

Economics and Environmental Policy Research Network

Research Symposium

February 27th – 28th, 2020

Session Notes for Discussion Session: Constitutional Challenge to Carbon Pricing in Canada

1. State of Existing Research and Discussion Context

This session sought to explore the constitutionality of the Federal Carbon Pricing Backstop in Canada.

Key themes discussed in the session include:

- **Federal Carbon Pricing Backstop:**
 - **Context:**
 - The Federal Government of Canada has made an international promise to reduce national greenhouse gas emissions.
 - To reduce emissions, every province will need to endeavor to reduce their own emissions so that Canadian emissions are reduced in total. Most Canadian provinces have their own emissions reductions policies in place, but four (Alberta, New Brunswick, Ontario, and Saskatchewan) either did not have a reduction program in place or the program was not strict enough. As such, the federal government has imposed a Federal Carbon Pricing Backstop on these four provinces.
 - The provinces of Ontario and Saskatchewan are claiming that the Federal Carbon Pricing Backstop is unconstitutional, and are taking their arguments to court
 - By the end of March 2020, there will be 29 different parties providing arguments for or against these cases. These parties include think tanks and NGOs.

- **Federal Heads of Power:**
 - **Context:** The Canadian federal government has several “heads of power” (law-making powers) that it could consider using as a defense should these legal cases end up at the Supreme Court of Canada:
 - Peace, Order and Good Government;
 - Emergency power;
 - Treaty implementing power;
 - Criminal law power – there are, however, limitations on this law, and it can only provide penalties for issues on environmental matters;
 - Taxation power – though the carbon pricing backstop does not fall under this because the taxation power is only relevant if the purpose of the revenue and not to change behavior; and
 - Trade and commerce power.

2. Research Questions Identified

- **Is the federal greenhouse gas pollution pricing act unconstitutional?**
 - a. **What is the pith and substance of the law?**
 - b. **Does it fall within a federal head of power?**
 - c. **If there is conflict with provincial laws, how is it resolved?**
- **Is this carbon pricing backstop argument something new or was it a matter of local concern that is now becoming a broader matter?**
- **Is there a coherent way to frame this carbon pricing backstop argument in a way that is understandable to a broader audience?**
- **Will the provinces work together or alone to be able to achieve what the federal government has set out in terms of emissions reductions?**
 - a. **Can the provinces do this by using regulations?**
 - b. **Would the provinces do it?**
 - c. **What is the scale of impact on provincial powers in the future?**
- **What happens if the Act is declared unconstitutional by the Supreme Court of Canada? Are there alternative actions that can be taken? E.g. subsidies.**
- **Some provinces are making the argument that carbon pricing is not necessary. How can that be addressed?**