BUSINESS COUNCIL OF ALBERTA

Standing Senate Committee on National Finance
The Senate of Canada
Ottawa, ON
K1A 0A4

June 7, 2024

Dear Senators of the National Finance Committee,

We are writing to express our concern with the amendments to Bill C-59 and its implications for Canada. We recommend removing the amendment to Clause 236 in its entirety.

The Business Council of Alberta (BCA) is a non-partisan, non-profit organization composed of the chief executives and leading entrepreneurs of Alberta's largest enterprises. Our members represent the majority of Alberta's private sector investment, job creation, exports, and research and development. We are dedicated to building a better and more prosperous Alberta within a strong Canada.

BCA strongly supports the ideals of accuracy and transparency, and our members work tirelessly to uphold these values in all that they do.

However, we worry that the recent amendments to Bill C-59 as presently drafted will, at best, fail to support the aim of ensuring accuracy and transparency and could lead to serious consequences for Canadian businesses and Canadians. Our biggest concern is that these amendments are themselves vague and ambiguous and were rushed into the bill without adequate study.

In his evidence and accompanying submission to the House of Commons Standing Committee on Finance during its study of C-59, the Commissioner of Competition, Matthew Boswell, said investigations of this nature are highly complex, "resource intensive" and that they may not be best dealt with under the Competition Act. "Obviously, we're not environmental experts; we're competition law experts." When asked specifically if a further amendment should be made—as is now proposed—the Commissioner refused to endorse that recommendation, saying it needs more study.[1]

We agree. And we believe you should as well.

While we and our members support the need for truth in advertising—as is already the law today—there is significant risk that a poorly drafted amendment, rushed at this time, could do more harm than good. It could lead to serious financial and reputational implications for Canadians businesses and Canada at large. Even worse, the addition of this new administrative hurdle, combined with a lack of clarity around expectations for compliance or

[1] Boswell, Matthew (2024). Testimony before the House of Commons Standing Committee on Finance (FINA). April 18, 2024. Evidence. Available at: https://www.ourcommons.ca/documentviewer/en/44-1/FINA/meeting-138/evidence

method for evaluation, will stifle communication from businesses on climate change and emissions—and at a time when its needed most.

Our concern primarily lies with the amendments in Clause 236 which require that a business entity prove that it meets a standard for "adequate and proper test" and "adequate and proper substantiation in accordance with internationally recognized methodology."

The inclusion of these requirements within the clause is problematic for multiple reasons:

1. This clause is generally applicable only to businesses in Canada. It is unclear why, and ultimately inequitable that, this requirement is being applied solely to business and not other organizations, such as non-profits and governments. This is why—as Commissioner Boswell says—the Competition Act is a poorly designed legislative tool for this problem. Advertising standards should be dealt with through other appropriate means, which would provide a holistic picture, with proper tools and resources.
2. There is no standard internationally recognized methodology. Depending on the nature of the environmental activity, restoration or mitigation, there are multiple methodologies being applied globally. For example, there is the International Sustainability Standards Board, the GRI Global Reporting Initiative, the EU Sustainability Reporting Standards, ISO 14001, the US SEC Climate Disclosure Rule, and many more. The legislation as amended is silent on what methodology will be acceptable and which will not. This ambiguity leaves every business in Canada open to legal challenge, resulting in significant costs for companies and government. It is simply unacceptable to include this kind of vague and ambiguous language in a binding requirement on every business in Canada.
3. The amendment is silent on what is considered a "representation to the public" and thus would warrant this kind of exceptional treatment, and potential consequence.

This silence, vagueness and ambiguity, combined with the severity of the penalties for non-compliance, is likely to result in companies large and small falling silent on their environmental performance, investments and activities. This is a highly negative consequence that businesses do not wish to see as a reality. Every business, from a local lawn company talking about the benefits of their organic fertilizer, to the large natural resource companies spending billions of dollars bringing landscapes back to original states, will re-evaluate their communications.

Even if the criteria were to be clarified, if the standard to meet them is sufficiently complicated and/or costly, and if the risk of litigation from external parties remains, it will ultimately keep a lid on any communication related to environmental performance, climate change and related issues.

These consequences would be a detriment to the progress and competitiveness of Canadian businesses who are working to reduce emissions not just of their own operations but—through knowledge-sharing and export development—globally. Communicating the

benefits of various methods, technologies, and products is a key part of growing Canada's leadership in energy and climate change. We need more companies talking about climate change, mitigation, and restoration investment, and what is needed to reduce emissions, not less.

Ideally, we would recommend removing the amendment in its entirety as we believe it is poorly drafted and not a top priority for Canadians or the Competition Bureau at this time.

However, mindful of the precedent associated with undoing legislation passed by the House of Commons, we believe there are important changes you can propose which would serve a valuable purpose in improving this legislation and ensuring it is done right.

Given the Senate's role in thoughtful reconsideration, we believe that you can play an important part in advocating for greater clarity and specificity. We recommend you consider either or both of the following changes:

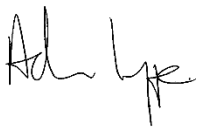
1) Require clause 236 to come into force only after the Minister of Industry has undertaken a study, consistent with Commissioner Boswell's advice to FINA, about the implications of this amendment and such power, the risk and cost that it creates for all Canadian businesses, and whether the Competition Act is the appropriate tool. This study should engage business leaders across the country in consultation. The results of this study should be released publicly, circulated for consultation, and tabled before Parliament before any order in council is given to bring the power into force.

2) Remove the following ambiguity: "in accordance with internationally recognized methodology." This would at least address the most troublesome and opaque elements of the amendment, which will otherwise waste important resources, time and attention due to a lack of clarity.

Leaving the amendment as drafted would result in undue, unjust, and costly consequences to Canadian businesses and ultimately Canadian competitiveness and the investment needed to grow our economy and create prosperity for Canadians.

We thank you for considering our recommendations.

Yours truly,



Adam Legge
President
cc: Mireille K. Aube, Clerk