



Reforming the *Competition Act* to Defend Climate: The Need to Regulate Deceptive Ads

A submission to:

The Consultation on the Future of Competition Policy in Canada and
The Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry

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DEFINITION

“Climate washing” is deceptive environmental marketing that misleads the public about the supposed climate-related virtues of a company or their products. Typically, it includes unsubstantiated representations that a company is or will be reducing or eliminating its greenhouse gas contributions. “Climate washing” can include false or misleading climate-related corporate advertising, marketing campaigns, packaging statements, labels, press releases and financial disclosures.

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PREFACE¹

Climate Change is an Existential Threat to Canadians

Climate change is real. It is caused by greenhouse gas emissions resulting from human activities, and it poses a grave threat to humanity's future. The only way to address the threat of climate change is to reduce greenhouse gas emissions.

– Supreme Court of Canada, *Reference re Greenhouse Gas Pollution Pricing Act*²

There is no longer any doubt that climate change is an existential threat to the human race. The United Nations Secretary General has stated that the 2021 Intergovernmental Panel on Climate Change report on the state of global climate was a “code red for humanity. The alarm bells are deafening, and the evidence is irrefutable.”³ Among other things, the World Health Organization has declared climate change the “biggest health threat facing humanity.”⁴

The European Union has declared a climate emergency and called on “all global actors...to urgently take the concrete action needed in order to fight and contain this threat before it is too late.” At least 18 national governments have declared a climate emergency,⁵ and over 2,300 jurisdictions spanning 40 countries have similarly declared a climate emergency.⁶

In 2019, the Federal Government of Canada passed a motion declaring a national climate emergency – acknowledging that “climate change is a real and urgent crisis” and that people are

¹ We acknowledge the deep intellectual debt that we owe to Centre Québécois du Droit de l'Environnement for its pioneering research on these issues and its generous collaboration as we developed this submission. In particular, we appreciate the writings and thoughts of lawyers Julien O. Beaulieu and Marc Bishai.

² *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 2.

³ “IPCC report: ‘code red’ for human driven global heating, warns UN chief” (9 August 2021), online: *United Nations News* <news.un.org/en/story/2021/08/1097362> [perma.cc/UT8Z-T6AZ].

⁴ “Climate change and health” (30 October 2021), online: *World Health Organization* <www.who.int/news-room/fact-sheets/detail/climate-change-and-health> [perma.cc/3AHY-3BFM].

⁵ Including Argentina, Austria, Italy, South Korea, Japan, New Zealand, and Peru. “Climate Emergency Declaration Fact Sheet” (last accessed 27 March 2023), online: *Climate Emergency Declaration and Mobilization in Action* <www.cedamia.org/fact-sheets/> [perma.cc/J86Z-2J28].

⁶ “Climate emergency declarations in 2,320 jurisdictions and local governments cover 1 billion citizens” (22 March 2023), online: *Climate Emergency Declaration* <climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/> [perma.cc/4K33-MBC3].

experiencing the effects of climate change today, including “flooding, wildfires, heat waves and other extreme weather events,” which are only forecast to worsen.⁷

The effects on Canadians are multifarious and profound. We now find ourselves in a frightening new era of heat domes, atmospheric rivers, bomb cyclones, catastrophic wildfires, hurricanes, melting glaciers, multi-billion-dollar insurance losses and destruction of highway systems and other infrastructure. Climate change poses a major threat to Canadian industries and the Canadian economy. The Parliamentary Budget Office estimates that climate change cost Canada a 1% loss of GDP in 2021, with losses to grow to 6% annually by the end of the century.⁸ Total GDP losses could add up to \$5.5 trillion by 2100.⁹

The Canadian Security Intelligence Service warns that climate change poses a profound long-term threat to national security and prosperity, food and water supplies, loss of infrastructure and coastal communities – and the risk of rising domestic and international conflict.¹⁰ Many egregious effects of climate change are briefly documented in [Appendix A](#) to this document.

There is clearly no issue facing Canadians that is of higher importance than dealing with climate change.

The Government of Canada’s current initiative to reform the *Competition Act* presents a unique opportunity to reform the *Act*’s provisions to better deter deceptive advertising¹¹ – particularly deceptive advertising that poses a direct threat to global climate stability.

⁷ Canada, Parliament, *House of Commons Journals*, 42nd Parl, 1st Sess, No 435 (17 June 2019), online: <www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-435/journals> [perma.cc/F2ZW-A9Y8]; In addition, over 600 Canadian municipalities have declared a state of climate emergency. “648 Municipalities have declared a climate emergency in Canada” (18 January 2022), online: *Random Acts of Green* <raog.ca/climate-emergency-declarations-canada/> [perma.cc/8P3U-WLZ2]

⁸ The Parliamentary Budget Officer admits these figures are likely an underestimate and based on optimistic assumptions about our ability to meet climate commitments. Both RBC and the Canadian Institute for Climate Choices have published reports with similar estimates, ranging from \$25 billion per year in 2025 to up to \$865 billion per year by 2100. Office of the Parliamentary Budget Officer, *Global greenhouse gas emissions and Canadian GDP* (8 November 2022) at 4-6, 12-13, online (pdf): <distribution-a617274656661637473.pbo-dpb.ca/bbc2846795c541eddc656e484a15e7ecd91bd0aff45196f231523d8c5c9aafe4> [perma.cc/KL5J-3LIX]; “The \$2 Trillion Transition: Canada’s road To Net Zero” (last visited 8 March 2023) at 6, online (pdf): *Royal Bank of Canada <thoughtleadership.rbc.com/wp-content/uploads/Net-Zero-ES.pdf>* [perma.cc/W8Q4-468M]; “Damage Control: Reducing the Costs of Climate Impacts in Canada” (September 2022) at 47, online (pdf): *Canadian Institute for Climate Choices <climateinstitute.ca/wp-content/uploads/2022/09/Damage-Control -EN_0927.pdf>* [perma.cc/42R8-TRNE].

⁹ Researchers from Queen’s University forecast 5.5 trillion in cumulative GDP losses, including annual GDP losses of up to \$20 billion by 2025 and \$168 billion by 2100. Cleary, S. & Willcott, N., “The Physical Costs of Climate Change: A Canadian Perspective” (April 2022) at 7, online (pdf): *Institute for Sustainable Finance <smith.queensu.ca/centres/isf/pdfs/ISF-Report-PhysicalCostsOfClimateChange.pdf>* [perma.cc/NS2Z-8SDC]; Willcott, N. & Cleary, S., *Canada faces huge physical costs from climate change, making net zero a great investment* (18 May 2022), online: *Queen’s Gazette <www.queensu.ca/gazette/stories/canada-faces-huge-physical-costs-climate-change-making-net-zero-great-investment>* [perma.cc/CT8X-FREV].

¹⁰ According to the *Globe and Mail*. See Bronskill, J., “CSIS warns climate change threatens Canadian security, prosperity,” *The Globe and Mail* (5 March 2023), online: <www.theglobeandmail.com/canada/article-csis-warns-climate-change-threatens-canadian-security-prosperity/> [perma.cc/2SYS-CCTZ].

¹¹ Note that in this report we will occasionally use the shorthand terms “ad” and “advertising” to include marketing claims and representations generally.

The Prime Minister’s mandate letter to the Minister of Innovation, Science and Industry asserted “climate change is an existential threat” – and instructed the Minister to “seek opportunities within your portfolio to support our whole-of-government effort to reduce emissions...”¹²

Below we make the case that one of the key “opportunities” to reduce greenhouse gas emissions in your portfolio is to reform the *Competition Act* – and crack down on deceptive climate washing ads.

¹² Climate action is a ministerial priority for the Minister of Innovation, Science and Industry. Ministerial Mandate Letter from Rt. Hon. Justin Trudeau to Minister Champagne (16 December 2021), online: <pm.gc.ca/en/mandate-letters/2021/12/16/minister-innovation-science-and-industry-mandate-letter> [perma.cc/94XM-2ST7]; The Prime Minister was acknowledging that the transition away from a carbon economy is not an issue for environment ministries alone – but is a multi-jurisdictional challenge that demands a whole of government approach. Swedish Energy Agency and Smith School, “The role of Ministries of Finance in driving and shaping the low-carbon energy transition” (January 2023), at 7, online (pdf): <www.smithschool.ox.ac.uk/sites/default/files/2023-01/The-role-of-Ministries-of-Finance-compressed.pdf> [perma.cc/94XM-2ST7]. Note that in undertaking a review of the *Competition Act*, the Minister has been tasked with ensuring that Canadians are protected from anti-consumer practices in critical sectors.

Deceptive Advertising Cannot Be Allowed to Repeat its Successful Sabotage of Action on Climate Change

Historians and other scholars have amassed a large body of evidence demonstrating that fossil fuel companies intentionally misled the public about the dangers of their products in order to protect their financial interests. Much of this evidence comes from internal corporate documents and peer-reviewed assessments of those documents. The research shows that the fossil fuel industry knew about the warming effects of GHG emissions as early as the 1950s and developed a sophisticated understanding of the problem and its likely impacts by the end of the 1970s, but instead of alerting the public of the dangers of their products, the industry actively coordinated and funded denial and disinformation in order to obscure climate science, reduce public support for climate action, and protect their financial interests.¹³

– Jessica Wentz and Benjamin Franta

INDUSTRY LONG KNEW THAT INCREASING THE USE OF FOSSIL FUELS WOULD TRIGGER CLIMATE CHANGE – BUT MISLED THE PUBLIC ABOUT IT

The fossil fuel industry is a major driver of climate change. In 2021, CO₂ emissions from fossil fuels (oil, coal, and gas) accounted for 95% of all Canadian CO₂ emissions.¹⁴ Yet, members of the fossil fuel industry have consistently misled the public about their industry’s role in exacerbating climate change – even though their own experts first informed industry of the problem over 50 years ago.

¹³ Wentz, J. & Franta, B., “Liability for Public Deception: Linking Fossil Fuel Disinformation to Climate Damages” (December 2022), 52 *Envtl. L. Rep.* 10995 at 11015, online (pdf): scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1196&context=sabin_climate_change [perma.cc/K2PD-9HHB].

¹⁴ Ritchie, H., Roser, M. & Rosado, P., “Canada: Co2 Country Profile based on the Global Carbon Project” (2022), online: *Our World in Data* <ourworldindata.org/co2/country/canada#total-greenhouse-gas-emissions-how-much-does-the-average-person-emit-where-do-emissions-come-from> [perma.cc/EU2A-9SBT]. Calculated from total Canadian CO₂ emissions equal to 545.63 million tonnes and the combined sector emissions equal to 520.9 million tonnes. See graphs, “What are the country’s annual CO₂ emissions?” and “What share of CO₂ emissions are produced from different fuels?”

For example:

- In 1959, one of America’s leading scientists, Edward Teller, addressed an American Petroleum Institute conference and warned that burning fossil fuels would likely melt the ice caps and create catastrophic climate change.¹⁵
- A 1968, American Petroleum Institute document acknowledged that “there seems to be no doubt that the potential damage to our environment could be severe.”¹⁶
- In 1970, an Imperial Oil engineer produced a report warning about fossil fuel pollution, including climate-warming carbon dioxide.¹⁷
- In 1977-78, a senior Exxon scientist warned company management that uncurbed fossil fuel emissions could raise global temperatures 2-3 degrees Celsius, shift deserts and fertile areas north, damage global agriculture, and pose potentially massive dangers to humanity.¹⁸
- In 1978, the same Exxon scientist warned an Exxon vice-president, “...man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical.”¹⁹

¹⁵ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 14-20, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

¹⁶ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 197, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

¹⁷ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 38-39, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

¹⁸ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 39-40, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

¹⁹ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 40, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

- In 1981, a different Exxon researcher informed Exxon that their emissions could “produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth’s population).”²⁰

THE FOSSIL FUEL INDUSTRY ORCHESTRATED CAMPAIGNS OF CLIMATE DISINFORMATION

In spite of the industry knowledge outlined above, for decades fossil fuel companies funded expensive public relations campaigns to raise unfounded doubts about the link between their products and climate change – providing millions of dollars to organizations that promoted disinformation on climate change.²¹

It is important to remember that by 1992 a broad, bipartisan consensus about the need for action on climate change had formed in North America. For example, surveys in that year showed that 85% of Canadians²² and 88% of Americans²³ believed that global warming was a serious problem.

²⁰ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 197, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

²¹ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 162, 170, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

²² A 1992 survey indicated that 85% of the Canadian’s polled considered global warming to be “very serious” or “somewhat serious.” See: Brechin, S.R., “Comparative public opinion and knowledge on global climatic change and the Kyoto protocol: the US versus the world?” (2003), *International Journal of Sociology and Social Policy*, Vol 23:10 at 110, online (pdf): <www-emerald-com.ezproxy.library.uvic.ca/insight/content/doi/10.1108/01443330310790318/full/pdf> [doi.org/10.1108/01443330310790318], citing Dunlap, R., Gallup, G.H. & Gallup, A.M., “Health of the Planet Survey: A George H. Memorial Survey” (1993) Gallup International Institute, Princeton, NJ USA.

²³ Footnote from *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at para 378. Note that the plaintiffs also include Board of County Commissioners of San Miguel County and the City of Boulder.

In response to this strong public consensus, the fossil fuel industry and associated groups launched sweeping public campaigns across the US and Canada – using industry-funded research,²⁴ advertising,²⁵ and public messaging – to change the public’s mind about climate change.

The campaigns aimed to convince the public that:

- the science of climate change was uncertain,
- it would be irresponsible to take action until there was certainty, and
- limiting greenhouse gas emissions would hurt the economy without benefitting the environment.²⁶

As the 1998 American Petroleum Institute “Global Climate Science Communications Action Plan,” signed by major oil and gas companies, stated:

Victory will be achieved when: average citizens “understand” (recognize) uncertainties in climate science; recognition of uncertainties becomes part of the “conventional wisdom...and those

²⁴ For example, Koch Industries – which processes tar sands oil – contributed massively to groups that spread disinformation about climate change. One study has calculated that a charitable foundation linked to Koch Industries gave \$24.9 million to “climate denial and opposition organizations.” Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 154, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG]; The Fraser Institute, a Canadian conservative think-tank that repeatedly denied man-made climate change, received \$120,000 from Exxon in the early 2000s and \$325,000 from charitable foundations linked to Koch Industries in the late 2010s. The former Executive Director of the Fraser Institute, Michael Walker, confirmed that they had been “receiving money from Koch Industries for ‘years and years,’” while documents confirmed that as of 2018, Koch foundations have donated about \$1.7 million dollars to the Fraser Institute. [Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022) at pp. 144 & 170.] In fact, the Fraser Institute’s most recent Annual Report explicitly thanks the Charles Koch Institute (amongst others) for continuing to support their organization. “2021 Annual Report: Canada’s most influential think tank” (last accessed 28 March 2023), at 19, online (pdf): *The Fraser Institute* <www.fraserinstitute.org/sites/default/files/uploaded/2022/2021-annual-report.pdf> [perma.cc/G9ZG-WDFN].

²⁵ For one example, see the description of how the Koch brothers-funded Americans for Prosperity ads denigrated environmentalist concerns – and specifically opposed things like the 2010 cap and trade climate change bill. Eventually such opposition killed the cap-and-trade measure that might otherwise have mitigated climate change. Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 154-157, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

²⁶ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 80-85, 90-93, 95-97, 121-122, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

promoting the Kyoto [climate change]treaty on the basis of extant science appear to be out of touch with reality.”²⁷

Recently 16 Puerto Rican municipalities have sued oil, gas, and coal companies for allegedly lying about climate change and the harms therein. The filed court pleadings – claiming compensation for the record 2017 hurricane season – allege many examples of the disinformation campaigns and marketing used by the fossil fuel industry.

The Puerto Rico municipalities allege that in 1991, the coal companies Peabody, Arch Coal, and Rio Tinto formed and were members of a greenwashing front group called Information Council on the Environment (“ICE”).²⁸ The municipalities allege ICE ran a marketing campaign, which included contracting a company to conduct opinion polls, that showed “older, less educated males from larger households who are not typically active information-seekers” and “younger, lower-income women” were the best targets for their radio advertisements that would “directly attack the proponents of global warming ... through comparison of global warming to historical or mythical instances of gloom and doom.”²⁹

The Puerto Rican pleadings state that the ICE advertising campaigns included:

One print advertisement ... showed a sailing ship about to drop off the edge of a flat world into the jaws of a waiting dragon. The headline read: “Some say the earth is warming. Some also said the earth was flat.” Another featured a cowering chicken under the headline, “Who Told You the Earth Was Warming . . . Chicken Little?” Another ad was targeted at Minneapolis readers and asked, “If the earth is getting warmer, why is Minneapolis getting colder?”³⁰

²⁷ “1998 American Petroleum Institute global climate science communications team action plan” (last accessed 28 March 2023), online: *Climate Files* <www.climatefiles.com/trade-group/american-petroleum-institute/1998-global-climate-science-communications-team-action-plan/> [perma.cc/5TRS-4ZBZ].

²⁸ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 374, online (pdf): <fingfx.thomsonreuters.com/gfx/legaldocs/invwyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf> [perma.cc/4CF8-Q3UL].

²⁹ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 377, online (pdf): <fingfx.thomsonreuters.com/gfx/legaldocs/invwyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf> [perma.cc/4CF8-Q3UL].

³⁰ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 378, online (pdf): <fingfx.thomsonreuters.com/gfx/legaldocs/invwyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf> [perma.cc/4CF8-Q3UL].

The Puerto Rican municipalities also allege an extensive disinformation campaign and false advertising committed by Mobil. The court pleadings state:

Every Thursday from 1985 to 2000, Mobil bought a full-page in the New York Times and used its ad space to publish what appeared to be scientific articles.

[...]

Mobil's advertorials continued until 2000 and Exxon continued to publish multiple 'Advertorials', again, designed to 'misinform' the general public

[....]

In 1997, Mobil paid for an ad/article published in the New York Times proclaiming:

Let's face it: The science of climate change is too uncertain to mandate a plan of action that could plunge economies into turmoil... We still don't know what role man-made greenhouse gases might play in warming the planet.³¹

Efforts by Mobil and Exxon to mislead the public have also been alleged in the pleadings of Boulder, Colorado and associated County Governments – which recently sued Suncor Energy and Exxon Mobil for harms stemming from their disinformation and inaction on climate change. The Boulder pleadings allege that the defendants “affirmatively misrepresented the causes and consequences of climate change,” for example:

Exxon and its predecessors directly ran multiple advertisements downplaying the risks of climate change and emphasizing uncertainty, contrary to its own internal documents. For example, in 1997 Mobil ran advertisements in the New York Times claiming, “Scientists cannot predict with certainty if temperatures will increase, by how much and

³¹ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at paras 402-404, online (pdf):

[fingfx.thomsonreuters.com/gfx/legaldocs/jnvwyekmzv/Puerto%20Rico%20Complaint%20Exxon.pdf](https://www.fingfx.thomsonreuters.com/gfx/legaldocs/jnvwyekmzv/Puerto%20Rico%20Complaint%20Exxon.pdf) [perma.cc/4CF8-Q3UL], citing Gibson, C., “How Exxon Used the New York Times to make you question climate science” (2 September 2017), online: *EcoWatch* <www.ecowatch.com/exxon-new-york-times-2479595376.html> [perma.cc/S422-URZQ]; Davies, D., “Climate Change Is 'Greatest Challenge Humans Have Ever Faced,' Author Says” (16 April 2019), online: *NPR* <www.npr.org/2019/04/16/713829853/climate-change-is-greatest-challenge-humans-have-ever-faced-author-says> [perma.cc/7TQC-2YRD]; Grandoni, D., “ExxonMobil asked people to ‘read the documents’ it produced on climate change. So, these Harvard researchers did,” *The Washington Post* (24 August 2017), online: <www.washingtonpost.com/news/powerpost/wp/2017/08/24/exxonmobil-asked-people-to-read-the-documents-it-produced-on-climate-change-so-these-harvard-researchers-did> [perma.cc/7EY7-9YZG].

where changes will occur. We still don't know what role man-made greenhouse gases might play in warming the planet.

Exxon continued these advertisements after its merger with Mobil.

One 2000 Exxon advertisement claimed that climate science was “unsettled.” A 2001 Exxon advertisement criticized “the unrealistic and economically damaging Kyoto process.” [The Kyoto Protocol climate change treaty] A 2004 Exxon advertisement again emphasized “[s]cientific uncertainties” that “limit our ability to make objective, quantitative determinations regarding the human role in recent climate change, or the degree and consequence of future change.”³²

See “*The forgotten oil ads that told us climate change was nothing*” linked in the footnote below for a selection of various ads run by the fossil fuel companies and associated groups to weaken concerns about climate change.³³

After the US House of Representatives Committee on Oversight and Reform conducted a 2022 investigation into oil and gas industry climate washing, the House Committee released a memo stating that the documents the Committee subpoenaed from oil and gas companies demonstrate:

... how the fossil fuel industry “greenwashed” its public image with promises and actions that oil and gas executives knew would not meaningfully reduce emissions, even as the industry moved aggressively to lock in continued fossil fuel production for decades to come—actions that could doom global efforts to prevent catastrophic climate change.³⁴

THE DISINFORMATION CAMPAIGNS AND MARKETING UNDERMINED ACTION TO FIX CLIMATE CHANGE

Tragically, these public-relations advertising campaigns were remarkably effective at undermining action on solving climate change. In 1992, 88% of American believed that global warming was a

³² *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at paras 387-389.

³³ Supran, G. & Oreskes, N., “The forgotten oil ads that told us climate change was nothing,” *The Guardian* (18 November 2021), online: <www.theguardian.com/environment/2021/nov/18/the-forgotten-oil-ads-that-told-us-climate-change-was-nothing> [perma.cc/TU22-HE2V].

³⁴ Memorandum to Members of the Committee on Oversight and Reform from Chairwomen Carolyn B. Maloney and Chairman Ro Khanna, *re Investigation of Fossil Fuel Industry Disinformation* (9 December 2022), Congress of the United States House of Representatives, online (pdf): <oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-12-09.COR_Supplemental_Memo-Fossil_Fuel_Industry_Disinformation.pdf> [perma.cc/WCX9-JYHQ].

serious problem, but by 1997 that number had fallen to only 42% (with just 28% of Americans thinking immediate action was needed).³⁵ In 1989, a survey found that 63% of Americans worried about climate change “a great deal” or “fair amount.” Eight years later, that number had dropped to 50%.³⁶ A study summarizing the 1990s shift in public opinion has observed:

*Through the 1990s, at a critical point when the fossil fuel usage needed to be brought under control, public concern about the risks and causes of climate change waned.*³⁷

The Puerto Rican court pleadings allege that industry’s “Global Climate Coalition” (“GCC”):

*...funded advertising campaigns and distributed material to misinform the public about climate change, with the specific purpose of preventing US adoption of the Kyoto Protocol....*³⁸

[The Kyoto Protocol climate change treaty]

Similarly, the Boulder pleadings allege that the Global Climate Coalition:

*...spent millions of dollars on **advertising that tried to discredit climate science**, and cast doubt on the dangerous consequences of climate change. In 1992, when 130 nations came together to sign the U.N. Framework Convention on Climate Change at the Rio de Janeiro “Earth Summit,” **GCC spent millions in misleading marketing to discredit the science**. They distributed videos claiming that climate change would not be a problem, and that more atmospheric carbon dioxide would actually be beneficial for the world. Similarly, throughout the 1990s and early 2000s, GCC and its members spent millions more and*

³⁵ Footnote from *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at para 378.

³⁶ Saad, L., “Are Americans concerned about global warming?” (5 October 2021), online: [GALLUP <news.gallup.com/poll/355427/americans-concerned-global-warming.aspx>](https://news.gallup.com/poll/355427/americans-concerned-global-warming.aspx) [perma.cc/3SYE-HBCN]; Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022) at 96.

³⁷ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022) at 96. Note that the decline in numbers concerned about global warming was less precipitous in Canada. In 1992, 85% of polled Canadian’s believed that global warming was a serious threat; however, surveys conducted in 2007/2008 found only 74% of polled Canadians believed global warming was a serious threat, with a further decline to 71% by 2010. See: Pugliese, A. & Ray, J., “Fewer Americans, Europeans view global warming as a threat (20 April 2011), online: [GALLUP <news.gallup.com/poll/147203/fewer-americans-europeans-view-global-warming-threat.aspx>](https://news.gallup.com/poll/147203/fewer-americans-europeans-view-global-warming-threat.aspx) [perma.cc/XED2-RV8Z].

³⁸ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 365, online (pdf): [<fingfx.thomsonreuters.com/gfx/legaldocs/invwvyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf>](https://fingfx.thomsonreuters.com/gfx/legaldocs/invwvyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf) [perma.cc/4CF8-Q3UL].

*distributed similarly deceptive materials designed to undermine support for the Kyoto Protocol, the follow-up to the Framework Convention.*³⁹

[emphasis added]

As a result of this industry-fostered decline in public concern, action was not taken on climate change in the 1990s – when it could have made a real difference. Although the US had signed the Kyoto Protocol in 1998, President Bush repudiated the climate treaty in 2001 and the US refused to become a party. It is significant to note that a 2001 US State Department memo instructed government officials to tell industry’s Global Climate Coalition that led the disinformation campaign:

*POTUS [President Bush] rejected Kyoto, in part, based on input from you.*⁴⁰

Similar dynamics contributed to Canada’s later withdrawal from Kyoto – and pausing of other climate change action under the Harper government.⁴¹

In a further example of the key role that advertising played in blocking US action on climate, “Americans for Prosperity” (funded in large part by oil sands money) ran ads denigrating environmentalist concerns – and specifically opposed things like the United States 2010 cap and trade climate change bill.⁴² Eventually, such opposition killed the cap-and-trade measure that might otherwise have mitigated climate change.⁴³

³⁹ Board of County Commissioners of Boulder County v Suncor Energy (USA), Complaint and Jury Demand at paras 392-393. [emphasis added]

⁴⁰ Briefing Memorandum from Ken Brill to Under Secretary Dobriansky (20 June 2001), at 3, online: Climate Files <www.climatefiles.com/denial-groups/global-climate-coalition-collection/2001-state-department-meeting/> [perma.cc/8WVG3-HVJT], cited in McGreal, C., “Big oil and gas kept a dirty secret for decades. Now they may pay the price,” *The Guardian* (30 June 2021), online: <www.theguardian.com/environment/2021/jun/30/climate-crimes-oil-and-gas-environment> [perma.cc/983Z-SFTN]

⁴¹ Although Canada ratified the Kyoto Protocol in 2002 and set targets to reduce GHGs by 6 percent by 2012, Canada withdrew from the Kyoto Protocol in 2011. Hrvatin, V., “A brief history of Canada’s climate change agreements,” *Canadian Geographic* (30 May 2016), online: <canadiangeographic.ca/articles/a-brief-history-of-canadas-climate-change-agreements/> [perma.cc/UN6R-6CVF]; The fossil fuel industry played a key role in Canada’s withdrawal from Kyoto. In the lead up to that 2011 decision, the oil industry “clearly dominated the Canadian lobby-channels and public debate,” for example through new industry funded Canadian Association of Petroleum Producers which promotes the oil sands. Ramos Fjellvang, C.V., “Why did Canada withdraw from the Kyoto Protocol? A case study” (2014), Master’s Thesis in Department of Political Science, University of Oslo, at 61, online (pdf): <www.duo.uio.no/bitstream/handle/10852/40357/Fjellvang_master_25.pdf> [perma.cc/5JGC-3MAT]

⁴² Greenblatt, A., “How cap and trade was ‘trashed’” (26 April 2010), online: *NPR* <www.npr.org/2010/04/26/126280761/how-cap-and-trade-was-trashed> [perma.cc/2RW4-NXXG]; Mayer, J., “Koch pledge tied to congressional climate inaction,” *The New Yorker* (30 June 2013), online: <www.newyorker.com/news/news-desk/koch-pledge-tied-to-congressional-climate-inaction> [perma.cc/B686-AGXC].

⁴³ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022); Cook, J., Supran, G., Lewandowsky, S., Oreskes, N. & Maibach, E., “America Misled – How the fossil fuel industry deliberately misled Americans about climate change” (October 2019), at 154-157, online (pdf): *Climate Change Communication* <www.climatechangecommunication.org/wp-content/uploads/2019/10/America_Misled.pdf> [perma.cc/WK29-APCG].

It would be far easier to manage the climate emergency today if remedial action had been implemented decades ago. But such remedial government action was undermined and blocked by deceptive industry communications and advertising.

Clearly, we would stand a better chance of stabilizing earth's climate if industry's misleading ads and statements had not persuaded consumers, citizens, and governments to dismiss the necessity of climate action a quarter century ago.

Numerous Governments are Now Suing Industry for the Deceptive Advertising

After discovering documents showing that industry knew for decades about the risks of fossil-fuel driven climate change, US governments are attempting to hold companies accountable for climate change deceptive marketing.⁴⁴ Over two dozen US states and municipalities have now filed complaints alleging that oil and gas companies have “violated state consumer protection and tort laws by deceiving the public about the dangers of fossil fuels and climate change in order to maximize the sale of their products.”⁴⁵

For example, since 2019, the states of Vermont, Connecticut, Minnesota, Massachusetts, the City of New York and the District of Columbia have all filed lawsuits against oil companies for misleading consumers and deceptive marketing relating to climate change.⁴⁶ Similarly, the State of Delaware alleged consumer fraud in its suit against the American Petroleum Institute and many fossil fuel companies for misleading the public about the link between their products and climate change.⁴⁷

Indeed, a wide variety of US governments have now filed a whole series of lawsuits to hold fossil fuel companies liable for “misleading and deceptive marketing and promotion of fossil fuels.” The

⁴⁴ “Climate liability litigation – cases underway to make climate polluters pay” (last accessed 28 March 2023), online: *Center for Climate Integrity* <climateintegrity.org/cases> [perma.cc/R79A-MKJQ]; One example of consumer protection legislation being used is the Vermont Consumer Protection law, which includes anti-trust, consumer protection, and fraud provisions. Vermont Statutes, Title 9: Commerce and Trade, Chapter 63: Consumer Protection, online: <legislature.vermont.gov/statutes/chapter/09/063> [perma.cc/9EKN-TVC3].

⁴⁵ According to: Wentz, J.A. & Franta, B., “Liability for Public Deception: Linking Fossil Fuel Disinformation to Climate Dangers” (December 2022), 52 *Envtl. L. Rep.* 10995 at 3, online (pdf): <scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1196&context=sabin_climate_change> [perma.cc/N5FD-U6QY] [emphasis added].

⁴⁶ “Climate liability litigation – cases underway to make climate polluters pay” (last accessed 28 March 2023), online: *Center for Climate Integrity* <climateintegrity.org/cases> [perma.cc/R79A-MKJQ].

⁴⁷ *Attorney General of the State of Delaware v BP America Inc et al*, Complaint, online (pdf): <attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2020/09/2020-09-09-Final-Complaint.pdf> [perma.cc/F7AC-C37L].

US Centre for Climate Integrity states that “consumer protection statutes have proven to be an effective tool in holding corporate actors accountable for their lies and deception.”⁴⁸

As mentioned, in 2022 16 Puerto Rican municipalities filed suit in US federal district court against coal, oil, and gas companies, seeking compensation for losses resulting from the historic 2017 hurricane season. The suit alleges the fossil fuel companies are liable because they knowingly produced and marketed products that exacerbated climate change – while concealing and misrepresenting the associated dangers.

The suit seeks to hold fossil fuel companies accountable for funding a “marketing campaign of deception that continues to this day,” in which fossil fuel companies funded a “fraudulent marketing scheme” to tell consumers that oil-based products wouldn’t impact climate.⁴⁹ The plaintiffs allege conspiracy to commit common law consumer fraud, and state:

*the Defendants [oil and coal companies and others] and their co-conspirators acted to accomplish their goal to maintain and/or increase fossil fuel usage through unlawful means, namely through misrepresentations, false representations, fraudulent concealment, and omissions concerning their goods and service which were materially false statements that induced the Plaintiffs to purchase their goods and services.*⁵⁰

Similarly, the City of Boulder and associated County Governments have filed pleadings that, according to *The Petroleum Papers*:

*...accused Suncor and Exxon of lying about the climate emergency for nearly sixty years. If those companies had taken seriously the internal scientific warnings about the dangers of their industry starting in the 1960s, the complaint argued, they shouldn’t have developed the oil sands at all.*⁵¹

⁴⁸ “Climate liability litigation – cases underway to make climate polluters pay” (last accessed 28 March 2023), online: *Center for Climate Integrity* <climateintegrity.org/cases> [perma.cc/R79A-MKJQ].

⁴⁹ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 6, online (pdf): <fingfx.thomsonreuters.com/gfx/legaldocs/invwyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf> [perma.cc/4CF8-Q3UL]; Mindock, C., *Puerto Rican towns sue Big Oil under RICO alleging collusion on climate denial* (29 November 2022), online: Reuters <www.reuters.com/legal/litigation/puerto-rican-towns-sue-big-oil-under-rico-alleging-collusion-climate-denial-2022-11-29/> [perma.cc/WAL7-ERAX].

⁵⁰ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at para 708, online (pdf): <fingfx.thomsonreuters.com/gfx/legaldocs/invwyeqkmzvw/Puerto%20Rico%20Complaint%20Exxon.pdf> [perma.cc/4CF8-Q3UL].

⁵¹ Dembicki, G., *The Petroleum Papers: Inside the Far-Right Conspiracy to Cover Up Climate Change* (Vancouver: Greystone Books, 2022) at 217-218.

The pleadings specifically allege:

*Defendants acted to prevent and forestall changes in energy use and supply, which they knew were needed, exacerbating the harms suffered by Plaintiffs and their residents. By hiding what they knew about, and affirmatively misrepresenting the dangers of unabated fossil fuel use, the Defendants protected fossil fuel demand, and obstructed the changes needed to prevent or at least minimize the impacts of climate change.*⁵²

The Philippines Commission on Human Rights National Inquiry

In a related matter, the Republic of the Philippines Commission on Human Rights conducted a National Inquiry on Climate Change, which began in 2015 and concluded with a report in 2022.⁵³ The purpose of the National Inquiry was to “determine the impact of climate change on the human rights of the Filipino people and if the top fossil fuel producers of the world...are fueling climate change.”⁵⁴

The Commission on Human Rights held in its 2022 report that the evidence of the National Inquiry demonstrated “that the Carbon Majors have known since 1965 that their products, when used as intended, result in various harms to the climate system.”⁵⁵ The Commission also held that the fossil fuel industry as a whole “engaged in measures to convince the public that the use of their products would not lead to significant harm.”⁵⁶ These measures were said to have involved a massive climate denial campaign, including deceptive advertising... political lobbying, media relations programs, and the creation of front groups.⁵⁷ Based on their inquiry, the Philippines Commission on Human Rights agreed that the:

...Carbon Majors, directly by themselves or indirectly through others, singly and/or through concerted action, engaged in willful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system. All

⁵² *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at para 16.

⁵³ Cadiz, A.R.E.T., “What is the NICC?” (last accessed 28 March 2023), online: *Institute of Environmental Science for Social Change* <essc.org.ph/content/nicc/> [perma.cc/23AJ-JNG5].

⁵⁴ Cadiz, A.R.E.T., “What is the NICC?” (last accessed 28 March 2023), online: *Institute of Environmental Science for Social Change* <essc.org.ph/content/nicc/> [perma.cc/23AJ-JNG5].

⁵⁵ Commission on Human Rights of the Philippines, *National inquiry on climate change report* (2022), at 95, online (pdf): <chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf> [perma.cc/R4BW-MMVX].

⁵⁶ Commission on Human Rights of the Philippines, *National inquiry on climate change report* (2022), at 95, online (pdf): <chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf> [perma.cc/R4BW-MMVX].

⁵⁷ Commission on Human Rights of the Philippines, *National inquiry on climate change report* (2022), at 94-96, online (pdf): <chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf> [perma.cc/R4BW-MMVX].

*these have served to obfuscate scientific findings and delay meaningful environmental and climate action.*⁵⁸

The Campaign of Disinformation to Consumers is Ongoing

Unfortunately, the spreading of disinformation through marketing continues to this day. The October, 2021 hearing before the US House of Representatives Oversight Committee saw oil and gas executives refusing to pledge that their organizations “will no longer spend any money, either directly or indirectly, to oppose efforts to reduce emissions and address climate change.”⁵⁹ After that hearing, the House Oversight Committee released documents that demonstrated how oil and gas corporations funded a campaign of climate disinformation and greenwashing for decades.⁶⁰ As one observer noted:

*The documents clearly show Big Oil has zero intention of divesting from fossil fuels in order to save the planet from the worst impacts of the climate crisis [.] Instead, they’re **engaging in greenwashing tactics** and exploiting the recent energy market turmoil to invest even more in oil and gas extraction.*⁶¹

[emphasis added]

A 2021 study by a Harvard research team found similar evidence of greenwashing and climate disinformation. They found that ExxonMobil “uses rhetoric mimicking the tobacco industry to downplay the reality and seriousness of climate change, to present fossil fuel dominance as reasonable and inevitable, and to shift responsibility for climate change away from itself and onto consumers.”⁶²

⁵⁸ Commission on Human Rights of the Philippines, *National inquiry on climate change report* (2022), at 98, online (pdf): <chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf> [perma.cc/R4BW-MMVX].

⁵⁹ United States, House of Representatives Committee on Oversight and Reform, *Hearing - Fueling the Climate Crisis: Exposing Big Oil Disinformation Campaign to Prevent Climate Action*, 117th Cong, 1st Sess (28 October 2021), online: <www.congress.gov/event/117th-congress/house-event/LC67716/text?s=1&r=99> [perma.cc/4MDV-DPZT]; Corbett, J., ““They’re Lying”: Lots of climate misinformation detected during testimony of big oil CEOs” (28 October 2021), online: *Common Dreams* <www.commondreams.org/news/2021/10/28/theyre-lying-lots-climate-misinformation-detected-during-testimony-big-oil-ceos> [perma.cc/6K43-DTK8].

⁶⁰ Sanders, E., “New big oil documents reveal a sinister strategy to keep fossil fuels alive” (9 December 2022), online: *ExxonKnews* <www.exxonknews.org/p/new-big-oil-documents-reveal-a-sinister> [perma.cc/V2H6-LES7].

⁶¹ Environmental Working Group President Ken Cook, quoted in “House oversight documents reveal big oil’s “greenwashing” climate claims to hide investments in fossil fuels” (9 December 2022), online: *EWG* <www.ewg.org/news-insights/statement/2022/12/house-oversight-documents-reveal-big-oils-greenwashing-climate> [perma.cc/MM2N-97G6] [emphasis added].

⁶² Supran, G. & Oreskes, N., “Rhetoric and frame analysis of ExxonMobil’s climate change communications” (21 May 2021) *One Earth* 4, 696–719, online (pdf): <www.cell.com/action/showPdf?pii=S2590-3322%2821%2900233-5> [perma.cc/Q7NJ-3YZM].

Geoffrey Supran, one of the Harvard Fellows who conducted this research stated that oil companies continue to spread climate misinformation through upgraded tactics, such as “...moving from print advertorials to digital advertorials and microtargeted social media. Digital advertorials are ads presented to appear in the style of newspapers online and made for the oil companies by the newspapers themselves.”⁶³

Clearly in the age of heat domes, atmospheric rivers, bomb cyclones, catastrophic wildfires, hurricanes melting glaciers, multi-billion-dollar insurance losses and destruction of major BC highways and other infrastructure, it is no longer viable for industry to argue that climate change is not happening. It is no longer effective to characterize the environmentally concerned as ‘Chicken Littles’ or ‘flat earthers.’ It is no longer viable to advertise that there is scientific “uncertainty” about whether fossil fuels exacerbate climate change. Similarly, in the face of cascading multi-billion-dollar climate change damages, it is no longer viable to run ads arguing that it makes ‘no economic sense’ to invest in preventative measures.

The new way of blocking remedial climate change legislation is to argue *that industry is already responding to climate change*. Thus, the new generation of ads claim that companies are “reducing greenhouse gases” and will be “net zero by 2050”; “carbon neutral”; “in alignment with the Paris Agreement”; and so on. Implicit in these ads is the key message that no new government regulation of fossil fuels is really necessary – because industry is already doing everything necessary.

However, in many cases these new advertised claims are also misleading. For example, European regulators have already ruled against ads that boast natural gas is a “clean” fuel.⁶⁴ A New Zealand tribunal ordered removal of a “going zero carbon” ad, because the gas company’s “zero” projection was based on unproven future technology.⁶⁵ Oil companies are advertising their operations will be “net zero by 2050” – but neglect to mention that this rosy calculation fails to count greenhouse gases from end use of the oil and gas.

InfluenceMap has released an analysis of current messaging and engagement by the Canadian oil and gas industry and concluded that it appears to be a case of “net-zero greenwashing”:

InfluenceMap's analysis shows that despite the Canadian oil and gas sector's widespread use of net zero commitments and narratives, the

⁶³ Powell, A., “Tracing big oil’s PR was to delay action on climate change,” *The Harvard Gazette* (28 September 2021), online: <news.harvard.edu/gazette/story/2021/09/oil-companies-discourage-climate-action-study-says/> [perma.cc/TS2Y-638F]. This evidence of how digital ads are increasingly contributing to greenwashing is relevant to Government’s current consultation focus on the *Competition Act* and digital markets.

⁶⁴ See Bhargava, A. *et al*, “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 9-10, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5].

⁶⁵ Bhargava, A. *et al* “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 9, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5].

industry remains strategically opposed to science-based policy to deliver net zero targets in line with limiting warming to 1.5°C... The sector has consistently supported the expansion of the fossil fuel industry, including advocacy for new oil and gas projects. This engagement starkly contrasts with IPCC [Intergovernmental Panel on Climate Change] and IEA [International Energy Agency] 1.5°C net zero scenarios that call for rapid phaseout of fossil fuels in the global energy mix... At the same time, the sector does not appear supportive of stringent emissions reduction regulations. Engagement from the entities show outright opposition or attempts to weaken climate policy action in the region. The Canadian government's recently proposed 2022 Oil and Gas Emissions Cap that would reduce sector's emissions by 30% below 2005 levels in 2030, for example, received severe pushback from several of the entities in this report.⁶⁶

Catherine McKenna, Canada's former Minister of Environment – and current chair of the UN Secretary General's High-Level Expert Group on Net-Zero Commitments of Non-State Entities – has identified the same issues with the new generation of advertising:

Despite the fact that net-zero pledges have now been made by 40 per cent of Forbes's list of 2,000 largest public companies, the reality is that many are not robust enough. At their worst, the pledges create a false impression that lead investors and consumers to believe that a company is doing more to protect the environment than it is.

Here in Canada, oil and gas companies, the single largest source of greenhouse-gas emissions, need to step up and take meaningful climate action now. But instead, we have the Pathways Alliance – which represents major oil sands companies – taking out full-page newspaper advertisements claiming they are on their way to net-zero despite all evidence to the contrary.

It is no secret that the window to limit dangerous warming to 1.5 C and ensure a sustainable future for our planet is quickly closing. While countries must take the lead, we simply won't get to net-zero emissions by 2050 without strong and measurable commitments by non-state actors, especially companies. The United Nations Secretary General

⁶⁶ "The Canadian oil and gas industry and climate policy: a report on climate and energy policy advocacy by the Canadian oil and gas sector" (February 2023), at 2, online (pdf): *Influence Map* <influencemap.org/site/data/000/021/Canada_Report_-_Main_Briefing_Feb21st_2022.pdf> [perma.cc/A69K-YJQC].

António Guterres puts it starkly: “We cannot afford slow movers, fake movers, or any form of greenwashing.”

New global climate accounting standards take aim at greenwashing

...We cannot allow companies to claim they are on the path to net zero if they are investing in new fossil-fuel infrastructure, if their absolute emissions are not decreasing, if they are only reporting on part of their emissions or if they are lobbying to undermine climate policy.⁶⁷

The UN Level Expert Group report pointed out the urgent need for regulations to separate the real net-zero pledges from bogus ones:

The risk is clear. If greenwash premised upon low-quality net zero pledges is not addressed, it will undermine the efforts of genuine leaders, creating both confusion, cynicism and a failure to deliver urgent climate action. Which is why, ultimately, regulations will be required to establish a level playing field and ensure that ambition is always matched by action.⁶⁸

In typical American style, former US House of Representatives Oversight and Reform Committee Chair Carolyn Maloney put it more bluntly:

[i]t’s time for the fossil fuel industry to stop lying to the American people and finally take serious steps to reduce emissions and address the global climate crisis they helped create.⁶⁹

Fossil fuel corporations cannot be allowed to continue misleading advertising around climate issues. The *Competition Act* must be strengthened to eliminate such egregious industrial behaviour.

Making companies accountable for misleading advertising has always been essential to maintain a healthy marketplace and fair competition. But today, the stakes have become far higher. Improved deceptive advertising rules are also essential to protect the planet.

⁶⁷ McKenna, C., “Companies need to stop greenwashing and get serious with net-zero pledges,” *The Globe and Mail* (last modified 28 February 2023), online: <www.theglobeandmail.com/business/commentary/article-companies-need-to-stop-greenwashing-and-get-serious-with-net-zero/> [perma.cc/CCM5-8PK8].

⁶⁸ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022), online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

⁶⁹ Lefebvre, B. & Colman, Z., “House oversight committee accuses oil companies of ‘lying’ about climate actions,” *Politico* (9 December 2022), online: <www.politico.com/news/2022/12/09/oversight-memo-oil-companies-climate-impact-00073248> [perma.cc/7U4H-S3HN].

Canada must reform and enforce its consumer protection law to ensure that companies tell the truth when it comes to their climate impacts. There is clearly broad public support for such action:

According to a 2021 public consultation on Canada’s 2030 Emissions Reduction Plan, citizens’ interest in regulating climate-washing is growing. As part of this consultation, Canadians “expressed concerns about [climate-related] reporting loopholes and greenwashing,” and “called for increased transparency and reporting on climate action and progress to date, in an easily accessible manner.”⁷⁰

The current reform of the *Competition Act* provides Canada with the golden opportunity to create a modern regulatory framework on climate washing and greenwashing.⁷¹ Therefore, we ask that Minister Champagne seriously consider this report and the recommendations found below.

It is imperative that government act. In light of the history of climate deception – and the grave consequences of that deception – we cannot again allow deceptive climate ads to risk humanity’s future.

⁷⁰ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 55, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

⁷¹ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 55, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

Competition Act Reform: The Urgent Need to Curb a New Generation of Climate Washing Ads

*We must have zero tolerance for net-zero greenwashing. ... Using bogus net-zero pledges to cover up massive fossil-fuel expansion is reprehensible. It is rank deception. This toxic cover-up could push our world over the climate cliff. The sham must end.*⁷²

– United Nations Secretary General António Guterres

Consumers today are increasingly aware of the impact of climate change on their lives and future – and of the changes needed to limit global warming. A large majority of Canadians are now concerned about climate change and believe it is important to reduce the use of fossil fuels.⁷³ In April 2022, an Ipsos survey found that 66% of Canadians worry about climate change and 76% think that Canadian businesses have a “great deal” or “fair amount” of responsibility to reduce their contribution to climate change.⁷⁴ An additional Ipsos study shows that Canadians’ concern about climate change affects their purchasing decisions.⁷⁵ Indeed, according to a 2019 PricewaterhouseCoopers study, one out of three Canadian consumers is prepared to pay a premium for more sustainable products.⁷⁶

Recognizing that climate change and climate action are important to consumers, companies are increasingly making marketing claims about their climate credentials. For example, they are pledging that they will be “net-zero by 2050”⁷⁷ – or offer products labelled as “climate/carbon

⁷² “Secretary-General’s remarks at launch of report of High-Level Expert Group on Net-Zero Commitments [as delivered]” (8 November 2022), online: *United Nations | Secretary-General* <www.un.org/sg/en/content/sg/statement/2022-11-08/secretary-generals-remarks-launch-of-report-of-high-level-expert-group-net-zero-commitments-delivered> [perma.cc/89KS-2NJ6].

⁷³ See Abacus Data, “Canadian Nuclear Association: Climate change, meeting Canada’s climate targets and the future of energy” (2020), online (pdf): *Canadian Nuclear Association* <cna.ca/wp-content/uploads/2020/10/Canadian-Nuclear-Association-Report-Aug-2020-final-3.pdf> [perma.cc/364H-S9XQ].

⁷⁴ See “Earth Day 2022: Public opinion on climate change” (April 2022), online (pdf): *Ipsos Global Advisor* <www.ipsos.com/sites/default/files/ct/news/documents/2022-04/Ipsos-Global-Advisor-Earth-Day-2022-Report_1.pdf> [perma.cc/VY9L-V9UC].

⁷⁵ See “Climate Change + Consumer Behaviour” (October 2021) at 2, online (pdf): *Ipsos Global Advisor* <www.ipsos.com/sites/default/files/ct/news/documents/2021-11/Ipsos%20Global%20Advisor%20-%20Climate%20Change%20and%20Consumer%20Behaviour%20Survey%20-%20Oct%202021.pdf> [perma.cc/6UG6-AGSC].

⁷⁶ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 10, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

⁷⁷ Net-zero refers to achieving an overall balance between greenhouse gas emissions produced and greenhouse gas emissions removed (e.g., by carbon capture) by 2050. Net-zero pledges are typically associated with a particular date, such as 2030 or 2050. For a discussion on the traps of net-zero pledges, see Dyke, J., Watson, R. & Knorr, W., “Climate Scientists: Concept of Net Zero is a Dangerous Trap,” *The Conversation* (22 April 2021), online: <theconversation.com/climate-scientists-concept-of-net-zero-is-a-dangerous-trap-157368> [perma.cc/Y3TK-FEP4].

neutral,” “zero carbon footprint,” “aligned with the Paris Agreement,” “meeting Paris Agreement targets,” “reduced greenhouse gases,” etc.⁷⁸

But the problem is that such claims are often vague and misleading. They often omit important information and carefully craft half-truths/ambiguous statements about a company’s carbon footprint and contribution to climate mitigation. It is often difficult for consumers to pin down what the claims mean – and whether the product or company is actually doing what it claims.⁷⁹

It is important to note that a recent global review of almost 500 websites with green claims promoting products/services found that 40% of these green claims could be misleading, potentially violating consumer protection laws.⁸⁰ The review found that using vague claims and unclear language without adequate explanation of evidence was one of the most significant misleading tactics.⁸¹ Another was omitting information – such as a product’s environmental footprint – to appear more sustainable.⁸²

For example, oil companies may advertise that their operations will be “net zero by 2050.” However, they may fail to tell the consumer that they are only talking about making their production operations “net zero” – and that the combustion of their final products, which causes the lion’s share of impact, is not included in their “net zero” projection at all.

As another example, Canadian banks have provided approximately \$911 billion dollars of financing to the fossil fuel industry since the Paris Agreement.⁸³ Yet many of the banks still advertise that they will “meet Net Zero” – despite the fact that the International Energy Agency roadmap to net

⁷⁸ See Bhargava, A. et al “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 6, online (pdf): cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf [perma.cc/Q47F-ZFN5].

⁷⁹As one author points out: “... the thousands of net-zero commitments announced by governments and firms can be interpreted and implemented in as many ways as there are actors who have committed to them.” Nemes, N. et al, “An Integrated Framework to Assess Greenwashing” (2022) 14:8 Sustainability 4431, online: [MDPI <doi.org/10.3390/su14084431>](https://doi.org/10.3390/su14084431).

⁸⁰ See UK, Competition and Markets Authority, Press Release, “Global sweep finds 40% of firms’ green claims could be misleading” (28 January 2021), online: [Gov.UK <www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>](https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading) [perma.cc/7EA5-ZGRY].

⁸¹ See UK, Competition and Markets Authority, Press Release, “Global sweep finds 40% of firms’ green claims could be misleading” (28 January 2021), online: [Gov.UK <www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>](https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading) [perma.cc/7EA5-ZGRY].

⁸² See UK, Competition and Markets Authority, Press Release, “Global sweep finds 40% of firms’ green claims could be misleading” (28 January 2021), online: [Gov.UK <www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>](https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading) [perma.cc/7EA5-ZGRY].

⁸³ Woodside, J., “Canada’s banks are making net-zero pledges – and billions in fossil fuel deals,” *Canada’s National Observer* (27 April 2022), online: www.nationalobserver.com/2022/04/27/explainer/canada-banks-funding-climate-change-fossil-fuels [perma.cc/G3TE-PHVS].

zero by 2050 states “there is no need for investment in new fossil fuel supply...”⁸⁴ – and the IEA has emphasized that there should be “no investment in new fossil fuel supply projects...”⁸⁵

A number of analyses of net-zero claims have documented widespread climate washing:

According to a report by Carbon Market Watch and New Climate Institute on net-zero pledges made by 25 multinationals, these companies’ alleged net-zero commitments would result in significantly less average reduction of GHG emissions than what the claims suggest. Along the same lines, a 2021 study of 81 early adopters of “science-based” net-zero targets showed that almost half of these firms were short of meeting one or more of their targets. The study also indicated that disclosing entities had highly variable and often poor reporting practices. Similarly, a 2022 report by Net Zero Tracker on the status and trends of net-zero target setting indicated that about two-thirds of corporate pledges did not meet minimum procedural standards for target setting.⁸⁶

Although many consumers want to support companies and purchase products with less climate impact, it is currently difficult for consumers to accurately assess whether climate claims are true. This leaves consumer particularly vulnerable to climate washing. A 2020 survey considering consumers’ understanding of greenwashing found that consumers in Canada, the UK and Pakistan were poor at identifying false claims and generally believed claims that products were sustainable⁸⁷. This occurred even when consumers were skeptical and aware of the possibility of greenwashing.

This creates a profound problem in a competitive marketplace. Misleading ads can make it impossible for consumers to distinguish between the beneficial products they want, and harmful products. If consumers cannot distinguish false claims from true ones, there will be serious market

⁸⁴ International Energy Agency, “Net Zero by 2050: a roadmap for the global energy sector” (October 2021), at 21, online (pdf): <[iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf](https://www.iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf)> [perma.cc/WWP4-Q9G8].

⁸⁵ Frangoul, A., “Scrap the sale of gasoline cars and stop investing in fossil fuels to meet net-zero targets, IEA says,” *CNBC* (18 May 2021), online: <www.cnn.com/2021/05/18/stop-investing-in-fossil-fuels-to-meet-net-zero-targets-ia-says.html> [perma.cc/3VWR-6USF]; UN secretary-general António Guterres called for “no new licensing or funding of oil and gas projects, based on the findings of the International Energy Agency that all new oil and gas development must cease for the world to limit global heating to 1.5C above pre-industrial levels.” Harvey, F., “World can still avoid worst of climate collapse with genuine change, IPCC says,” *The Guardian* (20 March 2023), online: <www.theguardian.com/environment/2023/mar/20/ipcc-says-world-can-avoid-worst-of-climate-breakdown-if-it-acts-now> [perma.cc/FL6V-CRK2].

⁸⁶ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 11-12, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/ECoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

⁸⁷ See Urbański, M. & Haque, A.U., “Are You Environmentally Conscious Enough to Differentiate between Greenwashed and Sustainable Items? A Global Consumers Perspective” (2020) 12:5 Sustainability 1786, online: <doi.org/10.3390/su12051786>.

failure. Consumers will be deprived of accurate information for purchase decisions. As a result, market dynamics will be distorted by the false information. *In the end, deceptive polluting companies and products will unjustly prosper at the expense of more sustainable products – contrary to consumer intentions.*

The Competition Bureau has already acknowledged this dynamic when it described the issue of greenwashing:

[t]hese practices mislead consumers, preventing them from making informed purchasing decisions. Greenwashing also harms businesses who truthfully offer products that have measurably less environmental impact, hampering their ability to compete.⁸⁸

By depriving consumers of the ability to make “informed purchasing decisions,” greenwashing and climate washing undermine one of the prime purposes of the *Competition Act* stated in s. 1.1 of the Act:

...to provide consumers with competitive prices and product choice.

When well-intentioned consumers cannot identify false claims and are misled by deceptive marketing, polluting products and companies can prosper – while sustainable competitors unjustly falter. The market will fail to fulfill the desires of the consumer to protect the environment.

Tragically, climate washing threatens the planet precisely because it leads consumers to *unintentionally* purchase products that exacerbate climate change. Successful misleading climate-washing ads can escalate the consumption of carbon intensive goods (*e.g.*, fossil fuels), and ultimately increase investments in carbon intensive sectors.

Furthermore, climate washing:

- legitimizes firms and industries that would otherwise be perceived as harmful to climate, and
- hampers the necessary mobilization of civil society/government to regulate greenhouse gas production.

In sum greenwashing and climate washing are profoundly anti-competitive measures that damage consumers, the truly sustainable businesses, and the environment. Such practices prevent consumers from making informed decisions and hamper sustainable businesses’ ability to compete. They also threaten the planet.

The Government of Canada must act to prevent this market failure. A report from the United Nations’ High-Level Expert Group on Net-Zero Commitments (“UN Net-Zero Report”) has called on governments to regulate and prevent climate washing by those making net-zero claims. The UN

⁸⁸ Competition Bureau Canada, *Building a more competitive Canada 2021-22 annual report* (Gatineau: Competition Bureau Canada, 12 October 2022), at 6, online (pdf): <ised-isde.canada.ca/site/competition-bureau-canada/sites/default/files/attachments/2022/CB-AnnualReport-2021-2022-Eng.pdf> [perma.cc/H49Q-UNXE].

report notes that climate-washing claims “not only erode confidence in net zero pledges overall, they undermine sovereign state commitments and understate the work required to achieve global net zero.” The UN report calls on governments to develop regulations relating to net-zero pledges which will “ensure rigour, consistency and competitiveness.”⁸⁹

Competition Act reform is essential if Canada is to respond to this specific UN call to action. In Canada, deceptive marketing claims are regulated under the *Act*. However, the *Act* has almost never been used to combat the flood of greenwashing ads in Canada— and never used to combat climate washing ads.⁹⁰

It is important to note that the current regulatory regime has major limitations when it comes to dealing with environmental claims. For example, the *Competition Act* regime does not identify what standards climate advertising claims must meet – and does not require firms to publicly disclose how they can substantiate such claims. The Competition Bureau has provided precious little guidance on how it assesses sustainability and climate-related claims. In addition, the Bureau has not adequately identified greenwashing or climate-washing claims as *an enforcement priority*. Despite the Bureau’s acknowledgment that it takes environmental claims seriously and will take action to combat claims that raise issues under the *Competition Act*,⁹¹ its 2022-2023 annual plan fails to prioritize greenwashing.⁹²

In addition, the *Competition Act* lacks other necessary provisions – such as an offence for conspiring to intentionally disseminate climate disinformation; enhanced penalties for climate washing; dedication of monies derived from penalties to climate mitigation measures; and empowering citizens to sue false advertisers.

In light of the history of deceptive climate advertising and the gravity of the escalating climate emergency, it is vitally important for Canadian regulators to remove deceptive climate-related ads from the marketplace. However, as will be seen below, Canada’s deceptive advertising legislation is inadequate for this task.

⁸⁹ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 33, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

⁹⁰ As discussed below, our research has disclosed no prosecutions and only 14 consent agreements addressing environmental claims for the 15-year period, 2006-2021. And all but four of those 14 cases addressed a single issue, environmental claims of energy savings for hot tubs.

⁹¹ Competition Bureau Canada, “Environmental claims and greenwashing” (2 December 2021), online: *Government of Canada* <ised-isde.canada.ca/site/competition-bureau-canada/en/environmental-claims-and-greenwashing> [perma.cc/SES7-JQ54].

⁹² Competition Bureau Canada, “2022-2023 Annual Plan: Competition, recovery and growth” (4 April 2022), online: *Government of Canada* <ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/2022-2023-annual-plan-competition-recovery-and-growth> [perma.cc/2X9V-ASBH].

The purpose of this submission is to identify how the *Competition Act* could be amended to address climate washing more effectively and explicitly. Among other things, the *Competition Act* regime needs to be reformed to:

- Set specific standards that climate claims must meet.
- Require companies making climate claims to publicly disclose or report information to substantiate those claims.
- Make misleading climate-washing claims an enforcement priority under the *Competition Act*.
- Highlight sustainability in the *Competition Act* purpose provisions.
- Provide for enhanced penalties when a deceptive advertising contravention causes negative environmental impacts.
- Impose drastically higher penalties for climate deception.
- Create a criminal conspiracy offence for collaborating to intentionally deceive consumers about climate impacts.
- Enhance private redress mechanisms and private rights of action against climate washing.
- Allocate funds collected from climate-washing penalties to climate mitigation and adaptation efforts.

In order to strengthen the regulation of misleading climate-washing advertising⁹³ under the *Competition Act*, we make the following recommendations. We submit that the following reforms are needed to meet the grave threat that climate washing poses to the future of humanity.

⁹³ And other false or misleading claims.

Examples of Climate Washing Complaints

INTERNATIONAL ACTIONS RECENTLY TAKEN AGAINST CLIMATE WASHING

Climate washing ads are epidemic. Globally, there are almost 50 climate-washing complaints currently pending before courts and regulatory bodies.⁹⁴ Other complaints have been considered by industry authorities. Recent results of complaints include:

- Regulators in the UK and Europe upheld claims against fossil fuel companies, including Shell, for misleading consumers by advertising natural gas as a ‘clean’ fuel.⁹⁵
- The New Zealand Advertising Standards Board found utility company FirstGas’ claim about “zero carbon” gas to be misleading because it was not substantiated. The Board ordered the advertisement to be removed.⁹⁶
- The Austrian advertising watchdog ruled that Austrian Airlines had misled consumers when it advertised its flights as “carbon dioxide neutral.”⁹⁷
- The UK Advertising Standards Authority concluded that Ryanair’s claim that it produced less GHG emissions than its competitors was misleading, as the company had not provided sufficient information to consumers to substantiate those claims.⁹⁸
- The UK Advertising Standards Authority ruled that two HSBC advertisements featuring climate-related claims were misleading and must not continue. The Authority admonished HSBC to ensure that future environmental marketing claims “were adequately qualified and did not omit material information about its contribution to carbon dioxide and greenhouse gas emissions.” In its ruling, the Authority highlighted that despite the general picture painted by the advertisements that HSBC was taking steps against climate change, “HSBC was continuing to significantly finance investments in businesses and industries that emitted notable levels of carbon dioxide and other greenhouse gasses,” and consumers would not know this was the case.

⁹⁴ See Bhargava, A. *et al* “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 6, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5].

⁹⁵ See Bhargava, A. *et al* “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 9-10, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5].

⁹⁶ Bhargava, A. *et al* “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 9, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5].

⁹⁷ “Austrian Airlines misleads consumers about CO₂-neutral flying, Austrian advertising watchdog rules” (August 29, 2022), online: Stay Grounded <stay-grounded.org/austrian-airlines-misleads-consumers-about-co%E2%82%82-neutral-flying-austrian-advertising-watchdog-rules/> [perma.cc/9QC8-43VH].

⁹⁸ See Bhargava, A. *et al* “CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications” (January 2022) at 10, online (pdf): *Climate Social Science Network* <cssn.org/wp-content/uploads/2022/01/CSSN-Research-Report-2022-1-Climate-Washing-Litigation-Legal-Liability-for-Misleading-Climate-Communications.pdf> [perma.cc/Q47F-ZFN5]. Note that the Advertising Standards Authority is the UK advertising industry’s self-regulatory body.

RECENT COMPLAINTS OF CLIMATE WASHING FILED WITH THE CANADIAN COMPETITION BUREAU

- In 2022, Ecojustice brought an application to the Bureau for an inquiry into the Royal Bank of Canada’s alleged misleading advertising with regards to its climate action.⁹⁹ The complaint focused on RBC’s representation that it supports the principles of the Paris Agreement¹⁰⁰ and is committed to achieving net-zero emissions in its lending by 2050.¹⁰¹ Ecojustice argued that this representation could be false and misleading, as RBC provided tens of billions of dollars annually in financial support to the fossil fuel industry and ranked fifth among the world’s 60 largest banks in terms of fossil fuel financing between 2016 and 2021.¹⁰² Ecojustice also argued that RBC lacked a credible plan of how it will reduce its greenhouse gas (“GHG”) emissions in order to attain its net-zero targets. In September 2022, the Competition Bureau launched an investigation into RBC’s climate-related claims, which is seen by many as a sign that the Bureau is taking climate washing seriously.¹⁰³
- A complaint filed by the Canadian Association of Physicians for the Environment recently alleged that the Canadian Gas Association’s representations of “natural” gas as “clean” are false and misleading. The Physician group alleges that when properly accounted for, “natural” gas has comparable greenhouse gas emissions to coal, in part because methane, the main ingredient in “natural” gas, has up to 80 times the climate-warming potential of carbon dioxide. The complaint argued that extraction and production of gas also pollutes the air and contaminates water sources, while domestic gas appliances cause indoor air pollution and pose a health risk for children’s respiratory health. The Competition Bureau confirmed in November 2022, that it would launch an inquiry into the marketing practices of the Canadian Gas Association.¹⁰⁴

⁹⁹ See “Application for inquiry regarding the Royal Bank of Canada’s apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development” (10 June 2022), at 2, online: [ecojustice <ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re-RBC-climate-representations-Final.pdf>](https://ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re-RBC-climate-representations-Final.pdf) [perma.cc/F6LC-QMDW].

¹⁰⁰ The Paris Agreement is an international agreement governed by the United Nations Framework Convention on Climate Change (UNFCCC). It came into effect in 2016, and as of 2021 it has been adopted by 192 parties. One of its primary goals is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels and [pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels.” See *Paris Agreement*, being an Annex to the *Report of the Conference of the parties on its twenty-first session, held in parties from 30 November to*

As discussed elsewhere,¹⁰⁵ numerous other court actions are proceeding against fossil fuel companies for alleged deception, conspiracy and fraud related to climate-related marketing.

13 December 2015–Addendum Part two: Action taken by the Conference of the parties at its twenty-first session, 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1, 55 ILM 740 (entered into force 4 November 2016) at Article 2(1)(a).

¹⁰¹ See Application for inquiry regarding the Royal Bank of Canada’s apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development” (10 June 2022), at 2, online: *Ecojustice* <[ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re -RBC-climate-representations-Final.pdf](https://ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re-RBC-climate-representations-Final.pdf)> [perma.cc/F6LC-QMDW].

¹⁰² See Application for inquiry regarding the Royal Bank of Canada’s apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development” (10 June 2022), at 2, online: *Ecojustice* <[ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re -RBC-climate-representations-Final.pdf](https://ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re-RBC-climate-representations-Final.pdf)> [perma.cc/F6LC-QMDW].

¹⁰³ See Shecter, B., “Competition Bureau investigation into RBC over climate claims,” *Financial Post* (12 October 2022), online: <financialpost.com/fp-finance/banking/competition-bureau-opens-investigation-into-rbc-over-climate-claims> [perma.cc/V6PN-9E2L].

¹⁰⁴ “Canadian gas association under investigation over its claims natural gas is ‘clean’,” *CBC News* (10 November 2022), online: <www.cbc.ca/news/science/canadian-gas-association-competition-bureau-investigation-1.6647619> [perma.cc/RJ9F-GWND].

¹⁰⁵ See the Preface and below.

RECOMMENDATIONS

RECOMMENDATION #1: SET SPECIFIC STANDARDS THAT CLIMATE CLAIMS MUST MEET

[Note: See [Appendix B](#) for summaries of key precedents cited below.]

Companies too often use vague “buzz words” to mislead consumers about the climate impacts of their operations and products. When companies make climate-related advertising claims, they should have to back those claims up against a defined standard and substantiate them.

Standards are necessary to provide common definitions because climate claims are more complex than they seem. For example, two different firms may claim they are selling “carbon neutral bananas,” but this may not mean the same thing for the two companies. One could be relying on dubious, low-quality carbon offsets to make its claim – or may only be accounting for part of its onsite emissions and omitting all the emissions produced in its supply chain. Since consumers may not be aware of these distinctions, firms can take advantage of the different standards or definitions out there to make meaningless statements.

Without common standards against which to assess claims, consumers are vulnerable to deception. Clearly, consumers need common standards in order to understand and verify what a company is saying when they claim to be ‘aligned with the Paris Agreement,’ ‘carbon neutral’ or ‘committed to net zero by 2050.’

This is why former Environment Minister McKenna has stressed:

*New global climate accounting standards take aim at greenwashing.*¹⁰⁶

The UK Competition and Markets Authority Guidance has responded to the need for recognized standards by articulating its *Green Code* provisions on net-zero claim advertising:

...concerning net-zero targets, the Green Code states that firms ‘should include accurate information about whether (and the degree to which) they are actively reducing the carbon emissions created in the production of their products or delivery of their services or are offsetting emissions with carbon removal. (...) In particular, where they are off-setting, businesses should provide information about any scheme they are using (which should be based on recognised standards and measurements, capable of objective verification). If not, consumers

¹⁰⁶ McKenna, C., “Companies need to stop greenwashing and get serious with net-zero pledges,” *The Globe and Mail* (last modified 28 February 2023), online: perma.cc/CCM5-8PK8.

could be misled into thinking that products or processes themselves generate no (or few) emissions when this is unlikely to be the case.’¹⁰⁷

The European Commission’s Proposed Amending Directive also sets proposed standards for climate claims. Under the Proposed Amending Directive, companies will not be able to make generic climate claims without demonstrating performance under a recognized standard.¹⁰⁸ Presumably standards developed will include rules for carbon accounting and offsetting, etc.

Such requirements that companies making climate claims follow an appropriate standard/protocol helps to define those claims – and gives consumers and regulators the tools to assess what the claim means in reality.

These kinds of defined standards should be incorporated into regulations under the *Competition Act*. Regulations should set (or adopt) the specific standards that companies would have to adhere to when making climate claims.

Much work has already been done on appropriate standards. A recent Environmental Defence/Ecojustice report recommends that financial institutions and large corporations be “required to prepare, publish, and implement a “Credible Climate Plan”: a plan that contains minimum prescribed “essential elements” to ensure that it is aligned with climate goals.”¹⁰⁹ The report calls for Credible Climate Plans to be based on *standardized, uniform minimum standards, and for the details of these standards to be set in regulations and accompanying guidelines.*¹¹⁰ Regulators are encouraged to draw from international best practices, including the United Nations Race to Zero program, and other mechanisms for setting targets.¹¹¹

¹⁰⁷ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 66, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

¹⁰⁸ See EC, *Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information* (30 March 2022) at 19, online (pdf): *EUR-Lex* <eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF> [perma.cc/VB7T-57YG].

¹⁰⁹ The report sets out the necessary elements of the Credible Climate Plan. See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 26, 29-43, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹⁰ See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 26, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹¹ “The essential elements of the Credible Climate Plan draw from and build on international best practices, including voluntary initiatives that Canada’s financial institutions have already committed to (see table at Annex A), including: The Glasgow Financial Alliance for Net Zero (GFANZ) has produced detailed guidance for transition plans and phasing out high-emitting assets.

Among its key recommendations, the Environmental Defence report also recommends that regulators adopt a green taxonomy.¹¹² This green taxonomy would define what qualifies as a “green investment.”¹¹³ A taxonomy can provide integrity to a label or descriptor – and clarity for companies operating in a market, by defining what elements must be in place to use that descriptor.¹¹⁴ For instance, a green taxonomy would include a list of verified environmentally-sustainable economic activities.¹¹⁵

The same report provides clear guidance on how to develop a taxonomy that would be aligned with limiting global warming to 1.5°C.¹¹⁶ A green taxonomy would, among other things, set sustainability objectives that investment and corporate activities would have to aim for to be

The United Nations “Race to Zero” has issued further guidance to provide additional clarity and transparency to apply its criteria. All GFANZ members must meet the Race to Zero criteria and have committed to achieving net-zero GHG emissions by 2050.

The Responsible Investment Association’s (RIA) *Canadian Investor Statement on Climate Change* has guidance for setting targets, aligning governance, and centring just transition principles.

The Task Force on Climate-Related Disclosure (TCFD) has issued *Guidance on Metrics, Targets and Transition Plans*.

The International Sustainability Standards Board (ISSB) has published draft general requirements for disclosure of sustainability-related financial information.”

Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 27, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹² See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 70, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹³ Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 75, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹⁴ See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 75, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹⁵ See EC, “EU taxonomy for sustainable activities” (last accessed 28 March 2023), online: *European Commission* <finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en> [perma.cc/X9W9-KWB2]; For an existing taxonomy, see the EU taxonomy for sustainable economic activities. EC, *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088*, [2020] OJ L 198/13, online: <eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN> [perma.cc/H4RB-WGMA]; However, there has been considerable criticism of the EU taxonomy. See Caldecott, B., “‘Encourages laziness and disincentives ambition’: Ben Caldecott shares his thoughts on the EU’s green taxonomy” (14 June 2019), online: *Responsible Investor* <www.responsible-investor.com/encourages-laziness-and-disincentives-ambition-ben-caldecott-shares-his-tho/> [perma.cc/PR3P-LQ4A]; “What’s wrong with the EU’s new green investment rules?” (29 September 2022), online: *Client Earth* <www.clientearth.org/latest/latest-updates/news/what-s-wrong-with-the-eu-s-new-green-investment-rules/> [perma.cc/RCE9-8YJ4].

¹¹⁶ With no or low overshoot. See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 75, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

counted as ‘green’ or ‘sustainable’.¹¹⁷ For instance, the report recommends that any green taxonomy include indirect Scope 3 emissions when determining if a business is actually aligned with climate goals.¹¹⁸

Further guidance on developing a green taxonomy can be gleaned from the recent government-convened Sustainable Finance Action Council of Canada roadmap report on developing a Canadian taxonomy for the financial sector.¹¹⁹

Fortunately, a number of formal emissions reduction schemes – such as the Canadian Government’s “Net-Zero Challenge” program, the UN “Race to Zero” program, and the “Science Based Targets Initiative” – *have already set standards defining such things as what qualifies as “net zero.”* The *Competition Act* regime could adopt or adapt these existing standards, which could be formally implemented through regulations.¹²⁰ (In addition to those established programs, government should consider the UN High Level Group’s report, which includes recommendations on how to set appropriate net-zero targets.¹²¹)

The standards, definitions, GHG accounting methodologies, and frameworks set out in these programs will make useful templates for regulators to emulate. There is no need to reinvent the wheel, when there are adequate standards out there for companies to follow when they wish to make statements which align with those programs (e.g., “achieving net zero by 2050” or “reducing

¹¹⁷ See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 76, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L].

¹¹⁸ Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 76, online (pdf): *Environmental Defence* <environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf> [perma.cc/42L5-268L]; Note: Scope 3 emissions are emissions not directly produced by the company or by its assets, but instead produced by those the company is indirectly responsible for along its value chain. “What are scope 1, 2 and 3 carbon emissions?” (2023), online: *National Grid* <www.nationalgrid.com/stories/energy-explained/what-are-scope-1-2-3-carbon-emissions> [perma.cc/JP37-8685].

¹¹⁹ See Sustainable Finance Action Council, “Taxonomy Roadmap Report: Mobilizing Finance for Sustainable Growth by Defining Green and Transition Investments,” (September 2022), online (pdf): <www.canada.ca/content/dam/fin/publications/sfac-camfd/2022/09/2022-09-eng.pdf> [perma.cc/TAR9-2VEA]; The report is not the taxonomy itself, but introduces a roadmap to develop it. Note that the main limitation of this taxonomy is that it would be specific to investments, and therefore would not encompass all climate-related claims to the public.

¹²⁰ See [Appendix B](#) for a discussion of those existing emission reduction schemes.

¹²¹ There are several sub-recommendations to this. First, all non-state actors should set their initial targets within a year of making their pledge, and targets should be for five-year intervals with the first target set for 2025 (in line with the Paris Agreement). Second, targets must account for all GHG emissions and include emissions from a non-state actor’s full value chain and activities including scope 1, 2, and 3 emissions and all emissions facilitated by financial institutions. Detailed recommendations for oil and gas companies include ending exploration for new oil and gas fields, expansion of reserves, and production. Detailed recommendations for financial institutions included transition plans away from and immediate end to lending and investments in companies planning new coal infrastructure or exploration for new oil and gas fields, etc. UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 17, 24, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

emissions by X% by a certain date”). Companies wishing to make climate claims covered by these standards could be required to follow those or adapted standards.

For instance, under the “Race to Zero” (“RtZ”) program, companies which pledge to reach net-zero emissions by 2050 must take immediate action to meet their interim goals.¹²² “Immediate” means “within months, not more than a year.”¹²³ The RtZ Interpretation Guide provides examples of actions that will meet this requirement, including “changing processes or business models” and “installing or purchasing new equipment.”¹²⁴

Along the same lines, Canada’s “Net-Zero Challenge” program requires companies to develop a preliminary net-zero plan within 12 months of joining the program.¹²⁵ Aside from announcing a net-zero by 2050 target, these plans must include a GHG emissions inventory baseline and information on climate-related financial disclosure.¹²⁶ Within 24 months of signing onto the program, companies must develop a comprehensive net-zero plan, which would include interim targets, scenario analysis to identify net-zero pathways, mitigation strategies and corporate governance strategies.¹²⁷

Ultimately, the standards that are set could be adopted through detailed regulations. Indeed, a combination of regulations and accompanying detailed guidelines that are adaptable to changes in science and technology would be a strong model.

Note: The existence of the different programs above does not obviate the need for government to implement *formal legal regulation*. One could think that government doesn’t need to step in and provide definitions, given that the private sector has already issued guidelines. However, the problem is that there is not a SINGLE, commonly agreed standard that everybody follows. And this currently allows firms to shop and pick the less stringent ones.

It is important to note that requiring use of legally recognized standards should be beneficial to companies as well as consumers. Standards will provide certainty to companies who want to make climate claims, but also want to make sure they are compliant with all relevant laws. In addition, standardizing the climate terms used will benefit truly sustainable companies – by creating a level competitive playing field for all companies.

¹²² See “Interpretation Guide” (April 2021), online (pdf): Race to Zero <racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf> [perma.cc/LP2S-9JB6].

¹²³ “Interpretation Guide” (April 2021), online (pdf): Race to Zero <racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf> [perma.cc/LP2S-9JB6].

¹²⁴ “Interpretation Guide” (April 2021), online (pdf): Race to Zero <racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf> [perma.cc/LP2S-9JB6].

¹²⁵ Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) at 9.

¹²⁶ Sections 4.2 and 8.2 of the Technical Guide provide detail on how to meet these requirements, respectively. Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) at 9.

¹²⁷ The Technical Guide provides detailed guidance on how to meet these requirements. Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) at 9-10.

RECOMMENDATION #2: REQUIRE COMPANIES MAKING CLIMATE CLAIMS TO PUBLICLY DISCLOSE OR REPORT INFORMATION TO SUBSTANTIATE THOSE CLAIMS

Currently, the *Competition Act* does not require a company making a climate claim to publicly disclose information to back up that claim. Substantiation of performance claims is mandatory under the statute – but the proof of this substantiation only has to be disclosed in the extremely rare event that an investigation has already been launched and the Competition Bureau requests it.

As a result, consumers and regulators do not have access to the information needed to assess whether a particular climate ad deserves to be investigated by the Bureau. In the current regime – which relies almost exclusively on consumer, NGO and competitor complaints to identify potential violations of the *Act* – this means that many deceptive claims potentially remain unreported.

To correct this situation, the *Competition Act* regime should include disclosure requirements for companies making climate claims. Companies making climate claims should be required to disclose specific information about their activities associated with those claims. Without this requirement, consumers cannot verify whether vague and ambiguous claims that companies are making are backed up by real reductions in emissions.

A good example of such a disclosure requirement is found in the 2021 amendments to the *French Environmental Code*, which now imposes disclosure requirements on companies making climate-related marketing claims.¹²⁸ Under the amended Code, companies cannot claim that goods or services are “carbon neutral” (or make an equivalent claim) unless they publicly disclose the following information in an easily accessible way to consumers:

- The net GHG emissions produced by the goods or services, including both direct and indirect emissions;
- The plan by which these direct and indirect GHG emissions will be avoided, reduced or offset, including annual quantifiable goals; and
- The residual greenhouse gas emissions offset method which will meet minimum standards defined by regulation.¹²⁹

The French Code highlights that companies must display the GHG emissions associated with a product’s whole life cycle.¹³⁰ The information must be communicated in a reliable and readily

¹²⁸ See art L 541-9-11 *Code de l’environnement*.

¹²⁹ See art L 229-68 *Code de l’environnement*.

¹³⁰ See arts L 541-9-11, 229-64 *Code de l’environnement*.

comprehensible way,¹³¹ and the consumer must be able to see or access the information at the moment they are purchasing the good or service.¹³²

Similarly, the EU Corporate Sustainability Reporting Directive requires companies to publicly report their climate impacts, GHG emissions, GHG emissions targets, progress being made to achieve the targets, and plans to achieve climate neutrality by 2050.¹³³

In a similar vein, California has a longstanding disclosure and substantiation requirement for those who advertise that a consumer good is not harmful to or is beneficial to the natural environment. Advertisers are required to keep in written form information and documentation supporting that representation. The representations that give rise to this requirement are “such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’ ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other like term.”¹³⁴ Under the California law, information and documentation required under that section must be supplied to members of the public upon request.¹³⁵

After defining the climate claims that would attract disclosure requirements, Canada must determine what types of information should be disclosed and in what format. With climate claims, it makes sense for the disclosure to include GHG emissions associated with the advertised product (or the entire business scheme if the company is advertising a company-wide policy). This information should also be communicated in a way that is easily accessible to the public at the relevant time.

As seen in [Appendix B](#) of this submission, there are examples of governments requiring companies to disclose their climate-related information and indicators, including GHG emissions, emissions reduction targets, plans, and progress. The UK CAP Code and its guidance documents require some level of substantiation when it comes to making environmental marketing claims, especially when those claims are vague or broad. Indeed, these guidance documents note that unqualified and broad claims are likely to mislead consumers if companies omit significant information.¹³⁶

¹³¹ See arts L 541-9-11, 229-64 *Code de l'environnement*.

¹³² See art L 541-9-11 *Code de l'environnement*. Note that a corporation that fails to meet disclosure and visibility requirements can be fined up to €100,000 (approximately \$145,000). See art L 229-65 *Code de l'environnement*.

¹³³ See Appendix B; EC, Council of the EU, Press Release, “Council gives final green light to corporate sustainability reporting directive” (28 November 2022), online: <www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/> [perma.cc/2FBY-AVFG]; EC, *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*, [2022] OJ, L 322/15, online (pdf): <eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464&from=EN> [perma.cc/YSX4-SWCH].

¹³⁴ California Code, Business and Professions Code (2021) § 17580(a).

¹³⁵ California Code, Business and Professions Code (2020) § 17580(b) and s.17580(6)(d).

¹³⁶ See UK Advertising Standards Authority, *Code of Non-broadcast Advertising and Direct & Promotional Marketing* (London: Castle House, 2014) at rule 11.1; Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 9.

Other examples of disclosure requirements are found in the *emissions reduction target programs* mentioned in [Appendix B](#). In addition, both the Canadian Securities Administrators and the US Securities and Exchange Commission have proposed rules to establish disclosure requirements for a company’s GHG emissions.¹³⁷ There are many instructive examples of best practices for matters such as mechanisms of disclosure and kinds of information best suited for disclosure.

Finally, the UN Net-Zero Report should guide the new *Competition Act* disclosure requirements. The UN recommendations stress the need for increased transparency when companies’ make net-zero pledges. In order to increase transparency and accountability, the UN Net-Zero Report recommends that:

- entities making pledges disclose their GHG emissions data, emissions targets and their plans for meeting those targets “to enable effective tracking of their progress toward their net-zero targets,”¹³⁸
- entities report information in a standardized and public way, with reported emissions verified by independent third parties,¹³⁹
- net-zero pledges be made publicly and include interim targets on a five-year basis,¹⁴⁰
- entities making net-zero pledges create and publicly disclose a transition plan that sets out the actions the entity will take to meet its targets, and

¹³⁷ *Press Release: SEC proposes rules to enhance and standardize climate-related disclosures for investors* (21 March 2022), online: US Securities and Exchange Commission <www.sec.gov/news/press-release/2022-46>. In 2021-2022, the Canadian Securities Administrators conducted a public consultation on a proposal that would require publicly traded companies to disclose climate-related information to investors. The proposal would require public issuers to disclose their greenhouse gas emissions and indicates CSA’s support for the “international movement toward mandatory climate-related disclosure standards.” [Canadian Securities Administrators, Canadian securities regulators seek comment on climate-related disclosure requirements (18 October 2021), online: Canadian Securities Administrators <www.securities-administrators.ca/news/canadian-securities-regulators-seek-comment-on-climate-related-disclosure-requirements>. Similarly, in March 2023, the Canadian Office of the Superintendent of Financial Institutions (“OSFI”) issued new guidelines that mandate climate-related financial disclosures for all federally regulated financial institutions. [Climate Risk Management (March 2023), at Chapter 2, online: The Office of the Superintendent of Financial Institutions <www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b15-dft.aspx#toc2>; News release: OSFI issues new guidelines on climate risk management (7 March 2023), online: The Office of the Superintendent of Financial Institutions <www.osfi-bsif.gc.ca/Eng/osfi-bsif/med/Pages/b15-nr.aspx>.] This shows that there is a major regulatory trend in Canada to require the disclosure of climate-related impacts.

¹³⁸ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 28, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

¹³⁹ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 29, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

¹⁴⁰ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 15, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD].

- transition plans be updated every five years, with progress on them reported annually.¹⁴¹

The UN Net-Zero Report’s transparency advice should be extended to other climate claims, such as carbon neutrality claims.

RECOMMENDATION #3: MAKE MISLEADING CLIMATE-WASHING CLAIMS AN ENFORCEMENT PRIORITY UNDER THE *COMPETITION ACT* AND ESTABLISH EXPERT INVESTIGATION TEAMS

The Competition Bureau has cited international estimates that as many as 40% of all environmental claims may be misleading.¹⁴² Yet the number of penalties imposed for greenwashing in no way reflects the prevalence of the problem in the marketplace. For example, our research has disclosed no prosecutions and only 14 consent agreements addressing environmental claims for the 15-year period, 2006-2021. And all but four of those 14 cases addressed a single issue, environmental claims of energy savings for hot tubs.¹⁴³

Yet, it is a well-known criminology principle that the frequency of law-breaking is heavily influenced by 1) the expected penalty and 2) the probability of being caught.¹⁴⁴ If we are to solve the problem of omnipresent greenwashing, many more of those 40% misleading environmental claims must be caught. Unfortunately, today in Canada meaningful deterrence of greenwashing simply does not exist, because of the inadequacy of enforcement efforts relative to the problem.

¹⁴¹ UN High Level Expert Group, “Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions – Report from the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities” (2022) at 21, online (pdf): <www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> [perma.cc/R8JR-4TBD]. There are detailed recommendations under this section for different types of non-state actors. For instance, financial institutions’ transition plans must, in addition to the requirements for regular companies, demonstrate how all parts of the business, including investments, align with interim targets and long-term targets.

¹⁴² See UK, Competition and Markets Authority, Press Release, “Global sweep finds 40% of firms’ green claims could be misleading” (28 January 2021), online: Gov.UK <www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading> [perma.cc/7EA5-ZGRY].

¹⁴³ The Competition Bureau/Tribunal decisions that involved false or misleading environmental claims include: *Keurig Canada Inc Registered Consent Agreement* (6 January 2022), CT-2022-001; two consent agreements with Canadian car manufacturers addressing their claims regarding 2.0 and 3.0 L diesel engines - see *Volkswagen Group Canada Inc and Audi Canada Inc Varied Consent Agreement* (19 July 2018), CT-2018-009 and *Volkswagen Group Canada Inc and Audi Canada Inc and Porsche Cars Canada Inc Consent Agreement* (12 January 2018), CT-2018-003; *Econoco Inc and Real Laroche, Claude Tardif Consent* (28 September 2006), CT-2006-002; and a series of ten consent agreements related to energy saving representations of hot tubs – see as an example *Dynastyspasregina Inc Consent Agreement* (25 June 2009), CT-2009-007.

¹⁴⁴ “Optimal sanctions are a function of both the probability of detection and conviction (P) and the quantum of penalty (F).” Sanderson, M. & Trebilcock, M., “Competition Class Actions: An Evaluation of Deterrence and Corrective Justice Rationales” (January 2006) Irwin Law: Competition Class Action Review Nbr. 31 at 23.

In contrast, the Netherlands is acting forcefully to enforce rules against false and misleading sustainability claims. For example,

...in 2021, the Dutch Authority for Consumers and Markets launched investigations into potentially false or misleading sustainability claims in the energy, dairy products, and clothing sectors, contacting over 170 corporations to review the compliance of their advertisements.¹⁴⁵

Unfortunately, Canada appears to mainly rely on complaints – and doesn't have a team to proactively enforce climate claims. Julien Beaulieu has noted:

According to a Competition Bureau representative interviewed during the preparation of this report, there is currently no team assigned to the active monitoring of environmental claims in Canada, which means that the agency mainly relies on complaints by citizens, NGOs, or firms for its enforcement efforts.¹⁴⁶

The lack of focus on environmental and climate issues in the Competition Bureau is reflected in the Bureau's own guiding documents. As Julien Beaulieu notes:

Despite the vast powers granted to the Competition Bureau under the Competition Act, achieving environmental goals is not currently among the agency's top priorities: The CCB's "Strategic Vision" for 2020-2024 and its two most recent "Annual Plans" for 2021-2022 and 2022-2023 do not refer to greenwashing and climate-related corporate claims.¹⁴⁷

The Bureau has no express mandate and no dedicated expert teams to deal with greenwashing; it is also not required to report on its enforcement actions relating to greenwashing. The achievement of sustainability or environmental goals does not appear in the *Act's* purpose clause. (See Recommendation #4 below.) Moreover, while the Bureau currently has an obligation to report every year on its law enforcement activities, the agency is not required to disclose whether it has conducted any investigations relating to greenwashing or other environmental considerations.

The *Act* should be amended to refer to the importance of incorporating environmental considerations when enforcing the statute. While these changes would not create new powers for

¹⁴⁵ Beaulieu, J.O., "Climate-Washing in Québec and Canada: How to Turn the Tide" (Fall 2022), at 6, online (pdf): *Centre Québécois du Droit de l'Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

¹⁴⁶ Beaulieu, J.O., "Climate-Washing in Québec and Canada: How to Turn the Tide" (Fall 2022), at 36, online (pdf): *Centre Québécois du Droit de l'Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

¹⁴⁷ Beaulieu, J.O., "Climate-Washing in Québec and Canada: How to Turn the Tide" (Fall 2022), at 33, online (pdf): *Centre Québécois du Droit de l'Environnement* <www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

the Bureau, they would require that their existing capabilities be deployed in alignment with Canada’s environmental goals. They may also assist with interpretation issues that may arise, by encouraging the interpretation which benefits environmental protection the most.

Furthermore, the Bureau should be required to specifically disclose in its annual report whether it has conducted any investigations relating to greenwashing or other environmental considerations.

It is critically important that government begin to *proactively monitor* misleading ads, instead of its current practice of relying mostly on complaints. Proactive enforcement against climate washing should be established as a top statutory priority for the Competition Bureau – which should establish expert investigation teams.¹⁴⁸

As Julien Beaulieu has pointed out:

*Our point is that climate-related claims are special because they’re really technical. And even if it seems simple, like saying something is carbon neutral, if you dig a bit deeper, it’s super technical, there are a lot of criteria, and it can mean a lot of things. We think we need experts who can understand what these claims mean.*¹⁴⁹

RECOMMENDATION #4: HIGHLIGHT SUSTAINABILITY IN THE COMPETITION ACT PURPOSE PROVISIONS

The purpose of the *Competition Act* is set out in s. 1.1:

Purpose of Act

1.1 The purpose of this *Act* is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

The current purposes of the *Act* do not expressly address sustainability, although it is arguable that in a modern economy sustainability is essential to both economic “efficiency” and “adaptability”: It is necessary to add “sustainability” to the purposes of the *Act*, in order to provide more express

¹⁴⁸ This recommendation is consistent with the Canadian Government’s Net-Zero Advisory Body recent recommendation that “Federal departments, agencies, and Crown corporations should increase their expertise and capacity related to data, analyses, and interpretations of net-zero modelling activities” . Net Zero Advisory Body, First annual report to the Minister of Environment and Climate Change – compete and succeed in a net-zero future (last modified 2 March 2023), at Advice 6, online: *Government of Canada* <www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/advisory-body/first-annual-report-to-minister.html> [perma.cc/ZVG9-LTCH].

¹⁴⁹ Lake, H., “Turning the tide on greenwashing” (27 October 2022), online: *Canadian Bar Association* <nationalmagazine.ca/en-ca/articles/law/business-corporate/2022/turning-the-tide-on-greenwashing> [perma.cc/8YDB-BA93].

direction to ensure that the Competition Bureau prioritizes issues such as the greenwashing problem.¹⁵⁰

Due to the overarching importance of the climate emergency – and the fact that climate advertising deceptions threaten the “marketplace” and the very planet upon which the market relies – *Competition Act* purposes should be expanded to include sustainability. This will optimize the chances that every provision of the *Act* – and the operations of the Competition Bureau – are focused on addressing climate washing.

The purpose statement of the *Competition Act* must be amended, so that the key priorities of sustainability and climate action are expressly considered whenever the statute is implemented or interpreted. This is consistent with advice recently delivered to Government by its own Net-Zero Advisory Body. In its first annual report this year, the Net-Zero Advisory Body advised that the Government of Canada:

*[D]irect that all federal agencies, departments and Crown corporations publicly articulate their role in helping Canada achieve net-zero emissions. The Government of Canada should then empower these organizations to play a more ambitious role by formalizing net-zero objectives in their corporate mandates, changing mandates if required, ensuring that executive compensation is meaningfully and transparently linked to climate mitigation performance, and applying common reporting standards. [...] Without formal mandates, many organizations will not have the corporate legitimacy and legal frameworks they need to maximize their contribution to net-zero.*¹⁵¹

This advice can be actualized through the above proposed amendment to the *Competition Act*'s purpose clause – and by incorporating a formal mandate to counter greenwashing in the Competition Bureau's corporate mandate. Formalizing a mandate to promote sustainability in Canada's consumer protection laws will help align the *Competition Act* with advice from the Net-Zero Advisory Body – and .help address the existential threat of climate change. It will ensure the critical nexus between climate and consumer protection is considered whenever the *Competition Act* is interpreted.

¹⁵⁰ Purpose and mandate provisions are important because they impact the interpretation of all other provisions of a statute. As Justice McLachlin has stated, “[t]he first, “most direct and authoritative evidence” of the legislative purpose of a provision is found in statements of purpose in the legislation itself [...]” [R v Appulonappa, 2015 SCC 59 at para 49.] Statutory interpretation must take into account the object of the statute,[Driedger, E.A., Construction of Statutes 2nd ed. (Toronto: Butterworths, 1983) at 87], and the clearest possible elucidation of the statute's purpose, or object, is a statement in the statute itself that directs interpretation.

¹⁵¹ Net Zero Advisory Body, First annual report to the Minister of Environment and Climate Change – compete and succeed in a net-zero future (last modified 2 March 2023), at Advice 1, online: [Government of Canada <www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/advisory-body/first-annual-report-to-minister.html>](https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/advisory-body/first-annual-report-to-minister.html) [perma.cc/ZVG9-LTCH].

RECOMMENDATION #5: PROVIDE FOR ENHANCED PENALTIES WHEN A CONTRAVENTION CAUSES NEGATIVE ENVIRONMENTAL IMPACTS

The *Competition Act* should provide for enhanced penalties when a contravention causes negative environmental impacts. In light of their ever-increasing global importance, environmental impacts – and specifically climate impacts – should be explicitly considered when determining the amount of an appropriate penalty.

Enhancing penalties could be done in one of two ways:

- Establishing environmental impact as an aggravating factor or
- By establishing a special additional fine when a contravention impacts the environment¹⁵².

The aggravating factor approach would mean that in cases where deceptive advertising was made out, the environmental impacts of such climate washing would be a factor considered when setting the monetary and other penalties. The additional fine approach would allow a court or decision-maker to impose an additional fine on the offender, perhaps representing the profits or advantages obtained as a result of the commission of the offence (or a multiple thereof).¹⁵³ Either approach could be applied to administrative penalties or court action – as long as the increased penalties are of a magnitude to create a real deterrent effective against some of the world's wealthiest corporations.

For example, section 74.1(5) of the *Competition Act* lists various factors that shall be considered when determining the monetary penalty following a violation of section 74.01(1). We propose that environmental harm, given its ever increasing global importance, should be added as an explicit aggravating factor.

The CQDE has written:

***Add environmental impact as an aggravating factor:** The effect of given conduct on the environment could be included as an aggravating or mitigating factor when determining the penalties awarded for a breach of the CP Statutes' provisions regulating deceptive marketing practices. For example, paragraph 74.1 (5) of the CA lists various factors that the courts shall consider when determining the amount of an administrative monetary penalty following a breach of paragraph 74.01 (1). This list includes the frequency and duration of the conduct and the vulnerability of the persons affected by the breach. The fact*

¹⁵² See Halley, P. & Gagnon-Rocque, A., "La sanction en droit pénal canadien de l'environnement : la loi et son application" (2009) 50:3-4 C de D 919, online: <doi.org/10.7202/039345ar>.

¹⁵³ See Halley, P. & Gagnon-Rocque, A., "La sanction en droit pénal canadien de l'environnement : la loi et son application" (2009) 50:3-4 C de D 919, online: <doi.org/10.7202/039345ar>.

*that the behavior has caused environmental harm could be added to this list as an additional aggravating factor, and impacts on particularly sensitive components of the environment such as wetlands or legally protected at-risk species could require higher minimum penalties.*¹⁵⁴

Some potential wording for such a provision is footnoted below.¹⁵⁵ Clearly, impacts on climate are important enough – and tied directly enough to deceptive advertising issues – to be identified specifically as aggravating factors.

RECOMMENDATION #6: IMPOSE DRASTICALLY HIGHER PENALTIES FOR CLIMATE DECEPTION

The last decade has seen a trend of increasing environmental penalties, in both Canada and abroad. For example, in the UK, larger fines for polluting corporations are becoming increasingly common.¹⁵⁶ Since 2014 in Canada, there have been an increasing number of environmental fines over \$1 million, in part due to environmental issues being front and center of public discussion.¹⁵⁷ A Government of Canada review has pointed out that low fines for environmental violations can become ineffectual since they are considered simply a cost of doing business by corporations.¹⁵⁸

The Government of Canada has also stated that fines/penalties play “an important role in ensuring compliance with the *Competition Act* by providing a financial incentive for businesses to comply

¹⁵⁴ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 20, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/ECoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD]; Such a provision could mimic a previous version of section 115.41 of the Quebec Environment Quality Act, which provided that environmental impacts generally could be considered as aggravating factors: 115.41 In determining the penalty, the judge may take into account aggravating factors such as (1) the seriousness of the harm or damage, or of the risk of harm or damage, to human health or the environment, including vegetation and wildlife; [...]. *Environment Quality Act*, CQLR c Q-2, at s. 115.41, as it appeared prior to 2022 amendments.

¹⁵⁵ Proposed text: *Competition Act* s. 74.1 (5) Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c): (a) the reach of the conduct within the relevant geographic market (...) (m) the impact of the conduct on the environment, including greenhouse gas emissions, pollution, biodiversity and ecosystems, particularly at-risk species and their habitats, as defined in the *Species at Risk Act*.

¹⁵⁶ Pedersen, O., “Punishing the polluters: why large fines are an important step towards cleaners corporations,” *The Conversation* (25 April 2019), online: <theconversation.com/punishing-the-polluters-why-large-fines-are-an-important-step-towards-cleaner-corporations-115727> [perma.cc/K426-5SLM].

¹⁵⁷ “Spot the Trend: Increasing Environmental Penalties in Canada” (29 April 2021), online: *Mclennan Ross* <www.mross.com/what-we-think/post/assessing-the-impact-blog/spot-trend-increasing-environmental> [perma.cc/QK5P-DG9Y].

¹⁵⁸ Environment and Climate Change Canada, *A discussion paper regarding environmental fines and sentencing regime: 10 years later* (2021), at 6, 8, 21, online (pdf): *Government of Canada* <publications.gc.ca/collections/collection_2021/eccc/En4-439-2021-eng.pdf> [perma.cc/7R58-NXKN].

with the law.”¹⁵⁹ An increase in monetary penalties occurred in Australia when the federal government amended their *Competition and Consumer Act 2010* in fall 2022.¹⁶⁰ The UK has proposed a digital markets, competition, and consumer bill, to be released shortly, **that will permit corporate fines of up to 10% of global turnover for breaching consumer law.**¹⁶¹ This increase is being touted as the legislative amendment “likely to have the widest impact” out of the proposed changes.¹⁶²

Current greenwashing penalties are obviously not sufficient, in light of the widespread misleading greenwashing that the Competition Bureau has acknowledged. Therefore, we recommend that the *Competition Act* be strengthened by dramatically increasing monetary penalties for climate-washing violations. The penalties should include the option of recovering an amount equal to 10% of the corporation’s annual worldwide gross revenue or nine times the benefits gained through the prohibited conduct.

The 2022 amendments to the *Competition Act* increased maximum administrative penalties for deceptive advertising to include the option of recovering treble the benefits gained or up to 3% of the corporation’s annual worldwide gross revenue.¹⁶³ We submit even these new penalties are not high enough to deter the egregious climate-washing behaviour of massive fossil fuel corporations. Fossil fuel corporations can bring in many billions in profits yearly, and the current penalties are not high enough to achieve deterrence. The comparatively small penalties involved may be seen as simply a cost of doing business for companies with hundreds of billions of dollars of revenue annually.

Therefore, considering the egregious gravity of climate washing, we contend that maximum penalties for such violations should be equal to nine times the benefits gained or 10% of annual worldwide gross revenue.

¹⁵⁹ Competition Bureau Canada, “Guide to the 2022 amendments to the *Competition Act*” (24 June 2022), online: Government of Canada <ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/guide-2022-amendments-competition-act#sec02> [perma.cc/NQ5E-YXTQ].

¹⁶⁰ Benbow, S. et al, “Higher penalties and strengthened unfair contract terms regime under amendments to Australian competition and consumer law” (11 November 2022), online: *Herbert Smith Freehills* <www.herbertsmithfreehills.com/latest-thinking/higher-penalties-and-strengthened-unfair-contract-terms-regime-under-amendments-to> [perma.cc/3ZXU-NLJD].

¹⁶¹ Ungoed-Thomas, J., “‘Greenwashing’ firms face steep new UK fines for misleading claims,” *The Guardian* (19 February 2023), online: <www.theguardian.com/environment/2023/feb/19/greenwashing-firms-face-steep-new-uk-fines-for-misleading-claims> [perma.cc/YQ87-FNSC].

¹⁶² Chapman, M., & McArdle, C., *Fines increase up to 10% of global turnover for consumer law breaches*, online: Lexology <www.lexology.com/library/detail.aspx?g=fd9b641-1005-45fb-87e3-ad82b51d4ed2> [perma.cc/4PHD-R9ZY].

¹⁶³ Competition Bureau Canada, “Guide to the 2022 amendments to the *Competition Act*” (24 June 2022), online: Government of Canada <ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/guide-2022-amendments-competition-act#sec02> [perma.cc/NQ5E-YXTQ]; archived *Competition Act*, [NOT IN FORCE], at s. 74.1(1)c, online: <laws.justice.gc.ca/eng/acts/C-34/20200701/P1TT3xt3.html> [perma.cc/KYF8-GNP9].

Note that the UK has already proposed amendments to recover 10% of annual worldwide gross revenue for a broad spectrum of anti-competition contraventions, not just climate-washing activities.¹⁶⁴

Therefore, we recommend increasing the maximum administrative penalties relating to climate washing to include recovery of:

- nine times the benefit obtained from the deceptive conduct, or
- 10% of the corporation's annual worldwide gross revenue.

See the proposed wording in the footnote below.¹⁶⁵

Note that once the rules regarding climate claims are clarified, specific and predictable, truly sustainable companies will have nothing to fear from potential large penalties for egregious contraventions.

RECOMMENDATION #7: CREATE A CRIMINAL CONSPIRACY OFFENCE FOR COLLABORATING TO INTENTIONALLY DECEIVE CONSUMERS ABOUT CLIMATE IMPACTS

The *Competition Act* currently penalizes certain types of conspiracies to control and dominate the market. For example, section 45 of the *Competition Act* prohibits conspiracies¹⁶⁶ between competitors to fix prices, allocate territories or eliminate production. Section 48 prohibits conspiracies to limit professional athletes' opportunities. However, the current Act fails to adequately regulate alleged conspiracies of corporations to intentionally mislead consumers about the environmental characteristics of a product. Yet such deception can not only seriously

¹⁶⁴ Chapman, M., & McArdle, C., *Fines increase up to 10% of global turnover for consumer law breaches*, online: Lexology <www.lexology.com/library/detail.aspx?g=fd9b641-1005-45fb-87e3-ad82b51d4ed2> [perma.cc/4PHD-R9ZY].

¹⁶⁵ Proposed Text: *Competition Act Administrative Remedies* s.74.1(1)(c) [...]

(iii) in the case of a corporation who engages in climate-related deceptive marketing or disinformation, the greater of:

(a) \$10,000,000 and, for each subsequent order, \$15,000,000, and

(b) nine times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 10% of the corporation's annual worldwide gross revenues.

Anti-Competition Administrative Monetary Penalty

s.79(3.2) If the Tribunal makes an order against a person under subsection (1) or (2) relating to climate disinformation, it may also order them to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding the greater of

(a) \$10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding \$15,000,000, and

(b) nine times the value of the benefit derived from the anti-competitive practice, or, if that amount cannot be reasonably determined, 10% of the person's annual worldwide gross revenues.

¹⁶⁶ And agreements or arrangements.

undermine the marketplace and lead to market failure – it has the potential to threaten the future of humanity. There ought to be a law.

Given the serious history of fossil fuel industry deception of the public – and the grave global consequences of such deception – the *Competition Act* should explicitly prohibit conspiracy to intentionally mislead the public about climate change impacts related to a product. Part VI Offences in Relation to Competition should include a new offence of intentionally conspiring to disseminate climate change disinformation.

In drafting such a new provision, government should closely study the pending civil litigation that alleges fossil fuel industry conspiracies to disseminate climate disinformation. Conspiracy has most recently been pleaded in the Puerto Rican 2022 class action lawsuit where the plaintiffs (various municipalities) allege conspiracy to commit common law consumer fraud.¹⁶⁷ In addition, the City of Boulder, Colorado and associated County governments filed a conspiracy complaint against ExxonMobil and Suncor in 2018 – alleging that the defendants:

*...conspired to, funded and participated in efforts to mislead people and consumers in Colorado about, among other things, the existence of climate change and the risks of fossil fuel use.*¹⁶⁸

*Defendants [Suncor and ExxonMobil] promoted, marketed and sold fossil fuel products without disclosing (and in spite of) the climate-altering dangers that they knew – and have long known – were associated with their use. In addition to concealing the known risks, Exxon and Suncor – separately, jointly and in coordination with others, such as API – directed, participated in, and benefited from efforts to misleadingly cast doubt about the causes and consequences of climate change, including: (1) **making affirmative and misleading statements suggesting that continued and unabated fossil fuel use was safe (in spite of internal knowledge to the contrary).***¹⁶⁹

¹⁶⁷ *The Municipalities of Puerto Rico v Exxon Mobil Corp et al.*, Complaint for Damages No. 3:22-cv-01550 DPR (2022) at paras 703-714, online (pdf):

[fingfx.thomsonreuters.com/gfx/legaldocs/jnvwyekmzv/Puerto%20Rico%20Complaint%20Exxon.pdf](https://www.fingfx.thomsonreuters.com/gfx/legaldocs/jnvwyekmzv/Puerto%20Rico%20Complaint%20Exxon.pdf)
[perma.cc/4CF8-Q3UL]

¹⁶⁸ *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at 21, 23; *Board of County Commissioners of Boulder County v Suncor Energy (USA) Inc Overview* (last accessed 28 March 2023), online: *Climate Case Chart* <climatecasechart.com/case/board-of-county-commissioners-of-boulder-county-v-suncor-energy-usa-inc/> [perma.cc/B7R2-SV8V].

¹⁶⁹ *Board of County Commissioners of Boulder County v Suncor Energy (USA)*, Complaint and Jury Demand at 84 [emphasis added]; *Board of County Commissioners of Boulder County v Suncor Energy (USA) Inc Overview* (last accessed 28 March 2023), online: *Climate Case Chart* <climatecasechart.com/case/board-of-county-commissioners-of-boulder-county-v-suncor-energy-usa-inc/> [perma.cc/B7R2-SV8V].

...Defendants acted in groups that concealed and misrepresented the dangers of fossil fuel use.

380. Defendants acted with and through groups and industry associations, such as API.

381. Defendants set up, and have funded, directed, and participated in efforts by such groups to mislead the public and fossil fuel consumers about the connection between unchecked fossil fuel use and dangerous climate alteration.

382. Defendants used such groups to spread information that they knew to be false, and to give the impression that there was “independent” science that doubted the causes and consequences of climate change.

[emphasis added]

Note that conspiracy offences have already been used to combat climate related disinformation in the automotive industry. In 2022, FCA US, formerly Chrysler Group LLC, plead guilty to a count of conspiracy to defraud the US, commit wire fraud, and violate the *Clean Air Act*.¹⁷⁰ This conspiracy charge arose from a “multi-year scheme to mislead U.S. regulators and customers” which included a marketing campaign that said their vehicles complied with US emission requirements and ran on a “clean EcoDiesel engine,” which were false.¹⁷¹

Potential wording for a *Competition Act* offence of “conspiracy to deceive regarding climate change impacts” is found in the footnote below.¹⁷²

¹⁷⁰ US Department of Justice Office of Public Affairs, “FCA US LLC enters guilty plea to fraud conspiracy” (3 June 2022), online: *The US Department of Justice* <www.justice.gov/opa/pr/fca-us-llc-enters-guilty-plea-fraud-conspiracy> [perma.cc/HJ5B-NKF4].

¹⁷¹ US Department of Justice Office of Public Affairs, “FCA US LLC enters guilty plea to fraud conspiracy” (3 June 2022), online: *The US Department of Justice* <www.justice.gov/opa/pr/fca-us-llc-enters-guilty-plea-fraud-conspiracy> [perma.cc/HJ5B-NKF4].

¹⁷² Proposed Text: *Competition Act* s. X (1) Everyone who knowingly and recklessly conspires, combines, agrees, or arranges with another person to intentionally deceive consumers or investors about: a) the impacts their products have with respect to climate change, or b) the climate sustainability of their products and related industry is guilty of an indictable offence and liable on conviction to a fine at the discretion of the court or to imprisonment for a term not exceeding five years, or both. .

RECOMMENDATION #8: ENHANCE PRIVATE REDRESS MECHANISMS AND PRIVATE RIGHTS OF ACTION

In initiating its current consultation, government specifically invited submissions on private redress mechanisms in the *Competition Act*.¹⁷³ Government's own discussion paper identifies the potential for a more robust private enforcement framework to ease the burden on public resources.¹⁷⁴ We submit that the *Act* should be amended to enhance the ability of citizens to privately sue companies that are breaking deceptive marketing laws. Enhancement of such private redress mechanisms is necessary to optimize compliance with deceptive marketing rules.

Private consumers are optimally situated to monitor deceptive advertising because of their daily interaction with such ads. Nevertheless, the current *Competition Act* allows only very limited private action against deceptive advertising. Private actions against deceptive advertising are not available at all under the *Act's* civil adjudicative regime that governs deceptive advertising.¹⁷⁵ For breaches of the s 74.01 civil prohibition, citizens are restricted to merely applying to the Commissioner of Competition to conduct an inquiry, discussed below.¹⁷⁶ Conduct of the civil proceeding is entirely up to the Competition Bureau. Furthermore, there is no incentive for citizens to invest time or resources into trying to build a section 74.01 case when they perceive a contravention, since they cannot recover compensation.¹⁷⁷

¹⁷³ Innovation, Science and Economic Development Canada, "Making Competition Work for Canadians: A consultation on the future of competition policy in Canada" (last modified 2 February 2023), online: *Government of Canada* <[ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/making-competition-work-canadians-consultation-future-competition-policy-canada](https://www.isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/making-competition-work-canadians-consultation-future-competition-policy-canada)> [perma.cc/SWN2-6WHJ].

¹⁷⁴ Innovation, Science and Economic Development Canada, *The Future of Competition Policy in Canada*, (Ottawa: Innovation, Science and Economic Development Canada, 2022) at 53, online (pdf): *Government of Canada* <[ised-isde.canada.ca/site/strategic-policy-sector/sites/default/files/attachments/2022/The-Future-of-Competition-Policy-eng_0.pdf](https://www.isde.canada.ca/site/strategic-policy-sector/sites/default/files/attachments/2022/The-Future-of-Competition-Policy-eng_0.pdf)> [perma.cc/3BDF-NA9G].

¹⁷⁵ Akman, D. D., "Private Competition Law Actions, Practical Law Canada Practice Note 2-618-8410" (1 January 2017), online: *Borden, Ladner, Gervais* <www.blg.com/en/insights/2017/01/private-competition-law-actions> [perma.cc/3ZCP-F2KS].

¹⁷⁶ See the provisions of sections 9 and 10, *Competition Act*, RSC 1985 c C-34. Note that the Competition Bureau has recently made submissions calling for removing even this private right, which makes the comprehensive reforms we suggest below even more pressing. See Competition Bureau Canada, "The Future of Competition Policy in Canada" (15 March 2023), online: *Government of Canada* <[ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/promotion-and-advocacy/regulatory-advice/interventions-competition-bureau/future-competition-policy-canada#sec-0](https://www.isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/promotion-and-advocacy/regulatory-advice/interventions-competition-bureau/future-competition-policy-canada#sec-0)> [perma.cc/4R9G-3EVD].

¹⁷⁷ Note: Government consultation document has acknowledged: "private access to the Competition Tribunal is available in some cases, but [private] complainants cannot obtain damages." Innovation, Science and Economic Development Canada, "Making Competition Work for Canadians: A consultation on the future of competition policy in Canada" (last modified 2 February 2023), online: *Government of Canada* <[ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/making-competition-work-canadians-consultation-future-competition-policy-canada](https://www.isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/making-competition-work-canadians-consultation-future-competition-policy-canada)> [perma.cc/SWN2-6WHJ].

Indeed, private rights of action for deceptive advertising are only permitted to recover loss or damage for what a person personally incurred as a result of a section 52 *criminal offence*.¹⁷⁸ Thus, private action is barred for all but the most serious of misconduct (e.g., criminal misconduct), which places undue legal burdens on the complaining citizen. A successful claim for deceptive advertising under the section 52 criminal provisions requires a private party to show not only that the defendant did the deceptive advertising – but that they did it *knowingly or recklessly*.¹⁷⁹ Limiting the private action to only the criminal provision establishes a high burden of proving *mens rea*, which can be a deterrent to individuals seeking to bring a claim.¹⁸⁰

Furthermore, even in the constrained circumstances where private action is permitted, the monetary relief available is not adequate to provide a meaningful incentive for those bringing action. A successful private action plaintiff is essentially limited to only recover loss or damage they have actually suffered.¹⁸¹ In other words, the only remedy is compensation to place the plaintiff in the same position that they would have been in but for the conduct.¹⁸² In many cases involving deceptive advertising the actual loss that an individual can prove would range from nil to miniscule – and would not provide an incentive for an individual to sue for their individual loss. While class action lawsuits may be possible under 36(1), each plaintiff must demonstrate that they suffered a calculable loss or damage because of the defendant’s conduct – and this is more difficult to prove for deceptive advertising than for price-fixing and other competition violations. Particularly in advertising cases, limiting the remedy to actual loss or damage limits the financial penalty to the offending party – and minimizes the monetary incentive for a plaintiff who sees

¹⁷⁸ Or if a party breaches an order made by a court or the Competition Tribunal, Section 36(1) of the *Competition Act* states:

Any person who has suffered loss or damage as a result of (a) conduct that is contrary to any provision of Part VI [Offences], or (b) the failure of any person to comply with an order of the Tribunal or another court under this Act, may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Thus, private actions for deceptive advertising are only permitted if 1) criminal conduct is alleged or, 2) if a party breaches an order made by a court or the Competition Tribunal. Thus, aside from being able to sue when tribunal orders are being blatantly breached, the only private right of action is limited to breaches involving the s. 52 criminal offence provisions – and is not available at all against companies breaching s. 74.01 (civil prohibitions).

¹⁷⁹ *Competition Act*, RSC 1985 c C-34, at s. 52(1).

¹⁸⁰ Kyles, D., “Stumbling Around in the Dark: Class Certification and the Private Right of Action Under Section 36 of the *Competition Act*” (2000) *The Canadian Class Action Review* Vol 1 No 2 Canada: Irwin Law at 345, citing Wong, S. & Wright, J.K., “Class Actions and Private Actions under the *Competition Act* (Canada)” (2003) 31 *International Business Lawyer* at 157.

¹⁸⁰ *Competition Act*, RSC 1985 c C-34, at s. 36(1).

¹⁸¹ Plus costs. *Competition Act*, RSC 1985 c C-34, at s. 36(1).

¹⁸² Per *Ratysh v Bloomer*, [1990] 1 SCR 940, cited in Spillette, R., Do, H. & Di Domenico, A., “Greenwashing: What it is and why it matters” (2022) 35(1) *CCLR* at 89-90.

lawbreaking to act.¹⁸³ *Unlike some other consumer protection laws, the private plaintiff is unable to recover punitive damages.*

In sum, the high evidentiary burden required to bring a private action – combined with the limited recovery available – fails to incentivize private action. This contributes to a lack of deterrence for lawbreaking companies. Such pinched and constrained private remedies fail to create a significant deterrent to climate washing – particularly amongst wealthy fossil fuel companies.

In light of current inadequate government enforcement against omnipresent greenwashing ads, civil society should be empowered to supplement that enforcement.

THE CURRENT STATUTORY SCHEME DOES NOT DETER GREENWASHING

The Competition Bureau has cited international estimates that as many as 40% of all environmental claims may be misleading.¹⁸⁴ Yet the number of penalties imposed for greenwashing has been pitifully small.¹⁸⁵ Clearly, there is a need for better mechanisms to stop greenwashing and – in particular – climate washing. Private rights of action can enhance deterrence against potential lawbreakers.

Criminology teaches us that deterrence is a function of probability of detection and strength of penalty.¹⁸⁶ Any increase in litigation enabled by private enforcement provisions bolsters signals to those tempted to offend and provides a broader deterrent effect.¹⁸⁷ Maximizing deterrence requires three main components – certainty of punishment, severity of punishment, and swiftness of punishment. And *certainty* of punishment has been identified as the most significant of the

¹⁸³ *Pioneer Corp v Godfrey*, 2019 SCC 42 at para 118; see also Naudie, C., Hirsh, A. & Dixon, O., “Competition class actions in Canada: The Supreme Court resets the ground rules” (20 September 2019), online: www.osler.com/en/resources/regulations/2019/competition-class-actions-in-canada-the-supreme-court-resets-the-ground-rules > [perma.cc/6EXA-BR9E].

¹⁸⁴ See UK, Competition and Markets Authority, Press Release, “Global sweep finds 40% of firms’ green claims could be misleading” (28 January 2021), online: [Gov.UK <www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>](http://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading) [perma.cc/7EA5-ZGRY].

¹⁸⁵ The cases involving penalties for greenwashing are the exception, rather than the rule. Our research has only been able to identify a handful of consent agreements, including: *Keurig Canada Inc Registered Consent Agreement* (6 January 2022), CT-2022-001; two consent agreements with Canadian car manufacturers addressing their claims regarding 2.0 and 3.0 L diesel engines - see *Volkswagen Group Canada Inc and Audi Canada Inc Varied Consent Agreement* (19 July 2018), CT-2018-009 and *Volkswagen Group Canada Inc and Audi Canada Inc and Porsche Cars Canada Inc Consent Agreement* (12 January 2018), CT-2018-003; *Econoco Inc and Real Laroche, Claude Tardif Consent* (28 September 2006), CT-2006-002; and a series of 10 consent agreements related to energy saving representations of hot tubs – see as an example *Dynastyspasregina Inc Consent Agreement* (25 June 2009), CT-2009-007. We have found no record of any successful criminal prosecutions for greenwashing.

¹⁸⁶ Sanderson, M. & Trebilcock, M., “Competition Class Actions: An Evaluation of Deterrence and Corrective Justice Rationales” (January 2006) *Irwin Law: Competition Class Action Review* Nbr. 31 at 23 (and 17, 19).

¹⁸⁷ Roach, K. & Trebilcock, M.J., “Private Enforcement of Competition Laws” (1996) 34:3 *Osgoode Hall LJ* 461 at 473, online: <digitalcommons.osgoode.yorku.ca/ohlj/vol34/iss3/2> [perma.cc/3KGF-L25F], citing Coffee Jr., J.C., “Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter is Not Working” (1983) 42 *Md. L. Rev.* 215 at 227.

three in promoting deterrence.¹⁸⁸ In order to effectively deter potential wrongdoers, competition law needs to ensure adequate probability of detection, which depends on:

- “how actively the competent authority enforces the law,” and
- the “probability of private litigation.”¹⁸⁹

The “probability of private litigation” against deceptive marketing needs to be bolstered, in order to enhance “certainty of punishment” for lawbreakers.

As discussed, under the current *Act* the only real route of private action lies in the s. 36 provision that allows a citizen to recover loss or damage as a result of a breach of the s. 52 criminal prohibition.¹⁹⁰ However, section 36 has not been well utilized under the current *Competition Act*. In the early days of the provision, “very few cases were brought under section 36.”¹⁹¹ And as of 2017, David Akman observed: “...in the 40 years that there has been a statutory right of action for damages under Canadian competition legislation, damages have been awarded on a contested basis in only a single case...”¹⁹² Given how prevalent green- and climate-washing claims are, this lack of private enforcement is of concern and should be addressed by amending the *Competition Act*.

ROBUST PRIVATE ACTION IS CRITICAL TO ENHANCING COMPETITION BUREAU CAPACITY

Currently, enforcement by the Competition Bureau does not provide adequate levels of certainty in punishing lawbreakers, because the Bureau faces issues limited resources and capacity.¹⁹³ This lack of enforcement action is especially critical since the Competition Bureau currently has sole

¹⁸⁸ Loughran, T.A. et al., *Chapter 4: Deterrence in The Handbook of Criminological Theory* (West Sussex:Wiley Blackwell, 2015) at 72.

¹⁸⁹ Broulik, J., *Two Contexts for Economics in Competition Law: Deterrence Effects and Competitive Effects in New Developments in Competition Law and Economics* (Switzerland: Springer International, 2019) at 31.

¹⁹⁰ *Competition Act*, RSC 1985 c C-34, at s. 36(1) “Any person who has suffered loss or damage as a result of (a) conduct that is contrary to any provision of Part VI, or (b) the failure of any person to comply with an order of the Tribunal or another court under this Act, may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.”

¹⁹¹ Sanderson, M. & Trebilcock, M., “Competition Class Actions: An Evaluation of Deterrence and Corrective Justice Rationales” (January 2006) Irwin Law: Competition Class Action Review Nbr. 31 at 15.

¹⁹² Akman, D. D., “Private Competition Law Actions, Practical Law Canada Practice Note 2-618-8410” (1 January 2017), online: *Borden, Ladner, Gervais* <www.blg.com/en/insights/2017/01/private-competition-law-actions> [perma.cc/3ZCP-F2KS].

¹⁹³ Wetston, H., *Senator Howard Wetston’s Commentary on the Public Consultation with Respect to Examining the Canadian Competition Act in the Digital Era (n.d.)*, at 15, online (pdf): <colindeacon.ca/media/51060/senator-wetston-commentary-en.pdf> [perma.cc/W3XN-9ETF]; Akman, D. D., “Private Competition Law Actions, Practical Law Canada Practice Note 2-618-8410” (1 January 2017), online: *Borden, Ladner, Gervais* <www.blg.com/en/insights/2017/01/private-competition-law-actions> [perma.cc/3ZCP-F2KS].>

jurisdiction to pursue civil contraventions of s. 74.01.¹⁹⁴ This indicates a need to complement the Bureau's public enforcement efforts with private enforcement to increase certainty.

Legislating effective private action remedies can reduce the burden on public agencies and can "[fill] the void" left by under-resourced government agencies, and augment limited enforcement resources.¹⁹⁵ This is an important factor, since the capacity and limited resources of the Competition Bureau have been widely criticized.¹⁹⁶ Furthermore, empowering private parties to bring claims can reduce the burden on Bureau resources and can "lighten the load on the Bureau and level the playing field in resource-intensive and time-sensitive proceedings."¹⁹⁷

A significant benefit of private action is the complementary effect that an efficient private right of action can have on enforcement otherwise carried out by government agencies. Private enforcement increases the accountability of public agencies that may not be adequately enforcing the law – while providing a fail-safe mechanism should public enforcement fall below acceptable levels.¹⁹⁸ In providing the public with a practical way to seek recourse when governments decline to enforce environmental laws, private actions enhance administrative decision-making and strengthen democratic institutions.¹⁹⁹

In sum, enhanced rights of private action will be beneficial as they serve broader public purposes – enhanced enforcement of the law; greater compliance with the law; enhanced corporate accountability; and highlighting gaps in government enforcement.²⁰⁰ Therefore, we call for the adoption of a more robust framework for private enforcement of competition law in Canada.

Useful precedents are discussed below.

INCREASE OPPORTUNITIES FOR PRIVATE ACTION AGAINST DECEPTIVE ADS

First of all, we recommend that the *Competition Act* be amended to increase opportunities for private action by permitting private action under section 74.01 in relation to civil prohibitions. The current system which only allows citizens to petition the Bureau to bring civil actions does not

¹⁹⁴ Akman, D. D., "Private Competition Law Actions, Practical Law Canada Practice Note 2-618-8410" (1 January 2017), online: *Borden, Ladner, Gervais* <www.blg.com/en/insights/2017/01/private-competition-law-actions> [perma.cc/3ZCP-F2KS].>.

¹⁹⁵ Adler, J., "Stand or Deliver: citizen suits, Standing and Environmental Protection" (2001) 12:39 *Duke Envtl L & Pol'y F* at 43.

¹⁹⁶ Note: While there have been recent increases to the Bureau's budget, the ability of private actions to supplement enforcement capacity should not be overlooked.

¹⁹⁷ Wetston, H., *Senator Howard Wetston's Commentary on the Public Consultation with Respect to Examining the Canadian Competition Act in the Digital Era (n.d.)*, at 15, online (pdf): <colindeacon.ca/media/51060/senator-wetston-commentary-en.pdf> [perma.cc/W3XN-9ETF].

¹⁹⁸ Roach, K. & Trebilcock, M.J., "Private Enforcement of Competition Laws" (1996) 34:3 *Osgoode Hall LJ* 461 at 472-473, online: <digitalcommons.osgoode.yorku.ca/ohlj/vol34/iss3/2> [perma.cc/3KGF-L25F]

¹⁹⁹ Babich, A., "Citizen Suits: The Teeth in Public Participation" (1995) 25 *ELR* 10141 at 10141.

²⁰⁰ For a discussion of the public policy reasons for providing private rights of action, such as citizen suits, to increase compliance with the law and enhance corporate accountability see Sax, J., *Defending the Environment* (New York: Knopf, 1971) at 61.

work – as evidenced by the utter dearth of greenwashing actions in a marketplace virtually awash with greenwashing contraventions.

Precedents worth considering include a number of Canadian statutes that provide a broad private right of action when laws are broken. These include the *Yukon Territory Environment Act*; the *Nunavut Environmental Rights Act*, and the *Northwest Territories Environmental Rights Act*.²⁰¹ These statutes share a relatively low evidentiary burden and provide a range of remedies that are not limited to actual losses. For example, section 8 of the *Yukon Environment Act* requires only that a person bringing a private action have reasonable grounds to believe that a person has impaired, or is likely to impair, the natural environment.²⁰² Remedies include the ability to grant an injunction or declaration, award damages and costs, and grant any other remedy that the court considers just.

The precedent of US “citizen suit” provisions should also be considered. Private enforcement is a core tenet of both consumer protection and environmental regulation in the US.²⁰³ Congress initially enacted citizen suits to “supplement governmental enforcement efforts” and enhance compliance.²⁰⁴ Currently, nearly every major US federal environmental law provides for such citizen suit private right of action. It is worth noting that citizen suit provisions have had the “intended effect of implementing a regime of full enforcement of the new environmental norms.”²⁰⁵

INCENTIVIZE PRIVATE ACTION AGAINST DECEPTIVE ADS

To incentivize private actions – and to specifically deter anti-competitive practices like climate washing – the *Competition Act* should be amended to include financial rewards for private parties that initiate successful legal actions. A cogent provision exists in the Fishery (General) Regulations – which grants 50% of financial penalties imposed to the private party who initiated the information leading to conviction.²⁰⁶ Such a mechanism is useful in situations involving parties who

²⁰¹ *Yukon Environment Act*, RSY 2002 c 76; *Nunavut Environmental Rights Act*, RSNWT (Nu) 1988 c 83 s. 6; *Northwest Territories Environmental Rights Act*, SNWT 2019 c 19 s. 13.

²⁰² *Environment Act*, RSY 2002, c 76, at s. 8.

²⁰³ See, for example, Van Cleve, G., “Congressional Power to Confer Broad Citizen Standing in Environmental Cases” (1999), 29 ENVTL. L. REP. 10028, 10028, cited in Reisinger, W., Dougherty, T.A. & Moser, N., “Environmental Enforcement and the limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick up the Slack” (2010) 20:1 Duke Envtl L & Pol’y F; see also Unger, J., “Environmental Rights in Alberta: Module 3 - A Right to a Healthy Environment” (28 November 2016) at 26-27, online (pdf): *Environmental Law Centre (Alberta)* <elc.ab.ca/wp-content/uploads/2016/12/EBR_Mod-3_CitizenEnforcement.pdf> [perma.cc/CM5R-6SAA] for a general discussion. See also: See also Axline, M.D., *Environmental Citizen Suits* (Library of Congress: Butterworth Legal Publishers, 1991) at 1-8.

²⁰⁴ Ross, J.A., “Citizen Suit: California’s Proposition 65 and the Lawyer’s Ethical Duty to the Public Interest” (1995), 29 U.S.F. L. REV. at 812. See also: See Miller, J.G., *Ch. 2 Citizen Suit Overview in Citizen Suits: Private Enforcement of Federal Pollution Control Laws* (Washington, DC: John Wiley & Sons, 1987).

²⁰⁵ Coplan, K.S., “Citizen Litigants Citizen Regulators: Four Cases Where Citizen Suits Drove Development of Clean Water Law” (2014), 25 Colo. Nat. Resources, Energy & Envtl. L. Rev. 61 at 63, 124, online:

<digitalcommons.pace.edu/lawfaculty/934/> [perma.cc/NK8Q-APMW].

²⁰⁶ Fishery (General) Regulations, SOR/93-53, at s. 62(1).

might otherwise not have sufficient financial resources to pursue public interest claims – including environmental-related provisions in the *Fisheries Act* or deceptive marketing provisions.

The *Consumer Protection Procedures Act* of the District of Columbia is a good example of a statute that provides robust remedies for private rights of action against deceptive advertising.²⁰⁷ It allows for an individual, a non-profit organization, or a public interest organization to seek potentially significant monetary relief, *including treble damages and punitive damages*.²⁰⁸ These remedies were specifically included in that law to “encourage the private bar to represent consumers.”²⁰⁹

A similar example is Proposition 65, the California statute that requires businesses to post a warning if their products are known carcinogens. Prop 65 empowers individuals to bring a private action for contraventions – *and to collect 25 % of both civil and criminal penalties awarded, which can be substantial*.²¹⁰ Note that Prop 65 and its citizen suit enforcements have driven significant improvements in product content in California.²¹¹

In summary, we recommend that the *Competition Act* be reformed to enhance private rights of action against deceptive advertising, and specifically:

- permit private rights of action for breaches of s 74.01, under the Act’s civil adjudicative regime governing deceptive advertising,
- provide for payment of half of penalties to private parties that initiate successful prosecutions, and
- allow private parties to sue for punitive damages, treble damages, and/or a percentage of all benefits realized by the lawbreaker.

RECOMMENDATION #9: ALLOCATE FUNDS COLLECTED FROM CLIMATE-WASHING PENALTIES TO CLIMATE MITIGATION AND ADAPTATION EFFORTS

²⁰⁷ *Private Rights of Action under the Consumer Protection Procedures Act* (2014), D.C. Code § 28-3905, online (pdf): oag.dc.gov/sites/default/files/2018-02/Private-Rights-of-Action.pdf [perma.cc/RUH6-CSQC].

²⁰⁸ *Private Rights of Action under the Consumer Protection Procedures Act* (2014), D.C. Code § 28-3905 at s. k(2), online (pdf): oag.dc.gov/sites/default/files/2018-02/Private-Rights-of-Action.pdf [perma.cc/RUH6-CSQC].

²⁰⁹ Yohay, P. R., “DC Consumer Protection Procedures Act” (1978) 27:3 *Cath U L Rev*, online (pdf): scholarship.law.edu/cgi/viewcontent.cgi?article=2409&context=lawreview [perma.cc/UN5R-VPK7].

²¹⁰ *Health and Safety Code: Chapter 6.6 Safe Drinking Water and Toxic Enforcement Act of 1986*, California Code § 25249.12 (d); Ross, J.A., “Citizen Suit: California’s Proposition 65 and the Lawyer’s Ethical Duty to the Public Interest” (1995), 29 *U.S.F. L. REV.* at 813-814; see also *Proposition 65 Settlement Executive Summary 2018*, online (pdf): oag.ca.gov/sites/all/files/agweb/pdfs/prop65/2018-summary-settlements.pdf [perma.cc/PV67-F3GK].

²¹¹ Email from Jamie Pleune to Calvin Sandborn (1 February 2023); see also Roe, D., “Little Labs Lost: An Invisible Success Story” (2012) 15:3 *Green Bag* 275.

Climate-washing penalties collected by government should logically be used to remediate the underlying problem. The Competition Bureau recognized this logic in its *Keurig* decision, where it obtained a consent order requiring Keurig to pay \$800,000 directly to a Canadian charitable organisation focused on environmental causes.²¹²

The *Competition Act* should be amended to direct that all government-collected penalties be directed to the federal Environmental Damages Fund to support climate mitigation and adaptation. Julien Beaulieu has pointed out the rationale:

In their April 2022 complaint filed against RBC, the complainants suggested, in case of breach of the CA, the imposition of a fine of \$10 million, with a recommendation that the funds collected be credited to the Environmental Damages Fund (the “EDF”) and made available for Indigenous-led organizations to use for climate mitigation and adaptation in Canada. The EDF is a specified-purpose account administered by Environment and Climate Change Canada to direct funds received from fines, court orders, and voluntary payments to projects relating to nature restoration, environmental quality improvement, research and development, and education and awareness. Fines and penalties are automatically directed to the EDF under fourteen federal legislative clauses, including the Fisheries Act and the Canadian Environmental Protection Act. The legislators could amend the CP Statutes to require that fines and penalties awarded concerning false or misleading climate claims be directed to the EDF or a similar provincial fund.²¹³ [or similar private conservation fund]

Specific provision should be made to allow for the penalty to be given to Indigenous or private conservation groups to advance climate mitigation and adaptation. There is precedent for that – a court imposing fines under section 40(6) of the *Fisheries Act* may recommend that all or a portion of the fine destined for the Environmental Damages Fund go to an organization for purposes “related to the conservation and protection of fish or fish habitat or the restoration of fish habitat, or for administering that Fund.”²¹⁴

There are numerous examples of fines under BC and other Canadian legislation being directed to funds with environmental purposes. For instance, section 73 of the *BC Forest and Range Practices Act*²¹⁵ states that all administrative penalties levied under that Act must be paid into the

²¹² *Keurig Canada Inc Registered Consent Agreement*, CT-2022-001, online: <decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/518827/index.do> [perma.cc/D9CE-L2CN].

²¹³ Beaulieu, J.O., “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), at 64, online (pdf): *Centre Québécois du Droit de l’Environnement* <www.cqde.org/wp-content/uploads/2022/10/ECoblanchiment_Rapport_Anglais.pdf> [perma.cc/D3HN-EXAD].

²¹⁴ See *Fisheries Act*, RSC 1985 c F-14, at s. 40(7).

²¹⁵ *Forest and Range Practices Act*, SBC 2002 c 69, at s. 73.

Environmental Remediation sub-account of the Forest Stand Management Fund.²¹⁶ Similarly, under section 120 of the BC *Wildlife Act*,²¹⁷ all surcharges and revenue derived under the statute must be paid into the Habitat Conservation Trust, whose funds are to be used for conservation and educational purposes.²¹⁸

²¹⁶ The Forest Stand Management Fund is established under the *Special Accounts Appropriation and Control Act*, RSBC 1996 c 436, at s. 2.

²¹⁷ *Wildlife Act*, RSBC 1996 c 488, at s. 120.

²¹⁸ See *Wildlife Act*, RSBC 1996 c 488, at s. 122(1).

APPENDIX A: NOTABLE EGREGIOUS EFFECTS OF CLIMATE CHANGE IN CANADA

The Canadian Security Intelligence Service (CSIS) has warned that climate change threatens “Canada’s safety, security, and prosperity.”²¹⁹ Costs from climate change include more frequent and severe natural disasters, as well as negative impacts on the economy, infrastructure, and Canadians’ health.²²⁰

In 2021, the atmospheric river that hit BC demolished the connections between Vancouver and the rest of Canada, with flooding that is estimated to have cost the province almost \$9 billion.²²¹ Rebuilding the highways alone could cost over \$1 billion,²²² and future floods are predicted to cause around \$20 billion in damage.²²³ Meanwhile, wildfires have ravaged communities like Fort McMurray and Lytton, rendering water unsafe to drink and causing billions of dollars in damage.²²⁴

²¹⁹ Jim Bronskill “Climate change threatens Canadian security, prosperity, warns stark spy agency brief”, *CBC News* (5 March 2023), online: <www.cbc.ca/news/politics/csis-climate-change-threats-canada-1.6768803> [perma.cc/3XV2-LRAH].

²²⁰ Health Canada, *Health of Canadians in a Changing Climate: Advancing our Knowledge for Action*, (Report), edited by Peter Berry & Rebekka Schnitter (Ottawa: Government of Canada, 2022), online (pdf): <changingclimate.ca/site/assets/uploads/sites/5/2022/02/CCHA-REPORT-EN.pdf> [perma.cc/47ZK-E76E]; Natural Resources Canada, *Canada in a Changing Climate: National Issues Report*, edited by Fiona J Warren & Nicole Lulham (Ottawa: Government of Canada, 2022), online (pdf): <changingclimate.ca/site/assets/uploads/sites/3/2021/05/National-Issues-Report_Final_EN.pdf> [perma.cc/FL4T-4XXB]; Council of Canadian Academies, “Canada’s Top Climate Change Risks: The Expert Panel on Climate Change Risks and Adaptation Potential” (Ottawa: Council of Canadian Academies, 2019), online (pdf): <cca-reports.ca/wp-content/uploads/2019/07/Report-Canada-top-climate-change-risks.pdf> [perma.cc/DF4G-RWVZ]; The Canadian Press, “New climate change report highlights rising danger, costs for Canadians” *CBC News* (28 February 2022), online: <www.cbc.ca/news/science/ipcc-climate-change-canada-1.6367036> [perma.cc/B2G9-MMVY].

²²¹ Justine Hunter “Cost of rebuilding B.C. after flooding nears \$9-billion”, *The Globe and Mail* (19 February 2022), online: [perma.cc/C7TV-4RHR].

²²² Gordon Hoekstra “A year after floods, B.C. estimates cost of climate-resilient highway rebuilds at \$1 billion”, *The Vancouver Sun* (9 November 2022), online: <vancouver.sun.com/news/local-news/bc-floods-estimate-highway-rebuilds-1-billion> [perma.cc/SQ97-M6HW].

²²³ Fraser Basin Council, “Lower Mainland Flood Management Strategy Phase 1 Summary Report” (May 2016) at 18-19, online (pdf): <www.fraserbasin.bc.ca/Library/Water_Flood_Strategy/FBC_LMFMS_Phase_1_Report_Web_May_2016.pdf> [perma.cc/C6U4-DQ98]; Natural Resources Canada, *British Columbia Chapter in Canada in a Changing Climate: Regional Perspectives Report*, by Robert Gifford et al, (Ottawa: Government of Canada, 2022) at 26-28, online (pdf): <changingclimate.ca/site/assets/uploads/sites/4/2020/11/British-Columbia-Regional-Perspective-Report-.pdf> [perma.cc/3FPC-LMRY].

²²⁴ Recent fires such as the one that levelled Lytton, and one around Williams Lake, each caused over \$100 million in property damage, while the 2016 Fort McMurray wildfire in Alberta cost almost \$9 billion and severely degraded water quality, causing a spike in treatment costs.

Andrea Woo et al “‘Like a war zone’: B.C. village of Lytton destroyed by fire”, *The Globe and Mail* (1 July 2021), online: [<https://perma.cc/95QJ-CTH5>]; Wallis Snowdon “Fort McMurray wildfire costs to reach almost \$9B, new report says”, *CBC News* (17 January 2017), online: <www.cbc.ca/news/canada/edmonton/fort-mcmurray-wildfire-costs-to-reach-

In BC alone, wildfires have burned an area larger than Vancouver Island since 2016.²²⁵ The Parliamentary Budget Office estimates that climate change already caused 1% loss of GDP in 2021, and forecasts climate change-induced losses to grow to 6% of GDP by the end of the century.²²⁶ Researchers from Queen’s University forecast that these costs, which do “not take into account the suffering of those who will lose livelihoods, homes and businesses, or even their lives, due to climate-related disasters,” could add up to \$2.8 trillion (more than our current GDP) to \$5.5 trillion by the end of the century.²²⁷

The World Health Organization identifies climate change as “the single biggest health threat facing humanity.”²²⁸ Reports from Health Canada, the Canadian Institute for Climate Choices, and others

[almost-9b-new-report-says-1.3939953](#)> [[perma.cc/FD87-43TJ](#)]; David Thurton “Fort McMurray seeing big spike in water-treatment costs”, *CBC News*, (9 February 2017), online: <[www.cbc.ca/news/canada/edmonton/fort-mcmurray-wildfire-water-treatment-costs-contaminants-1.3973249](#)> [[perma.cc/8NVQ-X8Z7](#)]; “British Columbia wildfires cause more than \$127 million in insured damage,” (27 September 2017), online: *Insurance Bureau of Canada* <[www.ibc.ca/bc/resources/media-centre/media-releases/british-columbia-wildfires-cause-more-than-127-million-in-insured-damage](#)> [[perma.cc/7YWY-E5VP](#)]; “Insured Losses in Lytton, BC, Increase to \$102 Million” (13 January 2022), online: *Insurance Bureau of Canada* <[www.ibc.ca/bc/resources/media-centre/media-releases/insured-losses-in-lytton-bc-increase-to-102-million](#)> [[perma.cc/HM8R-QN8U](#)].

²²⁵ British Columbia Wildlife Service, “Wildfire Averages” (last visited 7 March 2023), online: <[www2.gov.bc.ca/gov/content/safety/wildfire-status/about-bcws/wildfire-statistics/wildfire-averages](#)> [[perma.cc/T2E6-Q77T](#)]; BC Wildfire Service, “Wildfire Season Summary” (last visited 7 March 2023), online: <[www2.gov.bc.ca/gov/content/safety/wildfire-status/about-bcws/wildfire-history/wildfire-season-summary](#)> [[perma.cc/45YK-7BD2](#)]; Statistics Canada, “Table 15.2 Selected major sea islands, by region” (last updated 7 October 2016), online: <[www150.statcan.gc.ca/n1/pub/11-402-x/2010000/chap/geo/tbl/tbl02-eng.htm](#)> [[perma.cc/Q3VV-9C7A](#)].

²²⁶ The PBO admits that these figures are likely an underestimate and are based on the assumption that all climate commitments are met and adaptations are made, limiting global temperature increases to 1.8 degrees Celsius. RBC estimates that the physical damage from increasing natural disasters could cost \$40 billion per year, while researchers from Queen’s University forecast annual GDP losses of up to \$20 billion by 2025 and \$168 billion by 2100. The Canadian Institute for Climate Choices similarly estimates that climate change will cost \$25 billion in 2025 and up to \$865 billion per year by 2100.

Canada, Office of the Parliamentary Budget Officer, *Global greenhouse gas emissions and Canadian GDP*, (Report), (Ottawa: Office of the Parliamentary Budget Officer, 2022) at 4-6, 12-13, online (pdf): <[distribution-a617274656661637473.pbo-dpb.ca/bbc2846795c541eddc656e484a15e7ecd91bd0aff45196f231523d8c5c9aafe4](#)> [[perma.cc/KL5J-3LJX](#)]; Royal Bank of Canada, “The \$2 Trillion Transition: Canada’s road To Net Zero” (last visited 8 March 2023) at 6, online (pdf): <[thoughtleadership.rbc.com/wp-content/uploads/Net-Zero-ES.pdf](#)> [[perma.cc/W8Q4-468M](#)]; Institute for Sustainable Finance, “The Physical Costs of Climate Change: A Canadian Perspective”, by Sean Cleary & Neal Willcott, (April 2022) at 7, online (pdf): <[smith.Queen’su.ca/centres/isf/pdfs/ISF-Report-PhysicalCostsOfClimateChange.pdf](#)> []; Canadian Institute for Climate Choices, “Damage Control: Reducing the Costs of Climate Impacts in Canada” (September 2022) at 47, online (pdf): <[climateinstitute.ca/wp-content/uploads/2022/09/Damage-Control -EN 0927.pdf](#)> [[perma.cc/42R8-TRNE](#)].

²²⁷ Institute for Sustainable Finance, “The Physical Costs of Climate Change: A Canadian Perspective”, by Sean Cleary & Neal Willcott, (April 2022) at 7, online (pdf): <[smith.Queen’su.ca/centres/isf/pdfs/ISF-Report-PhysicalCostsOfClimateChange.pdf](#)> [[perma.cc/NS2Z-8SDC](#)]; “GDP, current prices” (last visited 8 March 2023), online: *International Monetary Fund* <[www.imf.org/external/datamapper/NGDPD@WEO/CAN?year=2023](#)> [[perma.cc/Z5W3-VQR2](#)]; Neal Willcott & Sean Cleary “Canada faces huge physical costs from climate change, making net zero a great investment”, *Queen’s Gazette*, (18 May 2022), online: <[www.queensu.ca/gazette/stories/canada-faces-huge-physical-costs-climate-change-making-net-zero-great-investment](#)> [[perma.cc/CT8X-FREV](#)].

²²⁸ This is also supported by statements from *The Lancet* and Doctors Without Borders.

show that climate change will have serious negative effects on Canadians' health, including through worsening air quality, infectious diseases, increasing temperatures, and mental health.²²⁹ These impacts have already started to play out, for example in the 2021 British Columbia heat dome that killed over 500 people in just one week,²³⁰ as well as increasingly frequent and severe wildfires that have destroyed communities and caused “episodes of the worst air quality that most people will ever experience in British Columbia.”²³¹ Adverse health impacts from heat alone could

WHO, “Climate change and health” (30 October 2021), online: *World Health Organization* <www.who.int/news-room/fact-sheets/detail/climate-change-and-health> [perma.cc/3AHY-3BFM]; “About the Lancet Countdown on health and climate change” (last visited 7 March 2023), online: *The Lancet* <www.thelancet.com/countdown-health-climate> [perma.cc/YA73-6BHP]; “Climate Crisis: Impact on Human Health” (last visited 7 March 2023), online: *Doctors Without Borders* <www.doctorswithoutborders.ca/content/climate-crisis-impact-human-health?utm_source=google&utm_medium=cpc&utm_campaign=grants> [perma.cc/2NNM-US7H]; “Climate Change and Health” (last visited 8 March 2023), online: *Canadian Medical Association* <www.cma.ca/climate-change-and-health> [perma.cc/5DHF-6TTY].

²²⁹ Health Canada, *Health of Canadians in a Changing Climate: Advancing our Knowledge for Action*, (Report), edited by Peter Berry & Rebekka Schnitter (Ottawa: Government of Canada, 2022) at 19-26, 114-613, online (pdf): <changingclimate.ca/site/assets/uploads/sites/5/2022/02/CCHA-REPORT-EN.pdf> [perma.cc/47ZK-E76E]; Health Canada, “Risks to health from climate change” (last updated 7 November 2022), online: <www.canada.ca/en/health-canada/services/climate-change-health/risks-to-health.html> [perma.cc/2LGF-UPDH]; Council of Canadian Academies, “Canada’s Top Climate Change Risks: The Expert Panel on Climate Change Risks and Adaptation Potential” (Ottawa: Council of Canadian Academies, 2019) at ix, 11, 14-16, 21-23, online (pdf): <cca-reports.ca/wp-content/uploads/2019/07/Report-Canada-top-climate-change-risks.pdf> [perma.cc/DF4G-RWVZ]; Canadian Institute for Climate Choices, “The Health Costs of Climate Change: How Canada Can Adapt, Prepare, and Save Lives” (June 2021) at vii-viii, 5, 16-19, online (pdf): <climatechoices.ca/wp-content/uploads/2021/06/ClimateChoices_Health-report_Final_June2021.pdf> [perma.cc/C5N9-8ZNV]; Global Climate and Health Alliance, “The Limits of Livability: The emerging threat of smoke impacts on health from forest fires and climate change – Country Brief: Canada” (2021), online (pdf): <climateandhealthalliance.org/wp-content/uploads/2021/06/limits_liability_country-report_bushfires-canada_EN_final.pdf> [perma.cc/6S97-MRQ8]; Global Climate and Health Alliance, “The Limits of Livability: The emerging threat of smoke impacts on health from forest fires and climate change”, by Frances MacGuire & Milena Sargeeva (2021), online (pdf): <cape.ca/wp-content/uploads/2021/06/016062021_GCHA_bushfire_report_limits_livability_health.pdf> [perma.cc/6AGM-PDCE].

²³⁰ The report to British Columbia’s Chief Coroner found over 600 deaths caused by heat. British Columbia Coroners Service, *Extreme Heat and Human Mortality: A Review of Heat Related Deaths in B.C. in Summer 2021* (Report to the Chief Coroner of British Columbia), (Victoria: BC Coroners Service, 7 June 2022), at 3-4, 11-13, online (pdf): <www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/extreme_heat_death_review_panel_report.pdf> [perma.cc/EGT5-UQTF].

²³¹ Wildfire smoke contains harmful fine particulate matter, as well as carbon monoxide, nitrogen oxides and volatile organic compounds. The BC Centre for Disease Control identifies a host of direct health impacts from wildfire smoke inhalation, including sore throat, cough, headache, eye irritation, chest pain, heart palpitations, and susceptibility to pneumonia and COVID-19. Wildfire smoke has had disproportionate impacts on people with asthma and other respiratory conditions. The rates of hospitalization for asthma are projected to rise due to climate change-induced wildfire smoke exposure. Beyond immediate impacts, smoke inhalation has been correlated with long-term negative health outcomes like cardiovascular, lung disease, and even cancer. Natural Resources Canada, “Climate change and fire” (last updated 11 August 2022), online: <natural-resources.canada.ca/our-natural-resources/forests/wildland-fires-insects-disturbances/climate-change-fire/13155> [perma.cc/MDK5-SF23]; Natural Resources Canada, *Canada in a Changing Climate: National Issues Report*, edited by Fiona J Warren & Nicole Lulham (Ottawa: Government of Canada, 2022) at 55 & 128, online (pdf): <changingclimate.ca/site/assets/uploads/sites/3/2021/05/National-Issues-Report_Final_EN.pdf> [perma.cc/FL4T-4XXB]; Council of Canadian Academies, “Canada’s Top Climate Change Risks: The Expert Panel on Climate Change Risks and Adaptation Potential” (Ottawa: Council of Canadian Academies, 2019) at 4, 10-11, 22, online (pdf): <cca-reports.ca/wp-content/uploads/2019/07/Report-Canada-top-climate-change-risks.pdf> [perma.cc/DF4G-RWVZ].

cost \$8.5 billion a year by 2100, accompanied by annual productivity losses that could reach almost \$15 billion.²³² These harms disproportionately affect Indigenous peoples, not only through climate effects on food and water security, air quality, and mental health, but also by jeopardizing traditional cultures, identities, and ways of life.²³³

Damages to property and infrastructure are also predicted to be severe.²³⁴ In Ontario alone, the Financial Accountability Office has reported that climate change would increase costs of maintaining roads and other transportation infrastructure by \$1.5 billion annually from 2022-2030.²³⁵ In Canada's North, which is warming at a pace 3 times the global average, climate change

[content/uploads/2019/07/Report-Canada-top-climate-change-risks.pdf](#) [perma.cc/DF4G-RWVZ]; Vancouver Coastal Health, "Outdoor air quality" (last visited 7 March 2023), online: <[www.vch.ca/en/outdoor-air-quality](#)> [perma.cc/8M93-KESW]; "Even more of BC faces wildfire risk due to climate change, says PICS researchers" (22 March 2022), online: *Pacific Institute for Climate Solutions* <[pics.uvic.ca/news/even-more-bc-faces-wildfire-risk-due-climate-change-say-pics-researchers](#)> [perma.cc/6P67-YWPI]; "Wildfire Smoke" (last updated 5 May 2022), online: *BC Centre for Disease Control* <[www.bccdc.ca/health-info/prevention-public-health/wildfire-smoke](#)> [perma.cc/L2U5-862V]; Jennifer D Stowell et al, "Asthma exacerbation due to climate change-induced wildfire smoke in the western US" (2021) 17 *Environmental Research Letters*, online (pdf): <[iopscience.iop.org/article/10.1088/1748-9326/ac4138/pdf](#)> [doi.org/10.1088/1748-9326/ac4138]; Emily Grant & Jennifer D Runkle, "Long-term health effects of wildfire exposure: A scoping review" (2022) 6 *J Climate Change & Health*, online: *ScienceDirect* <[www.sciencedirect.com/science/article/pii/S2667278221001073?via%3Dihub](#)> [doi.org/10.1016/j.joclim.2021.100110]; Global Climate and Health Alliance, "The Limits of Livability: The emerging threat of smoke impacts on health from forest fires and climate change – Country Brief: Canada" (2021), online (pdf): <[climateandhealthalliance.org/wp-content/uploads/2021/06/limits_liability_country-report_bushfires-canada_EN_final.pdf](#)> [perma.cc/6S97-MRQ8]; Global Climate and Health Alliance, "The Limits of Livability: The emerging threat of smoke impacts on health from forest fires and climate change", by Frances MacGuire & Milena Sargeeva (2021) at 24-25, online (pdf): <[cape.ca/wp-content/uploads/2021/06/016062021_GCHA_bushfire_report_limits_livability_health.pdf](#)> [perma.cc/6AGM-PDCE].

²³² Canadian Institute for Climate Choices, "The Health Costs of Climate Change: How Canada Can Adapt, Prepare, and Save Lives" (June 2021) at vii-viii, 31-33, online (pdf): <[climatechoices.ca/wp-content/uploads/2021/06/ClimateChoices_Health-report_Final_June2021.pdf](#)> [perma.cc/C5N9-8ZNV].

²³³ Health Canada, *Health of Canadians in a Changing Climate: Advancing our Knowledge for Action*, (Report), edited by Peter Berry & Rebekka Schnitter (Ottawa: Government of Canada, 2022) at 12, 46-47, 57-62, 70-88, online (pdf): <[changingclimate.ca/site/assets/uploads/sites/5/2022/02/CCHA-REPORT-EN.pdf](#)> [perma.cc/47ZK-E76E]; National Collaborating Centre for Indigenous Health, "Climate Change and Indigenous Peoples in Canada: Health Impacts" (2022) at 1-3, online (pdf): <[nccih.ca/Publications/lists/Publications/FS-Climate-Change-Health-Impacts-EN-Web-002.pdf](#)> [perma.cc/XKZ3-3JU7].

²³⁴ Natural Resources Canada, *Canada in a Changing Climate: National Issues Report*, edited by Fiona J Warren & Nicole Lulham (Ottawa: Government of Canada, 2022), online (pdf): <[changingclimate.ca/site/assets/uploads/sites/3/2021/05/National-Issues-Report_Final_EN.pdf](#)> [perma.cc/FL4T-4XXB]; Council of Canadian Academies, "Canada's Top Climate Change Risks: The Expert Panel on Climate Change Risks and Adaptation Potential" (Ottawa: Council of Canadian Academies, 2019), online (pdf): <[cca-reports.ca/wp-content/uploads/2019/07/Report-Canada-top-climate-change-risks.pdf](#)> [perma.cc/DF4G-RWVZ].

²³⁵ The report states that by 2100, climate change would increase the cost of maintaining Ontario's transport infrastructure by anywhere from \$110 (if proactive adaptation measures are taken) to \$322 billion. A December 2022 report from the same body estimates a 27 percent increase in costs for maintaining Ontario's stormwater infrastructure by 2030 and an up to 61 percent increase by 2100, costing anywhere from an extra \$71 to \$145 billion. Financial Accountability Office of Ontario, *Costing Climate Change Impacts*

has the potential to sever vital links between remote communities including airports, which are affected by thawing permafrost and increased precipitation, and winter roads, half of which could be unusable by 2050.²³⁶ Climate change already caused over \$2 billion in insured damages in 2021,²³⁷ and the Canadian Institute for Climate Choices estimates that infrastructure damage could cost up to \$16.9 billion annually by the end of the century, in addition to flood damage to buildings that could cost as much as \$13.6 billion per year.²³⁸

to *Public Infrastructure: Transportation* (Report), by Sabrina Afroz, Nicolas Rhodes & Jay Park, (Toronto: Financial Accountability Office of Ontario, 2022), at 20, 26-28, 32 online (pdf): <[www.fao-on.org/web/default/files/publications/EC2204%20CIPI%20Transport/CIPI%20Transportation-EN.pdf](http://www.fao.on.org/web/default/files/publications/EC2204%20CIPI%20Transport/CIPI%20Transportation-EN.pdf)> [perma.cc/5Q96-RTSK]; Financial Accountability Office of Ontario, *Costing Climate Change Impacts*

to *Public Infrastructure: Linear Storm and Wastewater* (Report), by Sabrina Afroz, Nicolas Rhodes & Jay Park, (Toronto: Financial Accountability Office of Ontario, 2022), at 18-19, 27-30, 34-35, online (pdf): <[www.fao-on.org/web/default/files/publications/EC2205%20CIPI%20Water/CIPI%20Water-EN.pdf](http://www.fao.on.org/web/default/files/publications/EC2205%20CIPI%20Water/CIPI%20Water-EN.pdf)> [perma.cc/9B5J-YCKR].

²³⁶ Environment and Climate Change Canada & Natural Resources Canada, *Canada's Changing Climate Report*, (Ottawa: Government of Canada, 2019) at 84-85, 118, 125, online (pdf):

<changingclimate.ca/site/assets/uploads/sites/2/2020/06/CCCR_FULLREPORT-EN-FINAL.pdf> [perma.cc/7ZWD-SN22];

Canadian Institute for Climate Choices, "Due North: Facing the costs of climate change for Northern infrastructure." (June 2022) at vii, 26-31, 35-40, online (pdf): <climateinstitute.ca/wp-content/uploads/2022/06/Due-North.pdf> [perma.cc/R4WU-VWQS].

²³⁷ Insurance Bureau of Canada, Media Release, "Severe Weather in 2021 Caused \$2.1 Billion in Insured Damage" (18 January 2022), online: <www.ibc.ca/ns/resources/media-centre/media-releases/severe-weather-in-2021-caused-2-1-billion-in-insured-damage> [perma.cc/BC7P-UEVZ].

²³⁸ Canadian Institute for Climate Choices, "Under Water: The Cost of Climate Change for Canada's Infrastructure" (September 2021) at v, 31-33, online (pdf): <climatechoices.ca/wp-content/uploads/2021/09/Infrastructure-English-FINAL-jan17-2022.pdf> [perma.cc/ZHF6-XZ4J].

APPENDIX B: PRECEDENTS FOR CHANGE

This Appendix identifies examples of leading jurisdictions that have acted against climate washing on the key issue of identifying standards that should apply to such advertising claims. Two main types of regulatory initiatives that taken place so far: (i) amending the consumer protection and corporate disclosure rules to better regulate climate-related claims (France, European Commission, California and Florida); and (ii) publishing law enforcement guidelines on environmental marketing and climate-related claims (United Kingdom, United States and Australia).

3.1 French Environmental Code

In 2021, the French Environmental Code was amended to impose disclosure requirements to companies making climate-related marketing claims²³⁹. Under the amended Code, companies cannot claim that goods or services are “carbon neutral” (or make an equivalent claim) unless they publicly disclose the following information in an easily accessible way to consumers:

- The net GHG emissions produced by the goods or services, including both direct and indirect emissions;
- The plan by which these direct and indirect GHG emissions will be avoided, reduced or offset, including annual quantifiable goals; and
- The residual greenhouse gas emissions offset method which will meet minimum standards defined by regulation.²⁴⁰

The Code highlights that companies must display the GHG emissions associated with a product’s whole life cycle.²⁴¹ The information must be communicated in a reliable and readily comprehensible way,²⁴² and the consumer must be able to see or access the information at the moment they are purchasing the good or service.²⁴³ A corporation that fails to meet these disclosure and visibility requirements can be fined up to €100,000 (approximately \$145,000)²⁴⁴.

3.2 European Commission directives

The European Commission, the executive of the European Union, has proposed two directives of particular interest in recent years. The most recent is a proposed directive amending the Unfair Commercial Practices Directive and the Consumer Rights Directive. The other is a proposed directive, now adopted by the EU Parliament, to amend the Non-Financial Reporting Directive (“NFRD”), changing it into the Corporate Sustainability Reporting Directive (“CSRD”).

²³⁹ See art L 541-9-11 *Code de l’environnement*.

²⁴⁰ See art L 229-68 *Code de l’environnement*.

²⁴¹ See arts L 541-9-11, 229-64 *Code de l’environnement*.

²⁴² See arts L 541-9-11, 229-64 *Code de l’environnement*.

²⁴³ See art L 541-9-11 *Code de l’environnement*.

²⁴⁴ See art L 229-65 *Code de l’environnement*.

3.2.1 Directive to Amend the Unfair Commercial Practices Directive and the Consumer Rights Directive

On March 30, 2022, the European Commission released a proposal for a directive which would prohibit the use of vague environmental and climate-related terms by advertisers unless they can meet a certain standard. The “Proposal for a Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (the “Proposed Amending Directive”) ²⁴⁵ proposes to amend the Unfair Commercial Practices Directive (“UCPD”) and the Consumer Rights Directive (“CRD”). The Proposed Amending Directive aims to allow consumers to make better informed and more sustainable purchasing decisions by targeting unfair and misleading commercial practices such as greenwashing.²⁴⁶

Some of the obligations under the Proposed Amending Directive are aimed at climate washing:

- Article 6(2) of the UCPD currently prohibits misleading representations. The Proposed Amending Directive would change the meaning of “misleading” to explicitly consider environmental and social impacts. Article 6(2) would also be amended to prohibit environmental claims,²⁴⁷ in particular climate-related claims such as “carbon neutrality” or similar claims “when they are not supported by clear, objective and verifiable commitments and targets given by the company.”²⁴⁸
- The Proposed Amending Directive would also amend Annex I of the UCPD to prohibit making generic environmental claims without recognised excellent performance relevant to the type of claim.²⁴⁹ Examples of generic environmental claims include claims like “climate

²⁴⁵ European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 1, online: *EUR-Lex* <https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF>.

²⁴⁶ European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 1, online: *EUR-Lex* <https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF>.

²⁴⁷ The Proposed Directive would define environmental claim very broadly in such a way that will likely cover most kinds of statements regarding a product’s impact on the environment. See Jean-Philippe Montfort & Pavlina Chopova-Lepêtre, “European Commission proposal would grant new rights to consumers under the Green Deal” (27 April 2022), online (blog): *Mayer Brown* <https://www.mayerbrown.com/en/perspectives-events/publications/2022/04/european-commission-proposal-would-grant-new-rights-to-consumers-under-the-green-deal#_edn3>.

²⁴⁸ European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 18, online: *EUR-Lex* <https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF>.

²⁴⁹ See European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 19, online: *EUR-Lex* <https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF>.

friendly,” “carbon neutral,” and “climate neutral.”²⁵⁰ These generic claims would be prohibited “whenever there is no excellent environmental performance demonstrated or whenever the specification of the claim is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product’s packaging or online selling interface.”²⁵¹

The EU Parliament has not yet adopted these amendments.

3.2.2 Corporate Sustainability Reporting Directive

In November, the EU Parliament adopted amendments to the Non-Financial Reporting Directive (“NFRD”), which would change it into the Corporate Sustainability Reporting Directive (“CSRD”). The new CSRD was adopted by the EU Council on November 28, 2022²⁵². These amendments expand the scope of the EU’s non-financial reporting regime to require EU and non-EU companies to report their climate impacts and future climate targets.

For instance, under Article 19a, companies shall include “information necessary to understand the undertaking’s impacts on sustainability matters” in their management report²⁵³. This information is defined to include:

- financial and investment plans and strategies to achieve ***climate neutrality by 2050 as defined by regulation***
- ***relevant exposure of the undertaking to coal-, oil- and gas-related activities; and***
- ***time-bound targets including appropriate absolute greenhouse gas emission reduction targets at least for 2030 and 2050, progress made towards achieving those targets, and a***

²⁵⁰ “Examples of such generic environmental claims are ‘environmentally friendly’, ‘eco-friendly’, ‘eco’, ‘green’, ‘nature’s friend’, ‘ecological’, ‘environmentally correct’, ‘climate friendly’, ‘gentle on the environment’, ‘carbon friendly’, ‘carbon neutral’, ‘carbon positive’, ‘climate neutral’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements, as well as broader statements such as ‘conscious’ or ‘responsible’ that suggest or create the impression of excellent environmental performance. [...]”. European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 19, online: https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF.

²⁵¹ European Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (30 March 2022) at 19, online: https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF.

²⁵² European Council, Press Release, “Council gives final green light to corporate sustainability reporting directive” (28 November 2022), online: <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/#:~:text=On%20February%202022%2C%20EU,representatives%20on%2030%20June%202022>>.

²⁵³ EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022].

statement whether the environmental targets are based on conclusive scientific evidence...²⁵⁴

Article 29b(1) states that the Commission shall adopt sustainability reporting standards, which will specify the information and the structure of reporting that companies must report under Articles 19a and 29a.²⁵⁵ Those reporting standards will, among other things, specify the information that companies must disclose about a number of environmental factors, including their GHG emissions.²⁵⁶ Article 29d requires those companies that have reporting requirements under Articles 19a or 29a to prepare their reports in the electronic reporting format required under existing regulations.²⁵⁷

The CSRD will also require companies' sustainability reporting to be verified by accredited independent third parties who will ensure that the CSRD disclosures comply with the certification standards to be adopted by the EU.^{258 259}

²⁵⁴ Almost identical provisions were added for parent companies under Article 29a(2). EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022].

²⁵⁵ See Article 29b(1) of the *Corporate Sustainability Reporting Directive*. EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022].

²⁵⁶ See Article 29b(1) of the *Corporate Sustainability Reporting Directive*. EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022].

²⁵⁷ See Article 29b(1) of the *Corporate Sustainability Reporting Directive*. EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022]. This reporting format is the "XHTML" format and is in line with other EU reporting requirements. See also Oliver Williams, "EU Corporate Sustainability Reporting Directive – new sustainability disclosure obligations for EU and non-EU companies" (21 November 2022), online (blog): *Mayer Brown* <<https://www.mayerbrown.com/en/perspectives-events/publications/2022/11/eu-corporate-sustainability-reporting-directive-new-sustainability-disclosure-obligations-for-eu-and-non-eu-companies#:~:text=The%20EU%20Council%20is%20expected,integrate%20it%20into%20national%20law>>.

²⁵⁸ See Article 34 of the *Corporate Sustainability Reporting Directive*. EC, *European Parliament legislative resolution of 10 November 2022 on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, [2022].

²⁵⁹ The CSRD will be rolled out in four stages, starting to apply to some companies as of January 1, 2024, and applying to all applicable companies by January 1, 2028. See Oliver Williams, "EU Corporate Sustainability Reporting Directive – new sustainability disclosure obligations for EU and non-EU companies" (21 November 2022), online (blog): *Mayer Brown* <<https://www.mayerbrown.com/en/perspectives-events/publications/2022/11/eu-corporate-sustainability-reporting-directive-new-sustainability-disclosure-obligations-for-eu-and-non-eu-companies#:~:text=The%20EU%20Council%20is%20expected,integrate%20it%20into%20national%20law>>.

3.3 State Consumer Protection Laws that require substantiation and disclosure of substantiation of Environmental Claims

The US states commonly have state consumer protection laws. These laws commonly include a general prohibition on misleading or deceptive advertising practices, without specifying provisions regarding climate-washing claims.

However, both Florida and California have laws requiring any person who represents in advertising or on a label that a consumer good is not harmful to or is beneficial to the natural environment to keep in written form information and documentation supporting that representation. The representations that give rise to this requirement are “such terms as ‘environmental choice,’ ‘ecologically friendly,’ ‘earth friendly,’ ‘environmentally friendly,’ ‘ecologically sound,’ ‘environmentally sound,’ ‘environmentally safe,’ ‘ecologically safe,’ ‘environmentally lite,’ ‘green product,’ or any other like term.”²⁶⁰ ²⁶¹ Under the California law, information and documentation required under that section must be supplied to members of the public upon request.²⁶²

3.4 Guidance by foreign consumer protection agencies

Internationally, there are many examples of government regulators publishing guidance documents designed to provide companies with non-binding guidance related to environmental marketing claims. These guidance documents typically set out principles for making environmental marketing claims in the context of consumer protection laws of general application. The three guidance documents highlighted in this sub-section are the UK Competition and Markets Authority guidance, the US Federal Trade Commissioner’s Green Guides, and Australia’s Competition and Consumer Commission green marketing guides.

3.4.1 United Kingdom CMA Guidance

The UK Competition and Markets Authority “CMA guidance on environmental claims on goods and services”²⁶³ (“CMA Guidance”) sets out non-binding guidelines to help businesses comply with their consumer protection law obligations.²⁶⁴ Though the guidance is aimed at environmental claims generally, the principles and guiding statements made in the CMA Guidance are relevant to climate washing.²⁶⁵ Indeed, a recent Ecojustice/Environmental Defence report recommended

²⁶⁰ CA Bus & Prof Code § 17580(a) (2020).

²⁶¹ The Florida law has a very similar list of representations. See Fla Stat § 403.7193(1).

²⁶² See CA Bus & Prof Code § 17580(b) (2020).

²⁶³ See UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021).

²⁶⁴ See UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at ss 2.13-2.16.

²⁶⁵ See UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 2.10.

Canadian regulators consider the CMA Guidance when producing guidelines for industry and advertisers on environmental and climate claims.²⁶⁶

The CMA Guidance sets out six basic principles for environmental claims²⁶⁷:

1. Claims must be truthful and accurate;
2. Claims must be clear and unambiguous;
3. Claims must not omit or hide important relevant information;
4. Comparisons must be fair and meaningful;
5. Claims must consider the full life cycle of the product or service; and
6. Claims must be substantiated.

Each of the above principles is discussed with accompanying statements and scenarios to guide advertisers and companies to make advertisements about environmental claims which abide by the law. Many if not all of the above principles could apply to climate-washing advertisements.

For instance, under the first principle that claims must be truthful and accurate, the CMA Guidance notes that as a rule of thumb “broader, more general or absolute claims are much more likely to be inaccurate and to mislead.”²⁶⁸ Businesses are told that their advertisements “should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects.”²⁶⁹

The second principle that claims must be clear and unambiguous is also relevant to combat climate washing. This principle focuses on claims being “transparent and straightforward so consumers can easily understand them.”²⁷⁰ Many climate-washing claims use terms such as “net zero” or “aligned with the Paris Agreement” which can be highly ambiguous without more information. The CMA Guidance notes:

- 3.48 Vague and/or general statements of environmental benefit are more likely to be misleading. At best, they can have a number of meanings that can confuse consumers and make it difficult for them to make informed decisions. At

²⁶⁶ See Environmental Defence, Ecojustice & Shift, “Roadmap to a Sustainable Financial System in Canada: Achieving Alignment Through Credible Climate Plans” (2 November 2022) at 77-79, online (pdf): *Environmental Defence* <<https://environmentaldefence.ca/wp-content/uploads/2022/11/Nov-2-FINAL-Roadmap-to-a-Sustainable-Financial-System.pdf>> [Roadmap to Sustainable Financial System].

²⁶⁷ See UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 1.7.

²⁶⁸ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.9.

²⁶⁹ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.18.

²⁷⁰ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.46.

worst, they can give the impression a product, service, process, brand or business is better for the environment than is really the case. They can also be difficult to substantiate.²⁷¹

[Emphasis added]

The sixth principle that claims must be substantiated is also relevant to curbing climate washing. The CMA Guidance notes that most environmental claims are based on factual claims which can be tested against scientific evidence: “Given the requirement that claims must be truthful and accurate, businesses should have evidence to support them.”²⁷² Since “[b]roader and more ambitious claims may be more difficult to substantiate”²⁷³ and may require a “high level of strong evidence” to substantiate, advertisers should be careful when making broad claims. The Guidance also notes that subjecting evidence to independent scrutiny “particularly where it is complex or controversial, may help ensure that it is robust.”²⁷⁴ Though the CMA Guidance does not require that the evidence backing up claims be disclosed publicly, it notes that “claims are less likely to mislead where the supporting evidence is publicly available, and it is clear where and how consumers can verify the claims.”²⁷⁵

The CMA Guidance also provides several example scenarios. One scenario is particularly helpful when considering how the Guidance might be applied to climate-washing cases. In the example, a fictitious company supplying consumers with electricity makes the following advertising claim: “Go 100% green with us – you’ll save the money and the planet with the UK’s cheapest and greenest energy supplier.”²⁷⁶ The CMA Guidance notes that the company would likely need to provide a high level of substantiating evidence, given the broad statements and the high likelihood of misleading consumers. The CMA Guidance then outlines what information the supplier would need to substantiate those claims. Alternatively, the guidance outlines what steps the company could take to make its advertisement compliant with consumer protection laws, if it could not satisfactorily substantiate the claims.²⁷⁷

The UK Guidance addresses net-zero claims:

“...concerning net-zero targets, the Green Code states that firms ‘should include accurate information about whether (and the degree to which) they are actively reducing the carbon

²⁷¹ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.48.

²⁷² UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.122.

²⁷³ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.131.

²⁷⁴ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.133.

²⁷⁵ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at s 3.138.

²⁷⁶ UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at 42.

²⁷⁷ See UK, Competition and Markets Authority, *CMA guidance on environmental claims on goods and services* (Green Claims Code) (London: 2021) at 43-44.

emissions created in the production of their products or delivery of their services or are offsetting emissions with carbon removal. (...) In particular, where they are off-setting, businesses should provide information about any scheme they are using (which should be based on recognised standards and measurements, capable of objective verification). If not, consumers could be misled into thinking that products or processes themselves generate no (or few) emissions when this is unlikely to be the case.”²⁷⁸

3.4.2 US Fair Trade Commission Green Guides

The United States Federal Trade Commissioner’s (“FTC”) guidance to help marketers make environmental marketing claims that are not unfair or deceptive are set out in the FTC’s Green Guides. The Green Guides are guidance documents, not dissimilar from the UK CMA Guidance, which are meant to help businesses to make environmental claims which are compliant with the prohibition against unfair or deceptive marketing claims in the *Federal Trade Commission Act*.²⁷⁹ Though the Guides themselves are not law, some states, including California, have incorporated them into their laws.²⁸⁰

Though the Green Guides were most recently revised in 2012²⁸¹ and largely do not address environmental claims about climate impacts, they contain some helpful general principles which could be applied to instances of climate washing.²⁸² For instance, under the Green Guides, marketers must ensure that their environmental marketing claims are “supported by a reasonable basis,” which will typically require competent and reliable scientific evidence.²⁸³ In addition, marketers must not make environmental marketing claims that overstate, directly or by implication, an environmental attribute or benefit.²⁸⁴ This includes not marketing environmental benefits when those benefits are negligible.²⁸⁵

²⁷⁸ Julien O Beaulieu, “Climate-Washing in Québec and Canada: How to Turn the Tide” (Fall 2022), online (pdf): Cen-tre Québécois du droit de l’Environnement <https://www.cqde.org/wp-content/uploads/2022/10/Ecoblanchiment_Rapport_Anglais.pdf> at p.66.

²⁷⁹ See Federal Trade Commission, “Green Guides”, online: *Federal Trade Commission* <<https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>>.

²⁸⁰ “In California, for example, public prosecutors actively enforce the Green Guides under the state’s Unfair Competition Law, but California law generally maintains that compliance with the Green Guides is a defense to a charge of deceptive environmental marketing.” Sarah Grey et al, “Changes to the FTC’s Green Guides on the Horizon” (8 August 2022), online (blog): *Arnold & Porter* <<https://www.arnoldporter.com/en/perspectives/blogs/environmental-edge/2022/08/changes-to-the-ftcs-green-guides>>.

²⁸¹ See Federal Trade Commission, “Green Guides”, online: *Federal Trade Commission* <<https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>>.

²⁸² See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at ss 260.2-260.3.

²⁸³ US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.2.

²⁸⁴ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at 260.3.

²⁸⁵ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.3.

The Green Guides also include a section on carbon offsets.²⁸⁶ This section tells sellers of carbon offsets to employ reliable scientific accounting methods to quantify claimed emission reductions.²⁸⁷ It also highlights two deceptive practices associated with carbon offset marketing claims: 1) claiming that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future when the reductions have not occurred and will not occur for two or more years to come²⁸⁸; and 2) claiming that a carbon offset represents an emission reduction if the reduction was already required by law.²⁸⁹ While the guidance on carbon offsets is brief, the principles behind these statements could be used to inform the treatment of offsets and emissions claims in general.

Currently, the FTC is working on revisions to the Green Guides.²⁹⁰ This latest revision could include guidance on how to make responsible climate-related claims²⁹¹ -- as this is an area of growing public concern and marketers are also looking for more direction and clarity.²⁹² There are also hopes that the revisions will include more detailed guidance on claims regarding carbon offsets.²⁹³

3.4.3 Australia CCC Guide

In 2011, Australia's Competition and Consumer Commission published a green marketing guide entitled "Green marketing and the Australian Consumer Law"²⁹⁴ (the "CCC Guide"). Like the CMA Guidance and FTC Green Guides, the Australian guidance was designed to educate businesses about their obligations regarding environmental claims under the relevant consumer protection legislation. The Australian *Competition and Consumer Act 2010* contains a broad prohibition of misleading and deceptive conduct,²⁹⁵ as well as prohibitions of a variety of types of false or

²⁸⁶ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.5.

²⁸⁷ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.5(a).

²⁸⁸ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.5(b).

²⁸⁹ See US, Federal Trade Commission, *Part 260 – Guides for the Use of Environmental Marketing Claims* (Federal Register: Federal Trade Commission, 2012) at s 260.5(c).

²⁹⁰ See Megan Graham, "What Brands Should Know as FTC Prepares to Update Green Marketing Guidelines", *The Wall Street Journal* (9 August 2022), online: <<https://www.wsj.com/articles/what-brands-should-know-as-ftc-prepares-to-update-green-marketing-guidelines-11660042800>>. Note that revisions had not yet started in August 2022, when this article was published, but the FTC still planned to update the Green Guides in 2022.

²⁹¹ See Sarah Grey et al, "Changes to the FTC's Green Guides on the Horizon" (8 August 2022), online (blog): *Arnold & Porter* <<https://www.arnoldporter.com/en/perspectives/blogs/environmental-edge/2022/08/changes-to-the-ftcs-green-guides>>.

²⁹² See Megan Graham, "What Brands Should Know as FTC Prepares to Update Green Marketing Guidelines", *The Wall Street Journal* (9 August 2022), online: <<https://www.wsj.com/articles/what-brands-should-know-as-ftc-prepares-to-update-green-marketing-guidelines-11660042800>>.

²⁹³ Megan Graham, "What Brands Should Know as FTC Prepares to Update Green Marketing Guidelines", *The Wall Street Journal* (9 August 2022), online: <<https://www.wsj.com/articles/what-brands-should-know-as-ftc-prepares-to-update-green-marketing-guidelines-11660042800>>.

²⁹⁴ Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 4.

²⁹⁵ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 3.

misleading representations.²⁹⁶ However, none of these prohibitions refer to environmental or climate claims.

The CCC Guide provides that environmental marketing claims should be as specific as possible, to avoid unqualified or general statements. Unqualified claims, the CCC Guide points out, risk misleading consumers.²⁹⁷ General statements without adequate explanations about the actual benefits of the environmental claims also risk misleading consumers.²⁹⁸ General phrases or terms that are likely to have different meanings should be avoided for this reason.²⁹⁹

The CCC Guide lists several examples of broad or unqualified claims that can be problematic, including claiming that a product or company will be ‘carbon neutral.’³⁰⁰ The CCC Guide states that any claims about “carbon neutrality should be factually based and not overstated.”³⁰¹ The guidance also includes principles similar to the CMA Guidance and FTC Green Guides, that claims should only be made when there is a real benefit,³⁰² and must not overstate a benefit.³⁰³

3.5 Emissions reduction target programs

In drafting new rules to govern climate claims, it may also be useful to consider the defined criteria used in emission reduction target programs. There are now many programs, both domestic and international, which offer companies a framework under which they can set, track and achieve emissions reduction targets. This sub-section will briefly discuss three relevant examples of such programs: the Canadian “Net-Zero Challenge,” the United Nations’ “Race to Zero” and the Science Based Targets Initiative.

3.5.1 Canadian “Net-Zero Challenge”

The Canadian federal government launched the “Net-Zero Challenge” (“NZC”) in 2022.³⁰⁴ This is a voluntary program which companies can participate in if they commit to doing the following:

²⁹⁶ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 4.

²⁹⁷ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 9.

²⁹⁸ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 9.

²⁹⁹ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 9.

³⁰⁰ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 14.

³⁰¹ Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 14.

³⁰² See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 10.

³⁰³ See Austl, Commonwealth, Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Canberra: Australian Government Publishing Service, 2011) at 11.

³⁰⁴ Environment and Climate Change Canada, News Release, “Launching the Net-Zero Challenge to recognize and support businesses transitioning to cleaner operations” (26 August 2022), online: <https://www.canada.ca/en/environment-climate-change/news/2022/08/launching-the-net-zero-challenge-to-recognize-and-support-businesses-transitioning-to-cleaner-operations.html>.

- Setting a net-zero emissions target by 2050 or earlier;
- Developing a preliminary net-zero plan within 12 months of joining and a comprehensive net-zero plan within 24 months of joining;
- Setting at least two interim emissions reduction targets consistent with the net-zero goal;
- Reporting annually on their progress on these targets;
- Completing the Participation Checklists; and
- Conducting and making public climate-related financial disclosures in line with the recommendations of the Task Force on Climate-Related Financial Disclosures³⁰⁵ (except for small and mediums-sized enterprises).³⁰⁶

The NZC’s Technical Guide³⁰⁷ discusses the details of joining and continuing to participate in the challenge, *including for instance the methods companies should use to calculate their GHG emissions*.³⁰⁸

3.5.2 United Nations “Race to Zero”

The UN “Race to Zero” (“RtZ”) is also a voluntary program based on reaching net-zero emissions.³⁰⁹ There are four basic criteria for participating in the RtZ campaign³¹⁰:

1. **Pledge:** Pledging to reach net-zero GHG emissions as soon as possible and by 2050 at the latest, in line with limiting warming to 1.5 degrees, with a fair share of the 50% reduction by 2030 in line with the Intergovernmental Panel on Climate Change Report on Global Warming of 1.5C;
2. **Plan:** Within 12 months of joining, explaining what actions will be taken to meet those goals, with an emphasis on the short- to medium-term;
3. **Proceed:** Taking immediate action towards fulfilling those plans; and

³⁰⁵ See Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) at 41. See Task Force on Climate-related Financial Disclosures, “Recommendations of the Task Force on Climate-related Financial Disclosures” (15 June 2017), online (pdf): *Financial Stability Board* <<https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>>.

³⁰⁶ See Environment and Climate Change Canada, “The Net-Zero Challenge,” online: *Government of Canada* <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/challenge.html>>.

³⁰⁷ Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) [Technical Guide] at X.

³⁰⁸ See Environment and Climate Change Canada, *Net-Zero Challenge Technical Guide* (Ottawa: Environment and Climate Change Canada, 2022) [Technical Guide] at s 4.0. The Technical Guide recommends using the Greenhouse Gas Protocol or ISO Standards together in calculating a company’s GHG emissions of various scopes. For instance, ISO 14067:2018, which guides companies in the quantification and reporting of GHG emissions and removals.

³⁰⁹ See United Nations Framework Convention on Climate Change, “Race to Zero Campaign”, online: *United Nations Climate Change* <<https://unfccc.int/climate-action/race-to-zero-campaign>> [Race to Zero Campaign].

³¹⁰ See Race to Zero Expert Peer Review Group, “Interpretation Guide” (April 2021), online (pdf): *Race to Zero* <<https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf>> [Race to Zero Interpretation Guide].

4. **Publish:** Committing to publicly reporting progress against interim and long-term targets and actions taken on an at least annual basis.³¹¹

Companies can join the RtZ by joining an initiative or network that is an official Race to Zero partner.³¹² Companies must include Scope 3 emissions in their emissions disclosures where they are material to their total emissions. *Their Interpretation Guide, like the NZC Technical Guide, discusses what companies must do to enter and meet their obligations under the program.*³¹³

3.5.3 Science Based Targets Initiative

The Science Based Targets initiative (“SBTi”) is another voluntary initiative, run as a partnership between CDP, the United Nations Global Compact, World Resources Institute and the World Wide Fund for Nature. Companies can join by setting science-based targets in line with the Paris Agreement:

Targets are considered ‘science-based’ if they are in line with what the latest climate science deems necessary to meet the goals of the Paris Agreement – limiting global warming to well-below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C.³¹⁴

The SBTi program differs from the NZC and RtZ programs because targets do not have to be net-zero by 2050. However, as seen above targets must align with the goals of the Paris Agreement, which may require a similar form of pledge or, potentially, something more stringent. *And, like the two other programs highlighted above, the SBTi requires participants to annually disclose company-wide emissions and target progress.*³¹⁵

³¹¹ See Race to Zero Expert Peer Review Group, “Interpretation Guide” (April 2021), online (pdf): *Race to Zero* <<https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf>> [Race to Zero Interpretation Guide]. The UN Race to Zero Criteria Interpretation Guide discusses in more detail the reporting requirements for companies wishing to join the Race. Companies must report annually information on their progress toward interim targets as well as the steps they are taking to deliver that progress. Included in this reporting, companies should provide information on remaining emissions that are particularly challenging for the company to reduce.

³¹² See United Nations Framework Convention on Climate Change, “Race to Zero Campaign”, online: *United Nations Climate Change* <<https://unfccc.int/climate-action/race-to-zero-campaign>> [Race to Zero Campaign].

³¹³ See Race to Zero Expert Peer Review Group, “Interpretation Guide” (April 2021), online (pdf): *Race to Zero* <<https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide-2.pdf>> [Race to Zero Interpretation Guide].

³¹⁴ Science Based Targets initiative, “How it works”, online: *Science Based Targets initiative* <<https://sciencebasedtargets.org/how-it-works>>.

³¹⁵ See Science Based Targets initiative, “Set a target”, online: *Science Based Targets initiative* <<https://sciencebasedtargets.org/step-by-step-process>>.