



# **Recent Law and Policy Developments in Climate Change and other areas of Sustainability**

*Hector Garza - Santamarina y Steta, S.C. - México*

*Lorenzo de la Puente - DELAPUENTE Abogados - Peru*

*Patricia Leeson - Gowling Lafleur Henderson LLP - Calgary*

## Recent development in Mexican Climate Change regulation – a nearsighted approach

### I. Copenhagen:

- Mexico presented the Fourth National Communication
- Breakdown of emissions in carbon units:

Concept	CO2 eq Gigagrams (Gg.)	Percentage
Energy Uses	430,097 Gg	60.4%
Waste	102,173 Gg	14.4%
Land use, land use change, forestry	70,202.8 Gg	9.9%
Industrial processes	63,526 Gg	8.9%
Agriculture	45,552.1 Gg	6.4%

In turn, the energy uses category is subdivided as follows:

Concept	CO2 eq Gigagrams (Gg.)	Percentage
Energy industry	149,137 Gg	35%
Transportation	144,691 Gg	34%
Construction industry	56,832 Gg	13%
Fugitive Emissions	47,395 Gg	11%
Other sectors (residential, commercial and agricultural)	32,042 Gg	7%

- The Fourth National Communication states that the results of Greenhouse Gas (“GHG”) emissions for the years 1990-2006 show that the increase of GHGs was approximately 40% during such period, representing an average annual growth of 2.4%.
- Mexico ratified its commitment to reduce in 50% the GHG emissions by 2050 (GHG’s reduction goal), as follows:

*“In a long-term vision, the Special Program on Climate Change, establishes, as an aspirational goal, to reduce 50% of GHG emissions by 2050, as compared to 2000 levels, and a flexible convergence towards a global per capita emissions average of 2.8 tonnes of CO2 eq in 2050. The former, preconditioned to the availability of sufficient incentives and international support, as part of the new financial architecture which will be put into practice starting from the 15th Conference of the Parties that will take place in Copenhagen, in December 2009.”*

- Mexico moved its original baseline from 1996 to 2000. If we consider the above statement referring to the average annual growth of GHGs reported by Mexico in this same document, it is fair to state that Mexico moved its original baseline and technically increased it in 9.6%

- May be considered as legally non-binding in view of (i) the architecture of the above wording; and (ii) the results of the Copenhagen COP 15 (lack of incentives and international support).
- Considering that Mexico voluntarily agreed to reduce 50% of its GHG emissions by 2050 and that 60.4% of its GHG emissions derive from “Energy Uses”, it is evident that such area should be considered as key in Mexico’s GHG reduction program
- what type of programs should Mexico focus on within the “Energy Uses” concept in order to reach its GHG reduction commitment?

## II. Energy efficiency:

- United Nations Economic Commission for Europe has stated that:

*“Buildings are major contributors to greenhouse gas (GHG) emissions. Worldwide, 30 to 40 per cent of all primary energy (i.e. energy contained in raw fuels) is used in buildings. In Europe, they account for 40 to 45 per cent of energy consumption. They also account for a significant amount of carbon dioxide (CO<sub>2</sub>) emissions: in the European Union, the residential sector represented 77 per cent of all CO<sub>2</sub> emissions from buildings in 2002. In low-income countries this share can rise to over 90 per cent.”*

- If we transpose the above information and consider the GHG reduction goal offered by the Federal government of Mexico, it is evident that measures need to be taken as soon as possible in order to promote and raise the level of the efficiency of constructions in Mexico. Otherwise, it will be impossible to reach the 2050 GHG reduction goal

### **III. Mexican law developments promoting energy efficiency of constructions:**

- The local government of the Federal District enacted on November 25, 2008 the Sustainable Buildings Certification Program.
- Developed considering the following international building certification programs:
  - The Leadership in Energy and Environmental Design (LEED), USA
  - Code for Sustainable Homes, United Kingdom
  - EnerGuide for Houses, Canada
  - House Energy Rating/Green Star, Australia
- Voluntary and is based on the grant of economic incentives
- Encompasses the implementation of both federal and local standards referring to: (i) thermal efficiency of buildings, (ii) green roof systems; (iii) rainwater reutilization programs; and, (iv) solar power, among others

- The program was drafted as a “harnessing regulation”, based on voluntary compliance and incentivized through tax rebates. The volume of the rebate is directly linked to the performance of the technologies implemented in the relevant building

- During the year of 2009, the Government of the Federal District offered the following tax rebates:

Duties derived from Water Supply:	20%
Real Estate Tax:	from 15% to <u>25%</u>

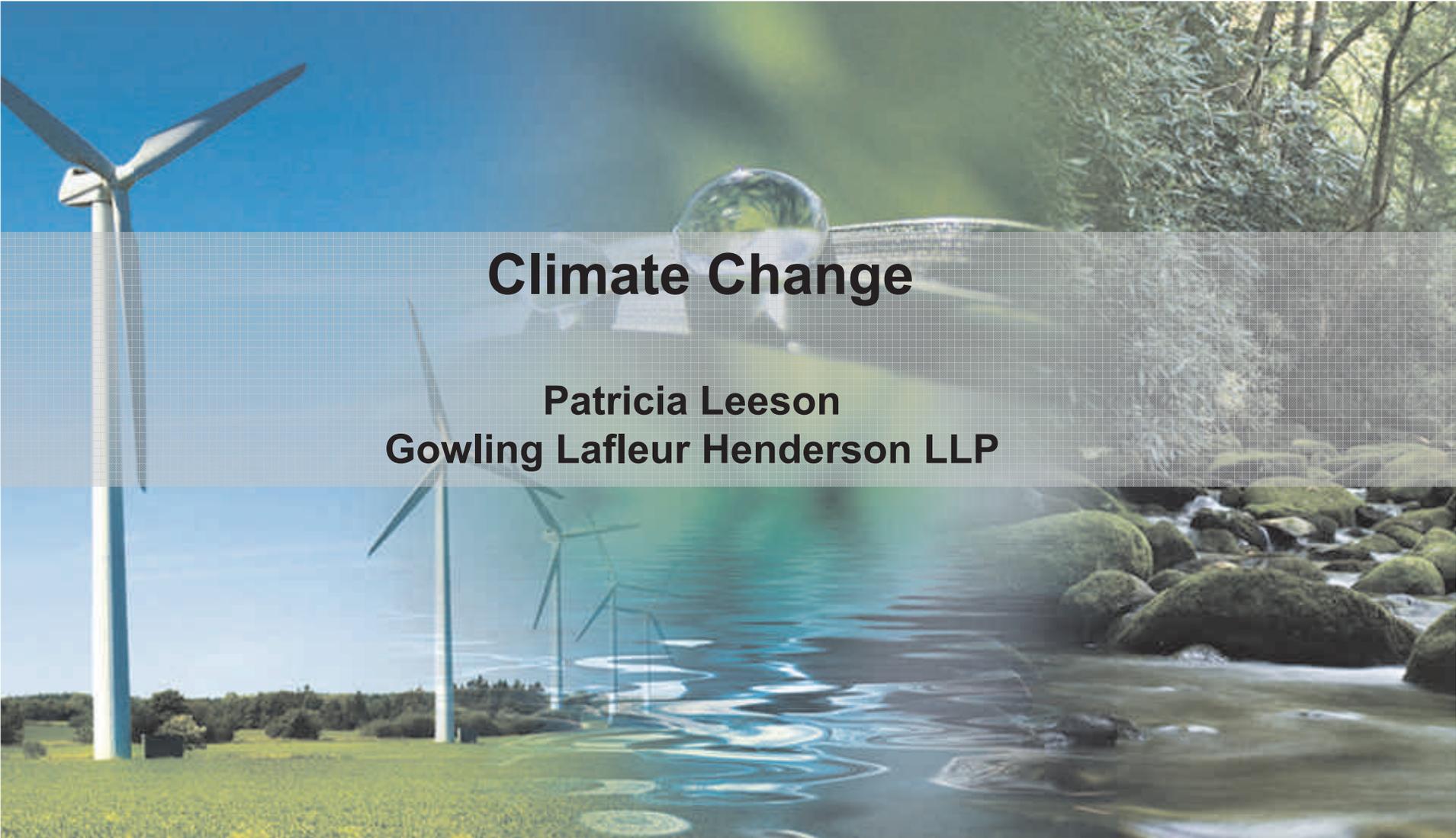
During the year of 2010

Duties derived from Water Supply:	20%
Real Estate Tax:	from 15% to <u>20%</u>

- In 2010 the Government of the Federal District reduced the real estate tax incentive from 25% to 20%.
- Material implementation and certification costs

## IV. Conclusions

- The Federal government of Mexico, but failed to identify and propose clear procedures to reach this goal.
- The GHG reduction program presented by Mexico only addresses CO<sub>2</sub>, but fails to address VOC and NO<sub>x</sub> emissions.
- Regulation of energy efficiency of buildings falls out of the sphere of competence of the Federal Government.
- The implementation of the Sustainable Buildings Certification Program under a harnessing regime by the local government of the Federal District:
  - has not offered sufficient incentives to make it appealing to the general public;
  - not viable in view of the implementation and certification costs
  - lacks the essential element of harnessing regulation, consisting in an increase of obligations in case of choosing not to participate in the program.



# Climate Change

**Patricia Leeson  
Gowling Lafleur Henderson LLP**

**GOWLINGS**

February 2010

Montréal | Ottawa | Toronto | Hamilton | Waterloo Region | Calgary | Vancouver | Moscow | London



## Canada a signatory to Kyoto Protocol

### Kyoto Protocol

- Canada ratified Kyoto December 2002
- Kyoto came into force in February 2005
- Canada committed to reduce greenhouse gas emissions to 6% below 1990 levels during the 2008–2012 (the First Kyoto Commitment Period)
- Canada currently 32% above Kyoto target



## Canadian Federal Government Policy Position

Federal Environment Minister – Jim Prentice

“We’ve adjusted our previous target to **ensure that it matches exactly with those just inscribed by the United States**. We have consistently said from the outset that we **must harmonize our climate change strategy** with that of our greatest trade partner **because of the degree of economic integration between our two countries.**”

“[...] **Our determination to harmonize our climate change policy with that of the United States** also extends beyond greenhouse gas emission targets: we need to proceed even **further in aligning our regulations.**” (February 1, 2010)



## Copenhagen

- **Copenhagen December 2009**
- **Non-binding accord to cap increases in global temperatures to below 2 degrees celsius**
- **Canada and United States signed Annex setting out short-term GHG reduction commitments**
- **United States**
  - **Committed to 17% below 2005 by 2020**
- **Canada then adopted same target**
  - **3% less than Kyoto Target**



# Constitution

## Constitutional Division of Powers

- Legislation in relation to the “Environment” is not clearly assigned as a head of power under the Canadian Constitution
- Provinces traditionally regulated sources of air emissions through direct regulation, approvals and codes of practice.



# Canada Regulatory Framework for GHG

## Government Actions and Initiatives

- **Federal Government Actions**
- **Provincial Actions**
- **Regional Initiatives**



# Federal Government Actions

## The Federal Regulatory Framework

- In April 2007, the Canadian Government bowed to political pressure and issued the *Regulatory framework for industrial greenhouse gas emissions*
- In March 2008, the Federal Government issued further details relating to this framework: *Turning the Corner: Regulatory framework for industrial greenhouse gas emissions*
- Future regulations controlling GHGs are likely to be passed under the *Canadian Environmental Protection and Enhancement Act*.



## Canadian Regulatory Framework for GHG

**Federal 2008 “Turning the Corner” proposal is intensity-based regulation for emissions of GHGs**

- **Targets:**
  - **Existing Facilities:** Reduce GHG emissions 18% below 2006 levels by 2010 and 2% continuous improvement every year after that.
  - **New facilities (2004 or later):** 3 years commissioning period + 2% continuous improvement. For new plants in key sectors emission intensity will be set based on a clean fuel standard to drive adoption of cleaner fuels and technology.
  - Target total percentage of reductions:
    - 20% below 2006 levels by 2020
    - 60% to 70% below 2008 levels by 2050



## Federal Government Actions

- **Emissions intensity caps for targeted sectors, setting targets based on production, allowing reductions to be achieved while accommodating growth**
- **Target Sectors:**
  - Electricity
  - Oil and gas
  - Pulp and paper
  - Iron and steel
  - Iron ore pelletizing
  - Smelting and refining
  - Cement
  - Lime
  - Potash
  - Chemicals and fertilizer



## Federal Government Actions

### Compliance Mechanisms:

- **Technology Fund**: 2010 to 2017 decreasing percentage contribution limit from 70% down to 0 with a fixed price of \$15 until 2012, \$20 in 2013 and escalating with GDP thereafter. The fund will invest in projects that will produce GHG reductions.
- **5Mt/yr for research and development**: Across the board.
- **Credit for early action**: One-time allocation of 15 Mt for reductions achieved between 1992 and 2006.
- **Pre-certified projects**: Up to 100% of compliance requirements.
- **Clean Development Mechanism**: CERs may be used for up to 10% of compliance requirements.
- **Offset Credits**: For up to 100% of compliance requirements.



## Provincial and Regional Initiatives

### Provincial

- Ontario – Quebec MOU – June 2008
- Ontario, Quebec enabling legislation of May 2009
- Alberta's Climate Change and Emissions Management Act (2007)
- Manitoba's Climate Change and Emissions Reduction Act (2008)
- B.C.'s Greenhouse Gas Reductions Targets Act (2008)
- Saskatchewan's Management and Reduction of Greenhouse Gases Act (re-introduced as a bill on December 1, 2009)

### Regional

- Western Climate Initiative (WCI)
- Regional Greenhouse Initiative (RGGI)
- Mid-western Greenhouse Gas Accord (MGA)



# Canada



**GOWLINGS**



## Alberta GHG Regulation

- **Since 2007: Applies to facilities with greater than 100,000 tonnes/ yr of GHGs emissions**
- **Intensity-based targets:**
  - Expressed as emissions intensity (kg GHGs emissions / unit) allows for growth
  - Since July 2007, large facilities must reduce intensity of GHG emissions by 12% calculated from a 2003 – 2005 average
- **Compliance options :**
  - Contribution to the Alberta Climate Change and Emissions Management Fund “Tech Fund” (C\$15/tonne)
  - Intra-Alberta only emissions trading (“Alberta money stays in Alberta”)
  - Alberta offset market – only from within Alberta



## British Columbia GHG Regulation

### **Carbon Tax:**

- *Carbon Tax Act (2008)*: \$10/tonne of GHGs emission (increase 5\$/tonne of GHGs emission per year until \$30/tonne of GHG emission in 2012)
- Applied to GHGs emitted from fossil fuels

### **Cap and Trade:**

- *Greenhouse Gas Reduction (Cap and Trade) Act (2008)*
  - creates a framework to allow BC to take part in the cap-and-trade system developed through the Western Climate Initiative
  - The legislation sets in law a GHG reduction target of at least 33 percent below its 2007 levels, and includes a long-term target of an 80 percent reduction below 2007 levels by 2050.

### **Reporting Requirements to BC Ministry:**

- Reporting requirement applies to facilities emitting more than 10,000 metric tonnes of carbon dioxide annually



# Ontario GHG Regulation

## Cap and Trade

- Passed legislation to create a cap-and-trade system by 2012 to take part in the Western Climate Initiative
- May auction some portion of allowances
- Hard caps for regulated sectors, to reduce over time
- Initially to cap emitters over 100,000 tonnes, to reduce to 25,000 tonnes by 2012
- Offset use to be limited to less than 50% to ensure majority of reductions from emitters
- To be determined: CDM use, credit for early action

## Other Initiatives:

- Phase out coal fired electricity by 2014



## Other Provinces GHG Regulation

### Saskatchewan

- Intensity based system like Alberta (12%, \$15) in 2010

### Quebec

#### Cap and Trade/Carbon Levy

- Imposed a Carbon levy C\$3.40 / tonne of GHG on sale of petroleum
- Levy to be used for government funding of emission reduction/energy efficiency activities – not revenue neutral
- Introduced legislation to create a cap-and-trade system to take part in the Western Climate Initiative



## Western Climate Initiative

- **WCI launched in 2007**
- **15% regional economy-wide emissions reduction goal from 2005 levels by 2020 (based on individual member's commitments)**
- **Includes Ontario, Quebec, Manitoba and B.C. along with Arizona, California, Montana, New Mexico, Oregon, Utah and Washington as well as 6 states in Mexico (Sask. an "Observer")**
- **GHG reductions through emissions regulation, trading and offsets**
- **Hard caps for emitters greater than 25,000 tonnes**



## Western Climate Initiative

- **First Compliance Period to begin in 2012 to 2015**
- **Caps to decline over time**
- **Some portion of initial allowances to be auctioned, with % increasing over time to possibly 100%**
- **Offsets to be eligible for compliance – not more than 49%,**
- **Offsets to be fungible through the WCI jurisdictions, common protocols to be developed**
- **May recognize CDM credits**



## Other Regional Initiatives

### **Regional Greenhouse Gas Initiative (low carbon fuel standard)**

- **10 New England and Mid-Atlantic States**
- **Functioning since 2010 – GHG emissions from power sector capped in 2010 and decline by 10% by 2018**
- **Auctioning of allowances**

### **Midwestern Governors Association Greenhouse Gas Reduction Accord**

- **Six mid-western states and Manitoba**



## Canadian Carbon Markets

- **Regulated Markets**
  - Alberta market
  - Emission offsets trade below \$15/tonne of CO<sub>2</sub>e
  - 2008 Alberta carbon markets estimated at \$31 million
- **Voluntary Markets**
  - Mostly Over-the-Counter (OTC)
  - 2008 Global voluntary market estimated at \$700 million
  - Canadian projects eligible under standards such as Gold Standard, ISO 14064-2, Voluntary Carbon Standard 2007



## Concluding Remarks

- **Canada has signaled at Federal level it is in lockstep with the U.S.**
- **Scenario 1**
  - **U.S. Cap and Trade: Canada will have to deal with existing intensity-based regimes in ‘fossil fuel’ provinces**
- **Scenario 2**
  - **EPA proceeds with regulation of GHGs (March 2010): Canada likely to move to direct regulation through comparable standard setting**



**Patricia Leeson**  
**Gowling Lafleur Henderson LLP**  
**1400 Scotia Centre**  
**700 – 2<sup>nd</sup> Street S.W.**  
**Calgary, Alberta T2P 4V5**  
**Tel: (403) 298-1821 Fax: (403) 263-9193**  
**Email: [patricia.leeson@gowlings.com](mailto:patricia.leeson@gowlings.com)**

**THANK YOU**

**GOWLINGS**