

# “GREENWASHING” – WHAT INDUSTRY AND CONSULTANTS NEED TO KNOW AFTER RECENT AMENDMENTS TO CANADA’S *COMPETITION ACT*

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This presentation provides general information and is not intended to provide legal advice.  
Audience members should seek legal advice for specific situations.

**SustainTech 2025**  
**Saskatoon, Saskatchewan**  
**March 20, 2025**

# Overview

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- **What is greenwashing?**
- **Importance of addressing greenwashing claims**
- **Updates about key legislative provisions**
- **Recent high-profile Canadian greenwashing case studies**
- **Suggestions to avoid deceptive marketing and false statements regarding environmental benefits**

# WHAT IS GREENWASHING?

# What is Greenwashing?

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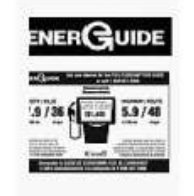
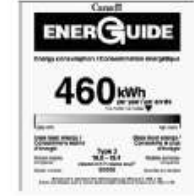
- **Disinformation disseminated by an organization so as to present an environmentally responsible public image**
- **A term used to describe the act of misleading consumers about the environmental practices of a company or the environmental benefits of a product or service.**

# Common Greenwashing Terms

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- **“all natural”**
- **“organic”**
- **“eco-friendly”**
- **“biodegradable”**
- **“safe for the environment”**
- **“locally sourced”**

# “Green” Labelling



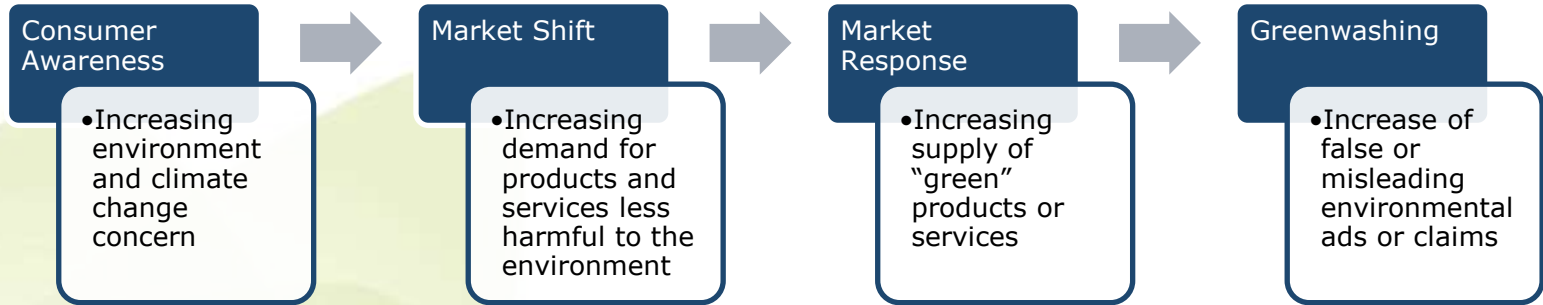
# Greenwashing Activities

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- **Outright misrepresentation or false claims to market goods and services**
- **Marketing discrepancies such as**
  - questionable labels
  - hidden trade-offs
  - failure to prove claims
  - vagueness
  - irrelevance
  - questionable comparisons

# The Relevance of Greenwashing

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# Importance of Addressing Greenwashing: Global Consumers and Claims

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- **64% of global consumers intend to pay more attention to environmental impact of consumption**
- **Consumers around the world are willing to pay 9.7% sustainability premium, even in the face of cost of living and inflationary concerns**
- **International Consumer Protection Enforcement Network indicates that 40% of green claims online could mislead**

# Importance of Addressing Greenwashing: Canada

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- **57% of Canadian consumers no longer trust firms' environmental claims**
  - notable when compared to the business leaders who believe that the Canadian public has a 71% trust in the authenticity of claims
  - 41% of businesses underestimate the risks of greenwashing accusations if they pursue sustainability goals
- **93% of Canadians believe companies should face penalties for making environmental claims that they cannot prove are true**

# RECENT GREENWASHING AMENDMENTS

# The Competition Bureau and Greenwashing

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- **The Canadian Competition Bureau enforces laws which ensure that corporations are making truthful claims which do not deceive consumers**
- **The Competition Bureau also investigates environmental claims that may arise**
  - The Competition Bureau prohibits false claims and claims based on inadequate testing

# Bill C-59 – New Greenwashing Amendments

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- **Bill C-59, *The Fall Economic Statement Implementation Act, 2023* came into effect on June 20, 2024, and amends the *Competition Act, 1985***
  - advertisers have the duty to substantiate any claims made that indicate an environmental benefit, regardless of the business' size and can also depend upon due diligence
- **As of June 20, 2025, there will be a private right of action for citizens against advertisers who can demonstrate greenwashing that impacts “public interest”**
  - Example: The Pathways Alliance (oil sands companies) removed all content from their website, including advertisements promoting a “plan for net-zero emissions”

# Bill C-59 – Greenwashing Penalties

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- **Corporations found to be greenwashing may have an administrative monetary penalty imposed up to the greater of**
  - \$10,000,000 (\$15,000,000 for each subsequent order), or
  - three times the value of the benefit derived by deceptive conduct (if the amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues)

# Draft Federal Guidelines from the Government of Canada

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- **New draft guidelines regulating environmental claims**
- **Guidelines are not legally enforceable**
- **Emphasis on the “ordinary meaning” where not otherwise specifically defined, with interpretation expected by courts**
- **The Competition Bureau launched public consultation soliciting feedback**
  - Consultation period fell between December 23, 2024, and February 28, 2025

# Section 74.01 of the *Competition Act, 1985*

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

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

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

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

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



# Key Civil Provisions Related to Environmental Claims

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## 1. False or misleading representations [s. 74.01(1)(a)]

- a) The Competition Bureau must consider the general impression conveyed by the claim and its literal meaning as well as whether the representation is false or misleading 'in a material respect' (i.e., information that could influence consumer behaviour)

## 2. Product performance claims [s. 74.01(1)(b)]

- a) The Competition Bureau requires claims be based on adequate and proper testing (interpreted by Courts as fit, apt, suitable or as required by the circumstances) before the claim is made

## 3. Claims about the environmental benefit of a product [s. 74.01(1)(b.1)]

- a) Product benefits must be evidence-based and subject to adequate and proper testing, interpreted by courts

## 4. Claims about the environmental benefit of a business or business activity [s. 74.01(1)(b.2)]

- a) Similarly, business activities must also substantiate claims using an "internationally recognized methodology"

# Principles for Compliance

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- **Principles guiding the Competition Bureau's enforcement of environmental claims**
  - Principle 1: Environmental claims should be truthful, and not false or misleading.
  - Principle 2: Environmental benefit of a product and performance claims should be adequately and properly tested.
  - Principle 3: Comparative environmental claims should be specific about what is being compared.
  - Principle 4: Environmental claims should avoid exaggeration.
  - Principle 5: Environmental claims should be clear and specific – not vague.
  - Principle 6: Environmental claims about the future should be supported by substantiation and a clear plan

# Greenwashing Constitutional Challenge

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- **In December 2024, the Alberta Enterprise Group and Independent Contractors Business Association filed a lawsuit**
  - The lawsuit, filed with the Calgary Court of King's Bench, seeks to declare the federal greenwashing legislation as unconstitutional
  - Allegations that even true claims could result in heavy fines and create a “chilling effect” on public commentary
  - Violation of s. 2(b) of the *Canadian Charter of Rights and Freedoms*
    2. Everyone has the following fundamental freedoms:
      - b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

# GREENWASHING CASE STUDIES

# Greenwashing Case Law

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- **Generally, although there have been attempts in the past to bring claims for greenwashing in both Canada in the US, they have been largely unsuccessful**
  - Plaintiff's often put forth arguments with merit, but have previously been unable to demonstrate loss or damage
- **This could change with the introduction of Bill C-59, especially with the private rights now afforded to consumers to bring “public interest” claims**

# Canadian Case Studies – Greenwashing

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- **Lululemon (2024)**
  - Stand Environmental Society (Stand.earth) filed a complaint against Lululemon for allegedly greenwashing and pledging to reduce their greenhouse gas emissions, which have in fact increased. A final decision has not yet been made
- **Keurig Canada Inc. (2022)**
  - Keurig reached an agreement, paying \$3,000,000 to the Competition Bureau about false or misleading environmental claims about the recyclability of single-use K-Cup® pods as widely accepted in municipal recycling programs, which they are not
- **Royal Bank of Canada (2022)**
  - The Competition Bureau launched an inquiry into RBC based on a complaint by private citizens that RBC's climate action claims were greenwashing while RBC was also funding fossil fuel projects

# SUGGESTIONS TO AVOID GREENWASHING CLAIMS

# Suggestions to Avoid Greenwashing

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- **Know the law and proactively pursue compliance**
  - ensure all environmental claims are specific and substantiated
  - confirming the accuracy of environmental monitoring
  - creating transparency and using accurate methodologies that are “internationally recognized”
  - avoiding the use of broad and vague terms or exaggerating otherwise truthful environmental claims
- **Comply with all legislation – statutory provisions**
- **Call your professional advisors for help**



# Willms & Shier Environmental Lawyers

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- **Established nearly 50 years ago**
- **Environmental, Indigenous, and Energy law**
- **14 lawyers**
  - six lawyers are certified by the Law Society of Ontario as Environmental Law Specialists
  - lawyers called to the Bars of Alberta, British Columbia, Ontario, Northwest Territories, Nunavut and the Yukon
  - offices in Toronto, Ottawa, Calgary, and Yellowknife

# Contact Information

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