

## Public Impact on Climate Change Law and Policy

**Author :** Brenda Heelan Powell

There have been significant developments in climate change law and policy at both the provincial and federal level over the past couple of years.

In Alberta, the Alberta Climate Leadership Plan has been adopted and several legislative changes have occurred as a result (if interested, see our numerous blog posts at <http://elc.ab.ca/blog/>). These include a price on carbon, a legislated limit on oil sands emissions, and efforts to increase the use of renewables. Likewise, the federal government has begun to take concrete steps to address climate change (see, for example, recent [proposed methane regulations](#)).

How does an individual or organization encourage the government to continue along this path?

### Litigation & Judicial Notice

In past blogs, we have spoken about climate change litigation in [Canada](#) and [elsewhere](#). The Environmental Law Centre (Victoria) has published an interesting report published called [Climate change litigation and the public right to a healthy atmosphere](#) which looks at the basis of climate change litigation in Canada. Another paper – [From Smokes to Smokestacks: Lessons from Tobacco for the Future of Climate Change Liability](#) (written by Professors Martin Olszynski, Sharon Mascher and Meinhard Doelle) draws from the tobacco litigation experience to assess climate change litigation in Canada.

One aspect of climate change litigation is the courts' willingness to take judicial notice of climate change. That is, the court accepting as fact that climate change is occurring and is a result of greenhouse gas emissions. An interesting case from Iowa involving judicial notice of climate change was recently brought to our attention by [Channing Dutton](#) (a US Attorney).

This case – *Iowa vs. Pearson*, Criminal No. SMCR505323 (Iowa Dist. 2017) – involved a person charged with trespassing. Under Iowa law, a person is not guilty of trespass if he or she can demonstrate justification. In this case, Pearson argued that she was not guilty of trespass because her actions were justified as she was protesting the construction of a pipeline which will contribute to climate change. Ultimately, Pearson was found guilty but the Court's instructions to the jury included the following:

You are instructed that the court has taken judicial notice of the following:

...

2. When fossil fuels are burned to generate electricity or to power our cars a gas known as

carbon dioxide or CO<sub>2</sub> is released into the atmosphere where it traps heat. CO<sub>2</sub> is considered a greenhouse gas. Accumulation of greenhouse gases is a contributing factor to climate change.

3. The State of Iowa, through one of its agencies, the Department of Natural Resources, or DNR has issued a statement relative to the impact of climate change on the State of Iowa as indicated in Exhibit 20 which has been admitted.

...

These items are regarded by the court to be facts, you may, but are not required to, accept these facts to be true.

This case is an illustration of the courts accepting the science of climate change as being settled (rather than requiring expert evidence subject to cross-examination). For more information about judicial notice of climate change, see our paper [Judicial Notice of Climate Change](#).

## Petitions

A petition can be used to bring an environmental issue to the attention of government and to request that actions be taken in response to those issues.

Petitions may be made to the provincial or federal legislative bodies, so long as a matter falls within their authority (climate change matters fall into the authority of both). The requirements for a valid petition to the Alberta Legislative Assembly can be found [here](#) and the requirements for a petition to the federal Parliament can be found [here](#) (see more detail in our article from 2012 [here](#)).

If you want to check who your MLA or MP is, check [here](#) and [here](#) respectively. It should be noted that a member of a legislative body is not required to present a petition that has been brought to his or her attention. Ultimately, the effect of a petition is to raise awareness of an issue and to convince the government to take (or not take) a particular action.

In some cases, statutes may create petition processes to trigger action. Particularly relevant is the [environmental petitions process](#) under the federal [Auditor General Act](#). This process allows Canadians to bring environmental concerns to the attention of the federal government. The government is required to respond to an environmental petition within 120 days of its receipt.

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