

May 28, 2024

Briefing Note: addressing greenwashing through the *Competition Act*

Greenwashing in Canada is a systemic issue that harms consumer and investor trust, undermines competitive markets, and hinders progress toward climate and environmental goals. Bill C-59, the *Fall Economic Statement Implementation Act, 2023*, seeks to address greenwashing by amending the *Competition Act*. While this amendment (and House Finance Committee improvement of it) is welcome, it must be further strengthened to tackle greenwashing effectively. The Senate has an opportunity to do so during its review of Bill C-59.

RECOMMENDATION: Amend the greenwashing provisions in s.236 of Bill C-59 as follows:

(3) Subsection 74.03 of the Act is amended by adding the following after subsection (1):

- (1.1) Within 6 months of this Act coming into force, any person making a representation under subsections (b.1) or (b.2) of section 74.01 must make the proof visible or accessible to the public at the time the representation is made.

This amendment ensures that companies making green claims about their products or business are required to make the evidence substantiating these claims readily available to the public.

Greenwashing is a problem in Canada

Greenwashing is misleading, untrue, or unsupported claims about the environmental characteristics of a product, brand, or entity. Like other forms of deceptive marketing, greenwashing negatively impacts Canadian consumers and causes unfair competition in the Canadian marketplace.

If Canadians cannot distinguish between genuinely green companies and pretenders (or if they lose trust in all green claims), then the incentive for Canadian companies to invest in green innovation and tackle climate change will be diminished. Without a focus on genuine sustainability, Canadian companies will be less competitive in jurisdictions that have strong greenwashing regulations (e.g. the E.U.).

A recent poll found that 78% of Canadians support the government passing new regulations against greenwashing.¹ Meanwhile, as a result of public complaints, the Competition Bureau has begun investigations into greenwashing by large entities like Royal Bank of Canada and Pathways Alliance. Legal action is also underway against FortisBC for greenwashing.²

Bill C-59 seeks to address greenwashing but needs further amendment

While greenwashing can be addressed under general deceptive marketing provisions already in the *Competition Act*, this fails to stop the majority of greenwashing. This is because the Act relies on an enforcement model that is reactive, piecemeal, and slow: public complaints to the Competition Bureau about specific cases of greenwashing that can take 2-3 years to resolve.

Canada needs a proactive and systemic approach, one that prevents greenwashing before it occurs, allows consumers to easily spot greenwashing, and eases the enforcement burden on the Bureau.

Section 236 of Bill C-59 proposes to amend the *Competition Act* by prohibiting claims about the climate or environmental benefits of a product or business unless the claim is based on an “adequate and proper test” or on “adequate and proper substantiation in accordance with internationally recognized methodology.” While we

¹ Ecojustice (2023) *Two-thirds of Canadians want financial sector regulated to ensure environmental sustainability*, [online](#).

² Ecojustice (2024), *Lawsuit claims FortisBC greenwashing deceives consumers, threatens climate progress*, [online](#).

welcome this proposal, it does little to address the flawed enforcement model that undermines our efforts to tackle greenwashing. An additional amendment is required.

Proposal: proof of green claims must be made accessible to the public

The proposal in s.236 of Bill C-59 can be strengthened by requiring the outcomes of the mandated test or the substantiating evidence that supports the green claim to be made publicly available at the time the claim is being made. E.g. accompany the claim with a link or QR code to a website with information on the claim's credibility.³

Providing this evidence upfront would more effectively prevent greenwashing because it:

1. **Proactively deters greenwashing.** Those unable to prove their claims will be less likely to greenwash, knowing they can now be caught more easily.
2. **Empowers consumers.** With greater ability to fact-check green claims, Canadians will be able to make more informed consumer choices, will be less susceptible to greenwashing, and will be better able to call out greenwashing in the media and to regulators.
3. **Eases the enforcement burden.** The Competition Bureau will be more easily able to identify greenwashing through the presence and adequacy of accompanying proof.

Requiring proof of green claims at the point of purchase is not an undue burden on businesses because:

1. **The work should already be done.** To promote fair competition, the *Competition Act* already requires that claims be substantiated with "adequate and proper tests". Publishing this proof would simply require companies to "show their homework" upfront. As it stands, the Act already requires companies to provide detailed information to help achieve the Act's other legislative goals.⁴
2. **Green claims are voluntary.** If a business wants the benefits of making a green claim, it should be willing and able to make the supporting information available.
3. **The alternative places an undue burden on others.** Without easy access to proof, regulators, competitors, investors, and consumers must take onerous and time-consuming steps (e.g. contacting the company or launching legal and regulatory proceedings) to verify green claims.

We recommend a grace period for compliance of one year from s.236 of Bill C-59's coming into force date. This would allow for the development of guidance (by the Bureau or via regulation) with further specificity on the expectations of public disclosure. Such guidance will help avoid "greenhushing" by providing clarity about the propriety of green claims.⁵ A grace period would also provide businesses (particularly SMEs) with time to gather their substantiating materials and make them publicly available.

Recommendation

The Senate should amend the greenwashing provision in s.236 of Bill C-59 as outlined above, to require that companies making green claims about their products or business make the evidence substantiating these claims readily available to the public, including at the time of purchase. Give businesses one year to comply.⁶

³ This requirement exists in France under its Environment Code France, *Code de l'environnement*, article L541-9-1, [online](#).

⁴ See the information requirements in s.16 of the *Notifiable Transactions Regulations* SOR/87-348 under the Act.

⁵ "Greenhushing" is when companies stay silent on their green goals or credentials for fear of scrutiny or the request to report on them.

⁶ Note: this requirement could be made by regulation under the Competition Act but amending Bill C-59 is preferable given the present nature of the opportunity.