- In the Philippines, the Commission on Human Rights will investigate [50 of the biggest fossil fuel companies](#) in the world and consider if their GHG emissions violate the human rights of the local population, which have been hit by a growing number of extreme weather events.



<sup>3</sup> The New York Times, "Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General", November 5, 2015, [https://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html?\\_r=0](https://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html?_r=0)

## POTENTIAL IMPLICATIONS

**Realignment of governmental GHG emissions reduction targets with scientific discourse could accelerate the transition to a [climate economy](#).** If the duty to mitigate the impacts of climate change over the coming decades is recognized by the courts, governments may be obligated to align their GHG reduction emission targets with scientific recommendations. To achieve the new targets, governments may need to decarbonize carbon-intensive sectors (e.g., energy, agriculture and transportation) sooner than expected. If governments are unable to meet targets in line with the [scientific consensus](#) over climate change, they could become liable for not adopting measures that reverse global warming and mitigate its impacts. From a legal point of view, public investments in carbon intensive infrastructure may become riskier over the coming years.

**The risk of stranded assets in the emerging climate economy is growing.** In September 2015, Mark Carney, Governor of the Bank of England, [warned](#) the financial community of the potential impacts of climate change on global financial stability. Liability risks are among the list of implications. As scientific research makes it easier to demonstrate the causal link between conduct and damages, parties who suffer from climate change damage may request compensation in front of a judge. A larger number of carbon emitters and extractors, as well as their insurers, may have to deal with civil lawsuits. While governments may have to manage a carbon budget and reach ambitious emission reduction targets, the allocation of carbon emission credits may signify the end of carbon intensive operations.

**Towards a legal recognition of future generations' rights.** Should legal rights around sustainability be granted to [future generations](#)? Intergenerational equity is central to the definition of [sustainable development](#), which is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” To date, climate change court cases have resulted in rulings that recognize governments owe a “duty of care” presently as well as for future generations. This may result in a paradigm shift in policy making, from short-term to long-term thinking, which would need to be reflected in all types of public institutions. The development of regulations and policies, as well as other decisions may have to include some form of “future generation impact assessment”. The implications may not necessarily cover only the environmental dimension but also the economic and the social realms.

