

**Competing Visions and Inequitable Costs: the National Energy Strategy and Regional Distributive Conflicts**

- Matthew Lesch & Doug Macdonald

**Abstract:** The central aim of this article is to provide analysis of the current political dynamic of the push for a National Energy Strategy (NES) by examining it through the lens of the distributive effects associated with the transition to a low-carbon economy. We begin by outlining several distributive effects that are inherently associated with energy and climate policy and then discuss how this basic challenge has been framed by various participants involved in the NES discourse. While we view co-ordination of climate and energy policy as desirable, we identify a number of challenges that undermine coordination. We find that key participants in the NES dialogue have been reluctant to explicitly address the problem of distributive effects. We also find that the weakness of existing intergovernmental institutions hinders the ability of Canadian governments to reach a national agreement. Based on these findings, we conclude that coordinating climate and energy policy in one national program can only be achieved if more robust mechanisms for intergovernmental negotiations are adopted and all participants involved are willing to explicitly address the problem of distributive effects.

**“Dirty Oil,” “Responsible Resource Development” and the Prospects for a National Conversation about Energy Sustainability in Canada**

- Mark S. Winfield

**Abstract:** This paper reflects on the prospects for a constructive national conversation about energy and energy resources development in Canada, leading to a more cohesive national energy policy framework. The paper examines the potential drivers of engagement in such a discussion, particularly in terms of how key provinces perceive their economic, environmental and political interests with respect to energy. Barriers to the emergence of a shared national vision around energy are also considered in these terms, particularly with respect to perceived regional impacts of the federal government's current approach to energy policy. The underlying normative framework for the paper seeks to advance energy sustainability in Canada while addressing the regional divisions over energy policy. Recommendations regarding a potential path forward for Canada are provided, emphasizing the need to moderate the pace of oil sands development, for federal energy policies to address the interests of the non-fossil fuel exporting provinces, the adoption of a carbon pricing mechanism and the strengthening rather than weakening of the environmental regulatory framework for energy resources development.

## **A Greener Grid? Canadian Policies for Renewable Power and Prospects for a National Sustainable Electricity Strategy**

- Marcia Valiante

**Abstract:** Despite increased demands for the development of one, Canada has no national sustainable energy policy. Instead, provinces have taken the lead in promoting the integration of renewable energy sources and demand management. These efforts have been taken in isolation from other jurisdictions. As a result, there is no coordination between provincial initiatives and no alignment of goals other than general ones of reducing greenhouse gas emissions and starting on the path to a green economy. With respect to the electric power sector, the prospects for greater coordination are constrained by historical, jurisdictional, and political factors. However, within these constraints, there are opportunities for interprovincial and regional initiatives that will enhance the role that renewable energy can play in the shift toward a sustainable energy future and a green economy. This paper explores both the background constraints and the opportunities for policy alignment with respect to Canadian electric power.

## **Energy Visions versus Private Rights: Government energy strategies game the system**

- Bruce Pardy

**Abstract:** A national energy vision promoting Canada as a global energy superpower is a flawed idea, but not because it would put private interests ahead of public good. Instead, the best argument is the opposite argument: that state endorsement of any particular energy future elevates a political notion of public interest above private legal rights.

## **Situating Sarnia: “Unimagined Communities” in the New National Energy Debate**

- Dayna Nadine Scott

**Abstract:** This paper argues that the active "unimagining" of downstream communities is crucial to maintaining a notion of unitary national ascent in the rhetoric surrounding the articulation of a new national energy strategy, specifically in relation to the pipeline debates that have gripped and divided Canadians. Examining in detail the recent decision of the National Energy Board approving Enbridge's application to reverse the flow of oil over a portion of its "Line 9" pipeline between Sarnia and Montreal reveals that the people of the Aamjiwnaang First Nation, downstream of Sarnia's refineries, need to be actively unimagined if the narrative of a "coast-to-coast" pipeline that will benefit everyone is to be maintained. In paying attention to the everyday, chronic pollution that inevitably comes with the refining of dirty oil, the authors can see that the

costs and risks associated with these decisions are delivered as inequities to the communities at the ends of the pipelines.

### **The Role of EA in Achieving a Sustainable Energy Future in Canada: A Case Study of the Lower Churchill Panel Review**

- Meinhard Doelle

**Abstract:** Energy projects have featured prominently in environmental assessment (EA) processes in Canada, particularly with respect to panel reviews conducted under the Canadian Environmental Assessment Act (CEAA). Now, for the first time in decades, there is serious talk in Canada of developing a national energy strategy. In this context, the article considers how the federal EA process could be utilized to support such efforts. The Lower Churchill Hydro Project Review Panel is used as a case study to illustrate how project EAs can support broader energy policy consideration.

### **The Role of Municipalities in Canada's Energy Strategies**

- Rod Northey

**Abstract:** Energy projects have featured prominently in environmental assessment (EA) processes in Canada, particularly with respect to panel reviews conducted under the Canadian Environmental Assessment Act (CEAA). Now, for the first time in decades, there is serious talk in Canada of developing a national energy strategy. In this context, the article considers how the federal EA process could be utilized to support such efforts. The Lower Churchill Hydro Project Review Panel is used as a case study to illustrate how project EAs can support broader energy policy consideration.

### **Justified Infringement – A Minimal Impairment Approach**

- Senwung Luk

**Abstract:** Notwithstanding historical antecedents and contemporary international law instruments establishing free, prior, and informed consent as a standard to be met before a state infringes on an indigenous right, Canadian law has set out a way to legalize infringements of these rights that took place without consent. It has laid out a doctrine of "justified infringement" of such rights, most notably in the Supreme Court of Canada's Sparrow decision. This article focuses on the doctrine of Aboriginal title as a kind of Aboriginal right, as it has been developed in the Delgamuukw decision. In one important part of Delgamuukw, the Court interpreted the Sparrow requirements for the Aboriginal title context. The article considers the ways in which the case law has laid out circumstances in which this title can be infringed, and identifies some puzzling elements about this body of law. It suggests that one direction for this doctrine to take that would be consistent with the Crown's fiduciary obligations to Aboriginal communities would be to hold the Crown to a standard of minimal impairment of

Aboriginal title. This is compared with the doctrine of the Crown's fiduciary accountability, especially as it has been applied in the Osoyoos case. This standard is then applied to a hypothetical example of a proposal for a major resource development project on unsurrendered Aboriginal title lands.

## **Indigenous Authority, Canadian Law, and Pipeline Proposals**

- Gordon Christie

**Abstract:** The Yinka Dene Alliance is a coalition of six First Nations in British Columbia. This Alliance has engaged a form of resistance to the proposed Northern Gateway pipeline articulated in such manifestos as the Save the Fraser Declaration. This Declaration (endorsed by over 130 First Nations in western Canada) brings to the fore the authority of the nations of the Yinka Dene Alliance, authority possessed as Indigenous nations and expressed in the form of pronouncements about what they consider to be against their Indigenous laws. The middle sections of this paper contain an exploration into how the Indigenous authority grounding these expressions of Indigenous law would likely be treated by Canadian law. The intent is to show just how antagonistic the Canadian legal apparatus is to such forms of resistance. Illustration of the depth and nature of the hostility leads into questions about why this might be so. Reflections on what seems to fuel an absolute denial of Indigenous authority show not only how challenging it will be to make headway but also the great promise held out by resistance founded on such authority. This promise is not only for Aboriginal peoples in Canada (as they struggle to protect their lands and cultures), but for citizens of the world in search of grounds of authority that might stand up in the face of powerful forces seemingly intent on short-term wealth maximization based on unsustainable resource exploitation.