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A Comment on the Strategically Narrowed Strategic Assessment of Climate Change

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Earlier this month, Environment and Climate Change Canada (ECCC) released the terms of reference (TOR) for the Strategic Assessment of Climate Change (SA). This post briefly provides commentary on the context behind this development, offers several initial impressions of the TOR, and notes a number of ways to make the most of the process as now prescribed. Overall, the TOR charts a relatively narrow path that misses a critical opportunity to improve coherence across climate law, policy and programs in Canada, including with respect to carbon pricing and provincial climate measures such as those in Alberta.

For those following federal developments on the climate law and policy front, the wait for the TOR was a long one. This is the first development since the [discussion paper](#) released last summer. Why it took so long is unclear, though the federal government has obviously had a number of matters to contend with on the climate front, including the Ontario and Saskatchewan carbon price reference cases (the latter discussed in a [recent post](#) by my colleague, Martin Olszynski) and the relatively contentious [Bill C-69](#).

Context – A Narrow Approach and Missed Opportunity

Since the 2015 election, the Trudeau government has set in motion a number of federal initiatives to address climate change and reduce greenhouse gas (GHG) emissions. These include the [Pan-Canadian Framework on Clean Growth and Climate Change](#), [Canada's mid-century long-term low-greenhouse gas development strategy](#), [accelerated phase out of coal-fired electricity](#), and inclusion of climate change considerations in [the proposed Impact Assessment Act](#) (IAA). This set of initiatives aims to, among other things, put Canada on track to achieve its emission reduction commitments in the Paris Agreement ([30 percent below 2005 levels by 2030](#)) and deeper reductions beyond.

In this context of multiple federal initiatives and a multitude of policies, plans, and programs already in place (and frequently changing) across territorial and provincial governments, an SA of climate change was much needed, and has been for a long time. It represented an opportunity to take stock and chart a path toward a reasonable degree of law and policy coherence across the country. The federal government is particularly well-positioned to play a lead role in tackling climate change, but has never fulfilled this role as effectively as it could. Instead, Canada (including federal and provincial governments) has chronically fallen short on climate commitments, as well documented in a recent set of [detailed reports](#) by the federal

Commissioner of the Environment and Sustainable Development and her provincial Auditor General counterparts.

Unfortunately, the federal government has not seized the present opportunity. It has, instead, taken an excessively narrow approach to the SA. This quickly became apparent in last summer's discussion paper, which indicated that the intended output was to provide guidance "on how climate change commitments should be considered in impact assessments" (at 1). Instead of looking across all government climate initiatives, the SA was narrowed to focus exclusively on impact assessments. While impact assessments are an important tool in addressing climate change (as detailed in this [recent report](#)), this approach of the SA is far narrower than what is actually needed.

In my view, the SA ought to have been comprised of two tracks. One track, which seems to now be underway, would focus on developing guidance and methodologies for assessments under the federal impact assessment regime. The second track would look across all the federal and provincial initiatives to identify gaps and inconsistencies in measures being taken to meet climate commitments. For example, this second track would assess coherence across project-level assessments, carbon pricing, cost-benefit analysis in regulatory decision-making, and direct regulation. Such an assessment would provide a comprehensive stock-take in a single place to give all Canadians a comprehensive, bird's eye view of present measures and a future path to achieving Canada's climate commitments. This second track would come much closer to meeting expectations that were initially raised when the SA was announced, and would more closely resemble typical [conceptualizations of strategic environmental assessment](#). In any event, and notwithstanding this missed opportunity, with the remainder of this post I will offer several impressions on the recently released TOR.

Initial Impressions

The TOR is relatively succinct, with six short parts covering the SA's context, objectives, process, expected content, engagement, and timelines. Rather than walking through each part, I will focus on several specific points that stand out.

Short timelines

The stated intention is for ECCC to release a draft SA in late April, provide a 30-day comment period, and then release the final SA by "summer 2019" (Part 6). This represents an ambitious timeline indeed, if not rushed. It would seem that the goal is to complete the assessment before the federal pre-election caretaker period begins. Perhaps one consequence of this fast pace is that, surprisingly, there was no draft TOR released, nor any comment period on the TOR. This differs from the process for the discussion paper where there was a three-month comment period (submissions from which are available [here](#)).

Downstream emissions excluded

Part 4(1) of the TOR deals with quantification of a project's GHG emissions. It appears that ECCC has already decided, quite reasonably, that the outcome of the SA will "provide an

approach to quantifying the GHG emissions of proposed projects”. This will be welcome news by all stakeholders who are interested in regulatory certainty on this front. The TOR, however, explicitly states that the SA of climate change will “include clarifying that downstream emissions will not be assessed” (the focus will exclusively be on direct and upstream emissions). This is surprising and unfortunate. Given the overarching objective of impact assessment to gather information for better decision-making, and given the broad purposes of the IAA (s 6(1)) and the requirement to take a precautionary approach (s 6(2)), it is unclear why the SA would not include a prong that takes an initial look at methodologies for calculating downstream emissions. This is particularly so, given that the SA is characterized by ECCC as an “evergreen document that can be updated over time” (Part 1). Instead of closing the door on this now, it would be better to use the SA to look further into assessing downstream emissions so that there is a more robust basis for deciding whether to exclude these emissions. In suggesting this, I note that the potentially avoided downstream emissions are likely to continue to be pointed to as a project benefit by project proponents and governments, particularly with respect to liquefied natural gas (LNG) export projects (e.g. by displacing coal-fired plants overseas, as suggested by in the [2016 BC Speech from the Throne](#)). Excluding downstream emissions in guidance flowing from the SA may preclude proponents from including reference to these benefits in project-specific assessments.

Potential for improved climate law and policy coherence

Parts 4(2) and 4(3) of the TOR deal with the planning and assessment phases of a project review. The TOR indicates that the guidance to be generated by the SA “could include an explanation of how applicable federal, provincial or territorial GHG laws, regulations and policies will be considered” (Part 4(2)), and guidance on “how to consider applicable federal, provincial, or territorial GHG laws, regulations, policies, and international commitments” (Part 4(3)). This presents potential for ensuring coherence between requirements of the federal government’s assessment of a specific project’s effects on Canada’s climate change commitments and other requirements imposed through other applicable GHG laws and policies. For example, to date, it has been unclear whether and to what extent a project’s coverage by a carbon pricing regime, such as the existing regime in Alberta, would be taken into consideration in the federal impact assessment process. This part of the SA and ensuing guidance may provide a basis to mitigate against any risk that project-specific requirements are inconsistent, or at least different from each other. Specifically, this part of the SA could develop an analytical framework that guards against any double-counting of a project’s emissions.

Of course, developing such methodologies will not be simple, but at least there is indication in the TOR that this work is beginning. While this project-specific version of taking stock of multiple applicable climate laws and policies is not as broad as the whole-of-government type I suggested above, it is a step in the right direction. It will also likely be viewed as a positive development by those interested in regulatory certainty, as it would provide the information that governments and proponents need to calculate project emissions and present them in relation to all applicable regulatory requirements (i.e., federal and provincial).

Focus on the megatonnes, but not climate costs and impacts

The current approach under the TOR is primarily concerned with calculating megatonnes in relation to a designated project. This focus is on presenting a *quantitative* view of emissions. To be sure, it is critically important that a project's GHG emissions are calculated and transparently presented through the assessment process. That is a key step in the analysis. However, it should not be the only step. It is equally important that decision-makers and the public have a contextualized and meaningful understanding of those emissions, one that facilitates comprehension of the climate change *impacts* that the emissions will have. A key tool that exists for doing so is the social cost of carbon (SCC). The SCC is a dollar figure representing the estimated value of damages associated with each unit of carbon emissions. In short, it provides an economic valuation of the impacts of GHG emissions globally. Applying a monetary value to a project's expected GHG emissions, something I look at in detail with Professor Meinhard Doelle in this [draft article](#), would provide decision-makers and the public with a better understanding of the significance of those emissions.

What's more, going beyond a narrow focus on calculating megatonnes would be more consistent with assessing all the effects of a project's impacts on Canada's ability to meet its environmental obligations and climate change commitments (as required under the IAA). For example, the Paris Agreement includes commitments on loss and damage, on consideration of economic and social consequences of various response strategies, and on the full, open and prompt exchange of information related to climate change. Effects of a project's emissions on these commitments would not be covered in an assessment that only calculates the quantity of emissions. As such, the impact assessment process, as directed by the outcomes of the SA, needs to generate additional information that contextualizes the megatonnes calculations and expresses them as the costs of climate impacts globally.

Two supplemental points underscore why calculation of climate damages may make sense in impact assessment. First, it would be most prudent to proceed on the basis that Canada may at some point be held liable for some degree of present and future emissions. This is a cost to all Canadians. As such, Canadians and decision-makers should be aware of such liabilities attributable to projects being assessed under the impact assessment regime. Second, using SCC in project-level assessment would make federal project-level government decision-making more consistent with existing federal regulatory decision-making processes where SCC is used as part of cost-benefit analysis, and has been used for several years now (something I discuss in detail [here](#)). In this way, it would be one more step toward policy coherence.

As currently drafted, the TOR do not look to be taking the SA in this direction. However, the TOR do include one potential basis for such analysis. Part 4(2) indicates that guidance flowing from the SA could include direction on assessing the "significance of the level of emissions". This could be used to develop guidance for assessing "significance" in terms of emissions quantity (i.e., megatonnes in relation to emission reduction commitments), but also costs and impacts.

Silence on how the SA relates to the other assessment and public interest factors

While the TOR is understandably set up to generate guidance for environmental assessments under the existing federal assessment regime (the *Canadian Environmental Assessment Act, 2012*, [SC 2012, c 19, s 52](#) (CEAA, 2012)), much of the SA is framed in anticipation of the new requirement in the IAA to consider “the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change” (ss 22 & 63). There is an unavoidable awkwardness here given differences between CEAA, 2012 and the IAA (i.e., the former includes no explicit mention of climate change). However, to the extent that the SA is taking place in anticipation of IAA becoming law (notwithstanding uncertainty on that front), it should include coverage of how assessment of a project’s GHG emissions relates to other impact assessment factors in section 22 and public interest factors in section 63. A characteristic of the IAA that could be particularly challenging is that climate change considerations could logically – and legally – fit within all five of the section 63 public interest determination factors (and their counterparts in section 22). For example, how will a project’s GHG emissions and associated impacts factor into consideration, as required under section 63(d), of any adverse impact that the designated project may have on the section 35 rights of Indigenous peoples? How will such emissions, and especially *costs* associated with such emissions, factor into consideration of changes to “economic conditions” as contemplated under section 22(1)(a)? How will a project’s GHG emissions be factored into determining the “extent to which the designated project contributes to sustainability” under section 63(a)? The SA is a key opportunity for generating clarity on this front. From a regulatory certainty perspective, it would be helpful for all stakeholders to understand how climate considerations may or may not be compartmentalized in the decision-making phase. This would also be important for issuing detailed reasons required under section 65(2) of the IAA.

Conclusions

The federal SA of climate change represents a missed opportunity to take stock and build coherence across the various federal and provincial climate law and policy tools in place and planned throughout Canada. Unfortunately, the TOR closes a number of important doors. The TOR makes clear that there is no intention of going beyond the stated focus on climate change considerations in project-level impact assessments.

However, there are a number of opportunities for the SA to still take important steps toward generating clarity and coherence in support of good project-level decision-making. As discussed above, it could begin the process of developing methodologies for assessing downstream emissions. It could set the stage for ensuring coherence between requirements of the federal government’s assessment of climate change considerations and the various requirements imposed through other applicable GHG laws and policies. It could also generate a basis for assessing climate change impacts and costs associated with a project’s GHG emissions. Unfortunately, however, the very short timelines set out in the TOR and the trend to date of ECCC approaching the SA quite narrowly suggest that these opportunities will also be missed.

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