Institute for Sustainable Finance

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ANALYSIS

Canadian Competition, Aussie Rules:

A model from Down Under to fight greenwashing, reduce litigation risk and support investment in climate action

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Smith
SCHOOL OF BUSINESS
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Contents

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INTRODUCTION

Bill C-59, enacted in June 2024, marks a significant shift in Canada's regulatory landscape by amending the *Competition Act* to directly target "greenwashing" — the practice of making misleading or unsubstantiated environmental claims. The new provisions broaden the scope of the deceptive marketing rules under Sections 52 and 74.01 and introduce substantial penalties for companies that fail to adequately substantiate their environmental claims. In a major change, the law now places the burden of proof on businesses, requires proper and adequate testing to support claims, and, since June 20, 2025, allows third-party organizations to bring actions before the Competition Tribunal.[1]

These changes are intended to restore trust in environmental communications, following widespread evidence of consumer skepticism. A Deloitte report found that 57% of Canadian consumers do not believe most green claims, and a Greenpeace survey showed 93% support penalties for unverifiable environmental statements.

However, the regulatory shift has created uncertainty across corporate Canada, especially in sectors like energy and finance, where ESG disclosures play a central role in investment decisions. This analysis focuses on the potential for increased risk of litigation facing Canadian firms and considers actions they can take to mitigate that risk. It then looks at Australia's approach, which offers robust consumer protections from greenwashing yet avoids disincentivizing sustainability disclosures, as a model for Canadian policy makers.[2]

MARKET REACTIONS AND SECTOR CONCERNS

The reaction to Bill C-59 has been mixed. On one hand, consumer advocates and some investors see the amendments as long-overdue guardrails to prevent misleading climate-related marketing. On the other hand, several corporations — especially in the upstream energy sector — have responded by withdrawing environmental disclosures, citing legal risk and uncertainty. As of fall 2024, 15% of companies on the TSX Composite Index had removed, revised, or issued cautionary disclaimers for ESG-related content on their websites.

Financial institutions were particularly vocal during the public consultation phase. Many expressed concern that the law does not clearly distinguish between marketing claims aimed at consumers and ESG disclosures intended for investors.[3] This blurring of categories could inadvertently chill legitimate sustainability reporting, potentially making it harder for Canadian firms to attract capital from global investors who are increasingly focused on climate risk. Respondents also urged the Competition Bureau to coordinate with sector-specific regulators and standard setters — such as the Office of the Superintendent of Financial Institutions (OSFI), the Canadian Securities Administrators (CSA), and the Canadian Sustainability Standards Board (CSSB) — to avoid duplicative or contradictory requirements.

1 The Competition Tribunal adjudicates disputes arising from those laws, such as mergers, abuse of dominance, and deceptive marketing cases, while the Competition Bureau is responsible for enforcing Canada's competition laws.

2 This material has been prepared for information purposes only and is not intended to provide, and should not be relied on for legal, financial or accounting advice.

3 See ISF's Briefing Note, "C-59: Government intentions vs. market reactions."

REGULATORY GUIDANCE AND REMAINING GAPS

In response to stakeholder feedback, the Competition Bureau released updated guidance in June 2025, offering some much-needed clarification. The guidance distinguishes between promotional claims and investor disclosures, indicates a principles-based approach for aspirational targets like net-zero commitments, and allows for a due diligence defence that may mitigate penalties for companies acting in good faith.

Nevertheless, significant ambiguities remain. Definitions provided in the guidance are not legally binding, and the lack of detailed, sector-specific examples has left many firms unsure of how to comply. Additionally, the Bureau's insistence that consumer protections should not defer to securities regulation has not fully alleviated market concerns about regulatory overlap.[4]

WHY LITIGATION RISK IS LIKELY TO SURGE

One thing that is clear is there will be plenty of work to do for legal departments. Given the scale of monetary penalties, a reverse-onus provision and confusion around standards, we are likely to see a lot of caution in boardrooms and internal reviews of disclosures by legal departments. Despite these cautionary measures, we still anticipate a significant rise in litigation in cases centred on environmental claims, misleading marketing, and greenwashing.

1. PRIVATE ACCESS EXPANDED BEYOND BUREAU ENFORCEMENT

Private disputes will surge and we can anticipate a rise in Competition Tribunal actions including applications for injunctions, prohibition orders, disgorgement, and restitution. As of June 20, 2025, private parties — such as competitors, consumer groups, or NGOs — can bring claims under deceptive marketing (e.g., greenwashing) and civil competitor conduct provisions before the Competition Tribunal, provided they obtain "leave" and the cases are deemed in the public interest. Historically, only more restrictive provisions allowed private actions.

In this environment, reputational and compliance risk will be elevated, pushing firms to exercise caution or curtail public environmental messaging altogether (a trend we have already seen in recent months).

2. NEW "GROUP ACTION" STYLE REMEDIES

While not a formal class action, the Tribunal may order disgorgement of the benefit derived from misleading conduct and distribute that remedy to affected persons. The Tribunal also gains procedural control to administer claims, appoint administrators, issue notices, and handle distributions — essentially mirroring a class system outside the civil court framework.

3. SIGNIFICANT MONETARY PENALTIES

Compounding the risk is the scale of potential penalties. Private litigants (and the Competition Bureau) can request Administrative Monetary Penalties (AMPs): for corporations, these penalties are up to the greater of CAD $10 million (first violation), CAD $15 million (subsequent violations), triple the benefit derived, or 3 percent of worldwide revenue if the value of the benefit cannot be reasonably determined. Individuals can face penalties too: up to CAD $750,000 (or CAD $1-million per subsequent order) or triple the benefit derived.

4 See Competition Bureau, "Backgrounder: Consultation on environmental claims and the *Competition Act*"

4. REVERSE ONUS AND VAGUE STANDARDS

Anyone making environmental claims must prove they are based on “adequate and proper tests” or “internationally recognized methodology” — a vague standard open to interpretation. This reverse onus increases uncertainty significantly, potentially chilling legal and lawful speech about the environment or sustainability.

WHAT REMAINS UNCERTAIN

- **Tribunal procedures:** It is unclear how stringent leave hearings will be, whether there will be screening akin to certification in class actions, and how much procedural power the Tribunal will exercise.
- **Standards and methodology guidance:** The Competition Bureau has issued guidance, but it remains to be seen how narrowly terms such as “adequate” or “internationally recognized” are defined by courts, which is critical for compliance.
- **Constitutional challenges:** Provincial governments (e.g., Alberta, Saskatchewan) have signaled intent to challenge these provisions on Charter grounds, arguing they impose a “gag” on speech.

WHAT BUSINESSES SHOULD DO NOW

In the absence of further guidance from the Competition Bureau or government reforms to the *Competition Act*, there are steps companies can take to mitigate the risk. Firms should audit all public claims around ESG, sustainability, and environmental impact and work with legal and compliance teams to ensure adequate testing and documentation, preferably referencing recognized thirdparty standards. For example, firms may leverage the Science-Based Targets Initiative (SBTi), which is largely recognized as the gold standard for target setting, to set credible goals.

This regulatory environment is still evolving. Companies should also stay tuned to forthcoming Tribunal procedures and decisions, monitor litigation trends to identify evolving legal risk, and keep an eye out for further Bureau guidance as there are still many questions in the marketplace following the Bureau’s final guidance approved June 5, 2025.

A COMPARISON WITH AUSTRALIA: MORE DETAIL, MORE CONFIDENCE

In contrast to Canada’s evolving regime, Australia’s approach to greenwashing regulation is more mature and robust. Australian regulators — including the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) — have developed clear, enforceable guidance, backed by enforcement actions and cross-agency co-ordination. The Australian framework offers:

- Specific substantiation standards for environmental and ESG claims;
- Detailed examples of compliant vs. non-compliant statements;
- Strong alignment between financial and competition regulators; and
- A track record of proactive enforcement, especially in superannuation and investment marketing, in contrast to C-59’s private right of action.

Feature	Canada (Bill C-59)	Australia (ASIC & ACCC Framework)
Legal Status	Recently enacted, limited case law	Operational, with multiple enforcement actions
Clarity & Guidance	Lacks enforceable definitions and detailed substantiation examples	Offers explicit guidance, examples, and substantiation standards
Regulatory Coordination	Ambiguous; tension with securities regulators	Strong coordination across ASIC, ACCC, and regulators
Scope	Covers marketing claims; uncertain on ESG disclosures	Covers superannuation funds, corporate statements
Robustness	Improving, but still limited in enforceability and clarity	More detailed, enforceable, and practical in scope

By comparison, Canada's framework under Bill C-59 is principles-based but underdeveloped, offering less precision and fewer concrete examples. While the intentions are aligned, Australia's detailed, regulator-co-ordinated regime offers greater legal certainty and is less likely to disincentivize voluntary ESG disclosures — a critical consideration for a country trying to align capital markets with net-zero goals.

LOOKING AHEAD: ALIGNING POLICY WITH PRACTICE

Bill C-59 is an important step toward strengthening consumer protection and restoring integrity in corporate environmental claims. However, its ultimate success will depend on whether the federal government and regulators can resolve remaining uncertainties and avoid unintended consequences, such as discouraging the very climate-related disclosures that investors need to allocate capital effectively.

From examining the Australian example and public feedback on Canada's Bill C-59 the following recommendations emerge:

- The Competition Bureau should issue clearer guidance, including sector-specific examples. However it is important to note that that this will still leave questions around enforceability (e.g., whether following guidance would reduce a firm's litigation risk) as it is ultimately up to the courts to interpret the legislation;
- There should be stronger co-ordination between the Competition Bureau and financial regulators such as the Office of the Superintendent of Financial Institutions and Canadian Securities Administrators to ensure that policy goals are aligned;
- Additionally, the federal government should co-ordinate with Canadian Securities Administrators who should restart their process to mandate corporate climate-related reporting under the Canadian Sustainability Standards Board (CSSB) guidelines; this would enhance clarity for both businesses and investors;
- If there is a perceived rise in opportunistic litigation, the federal government could amend the legislation to eliminate the private right of action, and instead expand Competition Bureau resources to investigate and enforce incidents of greenwashing;
    - If the private right of action is retained, it is important to clarify how the Competition Tribunal will decide which cases it will pursue. This involves clearly stating when and how a case will be deemed to be of 'public interest,' (private actors need to show this order to bring a case) and how the Tribunal will decide which cases will be pursued and made public;
- The federal government should amend the legislation to implement safe-harbour provisions for forward-looking disclosures, which would offer legal protection to companies that are attempting to make crucial projections about the future that might inform capital allocation decisions, but are dependent on subjective assumptions.

With these improvements, Canada can move closer to a regulatory environment that promotes both accountability and climate-aligned capital flows, without deterring corporate transparency.