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BRIEFING NOTE

Bill C-59: Government intentions vs. market reactions

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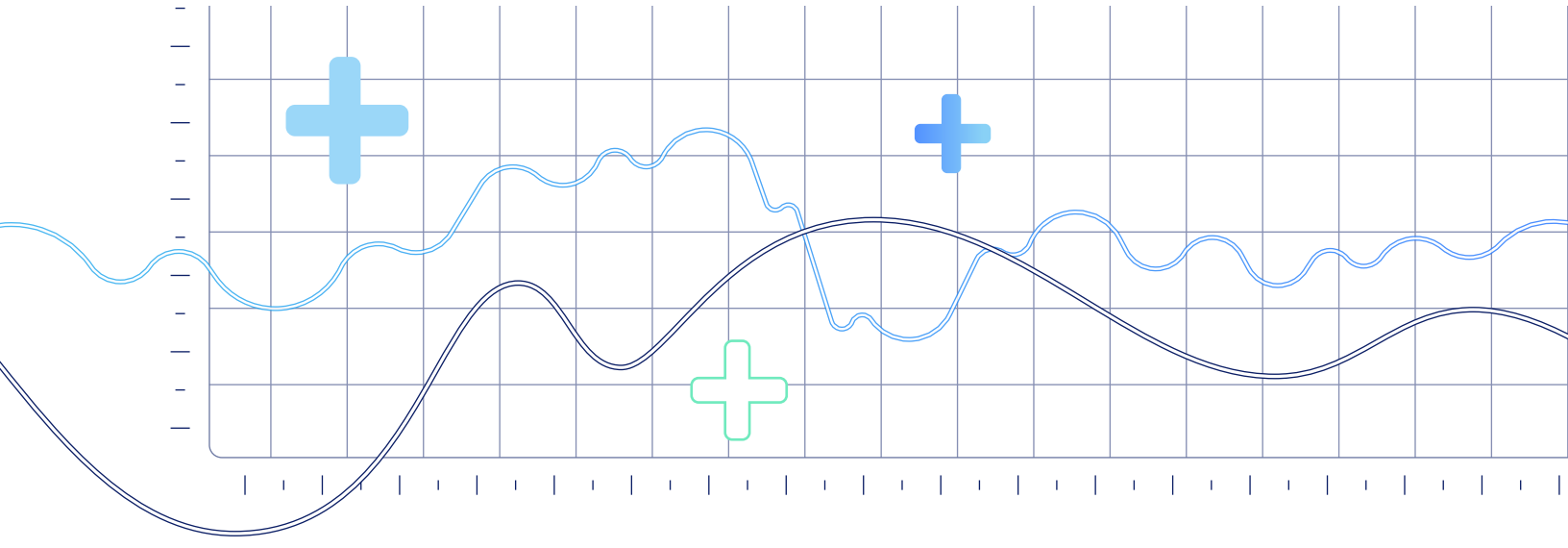
Contents



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INTRODUCTION

Recently, we saw a particularly high-profile example of a major Canadian institution backing off on its climate change-related initiatives, citing concerns about recent changes to the *Competition Act*. Royal Bank announced that it will not continue to pursue its stated goal of $500 billion in sustainable investments by 2025[1], citing uncertainty around disclosure methodology and potentially steep penalties under the *Act* as reasons. "Recent amendments to Canada's Competition Act limit the information we can share on certain sustainability disclosures and the progress we are making and have restricted our ability to publicly report on several metrics," the bank said in a statement.

Whether or not RBC's concern about greenwashing rules is well-founded, the bank is not alone in corporate Canada in pulling back on sustainability-related statements. Over the past year, calls for the Competition Bureau to clarify its compliance guidelines grew. With many expressing concern about inadvertently discouraging voluntary environmental reporting, the question must be asked: How did we get here? This Briefing Note traces the path of Bill C-59, explores related market reactions, and discusses remaining challenges.

Bill C-59 became law on June 20, 2024, making sweeping changes across various statutes. However, it was the changes to the deceptive marketing rules in the *Competition Act* that drew headlines. The deceptive marketing rules – sections 52 & 74.01 – were expanded to explicitly prohibit greenwashing, putting all corporate environmental claims under scrutiny and outlining steep monetary penalties for infringements.[2] The amendments put the onus on companies to substantiate all environmental claims using proper and adequate testing, and further, expanded private access to the Competition Tribunal. The Competition Bureau is the investigative and enforcement arm responsible for administering the *Competition Act*, while the Competition Tribunal adjudicates competition-related cases.

Companies make environmental claims to demonstrate corporate responsibility, align their values with stakeholders, and meet the growing consumer demand for sustainable products and services. However, numerous studies have shown that misleading environmental claims have eroded confidence in corporate environmental communications. For example, a Deloitte report states that "more than half (57%) of Canadian consumers say they don't believe most "green" or sustainable claims that brands make."[3] The Competition Bureau also warned consumers of online greenwashing, citing a study "by the International Consumer Protection and Enforcement Network that 40% of green claims made online could be misleading consumers."[4] Similarly, an Angus Reid Forum Poll, commissioned by Greenpeace Canada, found that 93% of Canadians support "the statement 'Companies should face penalties for making environmental claims that they can't prove are true.'"[5]

Despite the pervasiveness of greenwashing, regulatory enforcement of misleading environmental claims is largely absent in Canada. The problem, according to the Bureau, is that its expertise lies in "investigating misleading advertising and deceptive marketing practices" rather than "environmental sciences."[6] Since 2015, there have only been two interventions by the Bureau in cases related to environmental claims and both required the expertise of third parties.[7] The first case was the Competition Bureau's investigation into Volkswagen, Audi, and Porsche for cheating on emissions testing, a large-scale scandal that was originally discovered by the U.S. Environmental Protection Agency in 2015. The second case involved the alleged – but proven false – recyclability of Keurig Canada's K-Cup Pods, which was originally brought to the Bureau's attention by Ecojustice and the University of Victoria.

The amendments to the *Competition Act* can bridge this knowledge gap by:

1. Including a reverse onus provision that places the burden of proof on the entity making the environmental claim, meaning that companies must be able to back up their environmental statements. This reduces the level of investigation required by the Competition Bureau to prove that a claim is misleading.
2. Granting private access to the Competition Tribunal so that regulators can leverage the expertise and mandates of environmental organizations that can better identify greenwashing.

1 See Globe and Mail (2025), RBC drops sustainable finance targets, blaming anti-greenwash law.
2 Monetary penalties could include up to $10,000,000 ($15,000,000 for subsequent violations), or three times the benefit gained from the deceptive practice, or alternatively, if this value cannot be determined, 3% of global annual revenues. For further reading, see Competition Bureau (2024), Penalties and remedies for non-compliance.
3 Deloitte (2023), Creating value from sustainable products.
4 Competition Bureau (2022), Be on the lookout for greenwashing.
5 Greenpeace (2024), Canadians overwhelming (93%) support anti-greenwashing legislation: Poll.
6 See Competition Bureau (2024), Deceptive Market Practices Digest Volume 7
7 See Competition Bureau (2024), Competition Bureau seeks feedback on its new guidelines regarding environmental claims.

Across the various sectors of the Canadian economy, reactions have been mixed, with the energy sector being the most vocally opposed. Markedly, as of September 2024, at least 34 companies (15%) on the S&P/TSX Composite Index, mostly from the energy sector, issued disclaimers or outright removed their environmental disclosures from their websites as a result of the amendments[8].

Given the harsh monetary penalties outlined, market actors largely concurred that the Bureau needed to provide more details and guidance on compliance with the new regulations, and make explicit changes to protect climate-related disclosures, which are essential in empowering investors to make informed capital allocation decisions that align with a net-zero future.

The Competition Bureau launched a public consultation of the amendments, which concluded on September 27, 2024. The responses that were not marked confidential were made public (see written responses to the consultation on the Competition Act's new greenwashing provisions). This report analyzes the responses to the Public Consultation, and assesses the findings against the final guidance, which provide six principles for compliance with the new amendments. While we find that the updated guidance is an improvement, further clarity is required to reduce market anxieties over compliance with the new regulations.

A BRIEF INTRODUCTION TO ENVIRONMENTAL CLAIMS

While there are many ways to categorize different types of environmental claims, we find the following typology helpful:

'Greenness' of specific products and services:[9]

- One of the most common environmental claims involves the purported environmental benefits associated with purchasing or using a particular product or service. Such claims can range from stating that a product is recyclable to promoting it as low-carbon. Under the new regulations, all claims must be supported by "adequate and proper testing." Although the *Competition Act* does not explicitly define what "adequate and proper" means, existing case law surrounding product performance claims provides sufficient guidance. As a result, there is little ambiguity regarding the standards that must be met when making environmental claims about specific products.

Claims about the current 'greenness' of overall business operations

- Statements regarding the environmental impact of current business operations, such as claims of having reduced one's carbon footprint or achieving carbon neutrality, are also subject to scrutiny. The new regulations introduce some uncertainty regarding how regulators will evaluate the validity of carbon "offsets" used to substantiate carbon neutrality claims. This practice has grown increasingly controversial and the Bureau's position on such instruments is not yet clear.

Claims about long-term or aspirational targets

- At a Sustainable Finance Summit in Toronto in 2024, a panellist joked that "everyone and their cousin" had set an emissions target. As competitors released their environmental targets in response to consumer and government pressure, many companies felt the need to set similar targets without serious consideration of the commitment and capital required to achieve them. Nicknamed "green wishing", these targets are now under the microscope. There are serious questions regarding whether companies should be setting aspirational targets at all and, if so, how much evidence should be required to support such claims.

The following sections explore how companies, many of which use or must navigate environmental claims, have reacted to the amendments.

8 Data collected by author.

9 For example, see Douglas (2024), Green group sues Tyson Foods for allegedly false climate claims and Shecter (2022), Competition Bureau opens probe of alleged 'greenwashing' by natural gas association.

PUBLIC CONSULTATION: CORPORATE AND PRIVATE CONCERNS

The Competition Bureau released a total of 208 responses. We filtered the responses to eliminate duplicate and unrelated entries, bringing down the number of responses analyzed to 204. We classified each response by sector of operation and conducted a thematic analysis to identify the top concerns and recommendations by the public. Four major themes emerged: *unintended consequences* (mentioned in 173 responses), *difficulties in compliance* (mentioned in 140 responses), *the need for further clarity and guidance* (mentioned in 109 responses), and *policy recommendations* (mentioned in 88 responses). Because respondents in certain sectors were more active in coordinating responses to the consultation,[10] we also calculated the relative representation of each theme across responses where sectors are equally weighted.

UNINTENDED CONSEQUENCES

Canada has a voluntary disclosure regime, meaning that many companies are not obligated to disclose information about the sustainability of their operations.[11] A majority of respondents (173) expressed concern that the increase in legal liabilities associated with sustainability communications will reduce incentives for companies to disclose and invest in sustainable solutions. When all sectors are equally weighted, an average of 88% of responses mentioned unintended consequences.

DIFFICULTIES IN COMPLIANCE

A majority of respondents (140) described potential difficulties in complying with the new regulations. Concerns included the resource-intensiveness of substantiation, which may be particularly onerous for small to medium-sized companies. In addition, several respondents voiced concerns about overregulation, suggesting that companies were already overburdened by complying with multiple regulatory bodies. Supply chain complexities, such as Scope 3 reporting, and sector-specific challenges were also mentioned. When all sectors are equally weighted, an average of 79% of responses mentioned difficulties in compliance.

NEED FOR FURTHER CLARITY AND GUIDANCE

Over half the respondents (109) expressed concern about the uncertainty in how the new regulations will be implemented and enforced. Many requested more clarity through definitions of ambiguous terms, as well as guidance that includes examples of acceptable substantiation. When all sectors are equally weighted, an average of 50% of responses mentioned the need for further clarity and guidance.

POLICY RECOMMENDATIONS

Many responses noted a need for policy recommendations, albeit with significant variation in proposed solutions. The most common suggestions were to align regulations with sector-specific regulation and to implement safe-harbour provisions. A total of 70 responses described the need to align greenwashing regulation with sector-specific rules, often citing overlapping or contradictory regulations. Respondents suggested that the Bureau coordinate and defer to sector-specific regulators when applicable. When sectors are equally weighted, this recommendation was present in 25% of responses. This theme was overrepresented in the financial sector, where 65% of responses mentioned the need for harmonization with sector-specific regulation.

10 For example, the mining, quarrying, and oil and gas extraction sectors provided the most responses to the consultation (38). In addition, numerous individual responses represent employees of the same sector, with enough parallels to suggest that the responses may have been derived from the same template. To limit bias, we have opted to calculate the representation of each theme when sectors are equally weighted.

11 Exceptions include entities subject to OSFI Guideline B-15, which mandates climate-related financial disclosures for federally regulated financial institutions in Canada, and companies impacted by the EU's Corporate Sustainability Reporting Directive (CSRD), which applies to firms with significant operations in the European Union.

Safe-harbour provisions are legal measures that shield companies from liabilities. For example, they are frequently employed to limit any potential liabilities when companies release financial forecasts for the future. This provision was mentioned in 12% of responses when sectors were equally weighted. However, it was over-represented by the mining, quarrying, and oil and gas extraction sector, appearing in 45% of sector responses.

Other policy recommendations included allowing companies to invoke a due diligence defence that distinguishes between good faith compliance efforts and deliberate greenwashing, with proportional penalties applied accordingly. Some responses suggested introducing a phased rollout to ease compliance burdens, while others recommended repealing the amendments altogether.

SPOTLIGHT ON FINANCE SECTOR RESPONSES

Participants from the financial sector consistently highlighted the importance of distinguishing between environmental claims made to market a product or service and the data that companies disclose regarding their ESG performance. The former category targets consumers and might include the use of labels such as "green" or "sustainable" to highlight the environmental attributes of products and services and sway consumer choices. These environmental claims can also appear in marketing materials for financial products. The Competition Bureau is tasked with policing these claims to ensure they are not misleading to the public.

ESG disclosures, in contrast, are not marketing materials but serve to help investors make informed decisions about capital allocation, requiring subjective forward-looking information about an organization's climate or broader sustainability risks and opportunities. The financial sector warned against the possible conflation of marketing claims with ESG reporting, which may increase the legal risks associated with making voluntary ESG disclosures. Several companies have already made it clear that the new regulatory environment will lead to a pullback in their sustainability disclosures. According to the responses from the financial sector, the possible consequences are far-reaching: Canadian companies will not be able to compete with foreign companies for capital, as global investors, who increasingly value and factor in ESG considerations in their investment strategies, require such disclosures.

The financial sector also highlighted two distinct types of solutions going forward. First, finance sector respondents requested that the Bureau cooperate and defer to financial regulators and standard setters that develop policies specifically tailored to the sector, with consideration for Canada's net-zero ambitions and the competition for global capital. This includes the Canadian Sustainability Standards Board (CSSB),[12] the Canadian Securities Administrators (CSA), and the Office of the Superintendent of Financial Institutions (OSFI).

Coordination with financial regulators will reduce the risk of overlapping and/or contradictory regulations. For example, some responses raised the concern that the new regulations and associated risks of green hushing[13] may inadvertently contradict the goals of other sector-specific regulations that seek to enhance disclosures. An approach that recognizes the fundamental differences between environmental claims for consumer decision making and environmental data for investor decision making will allow for the dual achievement of consumer protection while preserving the ESG reporting ecosystem that investors rely on to guide capital toward a more sustainable economy.

12 The CSSB finalized its recommendations for CSDS 1 and CSDS 2, which adapt the International Sustainability Standards Board's (ISSB) first two sustainability standards for Canada. However, compliance with these standards remains voluntary. The CSA had disclosed that it would begin its own process to review and potentially mandate the CSDS 1 and CSDS 2 standards, but have since issued a temporary pause to these efforts.

13 Green hushing refers to a "company's refusal to publicize ESG information. The company may fear pushback from stakeholders who would find its sustainability efforts lacking or from investors who believe ESG undermines returns. On the surface, green hushing is not overtly dishonest; however, it limits the quantity and quality of publicly available information. Without this transparency, it becomes challenging to analyze corporate climate targets, share best practices on decarbonization and calculate Scope 3 emissions, which by definition require widespread reporting." (KPMG, 2023), Greenwashing, greenhushing and greenwishing: Don't fall victim to these ESG reporting traps.

Responses from the financial sector also opined on the value of forward-looking claims, arguing that net-zero targets are essential for getting companies to start thinking about the necessary trajectory of their greenhouse gas emissions reductions. Given the rapidly evolving nature of climate metrics, a flexible, principles-based approach for assessing forward-looking environmental claims was also recommended. As in the overall sample, many finance sector respondents also suggested the inclusion of safe-harbour provisions to provide protection for companies communicating their net-zero targets and other ESG data.

The key point consistently coming across from financial sector responses is that there is a difference between sustainability disclosures and marketing materials, and that it is critical to ensure that regulation of the latter does not impede the private sector from contributing to Canada's net zero goals.

CONCLUSION

The initial market reaction to Bill C-59 has been mixed, with some lauding the legislation as a needed step to protect consumers and the environment, and others contesting that the regulations do not consider the specific realities and challenges of each sector and the broader market. In response to the feedback provided, the Competition Bureau drafted guidelines for compliance which were finalized on June 5, 2025. The final guidelines outline considerations for different types of environmental claims, providing relevant definitions and examples for each, six broad principles for compliance, and a frequently asked questions section (FAQs). Additionally, a backgrounder was published to supplement the final guidelines.

The guidelines provide market actors needed with some much-needed clarity, many of which directly address concerns raised in the initial consultation, but in many cases, uncertainties remain. Key highlights include:

- **Clarity on the overlap with securities regulation:** The Bureau addresses concerns regarding the conflict between securities regulation and consumer greenwashing regulation, stating that it would not be in the best interest of consumers to defer all protections against greenwashing to securities regulators: "In the Bureau's view, the protections afforded to ordinary consumers under the Act should not be limited to the protections afforded to people who are seeking to invest in capital markets."[14] However, the guidance also provides some assurance that the Bureau will focus on promotional material rather than environmental disclosures for investors, which would only become relevant to the Bureau if the material is recycled as promotional or marketing material.
- **Allowing a defence for due diligence:** A due diligence defence limits the severity of possible penalties to only the removal of the misleading claim.
- **Persisting ambiguity in terminology:** While the guidelines have provided definitions, the guidelines are not a legal document, meaning that the provided definitions are not legally enforceable, unless they have already been interpreted by the courts. However, the updated guidance eases market concerns by confirming that the Bureau intends to use a flexible interpretation of 'internationally recognized.'
- **Insufficient detail and practical examples:** Market actors require detailed guidance and examples to ensure compliance with the new regulations, especially in relation to what constitutes sufficient evidence to back up a claim. The current guidance still falls short on this front.

Addressing these remaining issues should be a priority for the Competition Bureau and the new federal government so that corporations can have clarity on what is allowed in Canada's anti-greenwashing regime and to minimize unintended consequences. Particularly concerning would be disincentives for climate-related financial reporting which plays an important role in mobilizing capital to support action on environmental priorities. Finally, continuing to establish a mandatory regime for climate reporting under CSSB standards would enhance the confidence level of issuers and investors and facilitate sustainable investing.

14 Competition Bureau (2025), Backgrounder: Consultation on environmental claims and the Competition Act