

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

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**Re: Amend Bill C-59 to tackle greenwashing more effectively with the *Competition Act***

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The Canadian Association of Physicians for the Environment (CAPE), Ecojustice, Équiterre, and the Quebec Environmental Law Centre (CQDE) respectfully request that the Standing Senate Committee on National Finance amend Bill C-59, the *Fall Economic Statement Implementation Act, 2023*, to ensure that the *Competition Act* can tackle greenwashing effectively.

## I. Background

Greenwashing is the making of misleading, untrue, or unsupported representations about the environmental characteristics of a product, company, brand, or entity. Like other forms of deceptive marketing, greenwashing negatively impacts Canadian consumers and causes unfair competition in the Canadian marketplace. However, it is also a barrier to action on climate change because it impairs sustainable consumption decisions, reduces companies' incentives to invest in green innovation, and undermines Canada's competitiveness in a global net-zero economy.

Bill C-59 introduces several sustainability considerations into the *Competition Act*, including amendments to address greenwashing within the existing prohibition against deceptive marketing at s.74.01(1) of the Act. This amendment, in s.236 of the Bill, would prohibit claims about a product's environmental benefits unless the claim is based on an "adequate and proper test."

While we welcome proposals to increase sustainability considerations in the marketplace, the proposal to address greenwashing - as currently drafted - will not address that issue effectively. Below, we make recommendations for the Committee to improve the greenwashing prohibition in Bill C-59 and have included some suggested legislative language. We have also shared these recommendations with the House Standing Committee on Finance.

## II. Recommendations to strengthen the greenwashing prohibition in Bill C-59

### 1. Expand s.236 to apply to environmental claims promoting activities, brands, and entities

The proposed amendment in s.236 only requires "adequate and proper tests" for environmental claims about products, but not necessarily for environmental claims about an activity, brand, or entity.

This omission is problematic because up to 80% of "green" advertisements focus on an activity, brand or entity – not a specific product.<sup>1</sup> As written, the proposed amendment will exclude many instances of greenwashing from the prohibition under the *Competition Act*, even though they also unfairly advance a company's business interests. For example, deceptive claims about a company's net-zero targets and

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<sup>1</sup> A 2022 Harvard University study found that only one in five "green" car advertisements sold a product, and the rest functioned primarily to present the brand as green: Supran, G. et al (2022) *Three Shades of Green(washing): Content Analysis of Social Media Discourse by European Oil, Car and Airline Companies*, Algorithmic Transparency Institute & Harvard University, [online](#).

plans, or the contribution of an industry to climate change, will be out of scope.<sup>2</sup>

**RECOMMENDATION 1:** Amend s.236 to include all environmental claims, including those promoting activities, brands, and entities, to ensure fair competition and accurate information in the market. The European Union’s proposed rules on greenwashing define an “environmental claim” as including not only representations about a product, but also about a brand or trader.<sup>3</sup>

## **2. Amend s.236 to require that substantiation materials be made accessible to the public**

The proposed amendment in s.236 does not ensure the public has any access to the tests and other materials used by companies to substantiate their environmental claims.

Since there is no obligation to publicly disclose the substantiation materials, competitors, regulators and consumers will be unable to easily verify the credibility of a company’s green claims at the point of purchase – the time that it matters the most – or thereafter. They would need to take additional and time-consuming steps to access the substantiation materials, like contacting the company. The company may refuse to provide them to competitors or consumers, requiring legal or regulatory proceedings.

**RECOMMENDATION 2(a):** Amend s.236 to require that companies voluntarily making environmental claims publicly disclose the tests and information substantiating their claims in a format that is easily accessible to consumers, including at the time of purchase. A similar requirement exists in France under the Environment Code.<sup>4</sup>

**RECOMMENDATION 2(b):** For clarity, replace the term “test” with “evidence”, a broader term to help ensure that all relevant information required to substantiate the environmental claims is provided.

## **3. Ensure s.236 is not unnecessarily limited to a narrow set of environmental attributes.**

Currently, s.236 only requires that claims about “protecting the environment or mitigating the environmental and ecological effects of climate change” be based on an adequate and proper test.

There is a risk that this language could be interpreted narrowly and exclude common greenwashing claims, such as those about the causes of climate change (rather than the effects), having a neutral effect on the environment (rather than a benefit), or restoring the environment (rather than protecting it). Making this clarification is within the spirit of the provision and would be beneficial to businesses, as well as to the courts.

**RECOMMENDATION 3:** Amend s.236 to cover a wider range of claims about environmental attributes.

## **4. Require disclosure of all material negative environmental impacts**

The proposed amendment in s.236 does not require companies to disclose any negative environmental information about their product or company when advertising the positive attributes.

This allows companies to “cherry-pick” what information they provide - highlighting a single positive

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<sup>2</sup> Note: the definition of a “test” appears broad enough to encompass the type of modelling necessary to demonstrate a credible climate plan sufficient for a net zero claim. Courts have referred to the dictionary definition of test as ‘...a procedure intended to establish the quality, performance or reliability of something’: Competition Bureau of Canada (2016) *The Deceptive Marketing Practices Digest – Volume 2*, [online](#).

<sup>3</sup> European Parliament (2023) *Provisional Agreement Resulting from Inter-institutional Negotiations*, at p.20, [online](#).

<sup>4</sup> France, *Code de l’environnement*, article L541-9-1, [online](#).

environmental attribute that is true (e.g., uses less water than before) without revealing other, more significant negative environmental attributes (e.g., contributes to massive ocean pollution).

**RECOMMENDATION 4:** Require companies making environmental claims to disclose all material negative environmental impacts associated with the product, activity, brand, or entity being advertised.

### III. Proposed amendments to Bill C-59

Section 236 of Bill C-59 proposes to amend s.74.01(1) of the *Competition Act*, which states:

**74.01 (1)** *A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,*

(a) *makes a representation to the public that is false or misleading in a material respect;*

(b) *makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or ...*

Under s.74.1 of the Act, if a person is found to have engaged in “reviewable conduct”, they may be subject to court orders (e.g. to cease and retract the misleading claims) and monetary fines.

Section 236 of Bill C-59 proposes to introduce provision (b.1) to s.74.01(1). Below, we recommend amendments to the proposal in s.236 that would implement the recommendations in this brief. The black text is original to s.236. The green, underlined text are additions. The ~~red text with a strikethrough~~ are deletions.

**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 about environmental attributes, including of a product’s benefits for protecting or restoring the environment or mitigating the environmental and ecological effects or causes of climate change, of a product, activity, brand, or entity that is not based on ~~an~~ adequate and proper ~~test~~ evidence, the proof of which lies on the person making the representation, and the content of which must be made available to the public at the time when the representation is being made; or*

(b.2) *makes representations to the public about the positive environmental attributes of a product, activity, brand, or entity, without disclosing the corresponding environmental risks and impacts associated with the product, activity, or entity being advertised.*

### Contact

Please do not hesitate to contact us if you have any questions:

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