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# CANADA'S greenwashing AMENDMENT

## A failure of process and policy

February 2025

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Chambre de Commerce du Canada

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## Executive summary | *sommaire*

On April 30, 2024, the House of Commons Standing Committee on Finance pushed through a late-stage amendment to the *Competition Act* under *Bill C-59: The 2023 Fall Economic Statement*. The "greenwashing amendment," as it has come to be known, has had a dramatic silencing effect on the many businesses and associations across the country that want to communicate their environmental goals. The amendment has provided consumers with no concomitant benefits and should be repealed in its entirety.

In combination with other changes to the *Competition Act*, the greenwashing amendment – implemented under the pretence of combatting deceptive marketing practices and protecting the public from corporations that seek to mislead citizens about their "green" bona fides – imposes a host of ill-conceived provisions, including:

- Demanding that people or companies that make environmental claims prove their assertions based on an "internationally recognized methodology." The amendment does not define that methodology – and for some products it may not even exist.
- Applying a reverse onus of proof, which could expose companies and those subject to the *Competition Act* to large costs even from frivolous or mischievous complaints.
- Enabling "rights of private action," which allow environmental activists and climate advocacy groups, as well as consumers, business competitors, or even disgruntled employees, to file complaints. Previously, only businesses whose operations were directly affected by another's alleged anti-competitive conduct could bring a private action.
- Applying punitive fines, up to $10 million for a first offence or 3 per cent of the corporation's annual worldwide gross revenues, whichever is greater. For a large oilsands company – the obvious target of the amendment – that could mean fines of over a billion dollars.

Further, the amendment applies not just to consumer products, but to business activities, which takes it far outside the mandate of Competition Bureau Canada. It

encompasses representations made to investors, regulators, financial institutions, shareholders, and even governments. There are implications for organizations that don't even offer products or services to consumers.

The amendment passed with virtually no debate, no opportunity for consultation with stakeholders, and no fulsome discussion in the ordinary course of parliamentary procedure. It had immediate and negative repercussions on Canadian businesses and industry associations across dozens of sectors.

This paper describes how the amendment came about – and its subsequent fallout. It explains how such a consequential and controversial legislative change could be made without due process or input from Canadians.

It identifies the most damaging features of the greenwashing amendment and documents the many criticisms of the amendment that followed. Those criticisms come not only from oil and gas companies and industry associations, but from across the political and business spectrum including from the Alberta NDP, Green Party leader Elizabeth May, Environment and Climate Change Canada officials, and many other groups that favour high environmental standards but not the greenwashing clause.

The paper outlines Canada's approach to greenwashing claims, including the many processes and standards that run parallel to or even contradict the greenwashing amendment. It compares Canada's approach with that of its peers in the United Kingdom, United States, European Union and Australia.

There may be ways for Canada to mitigate the uncertainty, risk, greenhushing, and other negative impacts wrought by the amendment introduced in Bill C-59. However, this paper does not propose such fixes. The amendment is so flawed, and its inclusion in competition law so aberrant, that the authors' recommendation is that it be repealed. MLI

*Le 30 avril 2024, le Comité permanent des finances de la Chambre des communes a procédé à l'adoption tardive d'un amendement à la* Loi sur la concurrence *dans le cadre du* projet de loi C59 : Énoncé économique de l'automne 2023. *L'« amendement relatif à l'écoblanchiment », tel qu'il est désormais désigné, réduit au silence les nombreuses entreprises et associations du pays qui aspirent à promouvoir leurs objectifs environnementaux. L'amendement ne confère aux consommateurs aucun avantage concomitant et doit être abrogé.*

*En conjonction avec l'ensemble des modifications apportées à la* Loi sur la concurrence*, l'amendement – mis en œuvre sous prétexte de combattre les pratiques commerciales trompeuses et de protéger le public des allégations mensongères des entreprises en matière d'écoresponsabilité – impose de nombreuses mesures inappropriées, notamment les suivantes :*

- *L'exigence stipulant que les déclarations environnementales des individus et des entreprises doivent être fondées sur des preuves obtenues par une « méthode reconnue à l'échelle internationale ». L'amendement ne précise pas la méthode, laquelle peut même ne pas exister dans certains cas.*
- *L'application d'une disposition d'inversion du fardeau de la preuve. La disposition peut engendrer des coûts importants pour les entreprises et autres acteurs visés par la* Loi sur la concurrence*, et ce, même en présence de plaintes frivoles ou malveillantes.*
- *L'autorisation du « droit aux recours privés ». Le recours privé permet aux militants écologiques et aux groupes d'action sur le changement climatique, aux consommateurs, aux concurrents et même aux employés insatisfaits de soumettre des plaintes; auparavant, seules les entreprises directement touchées par le comportement anticoncurrentiel présumé d'une autre entreprise pouvaient intenter un recours privé.*
- *Des sanctions punitives susceptibles d'atteindre 10 millions de dollars pour une première infraction ou 3 % des recettes annuelles mondiales brutes de l'entreprise, le montant le plus élevé étant appliqué. Pour une grande entreprise du secteur des sables bitumineux – la cible manifeste de l'amendement – l'amende pourrait excéder un milliard de dollars.*

*De surcroît, l'amendement touche à la fois les produits de consommation et les activités commerciales, dépassant ainsi largement le champ d'action du Bureau de la concurrence du Canada. Il englobe les déclarations destinées aux investisseurs, aux organismes de réglementation, aux institutions financières, aux actionnaires et même aux gouvernements. Il impacte même les organisations sans produits ou services pour les consommateurs.*

*L'amendement a été adopté pratiquement sans débat ni consultation des parties prenantes et sans une discussion approfondie dans le cadre de la procédure parlementaire ordinaire. Il a eu des répercussions immédiates et défavorables sur les entreprises et les associations industrielles canadiennes dans des dizaines de secteurs.*

*Ce document décrit l'origine et les effets de l'amendement. Il explique de quelle manière une modification législative majeure et controversée a pu été apportée sans procédure formelle ni participation des Canadiens.*

*Il présente ses caractéristiques les plus nuisibles et recense les nombreuses critiques à son encontre. Ces critiques émanent non seulement des entreprises pétrolières et gazières et des associations industrielles, mais aussi de l'ensemble de l'échiquier politique et commercial, notamment le Nouveau Parti démocratique de l'Alberta, la cheffe du Parti vert, Elizabeth May, de représentants d'Environnement et Changement climatique Canada et de nombreux autres groupes prônant des normes environnementales rigoureuses, tout en s'opposant à la disposition sur l'écoblanchiment.*

*Ce document expose l’approche canadienne en matière d’allégations d’écoblanchiment, en incluant les multiples processus et normes parallèles ou en contradiction avec l’amendement. Il compare le Canada à ses pairs au Royaume-Uni, aux États-Unis, dans l’Union européenne et en Australie.*

*Le Canada dispose peut-être de moyens pouvant atténuer l’incertitude, le risque, l’écosilence et les autres effets négatifs de l’amendement apporté au projet de loi C59. Toutefois, ce document n’offre pas de telles solutions. L’amendement présente des vices si manifestes, et son intégration dans le droit de la concurrence apparaît si déconcertante, que les auteurs préconisent son abrogation sans réserve.* MLI

## Introduction

On April 30, 2024, the House of Commons Standing Committee on Finance (FINA) accepted a late-stage amendment to the *Competition Act* under *Bill C-59: The 2023 Fall Economic Statement*. The 546-page omnibus bill had already passed second reading in the House of Commons and FINA had completed its study of the bill. It was under clause-by-clause review on the final day in committee when the Bloc Quebecois, supported by the NDP and Liberals, moved a last-minute amendment.

The amendment, ostensibly to address misleading environmental claims (or "greenwashing"), was voted on less than 20 minutes later, with virtually no debate, no opportunity for consultation with stakeholders, and no fulsome discussion in the ordinary course of parliamentary procedure. The change, which became law one month later, made significant changes to the *Competition Act* under the pretence of combatting deceptive marketing practices and protecting the public from greenwashing. It had immediate and negative repercussions on Canadian businesses and industry associations across dozens of sectors.

The greenwashing amendment became a totem in the culture war between environmental activists and their supporters, and fossil fuel producers and theirs, and with much of the analysis and opinions delivered though this narrow lens. This paper seeks to go beyond the talking points and headlines to describe the process by which it became law and the impact it has had since then.

In the first section, we describe the making of the amendment and its subsequent fallout. We outline how federal politicians made such a consequential and controversial legislative change without due process or input from Canadians.

We then identify the most ill-conceived features of the greenwashing amendment: its application to business activities as opposed to just consumer products; the punitive fines; the reverse onus; the private rights of action; and the undefined methodology for substantiation.

And finally, we document the many criticisms of the amendment, which come not only from oil and gas companies and industry associations, but also the Alberta NDP, Green Party leader Elizabeth May, Environment and Climate Change Canada officials, and many other groups that favour high environmental standards, but not the greenwashing clause.

> *The late-stage greenwashing amendment has had a dramatic silencing effect on many businesses and associations across the country.*

In the second section, we outline Canada's approach to greenwashing claims, including the many processes and standards that run parallel to or even contradict the greenwashing amendment; and we compare the Canadian approach with those of its peers in the United Kingdom, the United States, the European Union, and Australia.

We argue that the late-stage greenwashing amendment has had a dramatic silencing effect on the many businesses and associations across the country that want to communicate their environmental achievements and goals. We subsequently recommend that the federal government repeal the amendment in its entirety.

Any future attempt to improve transparency in environmental claims should include proper consultation with industry and the public, and strike a balance between protecting consumers and businesses from greenwashing on the one hand, and overregulation, censorship, and greenhushing (muting claims of environmental accomplishments) on the other. The C-59 greenwashing amendment is a perfect example of how not to advance climate goals.

## What is greenwashing?

Environmentalist Jay Westerveld coined the term "greenwashing" in a 1986 magazine (Becker-Olsen and Potucek 2013). The term referred to a hotel policy he observed that encouraged guests to reuse their towels in order to "save the environment." In reality, he surmised, it was a policy aimed at manipulating customers' environmental sensibilities to reduce the hotel's laundry costs.

Environmentalist groups have long had greenwashing tactics in their crosshairs, seeing them as ploys by corporations to mislead the public into thinking they are doing more to protect the environment than they really are. The groups' efforts have led to legitimate advances to safeguard the interests of consumers and other stakeholders.

In recent years, however, these efforts have turned into something more ideological and insidious. Following the 2015 Paris Agreement, many corporations, including oil and gas companies, began to acknowledge in a more public way their role in a changing climate. They increasingly made commitments aligned with ESG (environmental, social, and governance) goals to reduce their emissions and other environmental impacts, and spoke of ways in which they were seeking to be a part of the solution, rather than the problem.

For many environmental activists – for whom action on climate change had come to be equated with eliminating fossil fuel production – this was enraging. As United Nations Secretary-General António Guterres said in 2022:

> Let's tell it like it is. Using bogus "net-zero" pledges to cover up massive fossil fuel expansion is reprehensible. It is rank deception. This toxic cover-up could push our world over the climate cliff. The sham must end. (Guterres 2022)

Efforts to address greenwashing globally took a more authoritative turn with the establishment by Guterres of a "High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities" on March 31, 2022, "to develop stronger and clearer standards for net-zero emissions pledges by non-State entities – including businesses, investors, cities, and regions – and speed up their implementation" (United Nations 2022).

He appointed Catherine McKenna, Canada's former minister of environment and climate change, as its chair.

The expert group concluded its mandate and launched its report, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions,* at the UN Climate Conference (COP27) in Sharm-el Sheikh, Egypt, on November 8, 2022.

McKenna's chair's note highlighted several recommendations, including the following:

- Non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply. Coal, oil, and gas account for over 70 per cent of global greenhouse gas emissions. Net Zero is entirely incompatible with continued investment in fossil fuels.
- Non-state actors cannot buy cheap carbon credits or offsets that often lack integrity instead of immediately cutting their own emissions across their value chain.
- Non-state actors cannot focus on reducing the intensity of their emissions rather than their absolute emissions or tackling only a part of their emissions rather than their full value chain (scopes 1, 2 and 3).
- Non-state actors cannot lobby to undermine ambitious government climate policies either directly or through trade associations or other bodies (Expert Group 2022, 7).

These recommendations are radical departures from mainstream climate policy in democratic societies. They seek to ban investment in oil, gas, and coal, which together comprise 81 per cent of total energy supply for humanity; make non-state entities responsible not only for their own direct and indirect emissions – scopes 1 and 2 – but also for the scope 3 emissions of all users of their products which, practically speaking, are impossible to measure with accuracy and not within any corporation's control; remove the option of carbon credits, which have become foundational to carbon-pricing mechanisms in Canada, the United States, Europe, and elsewhere; and remove the right to lobby, subverting the freedoms of opinion, expression, and association protected in the Universal Declaration of Human Rights that was passed by the UN in 1948, not to mention countless other charters and constitutions.

To give these ambitious and controversial recommendations teeth, McKenna finally recommended that "non-state actors need to move from voluntary initiatives to regulated requirements for net zero... This is why we call for regulation starting with large corporate emitters including assurance on their net zero pledges and mandatory annual progress reporting" (Expert Group 2022, 7).

This served as a rallying cry for Canadian environmental groups and the Competition Bureau, which took up the charge to turn the Expert Group's recommendations into law in Canada.

## Competition Bureau Canada and greenwashing

At the same time as greenwashing was getting more attention at the United Nations, the Competition Bureau Canada began to become more invested in the issue as well. During Canada's 2020–21 presidency of the International Consumer Protection Enforcement Network (ICPEN), a membership organization of consumer protection law enforcement authorities from around the world of which the Competition Bureau is a member, the UK's Competition and Markets Authority (CMA) and The Netherlands' Authority for Consumers and Markets (ACM) led the ICPEN's annual sweep of websites. Its goal is to give consumer authorities across the world the opportunity to target fraudulent, deceptive, or unfair conduct online.

For the first time, the sweep that year focused on misleading environmental claims. Its review of randomly selected websites suggested that 40 per cent of green claims made online could be misleading consumers (Competition and Markets Authority 2021a).

Citing the ICPEN review, the Competition Bureau Canada put out a press release in January 2022 warning Canadians to be "on the lookout for greenwashing." Noting that with an increase in "green" products, there had been a concomitant increase in false, misleading, or unsupported environmental claims, the Competition Bureau warned that greenwashing "can take many forms, including claims, adjectives, colours, and symbols used

to create an impression that a product or service is 'greener' than it really is." It reiterated that this is "illegal" in Canada (Competition Bureau Canada 2022a). (Environmental groups later said that the use of the colours blue and green, and images such as clouds, were examples of oilsands greenwashing; see ReClimate 2024).

> *Competition Bureau Canada put out a press release in January 2022 warning Canadians to be "on the lookout for greenwashing."*

Subsequently, Competition Bureau Commissioner Matthew Boswell actively advocated for more expansive powers by which to investigate greenwashing claims. In a letter to the members of the House of Commons Standing Committee of Finance, dated March 1, 2024, Boswell expressed his qualified support for an initial proposed greenwashing amendment (described below), but suggested additional amendments were necessary to "further strengthen the bill."

Boswell described the initial amendment as "a limited change that is more in the vein of clarifying the law than expanding it." He sought a bigger role for the Competition Bureau than that. Noting that a "significant portion of the greenwashing complaints the Bureau receives do not involve claims about products [emphasis in original], but rather more general or forward-looking environmental claims about a business or brand as a whole" Boswell subsequently requested the committee study "whether the reverse onus approach to greenwashing claims could eventually be expanded to require that all environmental claims made to promote a product or business interest be supported by adequate and proper substantiation" (Boswell 2024). Boswell would get his wish.

## The greenwashing amendment

On November 21, 2023, then Finance Minister Chrystia Freeland delivered the federal government's Fall Economic Statement. Included was a commitment to introduce "generational changes" to competition law in Canada that would "enhance protections for consumers, workers, and the environment, including by prohibiting misleading 'greenwashing' claims and improving the focus on worker impacts in competition analysis" (Department of Finance 2023). The federal government had already hosted an extensive public consultation on competition policy in the year previous; on the topic of greenwashing it concluded that "stakeholders were fervent in wanting to see additional and more prescriptive measures" (ISED 2023).

The specific amendment to address greenwashing, introduced on November 30, 2023, in the omnibus *Bill C-59 An Act to Implement Certain Provisions of the Fall Economic Statement,* would add a new provision to s. 74.01 (1) of the *Competition Act* to make a person subject to "reviewable conduct" if they:

> 236 (b.1) [make] a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting the environment or mitigating the environmental and ecological effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation… (the "products amendment").

Critically, this initial amendment only applied to *products*. It did not, then, apply to representations by companies about their goals or the nature of their operations.

This disappointed environmental non-governmental organizations (as well as the Competition Bureau Commission, as outlined above) who were seeking more robust measures to be able to constrain oil and gas companies. They swung into action.

One week after C-59 had first reading, on December 7, 2023, Greenpeace and the Canadian Association of Physicians for the Environment (CAPE) launched a report titled the *Fossil Fuel Deception Playbook*, which included a toolkit to help consumers report greenwashing to the Competition Bureau (Greenpeace 2023).

CAPE, the Quebec Environmental Law Centre (CQDE), Ecojustice, and Équiterre jointly submitted a briefing note in December 2023 to Parliament, asserting that the initially proposed amendment in C-59 would not "effectively address greenwashing." They included suggested legislative language to amend it (CAPE et al. 2023). Their first recommendation was related to the products versus activities distinction: "The proposed amendment in s.236 only requires 'adequate and proper tests' for environmental claims about products, but not necessarily for environmental claims about an activity, brand, or entity." They recommended Parliament "amend s.236 to include all environmental claims" (CAPE et al. 2023).

CAPE, led by its Executive Director Sabrina Bowman, subsequently had five meetings with NDP MP Charlie Angus between December 12, 2023, and January 30, 2024, before going on to meet with 25 other separate MPs between February 6, 2024, and March 27, 2024 (Office of the Commissioner of Lobbying of Canada 2024).

### The late-stage amendment

Following this extensive lobbying, the Bloc Quebecois introduced a late-stage amendment to the *Competition Act* under Bill C-59 that the House of Commons Standing Committee on Finance (FINA) agreed to on division on April 30, 2024.

The 546-page omnibus bill had already passed 2nd reading in the House of Commons, FINA had completed its study of it, and it was under clause-by-clause review when Bloc Quebecois MP Gabriel Ste-Marie introduced the additional amendment that expanded the products amendment that had already been debated. NDP and Liberal committee members also supported the new amendment. There was no opportunity for consultation with stakeholders and no fulsome discussion in the ordinary course of parliamentary procedure took place (FINA 2024).

The broadened amendment added an entirely new section under s. 74.01(1) (b.2) of the *Competition Act*:

> s. 74.01(1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

.....

> (b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation; ("the late-stage amendment").

### *What the amendment changed*

The late-stage amendment applies broadly to anybody making a representation about a business or business activity that relates to the environment. Although the prohibition is under the *Competition Act* and should normally have something to do with the purpose of the Act – i.e., consumers and competition – the amendment goes much further. It is not limited to protecting consumers from false advertising in the traditional sense; it captures much more.

It covers what a company, or its employees or representatives, can say to investors, financial institutions, stakeholders, business partners, and even regulators and governments. It includes what businesses say in their sustainability reports, how they talk about environmental targets and aspirations, and even catches what is said on social media. It applies to businesses that don't offer services or products to the public, and includes industry and business associations, as well as advocates.

The new section regulates and impacts almost every sector of the Canadian economy. Under the late-stage amendment, environmental representations do not even have to be false or materially misleading to be actionable. A communication can be true but still be illegal unless it can be substantiated in accordance with an "internationally recognized methodology," which may or may not even exist, and at any rate was not defined.

The late-stage amendment also has a reverse onus of proof: this means that the person or company making a representation, not the Bureau or the complainant seeking a review, must be able to prove that it is based on an internationally recognized standard. This is a reversal of the onus of proof that normally rests with the complainant. This matters because it exposes companies

and persons subject to the *Competition Act* to large costs arising from frivolous and mischievous complaints.

To compound matters, other *Competition Act* amendments included provisions that broaden who can bring a private action before the Competition Tribunal to prosecute deceptive marketing allegations. Previously, only businesses whose operations were directly affected by another's alleged anti-competitive conduct could bring a private action. These recent changes will, starting in June 2025, allow private rights of action for the public, including environmental activists and climate advocacy groups, as well as consumers, business competitors, and even disgruntled employees.

> *The greenwashing amendment exposes companies and persons subject to the* Competition Act *to large costs arising from frivolous and mischievous complaints.*

Finally, companies found in breach of the Act now face massive new penalties: up to $10 million for a first offence or three times the value of the benefit derived from the deceptive conduct, or if that amount can't be determined, 3 per cent of the corporation's annual worldwide gross revenues, whichever is greater. For a large oilsands company – the obvious target of the amendment – that could mean fines of over a billion dollars.

The late-stage amendment created instant pandemonium in the business community as industry associations scrambled to determine the amendment's implications and what, if any, opportunities there were for recourse. The Senate still needed to pass the omnibus bill, but time was ticking on passage of both C-59, which was to implement the 2023 fall Economic Statement, and C-69, which was to implement the 2024 budget, before the House rose for the summer. The government was intent on pushing those bills through.

A handful of business groups were able to make it onto the Senate National Finance Committee witness list. The Canadian Chamber of Commerce presented testimony articulating that:

> (...) the proposed amendments are excessively broad and represent a significant shift from the traditional scope of competition law. Our diverse membership is justifiably concerned about the uncertainty introduced by the new, inherently vague standard. This standard could impact any company making public statements or warranties regarding environmental and climate change matters... we recommend that the Senate withdraw the amendment (Senate of Canada 2024).

The response came from Senator Elizabeth Marshall:

> Thank you very much to the witnesses for being here today. I understand the concerns that you have and also those of your membership. But being realistic, I don't think that these amendments are going to change. I think what you see will be the final version or pretty close to it (Senate of Canada 2024).

The change became law when C-59 received Royal Assent on June 20, 2024, alongside seven other bills that day, following the House's final sitting.

### *The fallout*

There are many reasons why governments introduce late-stage amendments. Regardless of the reasons, the result is often the same: confusion, uncertainty, questions about the government's motivation, and unintended consequences.

In the case of the late-stage greenwashing amendment, the fallout was immediate and dramatic. Pathways Alliance, a consortium of large oilsands companies, took down its entire website, saying in a statement:

> These amendments create significant uncertainty and risk for all Canadian companies regardless of sector, which communicate publicly about environmental performance, including actions to address climate change. As a result, we have been forced to remove information on environmental and climate performance, progress, and plans from our websites, social media platforms and other communications channels at this time... These actions are a direct consequence of this legislation and are not related to our commitments or belief in the accuracy of our environmental communications (Pathways Alliance 2024).

Many other industry groups and companies took down information as well (Scace 2024). Minister of Energy and Natural Resources Jonathan Wilkinson said it was a "gross overreaction" (Graney 2024). Environmental groups, many of whom took credit for the amendment and claimed it as a victory (see e.g., Stewart 2024), derided such moves as evidence that these industry groups had lies on their websites that the greenwashing bill successfully made illegal.

In fact, lawyers around Calgary were advising clients to remove any environmental claims given the enormous risks and lack of information in the new *Competition Act* on application and enforcement. And it was not just the oil and gas sector; uncertainty and risks wrought by the amendment raised concerns across multiple sectors including agriculture and agrifood, chemistry, forestry, mining, construction, manufacturing, the financial sector, and especially businesses pursuing low carbon and energy transition projects and technologies.

The Competition Bureau, flooded with questions, provided "high-level tips to help businesses make sure that, when it comes to environmental claims, they stay on the right side of the law" (Competition Bureau Canada 2024a). Amongst its advice:

- *Be truthful, and not false or misleading*: "An environmental claim might be literally true, but still create a false or misleading general impression about an environmental benefit."
- *Ensure claims are properly and adequately tested*: "Recently enacted changes to the law add additional requirements for adequate and proper testing of certain kinds of environmental claims. The Bureau will provide further guidance regarding this new provision."
- *Avoid aspirational claims about the future:* "It is commendable when well-intentioned businesses set aggressive goals and timelines about future environmental performance. However, there is a significant risk that these claims might become greenwashing."

In other words: factuality is not sufficient; claims must be properly tested but no guidance on what that entails is available; and talking about environmental goals for the future is verboten.

The Competition Bureau also launched a two-month public consultation process to gather input for further guidance.

### *Consultation, after the fact*

Following the proclamation of Bill C-59 in June 2024, the Competition Bureau opened up consultation after the fact, focusing on how to provide guidance and clarification on things such as the "internationally recognized methodology" test under s. 74.01(1) (b.2). This resulted in 208 submissions from the public, most of which raised serious concerns.

The organizations with most at stake – the Canadian Association of Petroleum Producers, Business Council of Alberta, the Canadian Gas Association, and oil and gas companies – entered into the record their grave concerns with the greenwashing amendment.

But many non-fossil fuel organizations also made submissions highlighting the problems with the amendment, such as the Canadian Paint and Coatings Association, the Canadian Canola Growers Association, and Ducks Unlimited Canada. Avatar Innovations, a leading clean technology developer and venture capital fund, highlighted how the amendment adversely affected their sector – presumably the opposite of the intended effect:

> Bill C-59 imposes another layer of compliance on Canadian clean technology start-ups, a burden not faced by innovators in other jurisdictions...
>
> Most clean technologies have not yet reached commercial scale. Moving from lab to pilot to commercial scale requires assumptions about environmental benefits, but the absence of internationally recognized standards for scaling emerging technologies leaves Canadian cleantech innovators at a competitive disadvantage...
>
> The bill risks significantly chilling innovation and investment in Canada's cleantech sector (Avatar Innovations 2024).

Even progressives raised concerns with the greenwashing amendment. Naheed Nenshi, writing on behalf of the Alberta NDP, stated that:

> It appears that the federal government is targeting Canada's energy sector with this initiative. This is not only unneeded, but fundamentally unjust. These amendments will have far-reaching consequences across all industries, not just the energy sector,

> and will actually make it more difficult for industry to make the investments required to reduce emissions.
>
> For that reason, our preference is that these provisions be repealed in their entirety (Nenshi 2024).

Elizabeth May, the leader of the federal Green Party, called into question the need for the provisions at all, and thoughtfully highlighted the unintended consequences for the environmental movement:

> Based on the scope of the existing *Competition Act*, the proposed provisions in this consultation are not necessary.
>
> The existing rules on product advertising and truth in advertising are sufficient. I am concerned that by focusing on greenwashing, the government is opening space for criticism that this is a policy with special rules targeting fossil fuel corporations.
>
> When I hear the use of the term "woke" to describe paper straws, I worry that the issue of single use plastics and the environmental threat they represent is distorted. In the same way "greenwashing" may invite similar derisive commentary. Using the tools we have is likely to be more effective in cracking down on those who mislead for profit.
>
> False product advertising by fossil fuel corporations must be regulated, but this is already achieved by the current legislation (May 2024).

The Competition Bureau committed to offering compliance guidance based on the greenwashing amendments and launched a public consultation in June 2024. It released that much-anticipated guidance on December 23, 2024 (Competition Bureau 2024b), but offered little to address the very real concerns addressed in the consultation.

The bureau gave little assurance to businesses looking for certainty on how to comply with the vague "Internationally Recognized Methodology" test. Rather, it committed that it would "*likely* consider a methodology to be internationally recognized if it is recognized in two or more countries." Companies are no doubt looking for something more than "*likely*" when faced with massive fines and reputational damage for non-compliance. The bureau's draft guidelines were ambiguous and non-committal, noting that

methodologies to substantiate environmental claims required or recommended by the Canadian government are "*assumed*" by the bureau to be consistent with internationally recognized methodologies. But that assumption itself came with a disclaimer: "that businesses should still exercise due diligence to ensure that the methodology is 'internationally recognized.'"

The draft guidelines also clarified that the bureau would focus its enforcement on representations made in marketing and advertising materials and not on "representations made for a different purpose, such as to investors and shareholders in the context of securities filings." If, however, those filings and information are used in any sort of marketing or promotion, the new greenwashing provisions will be enforced. In addition, the bureau could not assure that its narrower focus would in any way limit what private litigants can do when the right to private action provisions comes into force in June 2025. Private litigants looking to pursue lawfare may not be inclined to limit their lawfare to advertisements about consumer products.

## An unnecessary amendment

The federal government's approach to addressing greenwashing – a late-stage amendment without corresponding guidance moved at the very last minute in parliamentary procedure at the behest of a small group of environmental NGOs without any consultation with industry or the broader Canadian public – is emphatically not the best way to approach the issue.

However, no one denies that there are examples of deceptive marketing practices around environmental claims from which the public deserves transparency and accountability. Concomitantly, jurisdictions around the world have been taking steps to address deceptive marketing practices and greenwashing.

Government approaches have tended to address the greenwashing problem in various ways, including (1) enhancing consumer protection legislation; (2) enacting voluntary or mandatory disclosure laws regarding ESG requirements; and (3) addressing the wording of regulations to standardize common language regarding environmental sustainability.

Canada is no exception and, in addition to *Competition Act* rules to protect consumers from deceptive marketing of products, has existing and developing reporting frameworks to guide how corporations disclose ESG and sustainability information to investors. These frameworks include the Sustainability Accounting Standard Board (SASB), the International Sustainability Standards Board (ISSB), the Taskforce on Climate-Related Financial Disclosure, and the Global Reporting Initiative (GRI). Duplicative and unnecessary changes to address the same issues under consumer protection legislation were not warranted.

Not only was the late-stage amendment unnecessary and duplicative, but it is also at odds with the purpose of the *Competition Act* itself. The *Competition Act* has historically been focused on protecting consumers and ensuring that there is competition among businesses. Under s. 1 of the legislation, the purpose of the *Competition Act* is to:

> … maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

In fact, the consumer protection framework under the existing legislation was serving its purpose, as even Green Party leader Elizabeth May, noted. Civil and criminal law provisions, coupled with extensive case law, had proved more than sufficient to deal with greenwashing in the context of the *Competition Act*.

Indeed, the Competition Bureau had successfully settled such cases in recent years, including the Volkswagen settlement agreement of up to $2.1 billion for falsely promoting clean diesel engines with reduced emissions (Competition Bureau Canada 2016) and the Keurig settlement agreement with a penalty of $3 million for falsely claiming recyclability of single-use coffee pods (Competition Bureau Canada 2022b).

If the system was working to protect consumers and ensuring competition, why was the late-stage amendment put in place?

It is abundantly clear that the amendment moves the *Competition Act* towards unfamiliar territory. This broadening of scope is the result, not of sound processes to improve deficiencies in regulation, but of advocacy by environmental activists seeking to expand competition law to accomplish their broader social and policy objectives.

EcoJustice and CAPE (2023) advocate for and believe that "protection of the environment, addressing climate change, as well as protecting and advancing human rights are objectives that the *Competition Act* is able to advance." They assert that competition law can and should assist in the transition to a sustainable economy, but changes in purpose and direction of the existing law would be required to do that. That is why climate activists also advocate for changing the *purpose* clause of the *Competition Act* to "ensure the *Act* promotes sustainability and advances environmental, health, climate, and social objectives" (EcoJustice and CAPE 2023).

Of note, the late-stage amendment was moved shortly after an article appeared from the Canadian Bar Association that quoted the United Nations Expert Group chair, Catherine McKenna, who is also a competition lawyer:

> This isn't one or two cases of misleading advertising. This is an industry that has been lying about the fact that fossil fuels cause climate change for decades. It's a trend for the industry that wants to continue burning its products while people pay the price… And now they're in a different phase, where they're trying to create the perception that they're part of the climate solution, when they're actually a major part of the problem (Lake 2024).

The late-stage *Competition Act* amendment also came just over two months after NDP MP Charlie Angus tabled Bill C-372, *The Fossil Fuel Advertising Act*, on February 5, 2024. The NDP bill proposed a ban on promoting fossil fuels in a similar manner to the 1990s ban on tobacco advertising. The bill faced strong criticism and derision, and some raised concerns about its constitutionality. It met the fate of most private member's bills, which was to die on the order paper.

Seen in this light, the late-stage amendment to the *Competition Act* should not be viewed as a change in order to better address concerns with greenwashing and false and misleading advertisement. It is not about protecting consumers and competition.

The amendment itself is awkwardly placed in the *Competition Act*, the wording is without precedent, and the prohibition goes beyond catching communications aimed at the consumer. It covers representations made to investors, regulators, financial institutions, shareholders, and even governments. It applies to businesses that don't even offer products or services to customers. It targets what companies can say to a wide body of audiences about their operations and their environmental and sustainability accomplishments and goals. And, looking under the hood, it is a step towards a *de facto* ban on advocacy, lobbying, and fulsome participation in public policy debates by interests representing fossil fuel companies.

*The amendment seems to suggest that it is appropriate for governments to solve a problem by stopping anyone with opposing views from talking about alternatives.*

This is quite astonishing, and reflects the view by some environmental advocates that protecting consumers from false and misleading *advertising* is not enough. The real problem to address is fossil fuel *advocacy* that suggests that fossil fuels can still have a role in a world that must achieve net-zero to address climate change. The problem with that view, however, is the obvious connection to censorship and freedom of speech. Nothing is more directly a breach of the right to freedom of expression than banning the ability to participate in the development of public policy.

The amendment seems to suggest that it is appropriate for governments to solve a problem by stopping anyone with opposing views from talking about alternatives. Although the easiest way to win an argument might be to silence the voices and opinions of those who think differently, it is never the best way to develop public policy.

It is our view that the late-stage amendment, together with earlier amendments, create onerous risk with enormous penalties that have as their goal to accomplish indirectly what is difficult to do directly: create a *de*

*facto* ban on advertisement, advocacy, and participation in the public policy process for the fossil fuel sector. No amount of guidance or clarification from the Competition Bureau can fix these underlying issues with Bill C-59's greenwashing amendment. Our view is that other legislation and policies are better suited to address legitimate social and environmental objectives.

## *Unintended consequences*

In addition to concerns about freedom of speech and censorship, it is our view that the rushed late-stage amendment, together with its threat of large fines, a reverse onus, private rights of action, and uncertain tests, are causing and will continue to cause adverse impacts on almost every sector of the economy, far beyond fossil fuel companies. Rushed legislation, absent the ability to thoroughly debate and assess alternatives and potential outcomes, almost inevitably leads to such unintended consequences. In this case, the unintended consequences are serious, should have been anticipated, and must be addressed.

### a. Uncertain tests and risk will lead to "greenhushing"

We are concerned that Bill C-59 is leading to "greenhushing," and that companies and associations are declining to speak about their environmental performance or climate strategies because they fear financial and reputational risk if they are reviewed under the *Competition Act*. While there is not a standard definition of greenhushing, it is generally understood to be when a company intentionally or unintentionally withholds or underreports positive information regarding sustainability, environmental and climate accomplishments, and climate goals, for fear of backlash.

Section 74.01(1) (b.2) of the *Competition Act* now prohibits communication regarding environmental benefits and climate change impacts unless the representation can be shown to be in accordance with an "internationally recognized methodology" (IRM). The Competition Bureau's draft guidelines, which it published in December 2024, do little to provide clarity regarding what this means, suggesting only what is *likely* to meet the test. This does not give adequate assurance to companies and leaves the door open for others to suggest that the appropriate standard to meet is the onerous anti-fossil fuel recommendations contained in McKenna's United Nations High Level Expert Group report *Integrity Matters.* These are the same basic

principles that the environmental NGOs who successfully advocated for the amendment in the first place are pushing (see, e.g., EcoJustice and CAPE 2024)

By adopting such a vague standard, and one that is likely to evolve over time, companies face enormous uncertainty and risk. The risk is further amplified by the companies' exposure to the huge penalties of $10 million or 3 per cent of annual worldwide gross revenues (whichever is higher), together with a reverse onus and private rights of action.

The types of communication and representations captured by s. 74.01(1)(b.2) include almost anything said or written about the goals of a business or industry. It covers words and concepts related to climate goals like carbon neutral, net zero, carbon footprint, decarbonize, lower emissions, offsets and credits; words like conservation, clean, recyclable, biodegradable, clean, green, and sustainable; as well as biodiversity goals, water management, clean air, and virtually anything that can be positively said about the environment. It doesn't matter if what is said is true or can be backed up. What matters under the *Competition* Act is that it meets a vague IRM.

The understandable end result is that companies cannot and will not take that risk. By talking about environmental goals, strategies, and performance, companies now face the risk of being targeted by not only environmental activists, but also by competitors and disgruntled employees.

For these groups, applying for a Competition Tribunal review of a company or its claims is far simpler than commencing a class action or litigating through the courts. In the courts, the complainant bears the burden of proof and must go through a process that is costly, time-consuming, and bears cost implications if the court dismisses the claim. Frivolous claims are therefore not very likely. Under a *Competition* Act review, however, the burden of proof shifts to the company. There are minimal cost risks to the complainant, and the process for the complainant is less onerous. It is very likely that this review process will increase the number of claims brought by environmental groups and others; indeed, that is its intention. The strategy has a name: lawfare.

There is already reason to believe that some groups are building cases for greenwashing claims, reviewing company websites, scrutinizing statements, examining corporate presentations, and monitoring public comments in preparation for 2025 when the private right of action provisions come into force (see, e.g., Alberta Wilderness Association 2024).

The consequence of this profound risk is that many companies will be greenhushed, unable or unwilling to talk about their environmental goals and performance. This not only applies to traditional industries such as oil and gas, chemistry, forestry, and agriculture, but also to renewable and new industries pursuing hydrogen, critical minerals, sustainable aviation fuel, and biofuels.

In fact, Bill C-59 may have a more severe impact on clean innovation and developing technology companies than on tradition oil and gas companies. This is because early stage start-ups might be developing technologies that are first-of-kind, so they will have no ability to identify an "internationally recognized methodology." Likewise, start-ups have fewer resources to deal with complex regulations that create additional reporting requirements (see Avatar Innovations 2024). Unfortunately, the result is counter-productive to the federal government's strategies to support new and emerging technologies (e.g., Hydrogen Strategy for Canada, Canadian Critical Minerals Strategy, Canada's Aviation Climate Plan).

The greenhushing impact will hit the energy sector particularly hard, preventing the oil and gas industry from speaking about efforts to lower emissions through carbon capture, technology, and innovation. It will tilt the balance in favour of those advocating to phase out fossil fuels, those who oppose carbon capture, and those who oppose any role of natural gas as a bridge fuel to replace coal in power generation. One side of the debate will be placed at a legal disadvantage and silenced, leaving a void in public policy advocacy and discussion about policy choices and alternatives.

Perhaps the most profound evidence that the amendments are already leading to greenhushing comes from officials with Environment and Climate Change Canada (ECCC), who, in their submission to the Competition Bureau's consultation, highlighted the risks to Canadian businesses participating in the ECCC's own programs:

> Uncertainty around the announced amendments has led to some challenges for ECCC to encourage companies to voluntary adopt net-zero commitments under the Net-Zero Challenge... Without incorporating a degree of flexibility and an acknowledgment of best efforts based on the latest, most reliable information available to companies, we run the risk of stifling or penalizing commitment and actions in the meantime. In this context, it

may be counterproductive to potentially hamper the ambition of companies and create a situation where they are reluctant to announce well-intentioned aspirational commitments and take real action for fear of legal risk (Hogg 2024).

**b. Uncertainty for companies to set net-zero targets**

Canadian companies are being encouraged to set decarbonization goals and align with Canada's emission reduction targets strategy. The uncertainty surrounding the IRM tests in s. 74.01(1) (b.2) are making it more difficult for businesses to set and communicate goals to reduce emissions or achieve net-zero targets.

Environmental groups advocated for the Competition Bureau to implement strict requirements related to future environmental performance claims like net zero or carbon neutrality (EcoJustice and CAPE 2024). They suggest that the appropriate IRM for net-zero representations should align with the UN High Level Expert Group recommendations for net zero plans, namely, that any net-zero plan needs to:

- Align with and be consistent with the goal of limiting global warming to 1.5 degrees.
- Have interim targets and associated plans to reach the targets for 2025 and 2030.
- Include the full scope of business activities and impacts, including Scope 3 emissions.
- Pledge targets that aim to end the use of and support for fossil fuels.
- Be based on proven methods for emissions reductions, not future unproven or unscaled technologies (United Nations 2022).

These requirements would likely mean that a net-zero plan or any stated climate commitments could not rely on carbon capture and sequestration (CCS) to meet emission reduction targets. It also means that companies would likely not be able to have net-zero plans that involve natural gas for electricity production, even if using CCS. Advocacy for natural gas as a bridge fuel to reduce emissions for coal fired electricity generation would not be acceptable as a means to reduce emissions from coal fired generation.

While the Competition Bureau's draft guidelines released on December 23, 2024, suggest that there are "many" standards that could be accepted as

an internationally recognized methodology for net-zero claims, this doesn't provide a lot of clarity. If what ultimately gets built into an IRM for future climate commitments are in line with the UN guidance as noted above, it is quite likely that companies will simply forego net-zero targets. At some point, the inability to communicate a net-zero ambition that does not fully align with a 1.5-degree target, or relies upon CCS or fossil fuels in any manner, could result in foregoing a target or climate goal altogether. If companies in general forego climate goals and targets, Canada will lose traction in its ability to meet its climate objectives and targets.

### c. Duplicate regulation and over-regulation

Viewed in its entirety, the Bill C-59 amendments appear to represent yet another lever to address climate policy in legislation that politicians designed for different purposes. This is like the *Impact Assessment Act 2019,* where climate tests were incorporated into project-specific environmental assessment legislation (a deed later deemed unconstitutional by the Supreme Court of Canada).

In addition to being part of an extensive web of complex climate regulations, including policies and regulations that Ottawa has developed under the Clean Electricity Regulations, the Oil and Gas Emissions Cap, methane regulations, clean fuel standards, and a mandatory target for 100 per cent zero emission vehicles by 2035, the *Competition Act* amendments duplicate and even contradict other climate and ESG disclosure efforts underway.

For example, the *Competition* Act amendments apply to company communications to shareholders and investors. Canada was already developing investor reporting regimes in Canada prior to the amendments in the *Competition* Act; one such regime includes the Canadian Sustainability Standards Board (CSSB) guidelines. Once those standards are finalized, the tests created in the *Competition Act* will be unnecessary, duplicative, and contradictory.

Given the broad scope of the wording of the *Competition Act* amendments, disclosure that is already legally required under one piece of legislation could potentially trigger a review under the *Competition Act*. This is not only duplication but regulation that puts companies in the untenable position that what they say to meet the requirements of securities legislation could open itself to liability under the *Competition Act*.

Likewise, critics have raised concerns over required communications to regulators and governments related to regulatory approvals, emissions reporting, and information provided for government programs and incentives. These communications required for a different purpose could potentially become grounds for a review under the *Competition Act*.

While the Competition Bureau guidelines have now suggested that the Bureau will focus its enforcement on claims made in marketing materials and not representations made to regulators or financial disclosure, that same focus does not bind private litigants when their private right of action is activated in June 2025.

## Canada's approach to greenwashing in comparison with its peers

The absurdity of the Canadian approach to greenwashing is evidenced when assessing it vis à vis its peers.

Jurisdictions around the world have been updating guidelines and legislation in response to growing public concerns about greenwashing. Many have published greenwashing guidance that describes general principles for companies to follow. Others have updated disclosure requirements in securities legislation. Some have, similar to Canada, enhanced consumer protection legislation as well as securities legislation. But none have done so in a manner that creates the level of uncertainty that Canada has under s. 74.01(1) (b.2) of the *Competition Act*, nor have any jurisdictions combined uncertain tests like the "internationally recognized methodology" test with a reverse onus, expanded private rights of access, and massive fines.

We have analyzed the state of regulation in the UK, the EU, the United States, and Australia for comparison. We have examined how each jurisdiction has revised consumer protection laws and separately, how they have modified financial disclosure laws and securities regulation. Through that lens, we then come to recommendations on how Canada can fix the problems created by the rushed, ill-thought-through legislative changes under Bill C-59.

## *United Kingdom*

### *UK consumer protection*

Regulatory bodies in the UK have recently expanded greenwashing guidance. The two UK authorities, the Advertising Standards Authority (ASA) and the Competition and Markets Authority (CMA) have each taken steps to enhance guidelines.

These two separate entities work together to enforce consumer protection rules. The ASA is an independent self-regulatory body, separate from government, which oversees advertising practices, publishes various codes, monitors advertising, responds to consumer complaints, and enforces rules and codes. The ASA sets its rules through the Committee of Advertising Practice (CAP), which is a related body of member companies in the advertising community in question. The ASA enforces the rules and if a company ignores an ASA ruling it faces numerous sanctions, including referral to other statutory enforcement agencies or by the ASA taking the company to court.

The second regulatory body, the CMA, is an independent, non-ministerial department of the UK government. Its mandate is to regulate commercial practices, competition, and consumer law, similar to Canada's Competition Bureau. The CMA and the ASA work together under a memorandum of understanding (MOU) that sets out the specific roles each plays. Under the MOU, the ASA is tasked with investigating and resolving complaints about business marketing and advertising under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) (Competition and Markets Authority 2017).

In 2021, after broad consultation, the CMA updated its Green Claims Code (Competition and Markets Authority 2021b). Separately, but in the same manner, the ASA published new advertising guidelines in the Advertising Guidance on Misleading Environmental Claims and Social Responsibility Code in 2022. It updated the guidelines again in 2023 to include climate references such as carbon neutral and net zero that were becoming more common in advertisements (Advertising Standards Authority 2023).

Both guidelines set out broad principles. Under the Green Claims Code, for instance, the principles include requirements that representations (a) are truthful and accurate; (b) are clear and unambiguous; (c) do not omit or hide important information; (d) compare goods or services in a fair and

meaningful way; (e) consider the full life cycle of the product or service; (f) are substantiated (CMA Green Code, para. 2.29).

Since the adoption of the new advertising standards (Advertising Standards Authority 2023), the ASA has actively pursued claims against airline company advertisements about sustainability and net-zero goals. It also pursued a claim against Equinor regarding representations that its energy mix was balanced through wind and carbon capture projects even though most of its business was still in fossil fuels. Shell and BP have also been subjects of ASA complaints. In all cases, advertisements were found in violation and the complaint was resolved by the companies removing the advertisements.

More recently, in 2024 the UK passed the *Digital Markets, Competition and Consumers Act*; it will come into force in 2025. The legislation sets up a new administrative procedure for the CMA to investigate greenwashing claims, gives the CMA the authority to impose fines without having to go through the courts and impose civil penalties of up to 10 per cent of global sales. Given these new powers, over time the CMA could be positioned to be the leading consumer protection enforcer rather than the self-regulating ASA.

While the UK has taken significant steps to strengthen its rules, there are important distinctions between Canada and the UK:

- The UK's new CMA Green Claims code sets a framework with guidelines to follow, whereas Canada now has prescriptive tests embodied in legislation. The UK guidelines set out a framework for how businesses can comply with consumer legislation, whereas Canada is now far more prescriptive, setting out the confusing "internationally recognized methodology" test with which companies must comply.
- While there is the potential in both jurisdictions for significant fines to be imposed, there is not a reverse onus of proof under UK's greenwashing process. The onus of proof is on the CMA to prove that an advertisement is misleading whereas in Canada the onus of proof rests with the company making a representation.
- The UK administrative system does not offer private rights of action through the administrative processes; the decision to proceed or enforce lies with the CMA or ASA. If environmental activists and citizens want to pursue their own claims, they still have to pursue separate greenwashing litigation in the courts.

- Notably, the UK has suggested that consumer protection law is specifically and more narrowly focused on consumer protection, suggesting that those laws are not the venue in which to conduct broader public policy such as climate policy. For instance, the guidance document for the Green Guide states: "Consumer protection law ensures that consumers can make informed choices about the products and services they buy. It does not require businesses to offer green products or services to consumers, nor set specific rules on environmental claims" (CMA 2021 para. 2.28.)

### a. UK sustainability, financial, and investment disclosure

The Financial Conduct Authority (FCA) in the UK has also enhanced greenwashing guidelines in the financial services sector. After consultation, it published new rules and guidance in 2023 that came into effect in May 2024 and that ensure that sustainability claims about products or services are "fair, clear, and not misleading" (Financial Conduct Authority 2024).

These rules apply to all FCA regulated companies and financial advisors and apply to a company's communications in relation to a product or service, including climate targets, strategies, and policies.

Mirroring some of the concerns raised in Canada's Competition Bureau consultation, stakeholders in the UK raised concerns about the scope of the rules and whether they were to apply to claims that companies make about themselves, in company level reports under other legally required disclosures (Financial Conduct Authority 2024, 14, para. 3.4). The FCA has since confirmed that the new rules apply specifically to claims about financial products and that:

> Firms are subject to other rules and expectations regarding the claims firms make about themselves and other firm-level disclosures but should nevertheless take into account how firm-level claims may be considered as part of the 'representative picture' in a decision-making process. Firms should also consider the expectations and obligations under CMA guidance and ASA requirements (Financial Conduct Authority 2024, 15).

In saying this, the FCA implies that the rules aren't intended to override other disclosure rules but are meant to be consistent. Canadian companies have raised these same concerns; clarity is urgently needed in Canada.

## *European Union*

### *EU Consumer protection*

The EU is tackling greenwashing through two directives: (1) the *EU Directive on Empowering Consumers for the Green Transition*, which updates the *Unfair Commercial Practices Directive* (European Commission 2022) and (2) the *EU Green Claims Directive* (European Commission 2023). The first directive has now passed through the EU Parliament. The second directive is still moving through the EU parliamentary process.

#### a. *Unfair Commercial Practices Directive*

In March 2022, the European Commission announced its intention to update the *Unfair Commercial Practices Directive* to protect consumers from greenwashing. After proceeding through the lengthy EU process, the European Parliament passed the new rules on January 19, 2024, and gave final approval in February 2024 (European Commission 2024a). European Union member states have 24 months to incorporate the new rules into their national laws.

With respect to greenwashing, the rules apply to communications to consumers (products and services) and prohibit:

- Generic environmental claims such as environmentally friendly, natural, biodegradable, climate neutral, without proof of "recognised excellent environmental performance."
- Claims that a product is carbon neutral if the claim relies on offsetting to balance its emissions reduction claim.
- Sustainability labels that are not based on "approved certification schemes" or "established by public authorities."

The 53-page final text that the European Parliament approved is quite extensive (Council of the European Union 2024). The introductory text refers to addressing broader social and climate objectives through consumer laws:

> … to make progress in the green transition, it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns… (Council of the European Union 2024, 6, para. 1).
>
> … Such information can also relate to respect for human rights, to equal treatment and opportunities for all, including gender equality, inclusion, and diversity, to contributions to social

> initiatives or to ethical commitments, such as animal welfare. The environmental and social characteristics of a product can be understood in a broad sense, encompassing the environmental and social aspects, impact, and performance of a product… (Council of the European Union 2024, 8, para. 3).

The EU final text also sets out rules concerning what future claims such as net-zero or carbon neutrality must contain, broadly prohibiting:

> … making an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, such as allocation of resources, and that is regularly verified by an independent third-party expert, whose findings are made available to consumer (Council of the European Union 2024, 40).

In this regard, once established in laws of EU member nations, there will be substantial similarities with Canada's new rules, except that the EU rules appear to be more narrowly directed to communications to *consumers*, as opposed to the more broadly based communications in Canada that capture company financial and regulatory disclosures.

### b. *New Green Claims Directive*

The EU Commission is also proposing a new *Green Claims Directive*. First introduced in March 2023, this directive is meant to complement the *Unfair Commercial Practices Directive* (Council of the European Union 2024, para. 1). While the *Unfair Commercial Practices Directive* is aimed at communication to consumers about specific products and services, the *Green Claims Directive* aims to stop greenwashing by setting standards for environmental claims themselves. Under the *Green Claims Directive*, companies would have to provide evidence to verify their environmental claims before advertising or marketing. The directive would be established under a stand-alone legal instrument rather than amending something already in existence (Council of the European Union 2024, para. 2.4). The *Green Claims Directive* is still winding through the European Parliament and has not yet formally passed, though the Parliament

approved a general approach in June 2024 (European Parliamentary Research Service 2024).

While it seems like the two directives are duplicative and create a complicated regulatory burden, the EU has claimed that they are complementary. The *Green Claims Directive*, if passed, would be operationalized through a stand-alone enactment, not through consumer protection related regulations. It also seems to go further, resembling Canada's new s. 74.01(1) (b.2) in that it captures communications that go beyond advertising and marketing to consumers. In this regard, there are substantial similarities with Canada's new *Competition Act* amendments.

One distinct difference, however, is the extensive consultation and study before each step of the Parliamentary process in the EU. That consultation ensured that there was significant early guidance on what tests needed to be met for compliance. Canada, on the other hand, passed new rules through committee in less than 20 minutes and through Parliament in less than a month. In this haste, Parliament passed the amendments in advance of any practical guidance on what was meant by the "internationally recognized methodology" test.

A second distinction is that, in the UK, none of the rules are enforceable until individual EU states adopt the new rules into their own national legislation, which could take as long as 2 years. In adopting the new EU directive, each European member state will have opportunities to consider the impact of existing or new rules relating to onus of proof, fines, and private rights of action, allowing for a potentially more balanced approach than Canada has adopted.

### c. EU sustainability, financial, and investment disclosure

Separate from the greenwashing provisions designed to protect consumers, the EU has also put in place a framework to govern how financial market participants must communicate sustainability information to investors (European Commission 2024b) and has established a unified EU classification system under the Taxonomy Regulation (European Union 2020) to determine whether business activity can be labeled sustainable.

## *United States*

Compared to Europe and Canada, the US has not been as aggressive in its approach to greenwashing.

### *US Consumer Protection*

In December 2022, the US Federal Trade Commission (FTC) announced that it was seeking public comment on how to update its Green Guides (Federal Trade Commission 2022). Specifically, the FTC sought input on how to address representations related to carbon offsets and climate change as well as guidance on other terms such as organic, sustainable, and recyclable. Although the public comment period closed in 2023, no update to the Green Guides has yet been issued.

The Green Guides have played a significant role in consumer class action litigation in the US, providing plaintiffs with evidence of proof of greenwashing in some cases, and providing defendants a "safe harbour" defence in other cases. Because the Green Guides have not been updated since 2012, many of the representations that companies are using today, including carbon neutral, net zero, and low emissions, are not addressed in the current version of the guides. The Green Guides use examples such as eco-friendly and environmentally friendly as concepts that can be inherently misleading, but there is no guidance on climate change and carbon neutral. This is leading to case-by-case determination in litigation in the courts.

Some states have incorporated the Green Guides into state legislation. For instance, California codified the Green Guides into the *California Environmental Marketing Claims Act* (California Legislative Information 2022).

**a. US sustainability, financial, and investment disclosure**

In March 2021, the US Securities and Exchange Commission (SEC) launched an enforcement task force focused on climate and ESG issues (Securities and Exchange Commission 2021). This was part of a broader push to increase access to ESG information and to address greenwashing claims related to sustainability disclosure. The initial focus was to address gaps in disclosure and compliance, including climate risks and sustainability. It was set up under an SEC enforcement division and was to evaluate tips and whistleblower complaints on ESG issues.

The SEC quietly disbanded the task force in September 2024 amidst speculation that the SEC and its staff have recently been downplaying ESG (see, e.g., McGinnis et al. 2024).

The SEC and the FTC agendas were already moving much more slowly than action in Canada. With the new Trump administration, it is almost certain that these agendas will be watered down further. Given growing backlash against ESG in the US, particularly in Republican states, coupled with a new focus by the Trump administration on increasing fossil fuel production and reducing regulations, it is unlikely that the US will move forward with anything at all resembling Canada's amendments to the *Competition Act*. At the state level, however, climate disclosure laws can still be expected to continue to develop in some jurisdictions, including California's sustainability reporting regulations.

## Australia

### Australian Consumer Protection

Greenwashing in Australia is dealt with through consumer protection rules that the Australian Competition and Consumer Commission (ACCC) and Ad Standards enforce. ACCC is an independent statutory authority similar to Canada's Competition Bureau. Ad Standards is Australia's advertising regulator and independently administers industry codes in a comparable manner to UK's ASA. In addition, private litigation through the courts is on the rise.

Consistent with the greenwashing approach in the UK and the EU, the ACCC is now focused on claims regarding energy transition, carbon neutrality, and the use of offsets.

Following six months of public consultation, the ACCC published final greenwashing guidelines in December 2023 (Australian Competition and Consumer Commission 2023). The *Making Environmental Claims: A Guide for Business* framework outlines 8 principles requiring claims to: (1) be accurate and truthful; (2) have evidence to back up claims; (3) not hide or omit information; (4) explain any conditions or qualifications; (5) avoid broad unqualified claims; (6) use clear language; (7) not have visual elements that give the wrong impression; (8) be open and direct about aspirational or future claims such as net zero (ACCC 2023, 6–33).

Although the guidelines are not legally binding, they are meant to help clarify and provide regulatory guidance for companies so they can comply

with the *Australian Consumer Law* (ACL). The ACCC has stated that enforcement of greenwashing claims is one of its main priorities for 2025 (Australian Competition and Consumer Commission, undated). The ACCC's enforcement powers and remedies are extensive and include fines of:

- of up $50 million; or
- 3 times the benefit obtained that is "reasonably attributable" to the contravention; or
- if the Court cannot determine the value of the benefit, whichever is greater.

Companies have cause for concern. However, while the fines in Australia are significant, there are substantial differences between Australia's new guidelines and Canada's Bill C-59 amendments:

- The new Australian guidelines are non-binding and serve as a framework to guide companies to maintain compliance. Canada has prescriptive tests – the "internationally recognized methodology test" – that must be followed.
- Although the fines are significant, there is not a reverse onus of proof under ACCC process (*Australia Competition and Consumer Act, 2010*).
- The ACCC process does not offer private rights of action through the administrative processes; environmental activists and citizens still must pursue separate greenwashing litigation in the courts if they want to pursue their own claims.

Taken together, it is apparent that the Canadian process and standard (unclear though it is) to address greenwashing is now more burdensome and punitive than that of its peers.

## Recommendations

There may be ways for Canada to mitigate the uncertainty, risk, greenhushing, and other negative impacts wrought by the greenwashing amendment introduced in Bill C-59. Many such remediations have been presented in the 208 submissions the Competition Bureau received in its public consultation. They include means by which the enforcement guidance could address its worst features: its application to business activities as opposed to just consumer products, punitive fines, reverse onus, private rights of action, and undefined methodology for substantiation.

Although the Competition Bureau provided some clarification in December 2024, and provided a small degree of assurance that the Bureau itself will focus its reviews on environmental claims directed at consumers and consumer products, that is not enough. Of particular concern is Section 74.01(1) (b.2) itself. This provision, placed awkwardly and inappropriately in the *Competition Act,* is so flawed, and its inclusion in competition law so aberrant, that our only recommendation is for the next federal government to repeal it.

*This provision is so flawed, our only recommendation is for the next federal government to repeal it.*

There is no possible way to reconcile legislation that is meant to protect consumers from competition and deceptive advertising with Section 74.01(1)(b.2), which we believe is intended to legislate broader climate policy objectives such as shaping "carbon neutrality" and net zero targets to exclude the use of fossil fuels, carbon offsetting, natural gas as a bridge fuel and carbon capture. On a more concerning level, the intent of s. 74.01(1)(b.2) appears to be aimed at silencing the oil and gas industry and regulating what they can and cannot advocate for.

We also have grave concerns with expanding and broadening private rights action and the likelihood that this would increase lawfare, coupled

with a reverse onus of proof and massive fines. The net effect of all these provisions leads to uncertainty, risk, and ultimately, greenhushing. It seems to us the greenwashing amendment was not about finding new ways to protect consumers, but new ways to punish oil and gas companies.

The most appropriate recourse is to repeal not only s. 74.01(1)(b.2), but all of the greenwashing and deceptive marketing amendments passed under Bill C-59. In our view, the *Competition Act* was working effectively and as intended. Alongside existing and developing frameworks including the Sustainability Accounting Standard Board (SASB), the International Sustainability Standards Board (ISSB), and the Taskforce on Climate-Related Financial Disclosure, and the Global Reporting Initiative (GRI), we believe Canadians are sufficiently protected from deceptive marketing practices and greenwashing. MLI

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Prior to entering politics, Savage was a leading advocate in the energy industry. A lifelong Albertan, Savage started her career practicing law before working for 13 years in the pipeline industry, at Enbridge and the Canadian Energy Pipeline Association. She earned a Master of Laws in Environment and Energy in 2015 with a published thesis on the evolving role of the National Energy Board.

As Minister of Energy, she led the ministry during the global pandemic and price collapse, representing the province at OPEC meetings and across North America and Europe. She implemented a liability management framework to help accelerate reclamation of oil and gas wells, overhauled the Alberta Energy Regulator, and modernized Alberta's legal, policy, and fiscal frameworks in new and emerging growth areas, including strategies to accelerate energy transition investments in critical minerals, hydrogen, geothermal, energy storage, and Small Modular Reactors. As Minister of Environment and Protected Areas she developed Alberta's net-zero climate strategy in 2023. She retired from politics later that year and returned to private practice where she continues to provide strategic advice on energy transition opportunities across Canada. MLI

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## References


Advertising Standards Authority [ASA]. 2023. "Misleading Environmental Claims and Social Responsibility." Advertising Guidance, June 23, 2023. ASA. Available at https://www.asa.org.uk/resource/advertising-guidance-misleading-environmental-claims-and-social-responsibility.html.

Alberta Wilderness Association [AWA]. 2024. "Re: AWA Feedback Regarding the Competition Act's New Greenwashing Provisions." Letter to Deceptive Marketing Practices Directorate, September 13, 2024. AWA. Available at https://competition-bureau.canada.ca/sites/default/files/documents/GW-Alberta-Wilderness-Association.pdf.

Australian Competition and Consumer Commission [ACCC]. 2023. *Making Environmental Claims: A Guide for Business*. ACCC. Available at https://www.accc.gov.au/about-us/publications/making-environmental-claims-a-guide-for-business.

Australian Competition and Consumer Commission [ACCC]. Undated. "Compliance and Enforcement Priorities." ACCC. Available at https://www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-priorities#toc-enforcement-action.

Australian Securities and Investments Commission [ASIC]. 2022. *How to Avoid Greenwashing When Offering or Promoting Sustainability-Related Products*. Information Sheet 271. ASIC. Available at https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Prohibitionsagainstmisleadinganddeceptiv.

Avatar Innovations. 2024. "Executive Summary" [Submission on Bill C-59]. Avatar Innovations. Available at https://competition-bureau.canada.ca/sites/default/files/documents/GW-Avatar-Innovations.pdf.

Becker-Olsen, Karen, and Sean Potucek. 2013. "Greenwashing." In Idowu, et. al. (eds), *Encyclopedia of Corporate Social Responsibility* (Springer): 1318–1323.

Boswell, Matthew. 2024. "Letter to Members of the House of Commons Standing Committee on Finance, March 1, 2024." Competition Bureau Canada. Available at https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SM-C-59_CompetitionBureauofCND_e.pdf.

Canadian Association of Physicians for the Environment [CAPE], the Quebec Environmental Law Centre [CQDE], Ecojustice, and Équiterre. 2023. "Briefing Note: Amending Bill C-59 to More Effectively Combat Greenwashing." CAPE, CQDE, Ecojustice, and Équiterre, December 2023. Available at https://www.ourcommons.ca/Content/Committee/441/FINA/Brief/BR12927750/br-external/Jointly-01-e.pdf.

Competition and Markets Authority [CMA]. 2017. "CMA and ASA Memorandum of Understanding on Consumer Protection Issues." Government of the United Kingdom, June 21, 2017. Available at https://www.gov.uk/government/publications/cma-and-asa-memorandum-of-understanding-on-consumer-protection-issues.

Competition and Markets Authority [CMA]. 2021a. "Global Sweep Finds 40% of Firms' Green Claims Could Be Misleading." Press release, January 28, 2021. Government of the United Kingdom. Available at https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading.

Competition and Markets Authority [CMA]. 2021b. *CMA Guidance on Environmental Claims on Goods and Services.* CMA, September 20, 2021. Government of the United Kingdom. Available at https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims.

Competition Bureau Canada. 2016. "Volkswagen and Audi to Pay up to $2.1 Billion to Consumers and $15 Million Penalty for Environmental Marketing Claims." News Release, December 19, 2016. Government of Canada. Available at https://www.canada.ca/en/competition-bureau/news/2016/12/volkswagen-audi-pay-up-2-1-billion-consumers-15-million-penalty-environmental-marketing-claims.html.

Competition Bureau Canada. 2022a. "Be on the Lookout for Greenwashing." News Release, January 26, 2022. Government of Canada. Available at https://www.canada.ca/en/competition-bureau/news/2022/01/be-on-the-lookout-for-greenwashing.html.

Competition Bureau Canada. 2022b. "Keurig Canada to Pay $3 Million Penalty to Settle Competition Bureau's Concerns over Coffee Pod Recycling Claims." News Release, January 6, 2022. Government of Canada. Available at https://www.canada.ca/en/competition-bureau/news/2022/01/keurig-canada-to-pay-3-million-penalty-to-settle-competition-bureaus-concerns-over-coffee-pod-recycling-claims.html.

Competition Bureau Canada. 2024a. *The Deceptive Marketing Practices Digest — Volume 7*. Government of Canada. Available at https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/deceptive-marketing-practices-digest-volume-7#.

Competition Bureau Canada. 2024b. "Competition Bureau Seeks Feedback on Its New Guidelines Regarding Environmental Claims." News Release, December 23, 2024. Government of Canada. Available at https://www.canada.ca/en/competition-bureau/news/2024/12/competition-bureau-seeks-feedback-on-its-new-guidelines-regarding-environmental-claims.html.

Council of the European Union. 2024. "Proposal for a Directive of the European Parliament and of the Council Amending Directives 2005/29/EC and 2011/83/EU as Regards Empowering Consumers for the Green Transition Through Better Protection Against Unfair Practices and Better Information – Outcome of the European Parliament's First Reading." Interinstitutional File: 2022/0092. Council of the European Union, January 19, 2024. Available at https://data.consilium.europa.eu/doc/document/ST-5417-2024-INIT/en/pdf.

Department of Finance Canada. 2023. "Supporting a Strong Middle Class: Backgrounder." Government of Canada, November 21, 2023. Available at https://www.canada.ca/en/department-finance/news/2023/11/supporting-a-strong-middle-class.html.

EcoJustice and Canadian Association of Physicians for the Environment [CAPE]. 2023. *Reforming the Competition Act to Address Deceptive Green Marketing and Integrate Sustainability*. EcoJustice and CAPE, March 31, 2023. Available at https://ecojustice.ca/wp-content/uploads/2023/04/2023-03-31-Ecojustice-and-CAPE-submission-to-ISED-re_-Competition-Act.pdf.

EcoJustice and CAPE. 2024. "Re: Public Consultation on the *Competition Act's* New Greenwashing Provisions." Letter to the Deceptive Marketing Practices Directorate, September 26, 2024. EcoJustice and CAPE Available at https://ecojustice.ca/wp-content/uploads/2024/09/2024-09-26-Ecojustice-and-CAPE-Submission-on-Competition-Act-Consultation-re-Green-Claims.pdf.

European Commission. 2022. "Circular Economy: Commission Proposes New Consumer Rights and a Ban on Greenwashing." Press Release, March 29, 2022. European Commission. Available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2098.

European Commission. 2023. *Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)*. European Commission. Available at https://environment.ec.europa.eu/publications/proposal-directive-green-claims_en.

European Commission. 2024a. "Consumer Rights: Final Approval for the Directive to Empower Consumers for the Green Transition." Press Release, February 20, 2024. European Commission. Available at https://www.consilium.europa.eu/en/press/press-releases/2024/02/20/consumer-rights-final-approval-for-the-directive-to-empower-consumers-for-the-green-transition/.

European Commission. 2024b. "Sustainability-Related Disclosure in the Financial Services Sector." European Commission. Available at https://finance.ec.europa.eu/sustainable-finance/disclosures/sustainability-related-disclosure-financial-services-sector_en.

European Parliamentary Research Service. 2024. *"Green Claims" Directive: Protecting Consumers from Greenwashing*. Briefing PE 753.958 (October). European Parliamentary Research Service. Available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753958/EPRS_BRI(2023)753958_EN.pdf.

European Union. 2020. "Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088." *Official Journal of the European Union*, June 22, 2020. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852.

Federal Trade Commission (United States). 2022. "FTC Seeks Public Comment on Potential Updates to its 'Green Guides' for the Use of Environmental Marketing Claims." Press Release, December 14, 2022. United States, Federal Trade Commission. Available at https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-public-comment-potential-updates-its-green-guides-use-environmental-marketing-claims.

Financial Conduct Authority [FCA] (United Kingdom). 2024. *FG24/3: Finalised Non-Handbook Guidance on the Anti-Greenwashing Rule*. FCA. Available at https://www.fca.org.uk/publications/finalised-guidance/fg24-3-finalised-non-handbook-guidance-anti-greenwashing-rule.

Graney, Emma. 2024. "Oil Sands Alliance Grossly Overreacted to Anti-Greenwashing Measures in Bill C-59, Wilkinson Says." *Globe and Mail*, July 3, 2024. Available at https://www.theglobeandmail.com/business/article-oil-sands-alliance-grossly-overreacted-to-anti-greenwashing-measures/.

Greenpeace. 2023. *Greenwashing Big Oil & Gas: The Fossil Fuel Deception Playbook*. Greenpeace and CAPE. Available at https://www.greenpeace.org/static/planet4-canada-stateless/2023/12/14cf92b2-greenwashing-toolkit-doc-1-1.pdf.

Guterres, Antonio. 2022. "Bogus Net-Zero Pledges 'Rank Deception,' Sham Must End, Secretary-General Stresses at Launch of Report by High-Level Expert Group on Non-State Actors' Commitments." Press Release. United Nations, November 8, 2022. Available at https://press.un.org/en/2022/sgsm21576.doc.htm.

High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities [Expert Group]. 2022. *Integrity Matters: Net-Zero Emissions Commitments of Non-State Entities*. United Nations, November 8, 2022. Available at https://www.un.org/sites/un2.un.org/files/high-levelexpertgroupupdate7.pdf.

Hogg, Grant. 2024. "Subject: Public Consultation on the Competition Act's New Greenwashing Provisions." Letter to Consultation on the New Greenwashing Provisions, September 27, 2024. Available at https://competition-bureau.canada.ca/sites/default/files/documents/GW-Environment-Climate-Change-Canada.pdf.

Industry, Science and Economic Development Canada [ISED]. 2023. "Greenwashing and Sustainability Claims." *Future of Canada's Competition Policy Consultation – What We Heard Report*. Government of Canada. Available at https://ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/consultation-future-competition-policy-canada/future-canadas-competition-policy-consultation-what-we-heard-report#s82.

Lake, Holly. 2024. "Banning Fossil Fuel Advertising." Canadian Bar Association (National), April 5, 2024. Available at https://nationalmagazine.ca/en-ca/articles/law/business-corporate/2024/banning-fossil-fuel-advertising.

May, Elizabeth. 2024. “Re. Open Consultation on the *Competition Act’s* New Greenwashing Provisions.” Letter to the Deceptive Marketing Practices Directorate, Undated. House of Commons. Available at https://competition-bureau.canada.ca/sites/default/files/documents/GW-Elizabeth-May-MP.pdf.

McGinnis, Jamie, Amy Roy, and George Raine. 2024. “Reading the Tea Leaves on the SEC’s Disbanding of its Enforcement ESG Task Force.” Harvard Law School Forum on Corporate Governance, October 3, 2024. Available at https://corpgov.law.harvard.edu/2024/10/03/reading-the-tea-leaves-on-the-secs-disbanding-of-its-enforcement-esg-task-force/.

Nenshi, Naheed. 2024. “Re: Public Consultation on Competition Act’s New Greenwashing Provisions.” Letter to the Deceptive Marketing Practices Directorate, September 27, 2024. Alberta’s New Democrats. Available at https://competition-bureau.canada.ca/sites/default/files/documents/GW-Alberta-NDP.pdf.

Office of the Commissioner of Lobbying of Canada. 2024. Advanced Registry Search Results: Canadian Association of Physicians for the Environment. Office of the Commissioner of Lobbying of Canada. Available at https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/advSrch?documentType=comlog&adv_3001_level1comlog=clientOrgCorpNumber&adv_3001_clientOrgCorpNumber=370677&srch=Search.

Pathways Alliance. 2024. “Competition Act Amendments Silence Canadian Businesses Taking Climate Action.” News Release, June 20, 2024. Pathways Alliance. Available at https://mma.prnewswire.com/media/2444364/Pathways_Alliance_Competition_Act_amendments_silence_Canadian_bu.pdf?p=pdf.

Pears, Peter, Tim Baines, and Oliver Williams, 2023. “Greenwashing: Navigating the Risk.” Harvard Law School Forum on Corporate Governance, July 24, 2023. Available at https://corpgov.law.harvard.edu/2023/07/24/greenwashing-navigating-the-risk/.

ReClimate. 2024. *What Lies Beneath: Pathways Alliance, Greenwashing, Networks, and Narratives*. [Webinar.] YouTube, May 23, 2024. Available at https://youtu.be/YzVqFuOXT9c?feature=shared.

Scace, Matt. 2024. “Pathways Alliance Oilsands Group Removes All Website Content as Bill C-59 Receives Major Industry Pushback.” *Calgary Herald,* June 21, 2024. Available at https://calgaryherald.com/business/energy/pathways-alliance-oilsands-group-removes-all-website-social-media-content-2.

Securities and Exchange Commission [SEC] (United States). 2021. "SEC Announces Enforcement Task Force Focused on Climate and ESG Issues." Press Release, March 4, 2021. US SEC. Available at https://www.sec.gov/newsroom/press-releases/2021-42.

Senate of Canada. 2024. The Standing Senate Committee on National Finance: Evidence. 44th Parliament, 1st Session. Senate of Canada, June 11, 2024. Available at https://sencanada.ca/en/Content/Sen/Committee/441/NFFN/111EV-56849-E.

Standing Committee on Finance [FINA]. 2024. Minutes of Proceedings: Standing Committee on Finance (FINA), 44th Parliament, Ist Session, April 30, 2024. House of Commons. Available at https://www.ourcommons.ca/DocumentViewer/en/44-1/FINA/meeting-140/minutes.

Stewart, Keith. 2024. "Join the Fight Against Greenwashing." Greenpeace, September 24, 2024. Available at https://www.greenpeace.org/canada/en/story/67408/join-the-fight-against-greenwashing/.

United Nations. 2022. *Integrity Matters: Net-Zero Emissions Commitments of Non-State Entities*. United Nations, High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities. Available at https://www.un.org/en/climatechange/high-level-expert-group.

## *Legislation (various countries)*

### *Australia*

*Competition and Consumer Act 2010,* No. 51, 1974. Compilation No. 155. Compilation date: 30 November 2024CL, s. 151. Government of Australia. Available at https://www.legislation.gov.au/C2004A00109/latest/text/4.

### *California*

California Legislative Information. 2022. *Article 7. Environmental Representations 17580*. Business and Professions Code, Div. 7, Part 3, Chapter 1: Advertising. California Legislative Information. Available at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=17580.5.

### *Canada*

*Bill C-59, An Act to Implement Certain Provisions of the Fall Economic Statement Tabled in Parliament on November 21, 2023, and Certain Provisions of the Budget Tabled in Parliament on March 28, 2023.* Statutes of Canada, 2024. First Session, Forty-fourth Parliament. Available at https://www.parl.ca/legisinfo/en/bill/44-1/c-59.

*Bill C-372, An Act respecting fossil fuel advertising* (2024). Parliament of Canada. First Session, Forty-fourth Parliament. Available at https://www.parl.ca/LegisInfo/en/bill/44-1/C-372.

*Competition Act (R.S.C., 1985, c. C-34).* Government of Canada. Available at https://laws.justice.gc.ca/eng/acts/C-34/index.html

*Impact Assessment Act* (*S.C. 2019, c. 28).* Government of Canada. Available at https://laws.justice.gc.ca/eng/acts/i-2.75/index.html.

### *United Kingdom*

*Digital Markets, Competition and Consumers Act 2024* (United Kingdom). House of Commons, Sessions 2022-23, 2023-24. Last updated: 19 September 2024. Available at https://bills.parliament.uk/bills/3453.

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