

The failure of the rule of law in Canada: the TMX pipeline, increasing oil production, and “imminent peril”

David Gooderham
February 16, 2023

In 2016, at the time the construction of the TMX pipeline expansion was authorized, the Government of Canada projected that Canada’s total crude oil production would rise to 5.7 million bpd by 2040 (up from 4.0 million in 2015). Now, seven years later, the government’s most recent reports and published data are still projecting oil production growth to 5.7 million bpd by 2040. Canada’s ambition to continue expanding its oil production to 2040 remains essentially unchanged. What Canada does matters because we are the world’s 4th largest oil producer.

The two new pipeline projects authorized by the Trudeau Government on November 29, 2016 (the TMX Expansion and Line 3) will in combination provide 910,000 bpd of additional shipping capacity. An increase in shipping capacity by 910,000 bpd is highly significant. That amount is almost exactly equivalent to the entire projected expansion of Canada’s oil production between 2020 and 2030. Yet no environmental assessment or independent public inquiry process of any kind in Canada has ever answered the fundamental question, which is whether the planned growth of Canada’s oil production to 2030 and 2040 is compatible with keeping increased warming to 1.5°C or even 2°C. At present we are on a path to warming in the range of 2.6 °C.

This paper looks at the contradiction between Canada’s growing oil production and the very deep cuts in global oil production required by 2030 and by 2040 to give us any realistic chance of keeping global warming to within the 1.5°C threshold or within 2°C.

The imminence of the peril

The aim of this paper is to set out the available sources of evidence that show the immediate need for an approximate 50% reduction in global emissions by 2030. Further, it demonstrates, why, in this global context, the planned expansion of oil production by Canada (the world’s 4th largest oil producer) is clearly incompatible with meeting that goal. I discuss below five main points:

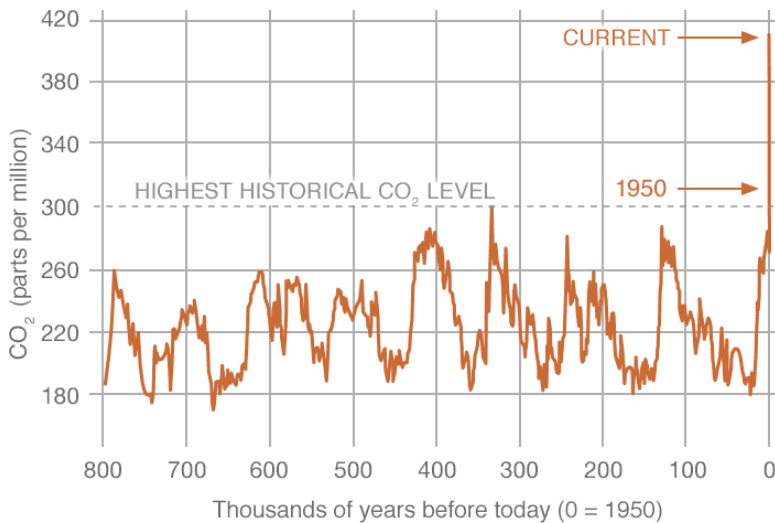
- (1) The available scientific findings documenting the annual rise in the atmospheric carbon concentration level which, at the current rate of increase (driven by rising global emissions) will by 2030 exceed the critical threshold that allows us to keep the earth’s average surface temperature increase to less than 1.5°C.
- (2) Recent sources that have documented in detail the massive scale of the emissions reductions required by 2030 to limit warming to that agreed 1.5°C limit, in particular the UN *Emissions Gap Report 2022* published on October 27, 2022.

- (3) Findings showing the significance of emissions from oil combustion as a share of total global emissions, and the magnitude of the reductions in oil production required by 2030 to keep the heating of the earth to within the 1.5°C threshold.
- (4) Details of the projected increase of Canada’s oil production to 2030 and 2040, based on the Government of Canada’s published data.

1: Proposed evidence about the atmospheric carbon concentration.

The *atmospheric carbon concentration level* is the metric that explains why the timeline to arrest the further expansion of oil production – and to achieve deep cuts in our consumption of oil, coal, and natural gas – is brief and unforgiving. It records the rising concentration of CO₂ and other GHGs in the upper atmosphere that are driving the heating of the earth’s atmosphere, measured in parts per million (ppm). Figure A represents the long-term record for the atmospheric carbon concentration over the past 800,000 years. It places our predicament in context:

Figure A: Atmospheric carbon concentration level (proxy measurements)



Source: US National Aeronautics and Space Administration (NASA)

The most recent measurements of the atmospheric carbon concentration level warn us of the unforgiving timeline we face. Each year the atmospheric CO₂ concentration follows a cycle. April and May are the high points of the year, September the low. *But the annual averages are moving up every year.* Ten years ago, in 2013, the annual average was 395.3 ppm. When we filed our application in 2018 the most recent available measurement was 405.0 ppm, the annual average in 2017. The annual average reached 415.7 ppm CO₂ in 2021.

An atmospheric carbon concentration level of 450 ppm is broadly equivalent to a 2°C increase in global average temperature. That conclusion is based on the correlation, supported by the scientific evidence, between increases in the CO₂ concentration level and warming of the earth.

...

Between 2016 and 2017, the atmospheric carbon concentration level rose by 2.2 ppm, which was slightly less than the increase between 2015 and 2016 (3.0 ppm). The rate of increase has been accelerating, reflecting the persistent growth in the annual level of global emissions from burning coal, oil, natural gas, and cement production. In the 1960s, the global growth rate of atmospheric carbon dioxide was about 0.6 ppm per year. The rise in the global atmospheric CO₂ concentration since 2000 is about 20 ppm per decade (IPCC 2018, Chapter 1 at 1-8).

An unusual characteristic of CO₂, unlike methane for example, is that once the gas is released into the upper atmosphere it does not break down. It has an effective atmospheric residence time of centuries to millennia (IPCC 2018 Chapter 1 at 1-23). It is only removed from the atmosphere when it is absorbed by the earth's surface – by dissolving into the upper ocean (and slowly into the deep ocean) or by biological uptake into forests and plants. The problem is that we keep releasing more CO₂ into the atmosphere every year. Once we stop massive fossil fuel burning, the incremental increases in the atmospheric concentration will stop. After emissions cease, atmospheric CO₂ will begin to decline, albeit very slowly – only over decades and centuries. From the perspective of the time frame that concerns us, slowing the rise in the concentration level to 2030 and 2035 is crucial.

Since before the beginning of human life on earth and up to the start of industrialization in about 1780, the CO₂ concentration level was never *higher* than 300 ppm. During the past 12,000 years, from the end of the last Ice Age until the advent of the industrial age, it was stable at about 280 ppm. By 1958, it was 315 ppm. Since then, the level has risen by another 100 ppm.

The threshold for 1.5°C is 430 ppm. At the present rate of increase, which is now about 2.5 ppm every year, the carbon concentration level is on track to exceed 430 ppm CO₂ by about 2028.

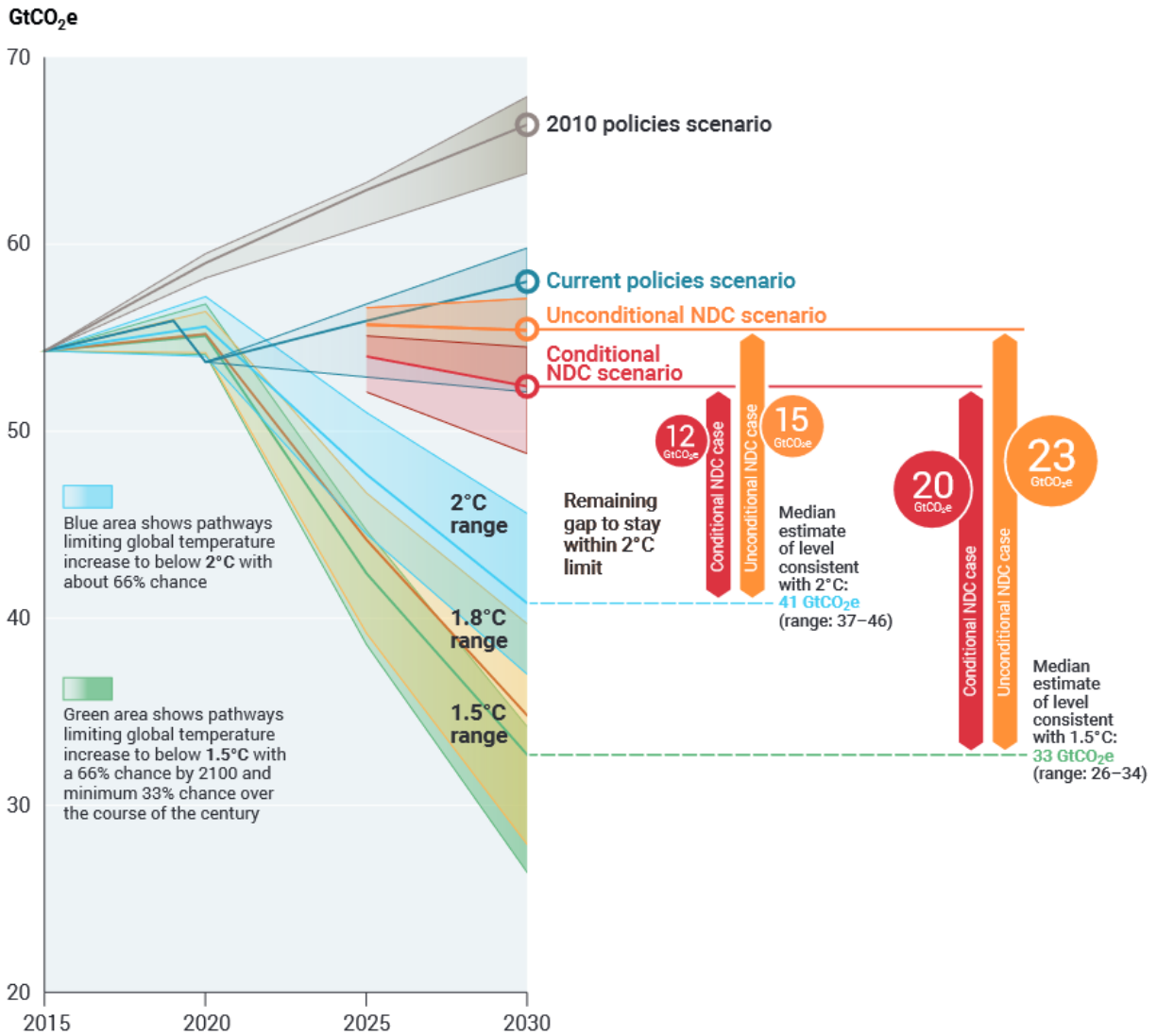
2: The “emissions gap” and the magnitude of global reductions required by 2030

Evidence about the unforgiving 2030 deadline is readily available. One of the leading sources is the *Emissions Gap Report* which is published annually by the UN. The most recent *UN Emissions Gap Report 2022*, released on October 27, 2022, provides an updated analysis of our current situation.

Under the terms of the Paris Agreement signed in December 2015, Canada and all the other major advanced industrial nations made solemn commitments that they would achieve specified reductions in their own national emissions by 2030. These are referred to as their “Nationally Determined Contributions” (NDCs). The most reliable of these are the “unconditional NDCs”. Some countries have made only “conditional” commitments, which are subject to various caveats and qualifications which mean those promised cuts are highly uncertain. But the total NDC commitments made so far, including all recent increases in the size of the original commitments announced up to September 2022, are not remotely adequate to achieve the massive reductions in global emissions needed by 2030. Many countries, having made those NDC commitments, have still not implemented actual policies or measures required to achieve their promised cuts.

The new *UN Emissions Gap* report provides a comprehensive picture explaining the extreme danger of our situation. Figure B below, reproduced from the *Emissions Gap Report 2022*, explains the scale of the deep and rapid emissions cuts required by 2030 to give us any realistic chance of keeping the earth’s average surface temperature increase to 1.5°C, or 2°C.

Figure B: Global greenhouse gas emissions scenario and the emissions gap to 2030



Source: *UN Emissions Gap Report 2022*, October 27, 2022, Figure ES.3, p. XX

It includes three crucial findings that define the scale of the problem. The annual level of global GHG emissions including emissions from changes in land use (i.e., deforestation) reached an estimated 52.8 GtCO₂eq in 2021. The first crucial finding is that with the benefit of all emissions reduction policies currently in place (all policies that have already been implemented by all countries and assuming no additional action is taken) global emissions are projected to increase to 58 GtCO₂eq by 2030. That emissions pathway (the “Current policies scenario”) will result in warming of 2.8°C during the twenty-first century. That is the pathway we are presently on.

Second, even with the full implementation of all unconditional NDCs promised by all countries (including Canada’s promised 40% reduction), global emissions are on track to reach 55 GtCO₂eq by 2030. The annual level of global emissions by 2030 will still be higher than it was in 2019, even if all the NDCs promised so far are fully achieved. That level of global emissions by 2030, only 3 GtCO₂eq below the Current policies scenario, will put us on a pathway to a temperature increase of 2.6°C above pre-industrial levels. That outcome is depicted by the orange line (the “Unconditional NDC scenario”) shown in Figure B.

A third crucial finding set out in the new report is that to stay on a pathway to limit the warming increase to 1.5°C, global emissions must decline to an annual level of 33 GtCO₂eq between now and 2030 (far below the projected 55 GtCO₂eq, which assumes all the unconditional NDCs so far promised will be fully implemented). That means we must achieve additional reductions of 23 GtCO₂eq all within the next eight years, a measure referred to as the “emissions gap”.

Canada has promised to reduce our domestic emissions 40% by 2030, below the 2005 level. That is our NDC. But even if Canada and all the other countries successfully implement and achieve the full amount of their promised unconditional NDC reductions by 2030, that still leaves us on a path to a temperature increase of 2.6°C above pre-industrial levels. .

Figure B provides the context that explains why coal, natural gas, and oil production must sharply decline by 2030 on a global scale. Burning fossil fuels (coal, oil, and natural gas) accounts for about 70% of total global emissions every year. Oil alone accounts for about one-third of that amount, and natural gas a little less than one-quarter.* Coal use has been slowly declining in the richest advanced industrial economies, but natural gas use is rising. Achieving a reduction in global emissions in the order of 23 GtCO₂eq (or anything close to that) cannot be achieved without accelerated cuts in coal production and substantial reductions in both oil and natural gas production, all within the next eight years.

Even to stay on a pathway to limit average warming to 2°C, additional reductions of 15 GtCO₂eq must be achieved within the next eight years.

Our predicament is severe. The present pathway that Canada and other major fossil fuel producers have adopted – which is characterized by the continuing growth of oil and natural gas production through the rest of this decade and only a slight decline in coal production – means the world is headed to warming of about 2.6°C.

* The IEA’s *World Energy Outlook 2022* released October 27, 2022, reports that CO₂ emissions from the energy sector (which comprise all emissions from burning coal, oil, and natural gas) reached an annual level of 36.6 GtCO₂ in 2021. That represents about 70% of the total annual level of global GHG emissions, which reached an estimated 52.8 GtCO₂eq in 2021. Recent estimates indicate that in 2022 the share of CO₂ emissions attributed to coal use is 15.1 GtCO₂. Another 12.1 GtCO₂ is attributed to combustion of oil. And 7.9 GtCO₂ is attributed to the combustion of natural gas. According to the IEA’s NZE Scenario analysis, CO₂ emissions from coal, oil, and natural gas combustion – the dominant share of human caused emissions - must be reduced by more than one-third within the next eight years, falling from 36.6 GtCO₂ to less than 23 GtCO₂ by 2030: see WEO 2022, section 3.3 at page 125.

3: Reductions in global oil production required by 2030

The sources of evidence relating to the safe future level of global oil production have very significantly evolved during the past six years, since the TMX pipeline expansion was approved in November 2016.

Up until 2018, the most authoritative source was the International Energy Agency's (IEA) 450 Scenario, which in various revised versions had been available since at least 2013. The 450 Scenario concluded that "business as usual" projections current at the time, which all pointed to continued growth of global crude oil production to 2040, were inconsistent with the goal of limiting the rise of average global temperature to 2°C. The IEA's 450 Scenario modelling future levels of oil production consistent with the 2°C goal required that oil production begin to decline by 2020 and decline about 20% by 2040. However, the 450 Scenario was only consistent with a 50% probability of keeping warming below 2°C. A higher probability, say 66%, would require deeper cuts. The IEA's 450 Scenario did not address the much deeper reductions needed to meet the 1.5°C goal.

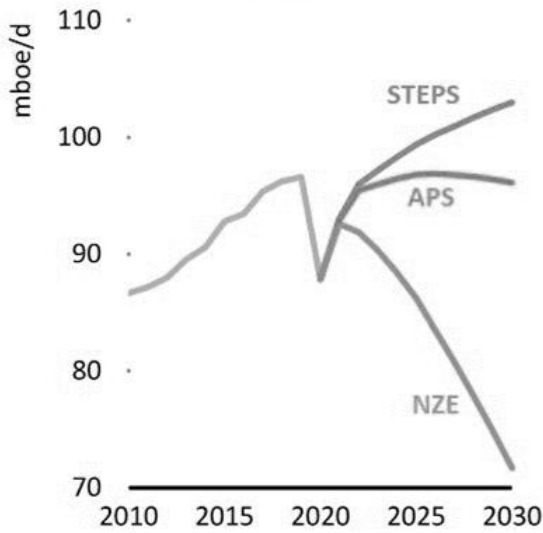
The IEA began to publish a new set of scenarios in 2019, initially with a Scenario that modelled global oil production consistent with a 1.8°C goal. With the publication of its "Net-Zero Emissions by 2050 Scenario", released on May 18, 2021, the IEA warned about the *immediacy* of the need to halt any further *expansion* of oil production. It published detailed findings about the rapid pace and severity of the deep cuts in global oil production required by 2030 and by 2040 that would be compatible with a 50% probability of limiting the average global temperature rise to 1.5°C. It determined that a 25% reduction in global production would be required by 2030, down to 72 million barrels per day (bpd) by 2030, and a 50% reduction by 2040, down to 44 million bpd.

The IEA's Net-Zero Emissions ("NZE") study concluded that production must decline to 24 million bpd by 2050 (a 75% reduction) to align with 1.5°C. Furthermore, to meet that goal, 70% of the remaining 24 million bpd of oil production by 2050 will have to be used in applications where *the fuel is not combusted and so does not result in any direct CO₂ emissions* (i.e., used to produce chemical feedstocks, lubricants, and asphalt). By 2050, oil must have very limited use as a transportation fuel except for aviation. An updated version of the NZE Scenario is found in the IEA's most recent annual report, *World Energy Outlook 2022*, published on October 27, 2022.

Canada's current plan is to continue *increasing* our oil production to 2030 and 2040. The top blue line in Figure C below ("STEPS", which refers to the IEA's Stated Policies Scenario) depicts the IEA's projection indicating the rising pathway of global oil production between now and 2030, based on the current plans of Canada and the world's other oil producing countries.

The sharply declining green line ("NZE") shows the magnitude of the cuts in overall world oil production needed by 2030 to give us a 50-50 chance of being able to limit global heating to less than 1.5°C.

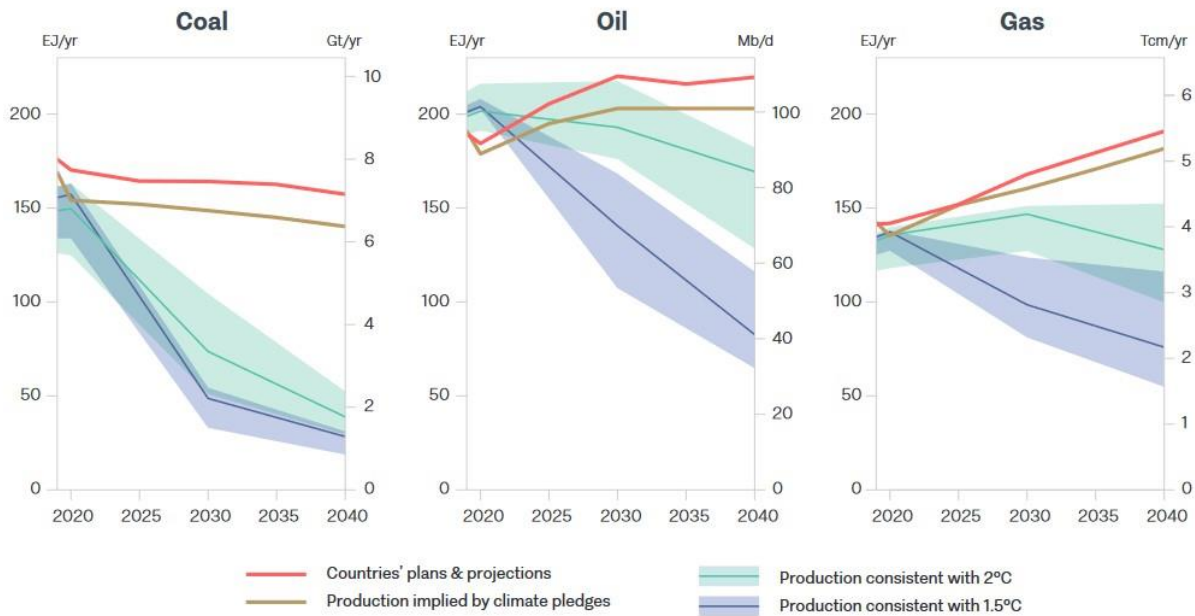
Figure C: Projected Oil Demand to 2050



Source: *World Energy Outlook 2021*, October 12, 2021, Figure 5.3, page 214.

Another clear warning was given October 20, 2021, when the UN Environmental Programme and the Stockholm Environmental Institute released their *Production Gap Report 2021*. In the case of oil production, the center graph in Figure D below shows that based on oil producing countries' current plans, between now and 2030 the gap will widen between the deep production decline required to be consistent with the 1.5°C pathway (the bottom diagonal line) and the current expansionary pathway (the top red line).

Figure D: projected coal, oil, and gas production to 2030 and 2040



Source: *Production Gap Report*, October 20, 2021, Figure 2.2 at page 16.

The *Production Gap Report* concluded that “the world’s governments plan to produce more than twice the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C”. In the specific case of oil production, it states:

Nations are, in aggregate, planning on producing around 40 million barrels per day (Mb/d) more oil than would be consistent with the median 1.5°C pathway in 2030 (with a range of 26-56 Mb/d). This excess is roughly equivalent to half of current global oil production.

— *Production Gap Report*, October 20, 2021, p. 15

4: Planned increases in Canada’s oil production to 2040

In 2016, at the time the construction of the TMX pipeline expansion was authorized, the Government of Canada projected that Canada’s total crude oil production would rise to 5.7 million bpd by 2040 (up from 4.0 million in 2015). Now, seven years later, the government’s most recent data (see below) is still projecting growth to 5.7 million bpd by 2040. The growth plan has not substantially changed.

The two new pipeline projects (the TMX Expansion and Line 3) will in combination provide 910,000 bpd of additional shipping capacity. An increase in shipping capacity by 910,000 bpd is material: it is almost exactly equivalent to the entire current projected expansion of Canada’s oil production between 2020 and 2030.

The Federal Government’s most recent data is still projecting growth to 5.7 million bpd by 2040. On March 29, 2022, the Federal Government released a major climate policy statement called the *2030 Emissions Reduction Plan* (ERP). Most of the 233-page document lays out details of promised policies that the government says will reduce Canada’s total domestic emissions by 2030. Yet this ‘emissions reduction plan’ incorporates a detailed plan by our government to continue increasing Canada’s oil production to 2030 and maintain high production levels for another 20 years after that. The plan envisions no significant reduction in Canada’s oil production levels before 2050. Table 6.2 at page 213 of the ERP provides data showing a 26% increase in our oil sands and conventional oil production this decade, rising from 4.411 million bpd in 2019 to 5.567 million by 2030. The data is taken directly from the *Canada’s Energy Future 2021* report, published by the Canada Energy Regulator (CER) on December 9, 2021.

At a press conference on April 4, 2022, Canada’s Minister of Environment Steven Guilbeault confirmed that Canada’s new climate plan is “based on” increasing oil production:

... the plan we presented last week, the Emissions Reduction Plan, was based on the Canadian Energy Regulator projections that oil and gas production would increase in Canada between now and 2030 ...

The ERP document portrays the CER as playing an important and responsible role in advising government and industry to ensure that Canada’s oil and gas production is safely developed in a way that is consistent with meeting the 1.5°C goal. The ERP (in a box on page 213) declares:

... a key objective of the 2015 Paris Agreement is to hold the increase in global average surface temperature to well below 2 degrees Celsius while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels.

It goes on to say that Canada has adopted a goal of “net-zero emissions by 2050”, and continues:

The Canada Energy Regulator’s Canada Energy Future reports provide a framework for businesses to make investment decisions in the energy sector. Its projections are important for ensuring Canadian businesses are making investments consistent with a transition to cleaner energy sources.

— 2030 Emissions Reduction Plan, Environment Canada, p. 213

The above statement is grossly misleading. The CER 2021 report published on December 9, 2021, offered no analysis or data that explains the massive discrepancy between Canada’s current plan to continue expanding our oil production to 2030 and 2040 and the deep and rapid reductions required to align our output to a 1.5°C. The CER’s most recent oil production projections published December 9, 2021, are as follows:

Figure E: Future oil production – conventional oil and oil sands, millions of barrels per day (bpd)

	2019	2030	2040	2050
Current Policies Scenario	4.4	5.4	5.7	5.5
Evolving Policies Scenario	4.4	5.0	4.6	4.0

Source: Canada’s Energy Future 2021, Canada Energy Regulator, December 9, 2021.

The CER 2021 report explains that its “Current Policies Scenario” assumes “energy and climate policies that are currently in place” around the world remain unchanged. In other words, it represents a continuation of the high-level dependence of the global energy system on fossil fuels to 2050, and projects Canada’s oil production will continue to grow to 2040. In its most recent *Canada’s Energy Future 2021* report, in a single brief sentence (on page 19) the CER admits that even its new “Evolving Policies Scenario”, showing slightly slower production growth to 2032 and thereafter a very gradual decline in Canada’s oil production to 2050, does not put us on a pathway to meet the Paris goals, whether 1.5°C or 2°C:

In the Evolving Policies Scenario, significant GHG emissions reductions will be realized, but ambitious goals such as net-zero by 2050 are unlikely to be met.

In stating that it does not “explicitly model climate goals”, the CER was admitting that it does not develop or examine scenarios that would identify the much lower and declining oil production levels in Canada over the next 20 to 30 years required to safely align our production with an effective global effort to stay within the 1.5°C warming threshold or within the 2°C warming threshold.

Multiple Canadian experts and leading international scholars, energy economists and climate scientists, have repeatedly warned that Canada’s current plan to continue increasing its oil production to 2040 is incompatible with meeting those goals.

On July 8, 2021, twenty-one energy economists and climate scientists, all deeply experienced and informed about Canada’s oil production projections and the emissions implications of continued expansion, sent a letter to the Prime Minister.[†] It cited in detail the findings of the IEA’s May 18, 2021 “Net-Zero Emissions by 2050 Scenario”, and was copied to the Minister of Environment and Climate Change, and to the Minister of Natural Resources, and to the Chair and CEO of the Canada Energy Regulator. They wrote: “Specifically, we urge you to mandate that the Canadian Energy Regulator model scenarios consistent with the IEA’s Net Zero by 2050 report”. In plain English, that meant the government should immediately direct or instruct the CER to develop scenarios that will identify the much lower and declining oil production levels in Canada over the next 20 to 30 years that would be safely aligned with an effective global effort to stay within the 1.5°C warming threshold.

The Minister did not act. Six months passed. Undeterred, the CER released its new oil projections, entirely ignoring the crucial question.

On December 14, 2021, just five days after the CER 2021 report was released, four of Canada’s leading experts on climate policy and oil production published an article[‡] containing a devastating indictment of the irresponsible and misleading character of the CER’s new projections: “Canada’s energy regulator turns a blind eye to dangerous global warming”. They stated that the report has “failed to inform looming policy decisions”. The authors pointed out that the CER’s new “Current Policies” forecast for Canadian fossil fuel production (now enshrined in Canada’s ERP) is roughly aligned with the IEA’s recently published “Stated Policies Scenario” which, as the authors explain, “anticipates 2.6°C of warming, far beyond the Paris target”.

For the past nine years, the CER (formerly known as the National Energy Board, or “NEB”) has turned a blind eye to this fundamental question, which remains unanswered. No independent environmental review or public inquiry process has ever answered the question, which is whether the planned growth of Canada’s oil production to 2030 and 2040 is compatible with keeping increased warming to 1.5°C.

The most egregious failure in Canada’s environmental review process was the ruling by the National Energy Board Inquiry on July 23, 2014 (NEB Ruling 25) that “upstream emissions” released into the atmosphere at oil sands production sites in Alberta did not fall within the scope of that Inquiry – and the Inquiry also excluded any consideration of the much larger volume of “downstream emissions” from our exported oil. The City of Vancouver, an Intervenor in the

[†] Letter July 8, 2021, sent by twenty-one energy economists and climate scientists to the Prime Minister, the Minister of Environment, Minister of Natural Resources, and to the Canada Energy Regulator: <https://www.linkedin.com/pulse/canadas-energy-regulator-should-develop-net-zero-letter-mark-winfield>

[‡] “Canada’s energy regulator turns a blind eye to dangerous global warming”, Kathryn Harrison, Mark Jaccard, Nicholas Rivers, and Angela Carter, December 14, 2021: <https://www.nationalobserver.com/2021/12/14/opinion/canadas-energy-regulator-turns-blind-eye-dangerous-global-warming>

Inquiry, appealed the NEB refusal but the Federal Court of Appeal dismissed the appeal on October 16, 2014. Accordingly, when the NEB on May 19, 2016, issued its final report recommending approval of the TMX pipeline expansion, it entirely ignored the growing volume of greenhouse gas emissions from Canada's expanding oil production – and declined to consider any scientific evidence about the impact of rising emissions on climate change.

On December 16, 2021, the Minister of Natural Resources belatedly instructed the CER to conduct an internal study to determine what future level of oil production in Canada would be safely aligned with a global effort to limit warming to 1.5°C. The recent ERP document published on March 29, 2022, informs Canadians that the Minister of Natural Resources had sent a letter to the CER asking that it conduct a new scenario analysis:

On December 16, 2021, Natural Resources Minister Jonathan Wilkinson, wrote to the Chairperson of the CER's Board of Directors Cassie Doyle, to request that the CER produce fully modelled net-zero scenarios consistent with 1.5 degrees of warming under the Paris Agreement. The 1.5 -aligned Scenario Analyses will include fully modelled scenarios of supply and demand of all energy commodities in Canada, including clean fuels, electricity, and oil and gas. This modelling will also include the future trends in low-carbon technology and energy markets, to provide Canadians with information they need to better understand the future energy transition.

— Emissions Reduction Plan, March 29, 2022

But the “modelling” has still not been done. The promised 1.5°C aligned analysis will not be publicly available until sometime in 2023. Moreover, the CER's new study is not a public inquiry process. It is a secretive process, conducted behind closed doors – with no opportunity to question the government's sources and data. In the meantime, our government is justifying decisions to expand our oil production (decisions that involve projects and infrastructure that will have an operating lifetime of 20 or 30 years) based on CER projections which are clearly not aligned with 1.5°C. Under the CER's Current Policies Scenario, Canada's projected oil production by 2040 is about 36% above our production level in 2019.

The Minister has assigned this task to an anonymous group of Federal Government employees and others, who are selected and contracted by the government to provide information and expert evidence behind closed doors. Under this arrangement, there will be no public hearings, no cross-examination of experts providing evidence, and no public record of the information considered by CER staff members. The CER will quietly decide in secrecy what evidence it will look at, and what lines of inquiry it will ignore.

On November 1, 2021, the Prime Minister, on the stage at the COP 26 meeting in Glasgow speaking to an assembly of world leaders, promised that Canada is “formally committed” to cap the emissions from our country's oil and gas sector. The promised “cap”, however, relates only to the volume of emissions released into the atmosphere from oil extraction and processing activities within Canada (the “upstream emissions”). On October 27, 2021, the day after his appointment, as Environment Minister Guilbeault was asked about the proposed “cap”. He responded: “We are not trying to cap production. We will be capping the amount of pollution that comes from those sectors.”

The failure of the rule of law

The Federal Government's recent *Emissions Reduction Plan* confirms that none of the government's proposed new policies, including plans to subsidize large-scale deployment of Carbon Capture, Utilization, and Storage (CCUS) technology in the oil sands industry, are intended to bring about any decline in the currently projected growth of Canada's oil production. Indeed, the text of the ERP affirms that the aim of government policy will be to continue to maximize production:

The government will work closely with the provinces and the sector to manage competitiveness challenges, remain attuned to evolving energy security and climate risk considerations, maximize opportunities for ongoing investment in the sector, and minimize the risk of carbon leakage. The intent of the cap is not to bring reductions in production that are not driven by declines in global demand. Mechanisms like the CCUS investment tax credit will help support decarbonization.

— 2030 Emissions Reduction Plan, March 29, 2022, p.53 (emphasis added)

The government's plan is clear: Canada's oil production will continue to increase until – and if – other countries eventually begin to consume less oil. In the meantime, Canada's production levels will be guided solely by “global demand”.

In Canada, and across the world, fateful decisions about the future level of oil production are being left to the market and to economics, to the vagaries of future oil prices, to the guiding norm of profitability, and to a messianic faith that future technological development will achieve a suitable outcome.

That hegemonic belief system – comprising economics, markets, and technology – at this crucial moment is eclipsing the rule of law. The decision-making process in Canada is being driven solely by the values and measures of economic-growth and whether, and for how long, the business of extracting oil reserves can remain profitable.

The rule of law has the capability to introduce values of a different order, standards of ethics and fairness – for example generational justice and compassion – that would examine and assess the impacts of the planned expansion of oil production on the natural world that supports human life, and all life. The rule of law is our way to order society, to make decisions and rules that protect the weak and vulnerable against the most powerful.

To be effective and to achieve its humane purpose, the rule of law must permeate the entire culture as a broadly accepted system of rules and values (accepted by politicians and demanded by citizens) guiding how we make consequential decisions of great complexity. Most crucially, the inquiry process must be independent, so we can be confident that the decision-makers are not being influenced by pressures, discussions, or other sources of information that have not been tested in public view.

The process must be open to the public, and there must be a full opportunity for opponents to challenge and cross-examine the experts chosen by the government and to call other witnesses who may disagree with the government's evidence.

Since 2013 and before that, with respect to the core question of addressing the future level of Canada's oil production, those values of the rule of law have been cast aside, boldly ignored by successive governments and Ministers.