

May 31, 2024

To: The Standing Senate Committee on National Finance

And to: The Standing Senate Committee on Banking, Commerce, and the Economy

The Honourable Chrystia Freeland  
Deputy Prime Minister and Minister of Finance  
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The Honourable François-Philippe Champagne  
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Dear Honourable Senators,

We understand from comments Senator Wallin made during the BANC meeting of May 29, 2024 on Bill C-69 that the Pathways Alliance has written a letter arguing that the proposed greenwashing provision in Bill C-59 raises 'concerns from this group, the Pathways Alliance, ... that it will create a chilling effect and prevent companies from making statements about their environmental performance or their plans.' Senator Wallin asked the Competition Bureau of Canada witnesses to provide comments on those amendments. (as per [transcript](#) 17:07:50)

While this letter from Pathways Alliance is not part of the official committee record and its content remains uncertain, we have grave concerns about the proposed greenwashing provisions in Bill C-59 being weakened.

### **The proposed greenwashing provisions**

The amendments proposed to the *Competition Act* (Act) by Bill C-59, s.236(1) would require companies to have done their due diligence before making green claims (exact text below). In particular, they must be able to back up their environmental claims about products with adequate and proper tests and about their business and business activities with adequate and proper substantiation in accordance with internationally recognized methodology. The proof for both types of claims lies on the person making the representation.

### **Why the proposed greenwashing provisions are necessary**

Both greenwashing subsections are critical to modernize the Act, ensure consumers are not being duped by false claims, and support green innovation and credible green products and businesses. This, in turn, will help Canada meet its climate and environmental goals and help ensure a sustainable, fair and competitive market that is ready for the future.

These subsections are also necessary to help the Competition Bureau investigate greenwashing allegations, ease the enforcement burden it faces, and increase the efficiency of its investigations - which currently take 2

to 3 years to resolve. The requirement for green business claims to be supported by substantiation was an issue raised by the Commissioner of the Competition Bureau. The Commissioner notes that a significant portion of the greenwashing complaints the Bureau receives are about a business or brand and that it can be challenging for the Bureau to prove the claims are false or misleading. The reverse onus provision in the greenwashing subsections will help the Bureau and complainants reach a resolution.<sup>1</sup>

These new subsections should not represent a burden on businesses making genuine green claims because these businesses should already have done their due diligence to establish that the claims are credible.

Other jurisdictions are acting on greenwashing. The EU, Canada's third largest trading partner, is moving ahead with strong regulation to combat greenwashing because of the inherent environmental and market problems it causes. Canada should also act on greenwashing to ensure its businesses are not left behind.

### **Guidance from the Competition Bureau**

We recognize that the amendments introduce new language requiring “adequate and proper substantiation in accordance with internationally recognized methodology”. However, we do not believe that this new language raises any issues given that:

- There are several internationally recognized methodologies that are readily available for firms willing to make environmental claims about their business and business activities.<sup>2</sup>
- Any uncertainty that this new language creates can be addressed by (1) the Competition Bureau issuing guidelines on the topic; and (2) the government adopting regulations under the Act that clarify the notion of substantiation.
- The Act already contains a provision that requires firms to substantiate their performance claims without identifying any specific technical standards to do so, which has allowed the Act to remain flexible and adaptable to new business realities. The new subsections are consistent with this approach.

Further, it is more important to ensure that companies are not deceiving consumers and the market with false claims of their environmental benefits, rather than being concerned with companies being hesitant about marketing environmental claims that they cannot prove.

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<sup>1</sup> Competition Bureau Canada, *Letter to House of Commons Standing Committee on Finance and Senate Standing Committee on National Finance* (1 March 2024), online: [https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SM-C-59\\_CompetitionBureauofCND\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SM-C-59_CompetitionBureauofCND_e.pdf).

<sup>2</sup> Examples of these methodologies include the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard (carbon accounting); the International Sustainability Standards Board's IFRS S2 (climate-related disclosures); the Taskforce on Nature-related Disclosures (nature-related disclosures), the Voluntary Carbon Market Initiative's Code of Practice (carbon offsets), United Nation's Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions (net zero commitments) etc.

## Greenwashing is rife and it must be addressed

The Pathways Alliance is a coalition of six companies representing 95% of oil sands production in Canada. It is engaged in an intense lobbying and PR campaign to convince the government to approve and subsidize a carbon capture and sequestration project that it claims will help it achieve net-zero emissions, despite several scientists raising concerns about the scientific viability of this technology.<sup>3</sup> The [US Senate Budget Committee and House Oversight released a joint report in April 2024](#) that found that oil “companies’ massive public-facing campaigns portray CCS as a viable and available solution to increasing greenhouse gas emissions, but the companies acknowledge internally that they are not planning to deploy the technology at the scale needed to solve the warming crisis.”<sup>4</sup> The report also finds that “[t]he industry’s true goal is to prolong, perhaps indefinitely, the unabated use of fossil fuels.”<sup>5</sup>

The Pathways Alliance is not a credible stakeholder when it comes to commenting on legislative reforms on greenwashing:

- A recent case study examining net zero greenwashing studied claims made by Pathways Alliance and found that the claims involved several types of greenwashing, namely, selective disclosure and omission, misalignment of claim and action, displacement of responsibility, non-credible claims, specious comparisons, nonstandard accounting, and inadequate reporting.<sup>6</sup>
- The Competition Bureau currently has an active investigation to determine whether the Pathways Alliance has misled the public in its advertising campaigns.

The proposed greenwashing provisions in Bill C-59, s.236(1), must be brought into force to help stop the growing ubiquity of misleading green claims.

The Competition Bureau has referred to findings by a global network of consumer protection authorities that 40% of green claims made online could be misleading consumers.<sup>7</sup> However, these numbers may be even higher; European consumer protection authorities found 42% of sustainability claims appeared to be false or

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<sup>3</sup>[Unpacking Carbon Capture and Storage: The technology behind the promise | International Institute for Sustainable Development \(iisd.org\)](#); [Why Carbon Capture and Storage Is Not a Net-Zero Solution for Canada’s Oil and Gas Sector | International Institute for Sustainable Development \(iisd.org\)](#); <https://www.greenpeace.org/canada/en/story/65623/shells-flagship-carbon-capture-project-sold-200m-of-phantom-emissions-credits-greenpeace-report/>; [Unpacking Carbon Capture and Storage: The technology behind the promise | International Institute for Sustainable Development \(iisd.org\)](#); [Why Carbon Capture and Storage Is Not a Net-Zero Solution for Canada’s Oil and Gas Sector | International Institute for Sustainable Development \(iisd.org\)](#)

<sup>4</sup> House Committee on Oversight and Accountability Democrats and Senate Committee on the Budget, *Denial, Disinformation, and Doublespeak: Big Oil’s Evolving Efforts to Avoid Accountability for Climate Change* (April 2024) at p 37 of PDF, online: [www.budget.senate.gov/imo/media/doc/fossil\\_fuel\\_report1.pdf](http://www.budget.senate.gov/imo/media/doc/fossil_fuel_report1.pdf).

<sup>5</sup> *Ibid* at p 39 of PDF.

<sup>6</sup> Melissa Aronczyk, Patrick McCurdy, Chris Russill, Greenwashing, net-zero, and the oil sands in Canada: The case of Pathways Alliance, *Energy Research & Social Science*, Volume 112, 2024, 103502, ISSN 2214-6296, <https://www.sciencedirect.com/science/article/pii/S2214629624000938>.

<sup>7</sup> Competition Bureau Canada, “Be on the lookout for greenwashing”, *News Release* (modified 26 January 2022), online: [www.canada.ca/en/competition-bureau/news/2022/01/be-on-the-lookout-for-greenwashing.html](http://www.canada.ca/en/competition-bureau/news/2022/01/be-on-the-lookout-for-greenwashing.html).

deceptive, the European Commission found that 53% of green claims provided vague, misleading or unfounded information, and Australian authorities found that 57% of environmental claims were concerning.<sup>8</sup>

Requiring companies to have proof to back up their green claims when we are in the middle of multiple environmental crises is frankly the bare minimum.

Sincerely,

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**Leah Temper**, PhD, Economic and Health Policy Program Director - Canadian Association of Physicians for the Environment

**Marc Bishai**, avocat - Centre québécois du droit de l'environnement

### Proposed Greenwashing Amendments in Bill C-59, section 236(1)

236 (1) Subsection 74.01(1) of the Act is amended by striking out “or” at the end of paragraph (b) and by adding the following after that paragraph:

·(b.1) makes a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation;

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation; or

<sup>8</sup> International Consumer Protection and Enforcement Network, “Screening of websites for ‘greenwashing’: half of green claims lack evidence” (29 January 2021), online: <https://icpen.org/news/1146>; European Commission, “Green Claims”, online: [https://environment.ec.europa.eu/topics/circular-economy/green-claims\\_en](https://environment.ec.europa.eu/topics/circular-economy/green-claims_en); Australian Competition and Consumer Commission, “ACCC ‘greenwashing’ internet sweep unearths widespread concerning claims” (2 March 2023), online: [www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims#:~:text=Of%20the%20247%20businesses%20reviewed,claims%20about%20their%20environmental%20credentials](http://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims#:~:text=Of%20the%20247%20businesses%20reviewed,claims%20about%20their%20environmental%20credentials).