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Just Transition Friction Needs Interest-Based Negotiation

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Matter Commented On: [Proposed federal just transition legislation](#)

For three weeks every January, I teach the University of Calgary Faculty of Law intensive block course on negotiations. This is a mandatory course for all second-year law students, and it's a key part of the [Calgary Curriculum](#). Each year I look for contemporary topics and events to use as examples that bring to life the approaches and concepts that we cover in the course. Like any good negotiations course, a core part of the curriculum is focused on [interest-based negotiations](#), the approach long advocated by dispute resolution and negotiation experts around the world. This feeds one of the course's key learning points: begin negotiations with an interest-based approach and then shift to more competitive, distributive stances later in the process if necessary. An obvious example for this year is the current friction between the federal government and the Alberta government with respect to a proposed federal [just transition](#) initiative. This short post examines what is painfully obvious and disconcerting in the present context: both levels of government contributing to this current tension are flouting even the most basic best practises in negotiations. They are adopting positional bargaining instead of an interest-based, problem-solving approach. While Alberta has been particularly aggressive, showing signs that it is more interested in short-term political gains than constructive resolution, no one is doing it right.

The Basics: Interest-Based Negotiations

Dispute resolution experts and practitioners have advocated interest-based negotiations for decades. Perhaps the most-cited source remains the landmark book from the Harvard Program on Negotiation (PON), [Getting to Yes](#). PON articulates this approach succinctly:

An interest-based negotiation is one in which parties share the interests that underlie their grievances and try to jointly negotiate a solution that satisfies all parties... interest-based negotiation has proven to be the most reliable way to create value and resolve conflicts.

The basic idea is that by asking “why” and drilling deeper into the interests and reasons driving what first appear as rigid, competitive positions, the negotiation process reveals information and values that in turn inform options that will satisfy parties' interests without compromising too much. This is harder than it sounds, however, given that most parties' default approach to resolving disputes is to assume a zero-sum, competitive scenario (see this well-known “Ugli

Orange” [exercise](#) for a simple example). An interest-based approach to negotiations provides a proven framework that helps parties counter their default zero-sum stance and instead “grow the pie” to find mutually beneficial options while also building relationships and trust.

The Problem: Just Transition Positions and Frictions

In the present context, marked by heated political exchanges about the potential federal [just transition](#) legislation, it is shocking to see how badly both the federal and Alberta governments are failing to employ even the most basic best practices in interest-based negotiations. Both levels of government have, to date, needlessly adopted a positional stance (though there are differences in degree). Here are the positions in a nutshell:

- federal government: ‘we want to pass [just transition legislation](#)’
- Alberta government: ‘we do not want you to pass just transition legislation (because we believe it is intended to [shut down the oil and gas industry](#))’

And from there the conversation escalates quickly into heated political back and forth. There are hints at the interests behind the positions, but there has been minimal indication in the public domain, to date, that the governments are actually engaged in dialogue – let alone a process – to uncover what each side is trying to accomplish and how to arrive at win-win outcomes that satisfy most interests at stake. It seems no one is meaningfully asking the fundamentally important “why” questions, and the situation is very far from any kind of level-headed collaborative problem-solving. Meanwhile, the rest of us suffer through more political fighting that uses valuable time. Adding fuel to all this were [hyperbolic statements](#) by the Alberta government about potential job losses, which have since been debunked (see, for example, this [commentary](#) by Jen Gerson). And it should be noted that Alberta’s Minister of Environment and Protected Areas seemed to indicate in passing during an *Alberta at Noon* radio interview last week that some dialogue is happening “behind the scenes,” ([at minute 5:40](#)) though details are unclear.

Commentary

Here is how this negotiation could unfold if the governments were to at least *begin* with an interest-based approach. The federal government could simply communicate something to the effect of, ‘we share your interest in long-term viability of the Canadian oil and gas sector; however, there is a broader energy transition happening globally, and we want to help Canada, and Alberta specifically, maximize prosperity through that transition and minimize any unwanted impacts on jobs and the economy... we think legislation is an effective way to do this’. Likewise, Alberta could communicate, ‘we have a shared interest in reducing pollution from the oil and gas sector and diversifying our economy to ensure long-term viability of the energy sector and Alberta’s economy generally... but the ‘just transition’ terminology carries a lot of baggage and is unacceptable for some of our electorate’. Obviously much more could and should be said, but these simple articulations of interests, the thrusts of which have already been communicated by

these governments in various snippets in recent years (see, for example, the [just transition briefing materials](#) that have attracted heat), would move the conversation away from the current gridlock and toward the building blocks of a mutually beneficial, win-win outcomes.

Casting the current dynamic in very plain terms, the federal government is looking to provide funding to Alberta to maximize energy transition opportunities (and minimize losses), and Alberta is in a position to receive that funding to create jobs and diversify the economy, but also to reduce emissions from the oil and gas sector such that those jobs remain viable for years to come. It is also important to note that this is happening in the context of the existing [Oil Sands Pathways to Net Zero initiative](#), where companies representing 95% of Canada's oil sands production have committed to net-zero emissions by 2050. Presumably it is this type of thinking, which recognizes the reality that the energy transition is indeed happening and picking up speed (see this helpful [analysis from Dale Beugin](#)), that also underpins the [indication by industry](#) last week (and [again this week](#)) that the just transition initiative represents more opportunity.

Viewed from a negotiations perspective, the current impasse is relatively easy to solve. That's because there are virtually limitless options for the governments to come to an agreement on how to proceed. In negotiations-speak, this is known as the 'Zone Of Possible Agreement,' or ZOPA – i.e. the area in which parties may find sufficient common ground to reach an agreement. For example, the federal government may be able to achieve what it wants without legislating, and it may be able to do so without using the politically-charged language of "just transition". At the same time, and in the interest of reciprocity, the Alberta government may be able to satisfy its interests by leading the design of what such federal funding and support will look like based on region-specific economic diversification priorities and technological advances (e.g. carbon capture). This type of flexibility and creativity can be seen in the same sector in the United States context where, against all odds, the Biden Administration was able to pass the [Inflation Reduction Act](#), which contained the most significant US federal climate change measures ever, including some that are similar in substance to the just transition initiative in Canada ([here](#) is a series of helpful podcasts on that US development, and [here](#) is succinct commentary on the US just transition aspect). As I always teach my students, a key preparation step that all parties should be doing is 'writing the other side's victory speech' and then mapping out how to get there. And in doing that mapping, parties would be wise to develop 'Multiple, Simultaneous, Equivalent Options', or MESOs, which represent acceptable but different packages of options, any of which may satisfy the other side's interests. Both levels of government should be doing this right now.

Of course, reality is messier than only this just transition issue and the associated enormous ZOPA. There is similar friction on other matters, such as a [regulatory cap on oil and gas emissions](#), the [impact assessment](#) of major natural resource projects, and even [parking restrictions at Moraine Lake](#) near Lake Louise in Banff National Park. In the present context,

Alberta has demonstrated an interest in *not* reaching agreement on such issues, and instead continuing the short-term(?) friction for political gain. Unfortunately, it remains unclear whether such political interests actually align with the best interests of the province and its citizens. The signal from the electorate at the moment is certainly fragmented and unclear, and will remain so until after a provincial election determines the government's mandate. And it is worth noting that the provincial NDP have also recently [stated](#) that the federal just transition legislation initiative should be dropped. I defer to the political scientists on such dimensions, but I would suggest that there is an overwhelming public interest in both levels of government adopting a collaborative, interest-based approach that at least reveals any actual areas of divergence on the just transition issue and others. By beginning with an interest-based approach, Alberta and Canada can at least understand whether there are actually areas of conflicting interests. From there, the much-needed adult conversations and negotiations can proceed.

Time will tell whether the just transition becomes another unfortunate story of missed opportunity and political turmoil, or an interest-based negotiation example from which all Albertans and Canadians can learn and, hopefully, benefit.

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