

Programme of Study

Introduction

I am enrolled in a Doctor of Philosophy (PhD) in Law at the Peter A. Allard School of Law. Supervised by Dr Stepan Wood, my project looks at the role of law and society in the regulation of low-carbon economy (LCE). Specifically, using Canada as a case study, it will identify the limitations of law and how civil society, as a unit of society, could help law.

I have carried out introductory research and engaged with relevant sources for my thesis. I completed a directed project with my supervisor where I investigated the international, federal and provincial laws regulating Canada's LCE. I have also read and annotated some of the relevant literature in two seminar courses. I am currently reading and annotating other sources for my comprehensive examination.

Proposal Outline

Context: Scientists and other people worry that countries' carbon emissions reduction commitments might not meet total emissions reduction targets that the world needs to survive climate change (IPCC 2014; Rogelj et al 2016; Lawrence and Wong 2017). To meet these targets, countries need to drastically transform their economies (see McGlade and Ekins 2015). LCE is the key policy agenda that has emerged at the international level for this transformation. However, LCE faces challenges. Some of the challenges arise where law, as a traditional regulatory instrument for policy implementation, affects how LCE is implemented. Thus, how countries use law to implement LCE depends on how smoothly law works.

Experience in the United Kingdom (UK), the United States (US), Spain and Canada, among others, has revealed some issues. First, LCE laws and implementation systems (regimes) find it difficult to mesh with existing regimes as they are resisted (see Geels 2014; Onifade 2015, 2016), partly due to the pre-existing influence of oil, gas and mining businesses. Second, even low-carbon business proponents may oppose LCE laws that limit profits (see Tamás et al 2010; MacLean, Doelle and Tollefson 2016).

These issues point to a legal problem, which is my research problem: the limitations of law as a regulatory instrument in LCE. Given the above challenges of regime resistance and opposition, among others such as weak regulation and the capture of regulation, largely caused by the influence of business stakeholders on governments, I believe law as traditionally defined as a government tool is not adequate to drive LCE promptly (see McGlade and Ekins 2015). Although recent studies focusing on Canada (Maclean 2016; Jensen and Dowlatabadi 2018), China (Zhang 2016) and the UK (Onifade 2016), among others, have engaged some regulatory challenges of LCE, they do not fully develop the idea that some of the challenges stem from the limitations of law. My research will fully develop this idea as a preliminary contribution.

To address my research problem, I will then explore how society could help law if properly organized to do so. Through governance initiatives, particularly those by civil society, society could control business stakeholders to facilitate LCE where law alone might not, so it has a regulatory capacity. Some recent studies have examined this regulatory capacity theoretically (Lange et al 2015) and practically (Ayling and Gunningham 2015; Richardson 2016) but have not considered how society could harness it to address law's limitations. This is the specific gap my research hopes to fill.

Objective, Question and Thesis: Given the context above, the objective of my research is to examine the role of law and society in the regulation of LCE, with a focus on Canada. I ask the central question: how could law and society work together in the regulation of LCE? To answer this question, my thesis is that society could support law. I believe that civil society groups can advance legal instruments in regulation.

Potential Contribution: I hope to make two original contributions. The first is how society, organized through civil society groups, could regulate LCE through governance initiatives. The second is, where society regulates LCE, how it could support law as traditionally understood as government regulation.

For the first contribution, I will examine how society could regulate business behavior in LCE. People could stimulate social values as regulatory drivers. Actuated through diverse decision-making mechanisms under the umbrella of governance, this stimulation could motivate action or inaction that supports LCE. To illustrate, there are relatively new governance mechanisms of society that advance LCE. “Carrot Mob,” a mass-based non-governmental organization (NGO), employs “buycotts” by organizing people to commit to shopping-sprees in favour of low-emitting businesses, and “Equitable Origin,” a stakeholder-based NGO, certifies low-emitting business projects. These examples show how society, organized through NGOs which form part of civil society, regulates carbon emissions through governance mechanisms such as “buycotts” and certification, and there are other governance mechanisms. Given the variety of mechanisms, I will identify the core or minimum elements of how society regulates LCE.

The second contribution, on impact, flows from the first. If society could regulate, this could support the role law currently plays in regulating LCE regimes. This support could enhance the entry of LCE regimes into the existing carbon terrain and advance implementation. As such, I will explore if and how society could support law through “hybrid regulation” which combines law and civil society governance.

Methodology: Guided by regulatory theory, my work will be empirical. I will use legal and policy instruments as primary data sources. They will come from relevant government and business archives that are publicly available and accessible. I will then employ primary and secondary empirical data. I will retrieve the primary empirical data through semi-structured interviews of government, business and civil society stakeholders involved in governance and/or regulatory decision-making in LCE. I will retrieve the secondary empirical data from the climate change and LCE literature as well as the publicly available and accessible archives of organizations involved in climate and low-carbon mobilization and activism.

For my analyses, I plan to employ qualitative methods, specifically literature review, case study and framework analysis, subject to the guidance of my supervisory committee. I will integrate the analyses into the introduction, methodology, theory, result, discussion and conclusion sections of the study, with the conclusion drafted based on the content of the other sections. I will take the following iterative steps:

1. I will start with a literature review to provide theoretical and practical justification for the project. First, I will review the literature on regime resistance and opposition of government regulation, among others, and how this leads to my research problem as addressed but not exhaustively discussed in the literature, the limitations of law in LCE. Second, I will also review the literature on how society regulates and then focus on works relevant to LCE. These two bodies of literature are substantive. They will justify my research. I will synthesize them in the introduction, theory, result and discussion. I will then review the literature on my research methods. This body of literature will not be substantive as it will only show how things will be done. I will synthesize it mainly in the methodology section.
2. To contextualize the research problem, I will use Canada as a case study, discussing the international, federal and provincial laws and issues. I will report the case study in the part 1 of the result section. I choose Canada mainly because key provinces have recently made LCE laws that are timely to explore.
3. To examine how to address law’s limitations seen in the case study, I will employ the Transnational Business Governance Interactions framework (Eberlein et al 2014) to analyse select civil society regulation schemes in Canada. This will be in the part 2 of the result section. I choose the framework because it would reveal society’s governance mechanisms that constitute regulation.
4. Finally, I will draw on the result to narrow the analyses to the two contributions: how society regulates and how this could support law in LCE. These contributions will appear in the discussion section.

Conclusion

I will draft my literature review and methodology in 2019, go to the field in 2020 and finish my thesis in 2021. As such, I will complete my project during the award tenure. During the tenure, I will also report my results via conferences, journals and other outlets. I will defend my thesis before obtaining the degree.