Canada Climate Law Initiative | L'Initiative canadienne de droit climatique

Submission to the House of Commons Standing Committee on Finance for the Pre-budget Consultations in Advance of the 2025 Federal Budget

Sonia li Trottier,
Director, Canada Climate Law Initiative
trottier@allard.ubc.ca

22 July 2024

Recommendations

Recommendation 1: Amend Canada Business Corporations Act Regulation SOR/2001-512 to include a new sub-section: "s.72(3). The financial statements shall include a climate transition plan to reach net-zero greenhouse gas (GHG) emissions no later than 2050, with 5-year targets for emissions reductions towards the net-zero target, including disclosure of Scope 1, 2, and 3 emissions and annual reporting of progress towards meeting targets."[1]

Recommendation 2: Approve and implement the Green and Transition Finance Taxonomy Council,[2] and develop the green and transition finance taxonomy as quickly as possible to set standards for classifying climate-related financial instruments and benchmarking climate risk management. The taxonomy is an essential part of Canada's transition to sustainable finance.

Recommendation 3: Amend Pension Benefits Standards Regulations to require pension plans to adopt transition plans and reconcile their climate-related policies with their investment portfolio. Section 7.1 should be amended to require that federally-regulated pension plan (FRPP) administrators, under their current obligations to establish a written statement of investment policies and procedures (SIPP), determine how their climate resilience policies (mitigation and adaptation) pertain to the plan's portfolio of investments and loans.

[1] The definition of material should align with Canadian securities law, specifically: ""information is likely material if a reasonable investor's decision whether to buy, sell or hold securities in an issuer would likely be influenced or changed if the information in question was omitted or misstated", proposed NI 51-107 Disclosure of Climate-related Matters (hereafter proposed NI 51-107).

[2] Sustainable Finance Action Council (SFAC) Taxonomy Roadmap Report (2022) (hereafter Taxonomy Roadmap).

To:
Members of the House of Commons Finance Committee
Parliament, Ottawa

Introduction

The Canada Climate Law Initiative (CCLI) appreciates the opportunity to make recommendations to the Finance Committee regarding priorities for the next federal budget. The CCLI believes three key policy changes can effectively amplify federal action on the management of climate-related financial risks and opportunities, in turn supporting a sustainable economy for all Canadians. CCLI's rationale for these recommendations is discussed below.

Recommendation 1:

CCLI proposes a new subsection under s.72 of the Canada Business Corporations Act Regulations[3] that will promote the management of climate-related financial risk and opportunities for federally-regulated corporations, which comprise a significant portion of the economy. This new subsection would require large to mid-size-cap *Canada Business Corporations (CBCA)* companies to develop transition plans to address climate-related risks and opportunities. Mandatory financial disclosure falls directly under the remit of the *CBCA* and, as such, the *CBCA* is the proper federal vehicle in which to make these changes.

There are a substantial number of *CBCA*-registered private companies that do not fall within current federal and provincial securities legislation initiatives (such as the proposed National Instrument 51-107 Disclosure of Climate-related Matters)[4] and the Office of the Superintendent of Financial Institutions (OSFI) Guideline B-15 Climate Risk Management.[5] The amendment of the *CBCA* regulations will help align Canada with the 'whole economy' approach followed by many jurisdictions, including the European Union and the United Kingdom (UK).[6]

Disclosure of transition plans can equip investors with the information they need to finance the transition at the speed and scale required. CCLI's proposal would be implemented over two years, initially applying to 1,102 companies with 500 or more employees with annual revenue of $389 million and average assets of $1.47 trillion; and, one year later, applying to 6,775 companies with

[3] Canada Business Corporations Regulations, 2001 (SOR/2001-512), as amended 2022, Part 8 Financial Disclosure, pursuant to the *Canada Business Corporations Act*, RSC 1985, C c 44, as amended, Canada Business Corporations Regulations, 2001 (justice.gc.ca).
[4] Proposed NI 51-107, note 1.
[5] Office of the Superintendent of Financial Services (OSFI), OSFI Guideline B-15 Climate Risk Management, (March 2023) Guideline B-15 - Climate Risk Management (osfi-bsif.gc.ca).
[6] UK Financial Conduct Authority, FCA welcomes the launch of the Transition Plan Taskforce Disclosure Framework (October 2023).

100 to 500 employees, with annual revenue of $52.4 million and average assets of $89.6 million.[7] These corporations have the resources to develop and implement transition plans. 542,925 (98%) micro and small *CBCA*-regulated companies will be unaffected by this proposal.[8]

A significant number of Canadian companies doing business globally are already required to meet this level of reporting on climate-related financial risks in jurisdictions like the European Union, the UK, and the State of California. For example, Canadian companies with activities in Europe are already impacted by the EU Corporate Sustainability Reporting Directive, which will require about 1,300 Canadian companies to make and independently verify several sustainability disclosures.[9]

Reporting in alignment with an agreed-upon framework produces relevant, comparable, and useful climate-related financial data, which is critical for investors to assess risk and value, make informed investment decisions, and comply with other global and domestic reporting obligations. These changes will ensure the continued global competitiveness for Canadian companies who are required to meet reporting standards in markets in which they are doing, or would like to be doing, business.

Our view is that the proposed amendment to section 72 of the CBCA would clearly signal to the market that climate-related financial disclosure with specific targets and timelines is expected as a matter of course. The government need not reinvent the wheel in amending the regulation but can adopt key provisions of OSFI's B-15 Guideline, endorse guidance by the Taskforce on Climate-related Financial Disclosure (TCFD), and further align with the International Financial Reporting Standards (IFRS) International Sustainability Standards Board (ISSB) IFRS S2 Climate-related Disclosures standards.

Recommendation 2:

A green and transition finance taxonomy is key to Canada's transition to sustainable finance as it will set standards for classifying climate-related financial instruments and benchmarking climate risk management. A taxonomy is primarily a classification system – it outlines a common set of definitions and criteria to create clarity and agreement on what constitutes a "green" or "transition" investment. Taxonomies are a critical tool for solving two urgent and interrelated challenges within Canada's financial system: the ability to attract global capital to invest in Canada's low-carbon transition and to reduce the risk of greenwashing.[10] Investors need transparency and certainty to make strategic investment decisions. A taxonomy does not dictate investors' or companies' investment or capital expenditure choices.

[7] Excel spreadsheet breaking down *CBCA* corporations by number of employees, income and assets as of 31 October 2022, ISED (31 October 2022), on file with the CCLI.
[8] Excel spreadsheet breaking down CBCA corporations by number of employees, income and assets as of 31 October 2022, ISED (31 October 2022), on file with the CCLI.
[9] Dieter Holger, "At Least 10,000 Foreign Companies to Be Hit by EU Sustainability Rules", The Wall Street Journal (5 April 2023).
[10] Taxonomy Roadmap, note 2.

A science-based taxonomy serves the market integrity, clarity, and interoperability necessary to accelerate global capital investment in Canada's low-carbon transition. The Sustainable Finance Action Council (SFAC) recommendations need to be implemented to facilitate company-level climate target setting, transition planning, and effective climate disclosure; evaluate projects against framework criteria to determine whether they are "green" or "transition"; and assess projects against "do no significant harm" criteria. The taxonomy will flow capital to decarbonization opportunities across all major emitting sectors and reduce the risk of greenwashing.

The proposed taxonomy will flow capital to decarbonization opportunities across all major emitting sectors and help with Canada's positioning in global capital and financial markets. Several financial institutions such as Ontario Teachers' Pension Plan and Co-operators Insurance participated in the council and its working groups to develop the taxonomy principles, and their input has helped make the roadmap practical and feasible whilst protecting the safety and soundness of the financial system.

The federal government in its 2023 Fall Economic Statement and 2024 budget announced that the Department of Finance will work in consultation with regulators, the financial sector, industry, and independent experts to develop a taxonomy that is aligned with reaching Canada's 2050 climate targets.[11] We recommend that the federal government fulfil these announcements by approving and implementing the Green and Transition Finance Taxonomy Council.

Recommendation 3:

CCLI recommends amending the Pension Benefits Standards Regulations to require pension plans to reconcile their climate-related policies with their investment portfolio and adopt transition plans. It is vitally important that pension plans understand how climate risk impacts their portfolio from a risk-adjusted returns perspective. A pension plan should expect its investment manager to report on the fund's carbon footprint, climate value at risk assessment under different scenarios, and the investment manager's strategy to address climate risk and opportunity.

Section 7.1 should be amended to require that federally-regulated pension plan (FRPP) administrators, under their current obligations to establish a written statement of investment policies and procedures (SIPP), determine how their climate resilience policies (mitigation and adaptation) pertain to the plan's portfolio of investments and loans. Pension standards legislation requires administrators to invest the assets of the pension fund with the degree of care that a person of ordinary prudence would exercise in dealing with the property of another person, and they must act in accordance with their fiduciary duty to provide lifetime retirement income to plan beneficiaries.[12] That duty includes conducting effective risk management to advance plan objectives and protect plan assets from adverse risks. The duty of impartiality requires trustees

[11] Deputy Prime Minister Freeland, "2023 Fall Economic Statement" (21 November 2023), at 63, FES-EEA-2023-en.pdf (canada.ca); Canada, "Budget 2024" at 198, Budget 2024 (canada.ca).
[12] Pension fiduciaries must ensure compliance with Regulations under the *Income Tax Act*; s.8502(a) states that "the primary purpose of the plan is to provide periodic payments to individuals after retirement and until death in respect of their service as employees"; *Income Tax Regulations,* CRC, c 945 at s.8502.

and fund managers to balance intergenerational interests in determining short and long-term investments. For pension fiduciaries to fulfill their fiduciary duty to act prudently, clear baseline standards with respect to climate governance and risk management are required, including identification, oversight, and management of climate-related risks and opportunities material to the financial risk-return profile of the pension fund's investments and a plan to transition to a decarbonized investment policy. The amendment would align pension fund investment policies with OSFI's Guideline B-15 on Climate Risk Management for financial institutions and enhance OSFI's supervisory processes to better support the Minister's priority of effective regulation of 1,180 FRPP with 682,400 members,[13] by developing a Risk Management Guideline that includes environmental considerations.[14]

About the Canada Climate Law Initiative

The Canada Climate Law Initiative (CCLI), a collaboration of the law faculties of the University of British Columbia and York University, provides businesses and regulators with climate governance guidance so that they can make informed decisions in the transition to a net-zero economy. Powered by the nation's top expertise, we engage with boards of directors and trustees to ensure businesses, pension funds, and asset managers understand their legal duties with respect to climate change. Our legal research offers important insights into a rapidly transforming policy landscape.

[13] As of 31 March 2023. See OSFI, "Office of the Superintendent of Financial Institutions Annual Report 2022-2023", OSFI Annual Report 2022-2023 (osfi-bsif.gc.ca) at 6, 28.
[14] The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, "Office of the Superintendent of Financial Institutions 2023–24 Departmental Plan", OSFI 2023–24 Departmental Plan (osfi-bsif.gc.ca).