



## Submission to the Competition Bureau Canada on the *Competition Act's* new greenwashing provisions

Sonia li Trottier,  
Director, Canada Climate Law Initiative (CCLI)  
[trottier@allard.ubc.ca](mailto:trottier@allard.ubc.ca)

27 September 2024

The Canada Climate Law Initiative (CCLI) appreciates the opportunity to consult on the Competition Bureau of Canada's future enforcement guidance on environmental claims, following recent amendments to the *Competition Act*, R.S.C., 1985, c. C-34. CCLI, a collaboration of the faculties of law of the University of British Columbia and York University, provides businesses and regulators with climate governance guidance so they can make informed decisions in the transition to a net-zero economy. CCLI examines the legal basis for corporate directors, officers, pension fiduciaries, and asset managers to manage and report climate-related financial risks and opportunities, publishing guidance on effective climate governance.<sup>1</sup>

We answer your specific questions below but wish to commence with some overview comments that we believe are important to your consultation regarding the new greenwashing provisions.

### Summary

Clear guidelines will help organizations understand their obligations and ensure their environmental claims comply with the law. This will lead to a fairer, more competitive and efficient marketplace for all.

The Bureau should pay particular attention to the following types of environmental claims: Greenhouse Gas (GHG) reduction Targets and Net-Zero Goals, Truth to Label, Enterprise Branding, and Financial Reporting. These types of claims are increasingly common and especially ambiguous, and despite appearing to provide specificity, lack of standardization. This makes them less likely to be adequately and properly tested or substantiated, as required by the new provisions.

---

<sup>1</sup> See for example, Helen Tooze, *Canadian Credit Unions and Effective Climate Governance Cooperating for a Sustainable Future* (CCLI and Canadian Credit Union Association, 2023); Janis Sarra and Norie Campbell, *Banking on a Net-Zero Future: Effective Climate Governance for Canadian Banks* (CCLI 2022); Janis Sarra, *Life, Health, Property, Casualty: Canadian Insurance Company Directors and Effective Climate Governance* (CCLI 2021); Janis Sarra, Roopa Davé, Meghan Harris-Ngae, and Ravipal Bains, *Audit Committees and Effective Climate Governance, A Guide for Boards of Directors* (CCLI, 2020).

When evaluating environmental claims, the Bureau should consider the substance of the testing and substantiation methods used, their relevance and materiality to the claims made, as well as an organization's transparency on such methods. The comparability of environmental claims made and the presence or absence of third-party verification should be further points of consideration for the Bureau.

Resource, time, and cost constraints are significant challenges for organizations endeavouring to comply with these provisions. However, the Bureau's guidance can significantly contribute to alleviating these challenges.

CCLI recommends the Bureau encourage intra-industry cooperation to develop best practices and standards to advance enforcement of the new provisions. The Bureau should also provide guidance on how these provisions interact with securities law.

We appreciate the challenges and uncertainties the new provisions have brought to light. However, CCLI supports the new provisions. Canadian organizations have always been required to adequately test and substantiate the claims they make. The new provisions are a continuation of that tradition. In other words, the provisions ask organizations to adequately test and substantiate their environmental claims, as they do for other claims. These provisions are a much-needed opportunity for organizations, consumers, and regulators to actively contemplate and address current shortcomings in environmental claims communicated in the marketplace.

Claims regarding the environmental benefits of products and services (with which 74.01(1)(b.1) is concerned) and those of business and business activities (with which 74.01(1)(b.2) is concerned) often appear in tandem and are interdependent,<sup>2</sup> as such this letter will address the consultation questions jointly to facilitate discussion.

***74.01(1)(b.1), Question One – What kinds of claims about environmental benefits are commonly made about products or services in the marketplace? Why are these claims more common than others?***

***74.01(1)(b.2), Question One – What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?***

In the marketplace, four kinds of claims are commonly made about the environmental benefits of products or services, and businesses or business activities. MinterEllison's greenwashing advisory guide provides a helpful categorization of the most common types of environmental benefit claims:<sup>3</sup>

1. GHG reduction Targets and Net-Zero Goals
2. Truth to Label

---

<sup>2</sup> That is, claims about the environmental benefits of a product or services influence the perception of the environmental benefits of a business of business activity and vice versa.

<sup>3</sup> See MinterEllison's Greenwashing Advisory Guide for information on these types of claims: Sarah Barker, Cécile Walton, & Phoebe Roberts, "Navigating the rising tide of greenwashing", MinterEllison (21 December 2022), online: <<https://www.minterellison.com/articles/navigating-the-rising-tide-of-greenwashing>>.

3. Enterprise Branding
4. Financial Reporting

These types of claims may be interrelated, and an organization may make a claim across and between the listed types.

### **1. GHG Reduction Targets and Net-Zero Goals**

In this type of claim, organizations typically assert that their business or business activities have reduced or will reduce their GHG emissions. Organizations making this type of claim typically set targets to achieve net-zero emissions by a specific date, with potential intervening milestones. In other cases, organizations may claim that their products or services contribute to the reduction of GHG emissions.

These claims have become common because of growing market expectation that organizations participate in the endeavour to meet Canada's climate goals in line with the Paris Agreement, increasing pressure from various stakeholders, and other strategic considerations. Organizations are looking to address climate-related risks and opportunities, meet investor and stakeholder expectations as they increasingly demand climate action, attract capital, enhance reputation and brand value, attract environmentally conscious consumers, and remain competitive. Reducing GHG emissions and net-zero goals is one of the main metrics associated with corporate sustainability and climate action. Many companies publicly commit to net-zero targets to meet this increasing pressure and market expectations, and demonstrate their dedication to sustainability and climate action. Doing so suggests that these organizations are eco-friendly, socially-conscious and responsible entities, and willing to commit to concrete numbers, dates, and milestones.

The Kukpi7 Judy Wilson, Chief of the Skat'sin te Secwepemc-Neskonlith Indian Band and others case against RBC is an example of this type of claim. In 2022, Kukpi7 Judy Wilson, Chief of the Skat'sin te Secwepemc-Neskonlith Indian Band, Eve Saint, a Wet'suwet'en Land Defender and four others, supported by Ecojustice and Stand.earth filed a complaint against the Royal Bank of Canada (RBC) with respect to its net-zero 2050 commitment and related advertisement.<sup>4</sup> The complaint alleges that RBC's advertisement with respect to being aligned with the Paris Agreement, while heavily financing the oil and gas industry, is greenwashing. The complaint argues that RBC's target of reducing emissions by 70% by 2025 solely applies to its operations and the financial institution does not disclose its scope 3 emissions although RBC claims to follow the Greenhouse Gas Protocol. The complaint states that in 2021, RBC provided a total of CA\$34.4 billion in loans and underwriting to the fossil fuel industry and, by the end of 2021, held a total of CA\$50.4 billion in shares and bonds of fossil fuel companies. By continuing to financially support the extraction and development of fossil fuels at an accelerating rate, RBC's business continues and increase its contributions to GHG emissions, which contradicts its claims that it plans to reduce GHG emissions and reach net-zero emissions by 2050. The Bureau is currently investigating the case.

---

<sup>4</sup> Ecojustice, "Application for inquiry regarding the Royal Bank of Canada's apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development" (10 June 2022), online(pdf): <[https://ecojustice.ca/wp-content/uploads/2023/09/2022-06-10-Complaint-to-Competition-Bureau-re\\_-RBC-climate-representations-Final-1.pdf](https://ecojustice.ca/wp-content/uploads/2023/09/2022-06-10-Complaint-to-Competition-Bureau-re_-RBC-climate-representations-Final-1.pdf)>.

This case is an example of the misalignment in the marketplace between organizations making GHG reduction targets and net-zero goals claims, and stakeholders who are interpreting them. The RBC case shows the divide between the GHG reduction claims the bank made and how the consuming and investing public interpreted those claims. Such a divide may arise from insufficient, incorrect testing, substantiation, analysis or knowledge of how the organization will achieve the targets. This case also indicates potential disconnections between an organization's GHG reduction targets and its business or business activities.

To this effect, the Bureau can significantly ameliorate the misalignment and foster marketplace integrity by providing guidance that directly addresses GHG reduction targets and net-zero goals, and then by surveying such claims and vigilantly responding to complaints when they arise.

## **2. Truth to Label**

In this type of claim, organizations use conspicuous and comprehensible adjectives to suggest products have environmental benefits that they may or may not have. Products are labelled with terms like "100% recyclable," "biodegradable," or "compostable" that, despite their eco-conscious implications, are not standardized terms and provide no definition nor evidence of their veracity.

These types of claims have become common because of the power of labelling on consumer perceptions and trust. Labels may directly influence consumer purchasing decisions by condensing complex environmental benefits into concise and ambiguous terms and offering those terms in a conspicuous, repeated format. Not only do labels make a product's supposed environmental benefits more comprehensible to consumers, but they also advertise an organization's willingness to make those claims. That apparent willingness can confer additional trust in these claims, despite a lack of further evidence. The lack of clear guidance and standards for environmentally-friendly products and services labels also makes it easier for entities to claim their products, services, or entire businesses are green. This effective form of marketing makes products appear more attractive to eco-conscious consumers.

An example of this type of claim is the 2022 penalty levied against Keurig Canada Inc for its misleading claims regarding the recyclability of its single-use K-Cup.<sup>5</sup> In that case, the Bureau found consumers were misled about the ease and actual process of recycling the product. Keurig Canada agreed to pay a CA\$3 million penalty, donate CA\$800,000 to a Canadian charitable organization focused on environmental causes, pay an additional CA\$85,000 for the costs of the Bureau's investigation, change its recyclable claims and the packaging of its K-Cup, publish corrective notices about the recyclability of its product, and enhance its corporate compliance program to promote compliance with the laws and prevent deceptive marketing issues in the future.<sup>6</sup>

---

<sup>5</sup> Competition Bureau Canada, "Keurig Canada to pay \$3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims" Government of Canada (6 January 2022), online(news release): <<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>>.

<sup>6</sup> Competition Bureau Canada, "Keurig Canada to pay \$3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims" (6 January 2022), <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>.

This case highlights the importance of accurate labeling and the potential for consumer deception when claims are not adequately and properly tested. Labels typically speak to product differentiators and sources of value or benefit for a product. As such, adequate and proper testing is essential to ensure the value or benefit promised to consumers is fully received. Ensuring the truth and accuracy of labels describing products, including environmental-related labels, is essential to a fair and efficient marketplace.

### **3. Enterprise Branding**

In this type of claim, organizations position and promote their overall brand, business, or business activities as sustainable or eco-friendly through various practises, initiatives, or policies they adopt.

Enterprise branding claims can enhance the entity's image, creating a positive brand image for consumers, which may engender a positive brand association despite a lack of further action and lead to falsely earned consumer loyalty. By building a connection between their reputation and sustainability, companies can advantageously differentiate themselves from their competitors.

An example of enterprise branding's greenwashing risk is Stand.earth's complaint against Lululemon Athletica Inc. (Lululemon), which alleges the company misled its customers about its environmental impact. Stand.earth argues that Lululemon's "Be Planet" campaign is false and misleading.<sup>7</sup> The "Be Planet" campaign asserts that the company's products and actions contribute to improving the environment and restoring a healthy planet. The complaint alleges that this campaign is contradictory to the company's Impact Report which revealed a growth in emissions since the start of the campaign; moreover, the company heavily relies on fossil fuels to make its products, which further contributes to emissions. Stand.earth notes that the materials Lululemon uses cannot be recycled effectively, are not biodegradable, and release microplastics in the ocean. In April 2024, the Bureau commenced an inquiry to determine whether Lululemon has made materially false and misleading representations in its advertising.<sup>8</sup>

This case illustrates how all-encompassing enterprising branding claims can be, which creates a wide-reaching greenwashing risk. Critically, the "Be Planet" campaign did not just seek to position particular Lululemon products as eco-friendly, but the entire company itself and its products and activities by extension. Such a campaign may heavily influence how consumers and investors perceive the total environmental impact of Lululemon's products and activities. Where this form of claim is false or misleading, consumers may misapprehend the true nature and environmental impact of the entity they are engaging with.

---

<sup>7</sup> Stand.earth, "An application pursuant to s. 9(1)(b) of the Competition Act, RSC 1985, c C-34 requesting the Commissioner cause an inquiry to be made into the conduct of Lululemon Athletica Inc." (8 February 2024), online (pdf):

<https://stand.earth/wp-content/uploads/2024/02/ApplicationFeb.pdf>.

<sup>8</sup> Competition Bureau Canada, "Notice of Inquiry Commencement, File No. 157336", (26 April 2024), online (pdf):

<https://s3.documentcloud.org/documents/24638214/standearth.pdf>.

#### 4. Financial Reporting

Financial reporting claims are when organizations, in their statutory and voluntary financial disclosure documents, disclose climate-related financial information related to the financial impacts of climate change and climate transition on the organization's financial performance, prospects, and position, as well as their strategies for addressing all of the above.<sup>9</sup>

With growing investor interest in climate and Environmental, Social, and Governance (ESG) issues and criteria, companies are under pressure to report on their environmental performance. Reporting of climate and ESG-related information can attract investment and meet the expectations of regulators and various stakeholders, including consumers and employees.

In January of 2024, the Investors for Paris Compliance (IPC) filed a complaint against the Bank of Montréal (BMO), Scotiabank, the Canadian Imperial Bank of Commerce (CIBC), the Toronto-Dominion Bank (TD) and RBC to the Ontario Securities Commission (OSC) and the Autorité des Marchés Financiers of Québec (AMF) for misleading financial reporting.<sup>10</sup> The IPC alleges the five banks have independently made sustainable finance commitments for this business segment worth billions of dollars in their financial disclosures. Yet none have disclosed the emission impacts of the deals in their sustainable finance business segment. The complaint documents several instances where sustainable finance deals have contributed to increasing, rather than reducing, GHG emissions.<sup>11</sup> The OSC, the AMF, and the banks have yet to issue responses to IPC's complaint.

This complaint is an example of potentially problematic environmental claims related to financial reporting. Guidance is required both from the securities regulators and the Bureau to ensure environmental claims in financial reporting are not false or misleading as financial disclosures play a critical role in providing useful information to investors and thus, play a role in the integrity, fairness, and efficiency of capital markets.

***74.01(1)(b.1), Question Two – Are there certain types of claims about environmental benefits of products or services that are less likely to be based on adequate and proper testing? Is there something about those types of claims that makes them harder to test?***

***74.01(1)(b.2), Question Two – Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology”? Is there something about those types of claims that makes them harder to substantiate?***

---

<sup>9</sup> Sarah Barker, Cécile Walton, & Phoebe Roberts, *supra* note 3 at 19..

<sup>10</sup> Investors for Paris Compliance, “A Complaint to the Ontario Securities Commission and the Autorité Des Marchés Financiers Of Québec”, (9 January 2024), online: <<https://www.investorsforparis.com/wp-content/uploads/2024/01/I4PC-OSC-AMF-EN-1.pdf>>.

<sup>11</sup> *Ibid* at page 12.

Claims that use ambiguous and unstandardized terms, those that assert specific actions ostensibly resulting in GHG reductions, and those that assert the sustainability of an organization's supply chain may be more challenging to assess whether they are based on adequate and proper testing and substantiation.

### **Claims with Ambiguous and Unstandardized Terms**

Entities may make Truth to Label and Enterprise Branding claims using terms such as “sustainable” and “eco-friendly”. Such terms lack standardized definitions, which leads to ambiguity in their definition and lack of credibility.

The lack of clear definitions and standardizations complicates efforts to assess the validity of environmental claims for both consumers and the entities who make them. The absence of standardized definitions makes it difficult to establish suitable and effective testing protocols or identify appropriate methodology to substantiate, test, or verify such claim since one cannot be certain a particular testing or substantiation method is fully material and conclusive of the term used. This is exemplified by the current state of eco-labels and certifications.

KPMG notes that there are over 300 labels and certifications ascertaining ESG performance for products and businesses; a critical challenge is that these labels differ significantly in their purview, scope, and focus.<sup>12</sup> Some eco-labels, such as the Forest Stewardship Council, UTZ certification, and Linking Environment and Farming (LEAF), follow best practices and are considered credible but many others are not.<sup>13</sup> As such, there is limited standardization and uniformity in how particular terms are used by these labels and certifications.

Without standardized definitions, organizations may inadequately use labels without necessarily testing and substantiating their definitions. Ultimately, this decreases the likelihood such claims will be tested and substantiated adequately and properly.

### **Claims that Assert GHG Emissions Reduction Due to Specific Courses of Action**

Demonstrating that specific actions directly result in quantifiable GHG reductions is a complex prospect. First of all, GHG emissions come from a variety of direct (scope 1 emissions) and indirect (scope 2 and scope 3 emissions) sources. Scope 1 and 2 emissions are generally fairly easy to calculate. A number of tools exist to help organizations calculate their emissions.<sup>14</sup> However, scope 3 emissions are harder to calculate and track as they are associated with an entity's supply chain activities, both upstream and

---

<sup>12</sup> Florin Bornhauser, “Sustainability Standards and Labels”, KPMG, (last accessed: 24 September 2024) at 7, online (pdf): <<https://assets.kpmg.com/content/dam/kpmgsites/ch/pdf/kpmg-ch-eco-labels-sustainability-standards-labels.pdf.coredownload.inline.pdf>>.

<sup>13</sup> Hamish Van Der Ven, “What’s in a label? Separating Credible Eco-labels from ‘Greenwash’”, Corporate Knights, (3 May 2019), online: <<https://www.corporateknights.com/perspectives/guest-comment/whats-label-separating-credible-ecolabels-greenwash/>>.

<sup>14</sup> See the United States Environmental Protection Agency's publication that describes methods for companies to calculate and report their Scope 1 and Scope 2 emissions: United States Environmental Protection Agency, “Scope 1 and Scope 2 Inventory Guidance”, (last updated: 8 March 2024), online: <<https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance>>. See also the following article outlining 11 Carbon accounting software and tools companies can use to calculate their Scope 1 and Scope 2 emissions: Michael Vereb, “Top 11 Carbon Accounting Software and Tools (2024 Reviewed)”, Arbor, (last updated 20 August 2024), online: <<https://www.arbor.eco/blog/top-11-carbon-accounting-software-tools-for-2024-arbor>>.



downstream.<sup>15</sup> Determining which specific courses of action led to emission reductions is complex due to the diversity of sources and activities an organization must account for. GHG emission reductions may also be the result of a combination of activities and initiatives as opposed to a single course of action.

Claims involving carbon offsets and credits are particularly contentious due to debates about their quality, integrity, actual impact, and the lack of regulation and oversight of the industry.<sup>16</sup> Long-term impacts require extensive data collection over prolonged periods, which can be expensive, impractical, or not yet possible. Accessing quality data is challenging and the time lag between the course of action and the GHG emission reduction can make it difficult to conclusively link a GHG emission reduction to a specific course of action. Moreover, it can be difficult to evaluate and verify the real-world impact of carbon offsets and credits, especially for credits tied to ongoing projects with uncertain outcomes.

Claims that a particular course of action will lead to GHG emissions reductions are less likely to be adequately and properly tested or substantiated due to quality, verifiability, and accessibility issues, and the lack of regulation, and oversight.

### **Claims that Assert a Supply Chain is Wholly or Partially Sustainable**

Companies may claim their supply chains are wholly or partially sustainable without adequate third-party verification of their suppliers' practices. A company, for example, might promote its products as sustainably sourced, yet its suppliers may engage in environmentally harmful practices. Given the complex and interconnected nature of both GHG emissions and international supply chains, organizations may also feign ignorance of some emissions linkages.

In the aforementioned Lululemon case, Stand.earth argues that Lululemon's supply chain produces substantial and increasing GHG emissions, despite the company's representation that it works to reduce its carbon footprint and contribute to a healthier environment across its value chain.<sup>17</sup> Stand.earth notes that although Lululemon began its "Be Planet" marketing campaign in 2020, its scope 3 emissions more than doubled in the intervening years to 2022.<sup>18</sup> As part of its "Be Planet" campaign, Lululemon expressed its dedication to partnering with suppliers to promote the adoption of renewable energy and phase out on-site coal boilers; however, Stand.earth reported that "80% of Lululemon's manufacturers and suppliers are located in countries with significant fossil fuel reliance and minimal grid renewables."<sup>19</sup> Furthermore, Stand.earth notes that many of Lululemon's largest suppliers do not publish information relating to their coal usage or plans to switch to renewable energy—making such representations difficult to verify.<sup>20</sup>

This case illustrates that ensuring the sustainability of an entire or part of a supply chain involves assessing the environmental practices of numerous suppliers, contractors, and subcontractors, which can be

---

<sup>15</sup> See this explanatory guide from Yale University's Sustainability office on Scope 3 emissions and why they are so difficult to calculate Yale Office of Sustainability, "Yale Experts Explain Scope 3 Emissions", Yale University, (14 November 2023), online: <<https://sustainability.yale.edu/explainers/yale-experts-explain-scope-3-emissions>>.

<sup>16</sup> Trouwloon, et al, "Understanding the Use of Carbon Credits by Companies: A Review of the Defining Elements of Corporate Climate Claims (2003) 7:4 Glob Chall 2200158.

<sup>17</sup> Stand.earth, *supra* note 7

<sup>18</sup> Stand.earth, *supra* note 7 at 8.

<sup>19</sup> Stand.earth, *supra* note 7 at 9.

<sup>20</sup> Stand.earth, *supra* note 7 at 9.



difficult. Accessing the data and verifying the sustainability of an entire supply chain requires comprehensive audits and continuous monitoring, which are resource-intensive and logistically complex. Without rigorous third-party verification and cooperation of suppliers, contractors, and sub-contractors, it is challenging to substantiate claims that some or all aspects of the supply chain adhere to high environmental standards. Ultimately, such claims are difficult to test and substantiate, and therefore less likely to be adequately and properly tested and substantiated.

***74.01(1)(b.2), Question Four – What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly substantiated”? Are there limitations to these methodologies that the Bureau should be aware of?***

The Bureau should consider two methodologies for setting climate targets and carbon accounting; the Science Based Targets initiative (SBTi) and the Partnership for Carbon Accounting Financials (PCAF).

#### **The Science Based Targets initiative (SBTi)**

The SBTi is a non-governmental organization which seeks to provide organizations with standards, tools, and guidance to set GHG emissions reduction targets aligned with current climate science requirements to fulfill the goals of the Paris Agreement.<sup>21</sup> The SBTi is globally recognized and has been adopted broadly. Over 9,000 companies have used the SBTi standards by either making net-zero commitments or establishing science-based targets.<sup>22</sup> Almost 150 of these companies are Canadian and include notable companies such as Telus Corporation, West Fraser Timber Co. Ltd, Stantec Inc., Purolator Inc., Nutrien Ltd., Loblaw Companies Limited, and Herschel Supply Company Ltd. The SBTi also provides sector-specific guidance.<sup>23</sup> Once determined, SBTi provides detailed criteria that must be met for net-zero targets to be validated.<sup>24</sup>

#### **The Partnership for Carbon Accounting Financials (PCAF)**

PCAF is a financial industry-led initiative that helps financial institutions assess and disclose the GHG emissions from their loans and investments through its GHG Accounting and Reporting Standard.<sup>25</sup> The PCAF was established by Dutch financial institutions in 2015 and spread internationally in 2019.<sup>26</sup> Today, over 500 financial institutions have either committed to or disclosed information in accordance with the PCAF; at least 30 of these institutions are Canadian.<sup>27</sup> Notable Canadian institutions include CIBC, BMO,

---

<sup>21</sup> Science Based Targets initiative, “About Science-Based Targets”, (last accessed: 24 September 2024), online: <<https://sciencebasedtargets.org/how-it-works>>.

<sup>22</sup> Science Based Targets initiative, “Companies Taking Action”, (last accessed: 24 September 2024), online: <https://sciencebasedtargets.org/companies-taking-action>.

<sup>23</sup> *Ibid* at 10.

<sup>24</sup> *Ibid* at 34.

<sup>25</sup> Partnership for Carbon Accounting Financials, “Financed Emissions Standard, Executive Summary”, (December 2022) at 2, online(pdf): <<https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard-exec-summary.pdf>>.

<sup>26</sup> *Ibid*.

<sup>27</sup> Partnership for Carbon Accounting Financials, “Financial Institutions Taking Action”, (last accessed: 24 September 2024), online: <<https://carbonaccountingfinancials.com/en/financial-institutions-taking-action#overview-of-financial-institutions>>.

Desjardins Group, the National Bank of Canada, TD Bank, Vancity Investment Management, and Canada Infrastructure Bank.<sup>28</sup>

### **Limitations**

Not directly related to the methodologies outlined above, the prevalence and multitude of rating agencies (such as Sustainalytics, MSCI, and S&P Global ESG), which employ their own methodologies, constitutes a limitation the Bureau should consider. Companies may rely on rating agencies to substantiate their environmental claims. However, the methodologies of rating agencies have been found to have significant shortcomings and inconsistencies.<sup>29</sup> As such, where organizations opt to use rating agencies, rather than employ a particular methodology to substantiate their claims, the Bureau should consider whether the methodology of the rating agency is itself internationally recognized.

To that end, the Bureau should clarify what being “internationally recognized” requires. A methodology could be considered internationally recognized by the function of prevalent use internationally; this is the case of SBTi for example which has grown to be a dominant methodology used across the globe.<sup>30</sup> Similarly, international recognition could stem from the creation of a methodology by an international organization or through a collaborative effort by many organizations. The International Sustainability Standards Board (ISSB) is an example of an internationally recognized body that develops sustainability and climate-related standards. The ISSB stems from the International Financial Reporting Standards Foundation (IFRS), which is the long-established pre-eminent international accounting standards setter.

***74.01(1)(b.1), Question Three – What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is “adequate and proper”?***

***74.01(1)(b.2), Question Four – What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on “adequate and proper substantiation in accordance with internationally recognized methodology”?***

In determining whether the testing to support claims about the environmental benefits of products is adequate and proper, and in determining whether claims about the environmental benefits of organizations are based on adequate and proper substantiation, the Bureau should consider the following criterion:

1. The testing or substantiation methodology used
2. The relevance of the testing and substantiation of claims made

---

<sup>28</sup> *Ibid.*

<sup>29</sup> Brain Tayan, “ESG Ratings: A Compass without Direction”, Harvard Law School Forum on Corporate Governance, (24 August 2022), online: <<https://corpgov.law.harvard.edu/2022/08/24/esg-ratings-a-compass-without-direction/>>.

<sup>30</sup> Science Based Targets initiative, “The Journey of the Science Based Targets initiative”, (27 June 2022), online: <<https://sciencebasedtargets.org/blog/the-journey-of-the-science-based-targets-initiative>>. See also Science Based Targets initiative, “About Us”, (last accessed: 24 September 2024), online: <[https://sciencebasedtargets.org/about-us#:~:text=The%20SBTi%20was%20formed%20as,Fund%20for%20Nature%20\(WWF\)](https://sciencebasedtargets.org/about-us#:~:text=The%20SBTi%20was%20formed%20as,Fund%20for%20Nature%20(WWF))>.

3. The transparency and disclosure of the testing and substantiation methodology
4. The comparability of the claims being tested and substantiated
5. The presence or absence of third-party verification

#### **1. The Testing or Substantiation Methodology Used**

In evaluating environmental claims, the Bureau should carefully consider the substance and requirements of the testing and substantiation methodology used by an organization.

Pre-existing internationally-recognized methodologies for testing and substantiating environmental claims provide robust criteria organizations must meet to make particular claims. These methodologies will enhance the credibility of claims by providing stringent requirements for organizations and will also provide the Bureau with a preliminary evaluation tool for environmental claims.

The Bureau should refer to well internationally-recognized and established methodologies independent of the one chosen by an organization for further evaluation. CCLI recommends the Bureau refer to the SBTi and PCAF for organizations to set climate targets and for carbon accounting.

#### **2. The Relevance of the Testing and Substantiation of Claims Made**

The Bureau should consider whether an organization's testing and substantiation methodologies are applicable to the environmental claims being made. Methodologies for calculating GHG emissions in manufacturing and shipping, for example, differ from those for calculating financed emissions in finance and investment contexts. Ensuring that the tests are relevant to the claims being made helps avoid misleading information and supports accurate representation of environmental benefits for consumers.

#### **3. The Transparency and Disclosure of the Testing and Substantiation Methodology**

The Bureau should consider whether an organization has detailed disclosure of its testing and substantiation methodologies when evaluating environmental claims. In addition to the evaluation of the veracity of an organization's claims, evaluating transparency ensures that an organization fosters trust and accountability by allowing stakeholders to scrutinize the methods and data underlying environmental claims. Furthermore, an organization's transparency about its testing and substantiation methodologies speaks to a high degree of rigour and care underlying the claims.

#### **4. The Comparability of the Claims Being Tested and Substantiated**

The Bureau should consider whether environmental claims made by an organization are comparable over time by other organizations in the same industry. Comparability allows for consistent progress tracking over time and distinction among peers and facilitates accountability by enabling stakeholders to assess claims against established benchmarks.

For example, if an organization makes claims about its emissions reduction in a given year, when evaluating the GHG emission reduction claim, the Bureau should consider whether the same organization is including that reduction figure for previous years and whether other organizations are making similar claims. The Bureau should consider whether the reduction figure in one year is comparable to reduction figures from

previous years or other organizations and the extent to which the methodology and metrics used are consistent across the years and organizations.

## **5. The Presence or Absence of Third-Party Verification**

The Bureau should also consider the presence of third-party verification as an indication that environmental claims are more likely to be adequately and properly tested and substantiated; conversely, it should consider the absence of third-party verification as an indication that the claims are less likely to be adequately and properly tested and substantiated.

Independent audits and certifications from reputable third-party organizations such as EcoLogo, Green Seal, Sustainable Forestry Initiative (SFI), or the Canadian Standards Association (CSA) can help attest to the truth of environmental claims by providing rigorous and standardized assessments. Accounting, audit, and assurance firms can also play a role. These firms have long-held expertise in assessing and verifying information and representations made by organizations. Verification by accounting, audit, and assurance firms, especially in financial disclosures, can contribute to the validity of organizations' claims.

Third-party verification adds an additional layer of credibility that claims are being objectively evaluated. Additionally, obtaining such third-party verification contributes to the rigour of an organization's efforts in testing and substantiating its environmental claims.

However, if third-party verification is to play such a role, the Bureau must also require such verifiers to employ adequate and proper testing and substantiation methodologies. Complaints against these verifiers, like those levied by Ecojustice<sup>31</sup>, must be afforded serious consideration and investigation.

### ***74.01(1)(b.1), Question Four – What challenges may businesses and advertisers face when complying with this provision?***

### ***74.01(1)(b.2), Question Five – What challenges may businesses and advertisers face when complying with this new provision of the law?***

Businesses and advertisers may face three main challenges when complying with these provisions: the continuing evolution of environmental science, the current ambiguity and lack of standardization, and the cost of compliance. It is worth mentioning that these challenges are underpinned by the fact that consumers, investors, and other stakeholders increasingly expect and demand that organizations make environmental claims or disclose climate-related information and take climate action.<sup>32</sup> This is a driving force pushing organizations to make claims and confront these challenges.

---

<sup>31</sup> See the Ecojustice complaints against [CSA](#) and [SFI](#): Ecojustice, "Application For Inquiry: The Canadian Standard Associations' False And Misleading Representations About Their Forest Certification Standard" (7 July 2021), online (pdf): <<https://ecojustice.ca/wp-content/uploads/2021/07/2021-07-21-CSA-CB-Complaint.pdf>> and Ecojustice, "Application For Inquiry: False And Misleading Representations By The Sustainable Forest Initiative About Their Forest Certification Standard", (2022), online: <<https://ecojustice.ca/wp-content/uploads/2022/12/SFI-CB-Complaint-Final.pdf>>.

<sup>32</sup> Ernest and Young Global Ltd. "Why sustainability has become a corporate imperative", EY Parthenon, 14 June 2021, online: <[https://www.ey.com/en\\_gl/insights/strategy/why-sustainability-has-become-a-corporate-imperative](https://www.ey.com/en_gl/insights/strategy/why-sustainability-has-become-a-corporate-imperative)>.

As environmental science evolves, advancements may render existing environmental claims irrelevant or testing and substantiation of these claims obsolete. This evolution may force organizations to regularly review and update their claims to reflect the latest scientific developments. For some organizations, this may be a resource-intensive and complex exercise.

Varying interpretations of ambiguous environmental terms may complicate compliance. As previously mentioned, terms like “sustainable”, “eco-friendly”, “climate-conscious”, and many others used in Truth to Label or Enterprise Branding claims, have a multitude of definitions and interpretations. For advertisers, this introduces the challenge of how to use such terms, while complying with the provisions of the law.

Secondly, while several standards and frameworks currently support organizations’ disclosure of climate-related information, the ambiguity around voluntary and mandatory disclosure of climate-related information and the variety of existing standards makes it difficult for organizations to ensure their claims meet regulatory requirements without being misleading. Recent and upcoming global developments concerning clear legislation and the convergence of standards should assist organizations in addressing this challenge.

In crafting its guidance, the Bureau should consider the IFRS and the ISSB IFRS S1 and IFRS S2 standards, and the incoming Canadian Sustainability Standards Board (CSSB)’s standards. The work of the ISSB and the CSSB are significant steps in the global alignment of disclosure of climate-related information.

Greater clarity from these standards will help organizations reduce greenwashing risks and challenges as they will provide clear guidance on what organizations should disclose, which will also lead to clearer expectations from investors and regulators for organizations to meet. Clear standards and guidance will also reduce the risk of greenhushing, which is the avoidance of environmental disclosure out of concern of being accused of greenwashing.<sup>33</sup>

The last challenge is that compliance with rigorous environmental-related regulations and ensuring claims are adequately tested or substantiated can be expensive and resource-intensive. The need for extensive testing, third-party verification, continuous monitoring, regular reviewing, and transparent reporting may impose significant financial burdens on organizations and demand time and resources that may affect organizations’ operations. Smaller organizations may find these costs especially challenging, potentially limiting their ability to compete with larger organizations that have more resources to invest in compliance. Furthermore, organizations must balance the costs and resources they invest in complying with environmental-related regulations with those they invest in complying with other regulatory requirements—the total of which may be onerous.<sup>34</sup>

---

<sup>33</sup> Dan Byrne, “What is Greenhushing”, Corporate Governance Institute, (last accessed: 24 September 2024), online: <<https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-is-greenhushing/?srsId=AfmBOooqAdAX3MxPoeEQY9OyQ2dzzGXUFVjvZiNv5JOOUxvDHZGo0Xrg>, <https://www.weforum.org/agenda/2022/11/what-is-greenhushing-and-is-it-really-a-cause-for-concern/>>.

<sup>34</sup> Canadian Federation of Independent Business, “Canada’s Red Tape Report, Sixth Edition, Executive Summary”, (January 2021), online: <<https://www.cfib-fcei.ca/en/research-economic-analysis/canadas-red-tape-report>>.

Despite these challenges, organizations must test and substantiate the environmental claims they make so that consumers are protected and investors can make informed decisions based on decision-useful and credible information.

**74.01(1)(b.1), Question Five – What other information should the Bureau be aware of when thinking about how and when to enforce this provision?**

**74.01(1)(b.2), Question Six – What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?**

Regarding enforcement, CCLI believes the Bureau should pay particular attention to the instruments and methods used by organizations to reach their GHG reduction targets. Many of these tools and strategies are unsupervised, unregulated, and untested. A cogent example is the use of carbon offsets and credits, the effects of which are highly debated. In particular, it is unclear whether carbon offsets and credits lead to a permanent or temporary reduction, or whether they succeed in avoiding or delaying emissions. Furthermore, there is a risk that these credits and offsets are double-counted by multiple organizations or are being awarded for actions that would have happened regardless of the credit.<sup>35</sup>

The Bureau should also consider the role of intra-industry collaboration in advance of enforcement action. The Bureau should encourage industry groups to develop and adhere to testing and standardization methodologies so that organizations might be presented with desirable options that reduce the need for enforcement action. These collaborative efforts will facilitate the sharing of best practices and resources, helping businesses achieve compliance more efficiently and at a lower cost.

### ***Jurisprudential Perspective***

On s. 74.01(1)(b) of the *Competition Act*, there is a well-developed body of jurisprudence that makes it clear that Canadian organizations have always been required to adequately test and substantiate their claims. As the Bureau moves to begin enforcement of the new provisions, it should do so with the understanding that these provisions are the codification of existing obligations on companies to make environmental claims that they have adequately and properly tested and substantiated.

In *Canada (Competition Bureau) v. Chatr Wireless Inc*<sup>36</sup> the Court reviewed misleading claims about network coverage made by Chatr Wireless. As part of that decision, the Supreme Court of Ontario completed analysis on whether s. 74.01(1)(b) of the charter was constitutional. Ruling that it was, the Court emphasized that:

Section 74.01(1)(b) protects against false or misleading performance claims made in the absence of prior adequate and proper testing. These claims may occur because the provider of the good or service is careless about the performance claim, or because the

---

<sup>35</sup> Science Based Targets initiative, “Evidence Synthesis Report, Part 1: Carbon Credits”, (July 2024), online (pdf): <<https://sciencebasedtargets.org/resources/files/Evidence-Synthesis-Report-Part-1-Carbon-Credits.pdf>>

<sup>36</sup> *Canada (Competition Bureau) v. Chatr Wireless Inc*, 2013 ONSC 5315 [*Chatr Wireless*]

provider of the good or service overconfidently believes that the performance claim is true and therefore has not tested the claim before making it.<sup>37</sup>

....

Section 74.01(1)(b) does not affect a truthful performance claim that can be tested in advance. Prohibiting a false claim from entering the marketplace is not a deleterious effect. Section 74.01(1)(b) requires substantiation of performance claims only. The reference to performance claims incorporates the notion of materiality because performance claims will always affect a consumer's decision with respect to a product or service.<sup>38</sup>

The ruling underscores the necessity for rigorous testing and evidence before making performance claims, a principle directly applicable to environmental claims. When organizations claim that their products are recyclable, compostable, or biodegradable, for example, such claims relate in part to the performance of these products. Bearing in mind the ruling in *Chatr Wireless Inc*, there is an existing requirement that environmental performance claims must be properly and adequately tested.

The principle discussed in *Chatr Wireless*, was animated in the two *Volkswagen AG* settlements.<sup>39</sup> Both settlements concerned misleading promotions by Volkswagen and Audi that certain 2.0L and 3.0L diesel engine vehicles sold or leased in Canada had clean diesel engines, with reduced emissions, cleaner than an equivalent gasoline engine sold in Canada. Across the two settlements, one in 2018 and one in 2016, Volkswagen and Audi agreed to pay approximately CA\$2.39 billion in compensation to consumers and CA\$17.5 million in penalties to the Bureau.<sup>40</sup> The essence of this case is that Volkswagen and Audi made claims deceiving consumers on the performance of their vehicles on an environmental basis—namely, the amount of emissions they released. Importantly, the companies used software to bypass emissions tests to establish credibility for their claims.

This case exemplifies that, regardless of the new provisions, environmental claims must not be misleading—they must be supported with adequate and proper substantiation. Absent such testing and substantiation of environmental claims, there can be significant harm incurred by Canadian consumers and society at large. The Bureau's enforcement decisions should be sensitive and responsive to the harms Canadian consumers may incur because of misleading environmental claims. This aligns with the Bureau's core objective to protect and promote competition for the benefit of Canadian consumers and businesses.<sup>41</sup>

---

<sup>37</sup> *Ibid* at para 480

<sup>38</sup> *Ibid* at para 525

<sup>39</sup> See the 2016 and the 2018 notices from the Bureau: Competition Bureau Canada, "Volkswagen and Audi to pay up to \$2.1 billion to consumers and \$15 million penalty for environmental marketing claims", Government of Canada, (19 December 2016), online: <<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>> and Competition Bureau Canada, "Up to \$290.5 million in compensation for Canadians in Volkswagen, Audi and Porsche emissions case", Government of Canada, (12 January 2018), online: <[https://www.canada.ca/en/competition-bureau/news/2018/01/up\\_to\\_290\\_5\\_million\\_in\\_compensation\\_for\\_canadians\\_in\\_volkswagen\\_audi\\_and\\_porsche.html](https://www.canada.ca/en/competition-bureau/news/2018/01/up_to_290_5_million_in_compensation_for_canadians_in_volkswagen_audi_and_porsche.html)>.

<sup>40</sup> *Ibid*.

<sup>41</sup> Competition Bureau Canada, "Competition Bureau Canada", Government of Canada, (last accessed: 24 September 2024), online: <<https://competition-bureau.canada.ca/>>.



## ***Securities Law Perspective***

Without clarity from securities regulators, some companies are concerned that their environmental disclosures may attract liability under these provisions.<sup>42</sup> Financial disclosure documents of publicly traded companies are subject to securities law. Organizations may make environmental claims as part of their financial disclosures or through associated climate, sustainability, and ESG reports. The CSA have yet to finalize and bring into force their proposed national instrument on climate-related matters.<sup>43</sup> Similarly, they have yet to establish a safe harbour provision for environmental-related disclosures or advise whether current safe harbour provisions apply to environmental disclosures. Previously, in 2010 the CSA provided guidance on environmental reporting, noting that Forward-Looking Information (FLI) must comply with the requirements in part 4A of NI 51-102.<sup>44</sup> They provided guidance on how organizations should assess if disclosures are FLI. The CSA has not issued further guidance with respect to FLI and safe harbour provisions at this point.

Until the CSSB publishes its final sustainability and climate-related standards and the CSA finalizes its proposed climate-related disclosure national instrument, the Bureau should clearly articulate how these provisions apply to financial disclosures under securities law. The Bureau should also carefully consider this apparent overlap in its enforcement efforts.

## **Conclusion**

Despite this uncertainty and challenges outlined above, the Bureau should communicate that these new provisions are not and should not be used as justification for organizations to abstain from providing climate-related and environmental disclosure in their financial disclosure documents or making environmental claims. CCLI supports these new provisions as they contribute to establishing stringent requirements for substantiating environmental claims, requirements which foster trust in the marketplace and help protect consumers and investors alike from deceptive claims. Liability arises from these provisions if organizations make environmental claims without proper and adequate testing and substantiation and actions are not aligned with the claims, not simply because they make the claims themselves. The World Economic Forum recently published an article providing guidance questions for boards and management in managing climate-related liability risk.<sup>45</sup>

---

<sup>42</sup> See this article from the Globe and Mail reporting a few companies expressing such a concern and withholding disclosing as a result: Emma Graney, "Oil sands producers hold off environmental reports in wake of Ottawa's new anti-greenwashing rules", *The Globe and Mail*, (1 August 2024), online: <<https://www.theglobeandmail.com/business/article-oil-sands-producers-hold-off-environmental-reports-in-wake-of-ottawas/>>.

<sup>43</sup> Based on the most current bulletin from the CSA, their proposed climate-related rule is still in development and awaiting feedback to the CSSB's draft standards: Canadian Securities Administrators, "Canadian securities regulators issue statements on proposed sustainability disclosure standards and ongoing climate consultation", (13 March 2024), online (news release): <<https://www.securities-administrators.ca/news/canadian-securities-regulators-issue-statements-on-proposed-sustainability-disclosure-standards-and-ongoing-climate-consultation/>>.

<sup>44</sup> Canadian Securities Administrators, "Staff Notice 51-333, Environmental Reporting Guidance", (27 October 2010), online: <[https://www.osc.ca/sites/default/files/pdfs/irps/csa\\_20101027\\_51-333\\_environmental-reporting.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/csa_20101027_51-333_environmental-reporting.pdf)>.

<sup>45</sup> The World Economic Forum, "Top 5 climate-related liability issues that your board should consider", (19 September 2024), online: <<https://www.weforum.org/agenda/2024/09/top-5-climate-change-related-liability-issues/>>.