



CLIMATE-WASHING IN QUÉBEC AND CANADA : HOW TO TURN THE TIDE

REPORT FROM THE
CENTRE QUÉBÉCOIS DU DROIT DE
L'ENVIRONNEMENT

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This publication is intended as a policy report on climate-related corporate claims only and is not intended to provide legal advice. Legal advice should be sought in respect of specific matters or projects. The laws, regulations and policies discussed in this overview are stated as of August 2022.

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About

CENTRE QUÉBÉCOIS DU DROIT DE L'ENVIRONNEMENT

At the Centre Québécois du droit de l'environnement (CQDE), our mission is to leverage our legal expertise to support citizens and protect the environment.

Since its foundation, the CQDE has been actively involved in providing legal information to citizens and environmental groups. We help shed light on the legal dimensions of the environmental problems they face, with a view to protecting environmental rights and working toward sustainable development. In addition, the CQDE has established a structured and supervised legal clinic offering university-level internships in environmental law. Through this initiative, we are doing our part to train the next generation of environmental lawyers.

We are the only organization offering independent environmental law expertise in Quebec. Our work provides citizens with access to information and justice in environmental law, a growing need as the number of environmental files involving legal issues is on the rise.

The CQDE plays an active role in Quebec society by participating in the major environmental debates in current affairs. We also take part in government consultations on various legislative and regulatory reforms to ensure the efficient protection of the environment. When relevant, the CQDE goes to court to promote the development of progressive case law in legal fields connected to the environment. The expertise of the CQDE has been recognized on numerous occasions by the courts.



Executive Summary

This report of the Centre québécois du droit de l'environnement (CQDE) outlines which rules and standards exist now to address climate-washing, and the CQDE's policy recommendations to improve how climate-washing is addressed.

The authors hope that it comes at an opportune time, as they expect a considerable increase in the number of climate-related claims in the coming months and years, such as “net-zero” and “carbon neutral”. If the status quo is maintained, many of such claims are likely to distort important decisions by various stakeholders during the ongoing climate crisis.

Q. WHAT IS THE SCOPE OF THIS REPORT?

This report focuses on climate-washing by the private sector in Québec and Canada, but much of it may be relevant in other jurisdictions and in the public sector.

Q. WHAT IS CLIMATE-WASHING?

Simply put, climate-washing is greenwashing as it applies to climate-related claims. Greenwashing happens when an entity falsely or misleadingly claims that its activities, products, or services have certain environmental attributes. Climate-washing concerns such claims as they pertain to climate attributes, such as “net-zero”, “carbon neutral”, greenhouse gas emissions reductions or communications about alignment with the goals of the Paris Agreement.

Q. WHY IS CLIMATE-WASHING A PROBLEM?

Consumers rely on the information communicated by companies for their consumption choices, investors for their investment choices, public bodies for their monitoring and sanctioning, and competitors and other stakeholders for various other objectives, to name only a few examples. However, when climate-related claims are vague or unsubstantiated, whether intentionally or not, all of these decisions can be distorted. Adequately addressing climate-washing can therefore provide the public with a clearer picture of the progress in the fight against climate change, and provide a more level playing field for the growing number of markets affected by climate-washing.



Q. IS CLIMATE-WASHING SUCH A RAMPANT PRACTICE THAT IT WARRANTS SUCH ATTENTION?

Climate-washing is already rampant, and it is expected to grow quickly in the coming months and years if current policy is maintained. There are already many controversies on this subject in Québec, Canada, and elsewhere. As more and more entities make climate-related claims, yet more entities will feel pressure to follow suit.

Q. WHAT RULES AND STANDARDS ARE IN PLACE NOW IN QUÉBEC AND CANADA TO ADDRESS CLIMATE-WASHING?

Consumer protection laws forbid companies from making false or misleading claims, but do not specifically address climate-related claims. Other than consumer protection rules, there are mandatory regimes in effect, but these only apply to certain subsets of entities, such as financial disclosure rules applicable to publicly traded companies, GHG emissions reporting rules applicable to certain emitters, etc. There is a wide spectrum of types and quality of climate-related claims and claimants. All stakeholders would benefit from greater legal predictability, uniformity and transparency.

Q. IS ANYTHING BEING DONE TO BETTER ADDRESS CLIMATE-WASHING IN QUÉBEC AND CANADA?

Some climate-related legislative reforms are currently in the works, but they mainly focus on financial market disclosures. A recent initiative has also been launched by the government of Canada, but it is a voluntary program that only captures one category of climate-related claims, namely “net-zero” entity-wide claims. As such, these initiatives will likely not capture most climate-related claims related to products or services, such as those appearing on product packaging and labeling or advertisements, or such as those relating to GHG emissions reductions. Consequently, they will not ensure that most categories of climate-related claims are subject to clear and mandatory rules and standards.

Q. WHAT ARE THE CQDE’S POLICY RECOMMENDATIONS?

The CQDE identifies four principles that constitute the foundations of an effective legal framework.

PRINCIPLE #1: QUALIFICATION.

Firms should be required to qualify all their climate-related allegations based on their scope, attribution rules, time frame, the characteristics of the offset mechanisms on which they rely, where applicable, and the quality of the claimant’s transition plan.



PRINCIPLE #2: SUBSTANTIATION.

Firms should be subject to specific rules that identify which information is needed to adequately substantiate climate-related claims.

PRINCIPLE #3: DISCLOSURE.

Firms should be obligated to publicly disclose all supporting evidence on which they base their climate-related claims as soon as they make such claims available to the public.

PRINCIPLE #4: MONITORING.

Rather than rely mostly on complaints, enforcement agencies should proactively monitor claims made by firms to the public.

Based on these four principles, the CQDE makes **three recommendations** to policymakers on the regulation of climate-related corporate claims.

RECOMMENDATION #1

Policymakers should issue or endorse a disclosure standard for climate-related corporate claims made to the public. This framework should include carbon accounting, offsetting, and reporting rules. It should not be exclusive to the financial sector and should cover both product-level and organization-level climate-related claims.

RECOMMENDATION #2

Policymakers should set climate-washing as a top enforcement priority for consumer protection agencies, which should establish investigation teams that actively monitor the marketplace and publish guidelines dedicated to climate-related claims.

RECOMMENDATION #3

Policymakers should adopt a coherent and comprehensive climate policy approach that considers the various private initiatives and upcoming regulatory reforms relating to climate accounting, targets, and reporting. Further policy initiatives should encompass both consumer protection and financial disclosure rules and should ensure that firms face consistent reporting and disclosure standards.



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List of abbreviations (in alphabetic order)

2015–2020 Sustainable Development Strategy of the Government of Québec (the “SDS Strategy”).

Administrative monetary penalty (“AMP”)

American Carbon Registry (“ACR”)

Autorité des Marchés Financiers (“AMF”)

Best practice guide on environmental marketing claims published in 2008 by the Canadian Standards Association in collaboration with the CCB (the “Guide”)

CCB and OPC collectively (the “Agencies”)

CPA and CA collectively (the “CP Statutes”)

Canada’s Competition Bureau (the “CCB”)

Canadian Greenhouse Gas Offset Credit System Regulations (“CA Offset Regulations”)

Canada’s Trademarks Act (the “TA”)

Canadian Code of Advertising Standards (the “ASC Code”)

Canadian Environmental Protection Act (the “CEPA”)

Canadian Food Inspection Agency (“CFIA”)

Canadian Net-Zero Emissions Accountability Act (“CANZEA”)

Carbon dioxide equivalents (“CO₂e”)

Carbon Disclosure Project (“CDP”)

Carbon Offsetting and Reduction Scheme for International Aviation (“CORSA”)

Climate Action Reserve (the “Reserve”)

Competition Act (the “CA”)

Consumer Packaging and Labelling Act (the “CPLA”)

Consumer Protection Act (the “CPA”)

Council of the International Civil Aviation Organization (“ICAO”)

Draft Assessment Framework recently proposed by the Integrity Council for the Voluntary Carbon Market to set global standards for high-quality carbon (“Assessment Framework”)

Environmental Quality Act (the “EQA”)

Federal output-based pricing system (the “OBPS”).

Gigaton (“Gt”)

Glasgow Financial Alliance for Net Zero (“GFANZ”)

Global Reporting Initiative (“GRI”)

Grantham Research Institute on Climate Change (the “Grantham Institute”)

Greenhouse Gas Protocol (“GHG Protocol”)

Greenhouse gas (“GHG”)

Industry standard ISO 14021:2016 Environmental labels and declarations—Self-declared environmental claims (Type II environmental labeling) (“ISO 14021”).



Intergovernmental Panel on Climate Change (“IPCC”)
International Chamber of Commerce (“ICC”)
International Standards Organization (“ISO”)
Minister of Innovation, Science and Industry (“ISI”)
National Contact Points created under the MNE Guidelines (“NCPs”)
Nationally determined contributions (“NDCs”)
Net-Zero Challenge launched by the Government of Canada (“NZC”)
OECD Guidelines for Multinational Enterprises (the “MNE Guidelines”)
Office de la protection du consommateur (the “OPC”)
Office of the Superintendent of Financial Institutions (“OSFI”)
Office québécois de la langue française (“OQLF”)
Offset Project Registry for the California Cap-and-Trade program (“OPR”)
Organization for Economic Co-operation and Development’s (“OECD”)
Pan-Canadian Greenhouse Gas Offsets Framework (the “Pan-Canadian Framework”)
Regulation respecting a cap-and-trade system for greenhouse gas emission allowances (the “CAT Regulation”)
Royal Bank of Canada (“RBC”)
Science Based Targets initiative (“SBTi”)
Sustainable Development Action Plan (“SDAP”)
Taskforce on Climate Related Financial Disclosures (the “TCFD”)
Textile Labelling Act (the “TLA”)
Transition Pathway Initiative (“TPI”)
Transition Plan Taskforce (the “TPT”)
United Kingdom’s Competition & Markets Authority’s green code guidance (the “Green Code”)
Verified Carbon Standard (“VCS”)
Voluntary Carbon Market Integrity Initiative’s “Provisional Claims Code of Practice” (“Code of Practice”)
Voluntary Carbon Markets Integrity Initiative (“VCMI”)

CLIMATE-WASHING IN QUÉBEC AND CANADA: HOW TO TURN THE TIDE¹

“This is a new world of hybrid governance. We’re not sitting back waiting for governments to decide something, and then all going in and abiding by those rules. We’re actually setting the rules ourselves and hoping that over time, governments catch up with us.”
– Rachel Kyte, Co-chair of the Voluntary Carbon Markets Integrity Initiative.

1. Introduction: the lack of applicable standards

From the operation of gas pipelines to organizing fashion shows, and from consuming car fuel to producing bananas, carbon neutrality and net-zero greenhouse gas (GHG) emissions claims are increasingly common.² However, the scope of these claims and the methodologies

¹ Some of the facts and ideas reported here were already shared by the author in past publications, including: Julien Beaulieu, « Le chien de garde s’est-il endormi? » (November 12, 2021), online: *La Presse* <<https://www.lapresse.ca/debats/opinions/2021-11-12/ecoblanchiment/le-chien-de-garde-s-est-il-endormi.php>>; Julien Beaulieu, “The false promise of carbon neutrality” (February 24, 2022), online: *National Magazine* <<https://nationalmagazine.ca/en-ca/articles/law/opinion/2022/le-mirage-carboneutre>>; and Julien Beaulieu, “Green Competition: Introduction to the interactions between competition and environmental policy in Canada” (2021) 23:2 CCLR, online: <<https://drive.google.com/file/d/17Q-VesQJ31OKzkhaO2Zdq6loEXZ5Spa/view>>.

² Chiquita, « Neutre en CO₂ » (undated), online: *Chiquita* <<https://www.chiquita.fr/neutralitecarbone>>; Alexandre Shields, « Un gazoduc « carboneutre » pour transporter du gaz albertain » (February 4th, 2021), online: *Le Devoir* <<https://www.ledevoir.com/environnement/594647/un-gazoduc-carboneutre-pour-transporter-du-gaz-albertain>>; Shell Canada, “Canadian drivers set to go carbon neutral with Shell” (November 12, 2020), online: *Shell Canada* <https://www.shell.ca/en_ca/media/news-and-media-releases/news-releases-2020/shell-launches-drive-carbon-neutral-program-in-canada.html>; Miles Socha, “Saint Laurent’s Desert



used to support them are far from uniform, as they are not subject to established standards. Unsurprisingly, this situation has led to a sharp increase around the globe in the number of controversies related to corporate climate-washing over the past years.³ In Canada, for example, at least three climate-washing complaints have been filed with the federal consumer protection watchdog in the last year in connection with carbon neutrality claims.⁴ Similarly, according to a 2022 report by the Grantham Research Institute on Climate Change (the “**Grantham Institute**”), at least 20 climate-washing lawsuits have also been filed before American, Australian, French, and Dutch courts since 2016.⁵ The institute has also identified at

Fashion Show in Morocco Will Be Carbon-neutral” (July 15, 2022), online: *Women’s Wear Daily*: <<https://wwd.com/fashion-news/fashion-scoops/saint-laurents-desert-fashion-show-in-morocco-will-be-carbon-neutral-1235253485>>.

³ For completeness, we note that greenwashing is not an issue specific to carbon neutrality claims. According to a 2021 ICPEN study, as much as 40% of online “green claims” could be deceptive. See: Competition and Markets Authority, “Global sweep finds 40% of firms’ green claims could be misleading” (January 28, 2021), online: *GOV.UK* <<https://web.archive.org/web/20220427033735/https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>>. Similarly, a 2021 report by Changing Markets Foundation focusing on the United Kingdom claimed that “59% of green claims made by fashion brands are misleading or unsubstantiated according to guidelines released by the UK’s Competition and Markets Authority.” See: Changing Markets Foundation, “Synthetics Anonymous: Fashion brands’ addiction to fossil fuels” (July 2021), online: *Changing Markets Foundation* <http://changingmarkets.org/wp-content/uploads/2021/07/SyntheticsAnonymous_FinalWeb.pdf>. For the purposes of this report, we will exclusively focus on climate-related corporate claims. However, many of the conclusions and policy recommendations formulated herein could also apply *mutatis mutandis* to other types of sustainability and environmental claims. We also note that this report focuses on climate-related claims made by private firms for commercial purposes. However, public organizations could also be subject to climate-washing complaints under certain circumstances. While these considerations are beyond the scope of this report, public organizations should be cautious when they formulate climate-related claims.

⁴ Ecojustice, “Members of the public submit complaint claiming RBC advertising on climate action is misleading” (April 21, 2022), online: *Ecojustice* <<https://ecojustice.ca/pressrelease/members-of-the-public-submit-complaint-claiming-rbc-advertising-on-climate-action-is-misleading>>; Centre québécois du droit de l’environnement, “Gazoduc project: the CQDE files a complaint with Competition Bureau Canada for false or misleading information” (June 29, 2021), online: *Centre québécois du droit de l’environnement* <<https://www.cqde.org/en/news/gazoduc-project-the-cqde-files-a-complaint-with-competition-bureau-canada-for-false-or-misleading-information>>; Greenpeace, “Driving carbon-neutral” is impossible with fossil fuels” (November 2021), online: *Greenpeace* <<https://www.greenpeace.org/static/planet4-canada-stateless/2021/11/a7369fc0-driving-carbon-neutral-is-impossible-with-fossil-fuels.docx.pdf>>.

⁵ Lisa Benjamin et al., “Climate-Washing Litigation: Legal Liability for Misleading Climate

least 27 complaints with non-judicial oversight organizations in the UK, Australia, Italy, New Zealand, Denmark, the United States, and South Korea since 2008.⁶ As recently as August 2022, yet another controversy emerged regarding allegedly “CO₂-neutral” flights.⁷

The Grantham Institute defines climate-washing litigation as legal “claims relating to the environment, human health, economics, or other aspects of climate change” that aim to address “misleading corporate climate claims made to the general public”.⁸ Climate-washing corporate practices include various marketing strategies which are false, misleading or deceptive, both intentionally and unintentionally, such as communicating false claims, omitting important information, and formulating vague or ambiguous statements on an emitter’s carbon footprint and contribution to climate change mitigation.⁹ Climate-washing litigation cases typically rely on consumer protection laws or general civil and commercial legal obligations.¹⁰ They mainly target three categories of false or misleading claims:

- Those relating to climate commitments,
- indications on the attributes of products or services, and
- communications on climate-related financial risks and harms.¹¹

Such cases could rightly be included under the broader umbrella of climate litigation, but climate-washing litigation in particular may well turn out to be a burgeoning area of climate action in the coming months and years.¹²

Communications” (January 2022), online: *The Climate Social Science Network* <<https://www.lse.ac.uk/granthaminstitute/publication/climate-washing-litigation-legal-liability-for-misleading-climate-communications>>.

⁶ *Idem*, page 5.

⁷ Stay Grounded, “Austrian Airlines misleads consumers about CO₂-neutral flying, Austrian advertising watchdog rules” (August 29, 2022), online: *Stay Grounded* <<https://stay-grounded.org/austrian-airlines-misleads-consumers-about-co%E2%82%82-neutral-flying-austrian-advertising-watchdog-rules>>.

⁸ Lisa Benjamin et al., *supra* note 5.

⁹ *Idem*. In Canada, the *Competition Act* includes penal section 52, which forbids false or misleading representations made to the public “knowingly or recklessly”. The *Competition Act* also includes civil section 74.01, which has no analogous wording. Therefore, it is our opinion that claims made in good faith (i.e. not “knowingly or recklessly”), but which are nevertheless false or misleading to the public, would be captured by section 74.01 but not by section 52.

¹⁰ *Idem*.

¹¹ *Idem*. In the context of this report, we will mainly focus on the first category, while also referring to the second category when useful.

¹² For example, in Canada, see: ENvironnement JEUnesse, “Climate justice: the Supreme Court of Canada

In Canada, there are currently no regulations or law enforcement guidelines dedicated to climate-related corporate claims.

Federal and provincial consumer protection laws generally prohibit false or misleading advertising. However, they do not set precise rules or standards on climate-related corporate claims. The Competition Bureau (the “**CCB**”), a federal agency under the responsibility of the Minister of Innovation, Science and Industry (“**ISI**”), theoretically has broad powers to combat false or misleading advertising and greenwashing under the *Competition Act* (the “**CA**”).¹³ However, the CCB has never taken a stance on carbon neutrality. Its most recent environmental claims guide, published almost 15 years ago and recently archived, does not mention the subject, and the agency has not publicly addressed any of the climate-washing complaints it received.¹⁴

Similarly, Québec’s *Office de la protection du consommateur*, which supervises the application of the province’s *Consumer Protection Act*¹⁵ (the “**CPA**”) and receives complaints from consumers, has never issued any guidelines on climate-related corporate claims. The CPA does prohibit deceptive marketing practices by merchants, advertisers, and manufacturers, including false or misleading advertising. Nevertheless, its provisions are generic and do not indicate which standards should be met by firms formulating net-zero targets or marketing products or services as carbon neutral.

On August 26, 2022, the Canadian Minister of Environment and Climate Change launched the

dismissed ENvironnement JEUnesse’s application for authorization” (July 28, 2022), online: ENvironnement JEUnesse <<https://enjeu.qc.ca/justice-judgment-scc>>; Équiterre, “Environmental groups going to court to overturn the federal government’s approval of Bay du Nord” (May 11, 2022), online: Équiterre <<https://www.equiterre.org/en/articles/cdp-poursuite-bay-du-nord>>. For a vast database of various types of climate litigation cases, see Sabin Center for Climate Change Law, “Global Climate Change Litigation” (2022), online: *Climate Case Chart* <<http://climatecasechart.com/non-us-climate-change-litigation>>. The category “suits against corporations” includes subcategories such as “carbon credits”, “GHG emissions reduction” and “misleading advertising.” For cases in the USA, see Sabin Center for Climate Change Law, “U.S. Climate Change Litigation” (2022), online: *Climate Case Chart* <<http://climatecasechart.com/us-climate-change-litigation>>.

¹³ Competition Bureau, “Our Organization” (January 20, 2022), online: *Canada* <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00125.html>.

¹⁴ The archived guide can be consulted online and is still referenced on the CCB’s website. See: Canadian Standards Association, “Archived – Environmental Claims: A Guide for Industry and Advertisers” (June 2008), online: *Competition Bureau* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02701.html>>.

¹⁵ *Consumer Protection Act*, CQLR c P-40.1, available at: <https://www.legisquebec.gouv.qc.ca/en/document/cs/P-40.1?langCont=en#ga:l_v-gb:l_i-h1>.

Net-Zero Challenge (“**NZC**”), a national voluntary initiative for firms doing business in Canada.¹⁶ As part of this initiative, the federal government published the NZC Technical Guide, which states the minimum requirements that companies must meet to join the initiative.¹⁷ However, participation in the NZC program is voluntary, and a breach of the NZC Technical Guide can only lead to a removal from the challenge’s participants list. The rules set by the NZC Technical Guide only apply to participating firms. As such, non-participants are not bound by the NZC Technical Guide’s rules. Moreover, the NZC focuses exclusively on organization-level net-zero claims, and therefore does not set guidelines on other types of climate-related claims, such as generic “green” climate-related claims or carbon neutrality claims about a particular product or service.

While some climate-related legislative reforms are currently in the works in Canada, they mainly focus on financial market disclosures. They, therefore, do not necessarily target more general communications with consumers and the public. For instance, in 2021-2022, the Canadian Securities Administrators, which includes Québec’s *Autorité des Marchés Financiers* (“**AMF**”), conducted a public consultation on a proposal that would require publicly traded companies to disclose climate-related information to investors.¹⁸ The proposal would require public issuers to disclose their greenhouse gas (“**GHG**”) emissions.¹⁹ However, the proposed

¹⁶ Government of Canada, “Launching the Net-Zero Challenge to recognize and support businesses transitioning to cleaner operations” (August 26, 2022), online: *Canada* <<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>>.

In addition to this initiative, the Government of Canada also launched the Net Zero Accelerator, which should provide up to C\$8 billion to support investments in specific industrial sectors with the goal of reducing GHG emissions while ensuring the competitiveness of the Canadian economy. See: Government of Canada, “Net Zero Accelerator Initiative” (March 18, 2022), online: *Canada* <<https://www.canada.ca/en/innovation-science-economic-development/news/2022/03/government-of-canada-launches-call-to-action-targeting-industrial-decarbonization-of-high-emitting-sectors.html>>.

¹⁷ Government of Canada, “Net-Zero Challenge Technical Guide” (July 2022), online: *Canada* <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/challenge/technical-guide.html>>.

¹⁸ Canadian Securities Administrators, “Canadian securities regulators seek comment on climate-related disclosure requirements” (October 18, 2021), online: *Canadian Securities Administrators* <<https://www.securities-administrators.ca/news/canadian-securities-regulators-seek-comment-on-climate-related-disclosure-requirements>>.

¹⁹ In this report, the terms GHG emissions, carbon footprint, and CO₂ are used interchangeably. For completeness, we note that GHG emissions are typically measured in carbon dioxide equivalents (“**CO₂e**”), a “unit of measure for comparison between greenhouse gases that have different global warming potentials (GWPs)”, as defined in the *Canadian Notice with respect to reporting of*

policy would apply only to companies regulated under securities laws, thus excluding a significant number of private companies not publicly issuing securities in the capital markets.²⁰ It would also not likely capture most carbon-neutral claims related to products or services, such as those appearing in advertisements or on product packaging and labeling.²¹

Along the same lines, a Canadian senator introduced a bill that proposes to enact the *Climate-Aligned Finance Act* (the “**CAFA**”) last spring, which would apply to federal financial institutions, federally incorporated companies, and companies active in federally regulated sectors.²² If adopted, this bill would require these entities to align their activities with Canada’s climate goals and disclose their emissions, targets, transition plans, and progress in achieving their targets.²³ However, the CAFA would not apply to all private entities, such as private equity funds or provincially incorporated corporations that do not conduct any federal work, undertaking, or business.²⁴ Furthermore, the current draft of Bill S-243 does not provide for the monitoring and sanctioning of reporting entities in case of non-compliance with its requirements.²⁵

Outside Canada, regulating and monitoring climate-related corporate claims has become a top priority for certain regulators and consumer protection agencies. For instance, the United Kingdom’s Competition and Markets Authority recently issued new “green” marketing claims guidelines. It also announced that it would pay particular attention to advertising campaigns that make sustainability claims in the upcoming year.²⁶ Similarly, 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.²⁷ In France, the Environment

greenhouse gases (GHGs) for 2021. This notice provides more information on how these calculations can be performed. See: Government of Canada, “Reporting greenhouse gas emissions data: technical guidance 2020” (February 15, 2021), online: *Government of Canada* <<https://www.gazette.gc.ca/rp-pr/pi/2021/2021-12-18/html/sup2-eng.html>>. The global warming potential of different GHGs varies depending on their half-life and interaction with the atmosphere.

²⁰ Canadian Securities Administrators, *supra* note 18.

²¹ *Idem*.

²² Senator Rosa Galvez, “Climate-Aligned Finance” (undated), online: *Senator Rosa Galvez* <<https://rosagalvez.ca/en/initiatives/climate-aligned-finance>>.

²³ Stéphane Lavolette, Karine Péloffy and Nick Zrinyi, “Legislative Overview – Bill S-243, *Climate-Aligned Finance (CAFA)*” (May 2022), online: *Senator Rosa Galvez* <<https://rosagalvez.ca/media/51168/2022-05-cafa-legislative-overview-v11-en.pdf>>.

²⁴ *Idem*.

²⁵ *Idem*.

²⁶ HM Government, “Green Claims Code – get your green claims right” (undated), online: *Green Claims Campaign* <<https://greenclaims.campaign.gov.uk>>.

²⁷ Autoriteit Consument & Markt, “ACM launches investigations into misleading sustainability claims in

Code (« *Code de l'environnement* ») was updated last summer to impose disclosure requirements on advertisers making carbon neutrality claims. Under the new rules, advertisers must publicly disclose information about their products and services' GHG emissions, including the quantity of direct and indirect carbon emissions and a description of the carbon offset mechanisms used.²⁸ No similar regulatory initiatives are currently taking place in Canada, where the fight against greenwashing is not among the consumer protection agencies' priorities.

Against this backdrop, the purpose of this report is to review the current regulatory landscape in Québec and at the federal level in Canada, and to formulate recommendations to relevant Canadian policymakers on how to foster corporate accountability in climate matters, drawing upon regulatory initiatives and best practices in other jurisdictions. This report also includes a summary of the primary standards and frameworks that are relevant to substantiate climate-related corporate claims. While principally aimed at policymakers, all stakeholders may also use this report if they wish to better understand the legal risks associated with climate-related claims in these jurisdictions.

three sectors" (May 3, 2021), online: *Autoriteit Consument & Markt* <<https://www.acm.nl/en/publications/acm-launches-investigations-misleading-sustainability-claims-three-sectors>>.

²⁸ République française, "LOI n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets" (August 22, 2021), online: *Légifrance* <[https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924#:~:text=LOI%20n%C2%B0%202021%2D1104,ses%20effets%20\(1\)%20%2D%20L%C3%A9gifrance&text=l'Union%20Europ%C3%A9enne-.LOI%20n%C2%B0%202021%2D1104%20du%2022%20ao%C3%BBt%202021%20portant,renforcement%20de%20la%20r%C3%A9silience%20](https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924#:~:text=LOI%20n%C2%B0%202021%2D1104,ses%20effets%20(1)%20%2D%20L%C3%A9gifrance&text=l'Union%20Europ%C3%A9enne-.LOI%20n%C2%B0%202021%2D1104%20du%2022%20ao%C3%BBt%202021%20portant,renforcement%20de%20la%20r%C3%A9silience%20)>.

2. The new world of climate corporate governance

2.1 THE GLOBAL RACE TO NET-ZERO 2050

In 2015, 196 countries adopted the Paris Agreement, which sets the goal of “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.²⁹ To achieve this goal, the Intergovernmental Panel on Climate Change (“**IPCC**”) estimated that global net anthropogenic GHG emissions would have to fall by “about 45 percent from 2010 levels by 2030, reaching ‘net zero’ around 2050”.³⁰ According to the IPCC, achieving these targets would translate into an approximately 50% to 66% chance of limiting global warming to 1.5°C.³¹

These conclusions imply that emitters can only release a finite net quantity of GHGs during the upcoming decades if we are ever to achieve the goal set in the Paris Agreement. In other words, the global economy would have to run on a carbon budget corresponding to the projected maximum cumulative net quantity of GHGs which emitters can release to realistically meet the Paris Agreement goals.³² For instance, as of 2018, only 420 gigatons (“**Gt**”) of GHGs remained in the Earth’s carbon budget to limit the probability of a 1.5°C temperature increase to 66%.³³ Since

²⁹ U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015). The full text of the agreement is available at <https://unfccc.int/sites/default/files/english_paris_agreement.pdf>.

³⁰ IPCC, “Summary for Policymakers” (2021), online: *Climate Change 2021: The Physical Science Basis* <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf>. More precisely, as indicated by the IPCC, “In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO₂ emissions decline by about 45% from 2010 levels by 2030 (40–60% interquartile range), reaching net zero around 2050 (2045–2055 interquartile range)”.

³¹ IPCC, “Annex I: Glossary” (2018), online: *Global Warming of 1.5 °C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* <<https://www.ipcc.ch/sr15/chapter/glossary>>.

³² *Idem*.

³³ IPCC, “Summary for Policymakers” (2018), online: *Global Warming of 1.5 °C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* <<https://www.ipcc.ch/sr15/chapter/spm>>; Pierre Friedlingstein et al., “Global Carbon Budget 2019” (2019), online: *Earth Systems Science Data*, 11, 1783–1838 <<https://essd.copernicus.org/articles/11/1783/2019>>.

then, 125 net GHG Gt have been released into the atmosphere, reducing the Earth's remaining carbon budget to approximately 295 Gt as of July 2022.³⁴

Under the Paris Agreement, countries must set and disclose plans for climate action every five years. These plans, defined in the Paris Agreement as the nationally determined contributions (“NDCs”), identify which measures signatories plan to implement to reduce their carbon footprint and collectively achieve net-zero by 2050. For example, Canada's 2021 updated NDC set the goal to reduce emissions by 40–45% below 2005 levels by 2030 and reduce its carbon footprint to net-zero by 2050.³⁵ In line with these goals, the Canadian government passed the *Canadian Net-Zero Emissions Accountability Act* (“CANZEA”), reiterating the country's commitment to achieve net-zero 2050 and meet its NDCs for 2030.³⁶

³⁴ IPCC, *supra* note 33; Mercator Research Institute on Global Commons and Climate Change, “That's how fast the carbon clock is ticking” (2022), online: *Mercator Research Institute on Global Commons and Climate Change* <<https://www.mcc-berlin.net/en/research/co2-budget.html>>. The allocation of the remaining global carbon budget is a complex issue. It raises both efficiency concerns – which industrial activities should be allowed to carry on, and which ones should be prohibited? – and equity concerns – which regions or groups should be allowed to spend which portion of the world's remaining GHG emissions budget? For example, should renewable energy infrastructure developers be allowed to emit more carbon in the short run if this allows them to ramp up low emission energy production in the future? Similarly, should countries with historically low GHG emissions get a more significant piece of the remaining carbon pie than countries responsible for most of the GHG emitted since the beginning of the industrial era?

³⁵ Government of Canada, “Canada's 2021 nationally determined contribution under the Paris Agreement” (2021), online: *UNFCCC* <https://unfccc.int/sites/default/files/NDC/2022-06/Canada%27s%20Enhanced%20NDC%20Submission1_FINAL%20EN.pdf>. Over 120 countries have made similar net-zero 2050 commitments, including all members of the G7. Various Canadian sub-national governments have also followed suit, including the provinces of Québec, Prince Edward Island, Newfoundland and Labrador, Nova Scotia and British Columbia, and the cities of Guelph, Vancouver, Hamilton, Toronto, and Halifax. For instance, the Government of Québec has joined the Under2 Coalition, a global network of state and regional governments committing to achieving the Paris Agreement goals. See: Net Zero Tracker, “Global net zero coverage” (2022), online: *Net Zero Tracker* <<https://zerotracker.net>>; Government of Canada, “Net-Zero Emissions by 2050” (2022), online: *Government of Canada* <<https://bit.ly/3Ca5RMC>>; Under2 Coalition, “Under2 Coalition” (2022), online <<https://www.theclimategroup.org/under2-coalition>>.

³⁶ *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 <<https://laws-lois.justice.gc.ca/eng/acts/c-19.3/FullText.html>>. This statute also stipulates that the federal Minister of the Environment must establish a GHG emission reduction plan for 2030, including critical emissions reduction measures, sectoral strategies, and their projected implementation timeline.

2.2. THE GROWING ROLE OF THE PRIVATE SECTOR

The Canadian GHG emissions reduction strategy relies on a mix of public and private initiatives. For instance, in its 2021 updated NDC submission, the Government of Canada indicated that “investor decisions by leaders in the private and financial sectors will also drive and accelerate reductions as companies move to capitalize on the growing demand for low-carbon products and services”, contributing to the achievement of the country’s climate targets.³⁷

In Canada and worldwide, companies are increasingly engaging on climate change, setting net-zero targets, advertising carbon neutral or eco-friendly products, and disclosing climate-related information to investors and consumers. For instance, 702 of the Forbes 2000-listed firms, which includes some of the world’s biggest companies by sales, profit, assets, and market value, have already committed to being net-zero by 2050, including major Canadian banks TD and RBC.³⁸ Among these companies, almost 40% intend to rely on carbon offsets to achieve their targets, and nearly 60% plan to become net-zero by 2030.³⁹

This trend is partly driven by governmental calls to action but also by consumer demand. According to a 2019 PricewaterhouseCoopers study, one out of three Canadian consumers would be ready to pay a premium for more sustainable products. There is also greater investor awareness regarding climate-related risks and impacts, as demonstrated by the rise of ESG-compliant funds and “green” financial products over the past decade. For example, a 2022 study by Québec’s AMF about the climate-related risk management practices of 230 financial institutions showed that more than two-thirds of organizations had internal reporting policies relating to these risks. Furthermore, the study showed that 67% of the institutions reviewed already invested in “green” or ESG assets.⁴⁰ On the other hand, greenwashing can be financially detrimental to businesses.⁴¹

³⁷ Government of Canada, “Canada’s 2021 nationally determined contribution under the Paris Agreement”, *supra* note 35.

³⁸ Isabel Contreras and Andrea Murphy, “The Global 2000” (May 12, 2022), online: *Forbes* <<https://www.forbes.com/lists/global2000/?sh=1ebfa50c5ac0>>; Net Zero Tracker, “Net Zero Stocktake 2022” (June 2022), online: *Net Zero Tracker* <<https://cal-nzt.edcdn.com/@storage/Net-Zero-Stocktake-Report-2022.pdf?v=1655074300>>.

³⁹ *Idem*, p.5.

⁴⁰ Autorité des marchés financiers, “Risques liés aux changements climatiques : une industrie qui se prépare, un encadrement à préciser” (July 7, 2022), online: *Autorité des marchés financiers* <<https://lautorite.qc.ca/grand-public/salle-de-presse/actualites/fiche-dactualite/risques-lies-aux-changements-climatiques-une-industrie-qui-se-prepare-un-encadrement-a-preciser>>.

⁴¹ For example, according to a Harvard Business Review study, greenwashing would have a negative

As part of this trend, many public and private initiatives have been aiming at fostering and streamlining climate target setting, reporting, and disclosure. For example, in 2020, the United Nations launched the Race to Zero, a global campaign rallying non-state actors – including companies, cities, regions, financial and educational institutions – to halve global emissions by 2030 and achieve net-zero carbon emissions by 2050.⁴² All members of the Race to Zero must commit to reducing emissions across all scopes “swiftly and fairly” in line with the Paris Agreement, including setting action plans and near-term targets.⁴³

On August 26, 2022, the Canadian government launched the NZC, which aims at “[normalizing] net-zero planning so that it becomes the default business practice”, building upon the other global net-zero initiatives like the Race to Zero.⁴⁴ As part of this initiative, large industrial emitters, financial institutions, and small and medium enterprises are invited to set net-zero targets and transition plans. This initiative is an additional demonstration that governments increasingly rely on the private sector’s contributions to achieve climate policy goals.

Appendix A provides a more detailed description of the main existing climate disclosure, reporting, and target-setting frameworks and initiatives.

2.3. DISTINGUISHING PARIS AGREEMENT-COHERENT COMMITMENTS FROM CLIMATE-WASHING

While corporate engagement on climate issues is welcome news, it also raises climate-washing concerns. According to a report by Carbon Market Watch and NewClimate 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.⁴⁵ 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

impact on firms’ profitability. See: Ioannis Ioannou, George Kassinis, and Giorgos Papagiannakis, “How Greenwashing Affects the Bottom Line” (July 21, 2022), online: *Harvard Business Review* <<https://hbr.org/2022/07/how-greenwashing-affects-the-bottom-line>>.

⁴² Race to Zero, “Campaign Overview” (2020), online: *Climate Champions* <<https://climatechampions.unfccc.int/join-the-race>>.

⁴³ *Idem*.

⁴⁴ Government of Canada, *supra* note 16, p. 1.

⁴⁵ Thomas Day et al., “Corporate Climate Responsibility Monitor 2022” (February 2022), online: *NewClimate Institute and Carbon Market Watch* <<https://carbonmarketwatch.org/2022/02/07/coming-soon-top-corporations-use-misleading-climate-pledges-to-greenwash-image-new-report>>.

poor reporting practices.⁴⁶ 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.⁴⁷

Accordingly, many jurisdictions have experienced a substantial increase in climate-washing litigation cases and complaints over the past years. For instance, in Canada, three climate-washing complaints have been brought to the public's attention in 2021-2022, all submitted to the CCB:

GAZODUQ / SYMBIO INFRASTRUCTURE

In June 2021, the Centre québécois du droit de l'environnement filed a complaint with the CBB against Gazoduq and its majority shareholder, Symbio Infrastructure (formerly Société en commandite GNL Québec). The complaint asked that the agency investigate possibly false or misleading information about important aspects of their Gazoduq project.⁴⁸ The project involved the construction of a pipeline of approximately 780 km to transport methane gas from Western Canada to the port of Saguenay.

In their communications with the public, the companies had claimed that their pipeline project would be carbon neutral and contribute to reducing global GHG emissions by replacing more polluting energy sources such as coal and oil. However, according to the complaint, these claims had potentially not been adequately substantiated. For instance, the companies repeatedly claimed on their website, social media, and press releases that they were building a carbon-neutral pipeline without providing detailed evidence on the scope and strategy to achieve this goal. Furthermore, the CQDE questioned whether the companies' claims regarding the reduction of global GHG emissions were realistic, given the risk that a greater supply of liquefied natural gas (LNG) supply incentivizes fossil fuel consumption for a longer period at a quicker pace.

Indeed, according to the International Energy Agency, the development of new LNG infrastructure could slow down the transition towards renewable energy by "locking in" the energy mix of some countries for decades, contradicting the argument that the Gazoduq

⁴⁶ Jannick Gieseckam, "Science-Based Targets: On Target?" (February 4, 2021), online: *Sustainability* 13(4), <<https://doi.org/10.3390/su13041657>>.

⁴⁷ Net Zero Tracker, *supra* note 38, p.6.

⁴⁸ Centre québécois du droit de l'environnement, "Gazoduq project: the CQDE files a complaint with Competition Bureau Canada for false or misleading information" (June 29, 2021), online: *Centre québécois du droit de l'environnement* <<https://www.cqde.org/en/news/gazoduq-project-the-cqde-files-a-complaint-with-competition-bureau-canada-for-false-or-misleading-information>>.

project would reduce global GHG emissions.⁴⁹ To our knowledge, the CCB has yet to address the CQDE's complaint publicly and has not taken any legal action against Gazduq or Symbio Infrastructure in connection with their climate claims.

SHELL CANADA

In November 2021, Greenpeace Canada filed a complaint with the CCB against Shell Canada's "Drive carbon-neutral" campaign, alleging that it misled the Canadian public by promoting forest-based carbon offsets as sustainable.⁵⁰ Shell launched its campaign in 2020 informing its car fuel customers that they could offset their carbon footprint directly at the gas pump by purchasing "independently-verified carbon credits generated from Canadian and international projects that protect or restore natural landscapes."⁵¹ In its press release, Shell defines carbon neutrality as the situation where "an amount of CO₂ equivalent to that associated with the production, delivery, and usage of the fuel has been removed from the atmosphere through a nature-based process, or emissions saved through avoided deforestation."

According to Shell, the carbon offsets⁵² offered to fuel consumers as part of the campaign covered "CO₂ emissions generated by the fuel purchased by participating drivers – as well as from the extraction, refining, and distribution of the fuel – will be offset by carbon credits." The credits were mainly issued in connection with the Darkwoods Conservation Area, which covers 630km² of rare inland temperate rainforest, sub-alpine meadows, and freshwater systems in Southeast British Columbia.⁵³ Shell also indicated that it would source credits from other

⁴⁹ As concluded by the International Energy Agency: "No new natural gas fields are needed in the [Net-Zero Emissions by 2050 Scenario] beyond those already under development. Also not needed are many of the liquefied natural gas (LNG) liquefaction facilities currently under construction or at the planning stage." See: International Energy Agency, "Net Zero by 2050 – A Roadmap for the Global Energy Sector" (May 2021), online: *International Energy Agency* <<https://iea.blob.core.windows.net/assets/ad0d4830-bd7e-47b6-838c-40d115733c13/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>>.

⁵⁰ Greenpeace, "Driving carbon neutral is impossible with fossil fuels – Complaint to the Competition Bureau of Canada against Shell's misleading promotion of forest-based "offsets" as sustainable, climate action" (November 2021), online: *Greenpeace* <<https://www.greenpeace.org/static/planet4-canada-stateless/2021/11/a7369fc0-driving-carbon-neutral-is-impossible-with-fossil-fuels.docx.pdf>>.

⁵¹ Shell Canada, "Canadian drivers set to go carbon neutral with Shell" (November 12, 2020), online: *Shell Canada* <https://www.shell.ca/en_ca/media/news-and-media-releases/news-releases-2020/shell-launches-drive-carbon-neutral-program-in-canada.html#>.

⁵² Additional information on emissions offsets and voluntary carbon markets is provided in section 3.4.

⁵³ Shell Canada, *supra* note 51: Nature Conservancy Canada, "Who We Are" (2022), online: *Nature Conservancy Canada* <<https://www.natureconservancy.ca/en/who-we>>.

“nature-based projects” worldwide, including in Peru and Indonesia.⁵⁴

Greenpeace questioned the validity of these claims, alleging an absence of any “direct and accessible evidence of its climate and sustainability claim” on GHG emission reductions.⁵⁵ According to Greenpeace, “there are known and proven problems with forest-based offset projects in general [...] that compromise the legitimate claims of carbon benefits from these types of projects”, such as double-counting, leakage, and permanence issues.⁵⁶ For instance, it can be that forests will eventually be burnt or destroyed by invasive species; similarly, protecting one forest from logging can lead to the exploitation of a different forest in another area of the world, with no impact on global GHG emissions.

To our knowledge, the CCB has yet to address Greenpeace’s complaint publicly and has not taken any legal action against Shell Canada regarding its climate claims. However, a similar Shell campaign has been the subject of an investigation by the Dutch Advertising Code Committee, which concluded that Shell’s carbon neutrality claims were misleading and could no longer be used due to the lack of substantiation on CO₂ offsetting.⁵⁷

ROYAL BANK OF CANADA (“RBC”)⁵⁸

In April 2022, six citizens filed a complaint against RBC about the bank’s corporate climate pledges and ongoing fossil fuel finance activities. Supported by various environmental and indigenous groups, the applicants argued that RBC was “misleadingly presenting itself as taking action on climate change that aligns with the Paris Agreement.”

According to the complaint, despite its commitment to achieving net-zero emissions by 2050 in its lending and investments, RBC ranked fifth amongst the world’s 60 largest banks in terms

[are/?gclid=Cj0KCQjw_vjWBhD8ARIsAHImCd6rleisLoLSWpYRuiPPsEAiawleuaETyBqEivkKCEFnHH6H4G-csXQaAuShEALw_wcB](https://www.ccb.ca/eng/faq/faq-climate-claims-royal-bank-of-canada)>.

⁵⁴ Shell Canada, *supra* note 51.

⁵⁵ Greenpeace, *supra* note 50.

⁵⁶ *Idem*.

⁵⁷ Reclame Fossielvrij, “Dutch advertising watchdog: Shell must end advertising of deceptive CO₂ compensation campaign” (June 30, 2022), online: *Reclame Fossielvrij* <<https://verbiedfossielereclame.nl/dutch-advertising-watchdog-shell-must-end-advertising-of-deceptive-co2-compensation-campaign>>.

⁵⁸ Ecojustice, “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” (June 10, 2022), online: *Ecojustice* <https://ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re_-RBC-climate-representations-Final.pdf>.

of fossil fuel financing between 2016 and 2021.⁵⁹ In 2021 alone, RBC granted more than C\$32.4 billion in loans and underwriting to fossil fuel companies and invested more than C\$50 billion in the sector. RBC is also directly or indirectly involved in various fossil fuel development projects, such as the Coastal GasLink and Trans Mountain pipeline projects.⁶⁰ As such, the six applicants argued that “until RBC stops funding fossil fuel expansion and develops credible plans that phase out fossil fuel financing, it should not be able to advertise itself as supporting the principles of the Paris Agreement or aiming to achieve net-zero emissions targets by 2050.” The applicants requested the CCB to investigate RBC’s corporate climate claims and suggested, in case of breach of the CA, the imposition of a fine of \$10 million to RBC to be available for Indigenous-led organizations to use for climate mitigation and adaptation in Canada.⁶¹ Again, to our knowledge, the CCB has yet to address the applicants’ complaint publicly and has not taken any legal action against RBC in connection with its climate claims.

There has also been a similar rise in the number of climate-washing matters outside Canada. These foreign cases can be grouped into three main categories:

- cases involving the intervention of a consumer protection agency, often triggered by private complaints from consumers, NGOs or competitors, like those submitted in Canada to the CCB;
- legal claims involving private parties seeking remedies before the courts;

⁵⁹ RBC is not the only Canadian bank providing financial services to the fossil fuel industry. According to the National Observer, “RBC, TD, Scotiabank, BMO and CIBC all find themselves among the world’s top 20 financiers of fossil fuels. These five banks alone have pumped approximately \$911 billion into coal, oil and gas companies since the Paris Agreement was signed in late 2015, and they are on track to cross the \$1-trillion threshold later this year. That money is used to expand fossil fuel production, build new pipelines, construct liquefied natural gas (LNG) facilities and more [...]. Meanwhile, as of last year, the Big 5 are also members of the Net-Zero Banking Alliance and the Glasgow Financial Alliance for Net-Zero, committing them to align their financing with net-zero greenhouse gas emissions by 2050. Those pledges also require banks to set targets for reducing greenhouse gas emissions by 2030.” See: John Woodside, “Canada’s banks are making net-zero pledges – and billions in fossil fuel deals” (April 27, 2022), online: *Canada’s National Observer* <<https://www.nationalobserver.com/2022/04/27/explainer/canada-banks-funding-climate-change-fossil-fuels>>.

⁶⁰ Nichola Saminather, “Royal Bank defends funding B.C.’s Coastal GasLink pipeline despite environmental concerns” (April 7, 2022), online: *CBC* <<https://www.cbc.ca/news/canada/british-columbia/rbc-coastal-gaslink-defends-1.6412189>>; John Woodside, “Canada’s biggest banks quietly prop up TMX” (May 31, 2022), online: *Canada’s National Observer* <<https://www.nationalobserver.com/2022/05/31/news/canada-biggest-banks-quietly-prop-tmx>>.

⁶¹ Ecojustice, *supra* note 58.

- cases initiated following private complaints to non-governmental adjudication bodies, such as the Organization for Economic Co-operation and Development's ("OECD") MNE Focal points or industry self-regulation organizations.

For a summary of certain climate-washing cases that occurred outside Canada for each of these categories, we refer the reader to the Grantham Institute's climate litigation database, available on the institute's website.⁶²

⁶² Grantham Research Institute on Climate Change and the Environment, "Litigation Cases" (2022), online: *Grantham Research Institute on Climate Change and the Environment* <https://climate-laws.org/litigation_cases>.

3. Assessing carbon neutrality and net-zero claims

3.1 DEFINING NET-ZERO

The terms “net-zero” and “carbon neutral” are often used interchangeably in the context of climate-related claims.⁶³ However, some sources indicate that the expression “carbon neutrality” would only relate to CO₂ emissions, whereas “net-zero” would include other types of GHGs, measured in CO₂e.⁶⁴ The CANZEA, which establishes the federal government’s net-zero targets, includes all GHG emissions rather than only CO₂, as it defines the expression “net-zero emissions” as the situation where “anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere over a specified period”.⁶⁵ In the French version of the CANZEA, “net-zero emissions” is translated as “carboneutralité”. Likewise, the NZC Technical Guide issued by the Government of Canada defines “net-zero emissions” (referred to as « *carboneutralité* » or « *émissions nettes nulles* » in the French version) as the situation where an “economy either emits no greenhouse gas emissions or offsets its emissions”, including other GHGs than CO₂.⁶⁶ As such, in this report, we will consider the expressions “net-zero” and “carbon neutral” to be synonyms and to encompass all sources of GHG emissions, including but not limited to CO₂. Considering the inherent ambiguity in the term “carbon neutral”, prudent firms should presume that using it in the context of a corporate claim might convey the general impression that the claim relates to

⁶³ Data-Driven. EnviroLab and NewClimate Institute, “Accelerating Net Zero: Exploring Cities, Regions, and Companies’ Pledges to Decarbonise” (2020), online: *Data-Driven EnviroLab* <http://datadrivenlab.org/wp-content/uploads/2020/09/Accelerating_Net_Zero_Report_Sept2020.pdf>.

⁶⁴ *Idem*; IPCC, *supra* note 30; Natural History Museum, “What does carbon neutral mean and what is net zero?” (undated), online: *Natural History Museum* <<https://www.nhm.ac.uk/discover/quick-questions/what-do-carbon-neutral-and-net-zero-mean.html>>.

⁶⁵ *Canadian Net-Zero Emissions Accountability Act*, *supra* note 36, s. 2. This is essentially the same definition as the one used by the IPCC in its glossary. See IPCC, *supra* note 30. The *Office québécois de la langue française* (“OQLF”) recommends using the expression “carbon neutral” in French (“*carboneutre*”) and to avoid using “*net zéro*”, which would have an “unusual” and “incomplete” terminology in French. The OQLF defines the word “*carboneutre*” as relating to neutrality for GHG emissions from all sources, including methane and CFCs. See: Office québécois de la langue française, “*carboneutre*” (2022), online: *Vocabulaire du développement durable* <<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26500845/carboneutre>>.

⁶⁶ Government of Canada, *supra* note 17.

all types of GHGs, not only CO₂.

While the CANZEA's definition of net-zero emissions may seem relatively straightforward at first glance, there is no universal agreement on how firms can transpose it to net-zero corporate claims. Contrary to national net-zero pledges made by countries, corporate carbon neutrality claims either take place at the product level (e.g., advertising a specific good as “carbon neutral”) or at the organization level (e.g., stating that the activities of an organization are net-zero). For each of these types of claims, there is more than one way an organization can report its GHG emissions, and several questions can arise. For example:

- Should a firm include anthropogenic emissions from its supply chain into its carbon footprint, acknowledging that supply chain emissions may constitute an important part of its climate impact? If it does, should these emissions also be included in the suppliers' GHG footprint?
- If a firm relies on carbon offsets to achieve net-zero, how can it ensure that the greenhouse gases it removes from the atmosphere are removed permanently?
- If a company advertises one of its products as “carbon neutral”, does it need to include the GHGs emitted during the product's entire life cycle or only during its production?
- Should firms report their carbon footprint in aggregate terms or based on their activities' carbon intensity (i.e., GHG emissions per unit of output)?

As outlined in this report, answers to most of these questions can be found in various standards and initiatives, but they are generally voluntary and often only address part of these issues, so there is no uniform and mandatory detailed framework currently in effect in Québec or at the federal level in Canada.

Firms can address these issues by qualifying their climate-related claims based on their scope, attribution rules, time frame, the characteristics of the offset mechanisms on which they rely, the quality of the claimant's transition plan, and their degree of transparency. The paragraphs below provide a review of these factors. **Appendix B** provides a summary table comparing the requirements of different target-setting and reporting frameworks with respect to these criteria, including Canada's Net-Zero Challenge.

3.2 SCOPE AND ATTRIBUTION RULES

An organization can report climate-related information on its overall carbon footprint or specific products and services.

Firstly, the GHG emissions resulting from an organization's activities are typically classified based on their scope. For example, the Greenhouse Gas Protocol (“**GHG Protocol**”), which has developed the widely used “Corporate Accounting and Reporting Standard”, distinguishes three

different emission “scopes”.⁶⁷ Under the GHG Protocol’s classification:

- **Scope 1 emissions** include only GHG emissions from sources under the organization’s direct control, such as emissions from a factory smokestack.
- **Scope 2 emissions** include indirect GHG emissions, such as emissions from a thermal power station that supplies the energy used by a company to operate its plant.
- **Scope 3 emissions** include the GHG emissions produced by a company’s supply chain, encompassing all emissions from the production and transportation of raw materials, employee travel, waste treatment, etc.

Private and public organizations broadly use this classification to calculate and report their GHG emissions. For instance, it is the basis of the *Federal GHG Accounting and Reporting Guidance* that the Government of Canada uses to quantify the GHG emissions from federal operations. This classification is also endorsed by the Canadian government in the NZC Technical Guide, and is the basis of the private standard *GRI 305: Emissions 2016* issued by the Global Reporting Initiative (“GRI”).⁶⁸

The measurement and reporting of Scope 3 emissions have been extensively debated in the context of upcoming legislative reforms on climate-related financial risk disclosures, as discussed further in section 4.3.⁶⁹ For instance, some have argued that costs and limited access to data prevent firms from efficiently gathering information on Scope 3 emissions, or that companies have limited influence on Scope 3 emissions, for example as concerns the emissions of suppliers’ own suppliers.⁷⁰ On the other hand, some companies have relatively low Scope 1 or 2 emissions while holding significant leverage over the business practices of their suppliers.⁷¹ For these companies, reporting may seem very ambitious at first glance, but

⁶⁷ Greenhouse Gas Protocol, “About Us” (undated), online: *Greenhouse Gas Protocol* <<https://ghgprotocol.org/about-us>>.

⁶⁸ Government of Canada, “Government of Canada’s Greenhouse Gas Emissions Inventory” (March 15, 2022), online: *Government of Canada* <<https://www.canada.ca/en/treasury-board-secretariat/services/innovation/greening-government/government-canada-greenhouse-gas-emissions-inventory.html>>.

⁶⁹ Jenaya Copithorne, Michael Irish and Janis Sarra, “Summary of Submissions to Canadian Securities Administrators on Proposed National Instrument 51-107 Disclosure of Climate-related Matters” (March 2022), online: *Canada Climate Law Initiative* <<https://ccli.ubc.ca/wp-content/uploads/2022/03/CCLI-Summary-of-submissions-to-CSA.pdf>>.

⁷⁰ Lombard Odier, “Calculating a company’s carbon footprint: debunking 7 misconceptions on scope 3 emissions” (August 4, 2021), Lombard Odier <<https://www.lombardodier.com/contents/corporate-news/responsible-capital/2021/august/calculating-a-companys-carbon-fo.html>>.

⁷¹ Jenaya Copithorne, Michael Irish and Janis Sarra, *supra* note 69.

ignoring Scope 3 emissions would make net-zero targets much less impactful. In the case of a typical oil and gas production company, the bulk of the GHG emissions resulting from the company's activities are emitted downstream, during the consumption of the oil or gas in such a context, a net-zero claim in such a context which ignores Scope 3 emissions is clearly very different from a net-zero claim which includes such emissions.

Secondly, the GHG emissions associated with a given product or service are typically assessed based on the product or service's life cycle. Product life cycle emissions relate to GHG emissions generated during the production, use, and disposal of the product, inclusive of those rising from materials sourcing, manufacturing activities, transportation, commercialization, and storage.⁷² The GHG Protocol's "Product Life Cycle Accounting and Reporting Standard" is an example of GHG accounting methodology on product life cycle emissions.⁷³ Other industry standards include ISO 14067:2018 and PAS 2060.

In addition to the classification of emissions, there are various ways one can attribute GHG emissions between corporate entities based on ownership and governance thresholds, such as the "equity share" or the "control" approaches developed by the GHG Protocol:⁷⁴

- **The equity share approach** states that an organization should account for the GHG emissions of its different business undertakings based on the percentage of equity owned.⁷⁵ For example, if a company holds a 50% equity share in a coal power plant, it shall account for 50% of the GHG emissions associated with this facility. However, if the equity share is not representative of the "economic risks and rewards flowing from an operation", then the corporation should modify how it allocates its GHG emissions accordingly.
- **The control approach** requires an organization to account for 100% of the GHG emissions of the business undertakings over which it exercises either financial or operational control.⁷⁶ According to the GHG Protocol's guidance, "a company is considered to financially control an operation if it retains the majority risks and rewards

⁷² Greenhouse Gas Protocol, "FAQ" (undated), online: *Greenhouse Gas Protocol* <https://ghgprotocol.org/sites/default/files/standards_supporting/FAQ.pdf>.

⁷³ Greenhouse Gas Protocol, "Product Life Cycle Accounting and Reporting Standard" (September 2011), online: *Greenhouse Gas Protocol* <https://ghgprotocol.org/sites/default/files/standards/Product-Life-Cycle-Accounting-Reporting-Standard_041613.pdf>.

⁷⁴ Greenhouse Gas Protocol, "A Corporate Accounting and Reporting Standard – Revised Edition" (March 2004), online: *Greenhouse Gas Protocol* <<https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>>.

⁷⁵ *Idem*.

⁷⁶ *Idem*.

of ownership of the operation's assets".⁷⁷ In contrast, an organization holds operational control when it "has the full authority to introduce and implement its operating policies".⁷⁸

While a review of the challenges raised by GHG accounting is beyond the scope of this report, these debates illustrate the need for precise guidance on the substantiation of climate-related corporate claims.

3.3 DECARBONISATION TIMELINE

When formulating a climate-related claim, companies must decide whether to communicate information on their current emissions, ongoing mitigation actions, and aspirational goals and targets. For example, some companies have committed to going carbon neutral by 2030, whereas others have formulated net-zero targets for the year 2050. A distant corporate target allows firms to amortize their investments in decarbonisation over a prolonged period. However, this can also decrease the short-term incentives to spend time and resources on decarbonisation. According to a 2022 report by Net Zero Tracker, only half of corporate net-zero targets reviewed included interim emission reduction targets⁷⁹ – conflicting with the goal of decreasing global emissions by 45% from 2010 levels by 2030 pursuant to the IPCC's 1.5°C pathway.⁸⁰ With the long timeline currently ahead of them, it can be very tempting for executives to pass the buck to their successors and postpone impactful emissions reductions. A recent Financial Times article reported that most companies are projected to go through at least four different CEOs before reaching their carbon neutrality objectives.⁸¹

3.4 OFFSET MECHANISMS

Entities which set net-zero targets generally rely on emissions offset mechanisms. In 2021, Ecosystem Marketplace estimated the total value of transactions on the voluntary carbon offset markets at almost US\$2 billion.⁸² Carbon credits are "tokens" corresponding to reducing

⁷⁷ *Idem.*

⁷⁸ *Idem.*

⁷⁹ Net Zero Tracker, *supra* note 38.

⁸⁰ IPCC, *supra* note 31.

⁸¹ Lex, "Net zero pledges: not even next management's problem" (September 25, 2021), online: *Financial Times* <<https://www.ft.com/content/083c3972-d729-4867-82dc-a6806b83a7bd>>.

⁸² Ecosystem Marketplace, "Ecosystem Marketplace's State of the Voluntary Carbon Markets 2022 Q3" (August 3, 2022), online: *Ecosystem Marketplace* <<https://www.ecosystemmarketplace.com/publications/state-of-the-voluntary-carbon-markets-2022>>.

or removing a given quantity of GHG emissions, typically measured in tons of CO₂e.⁸³ Credits are issued after an emission-removal or an emission-reduction activity is registered with a carbon offset organization, and, in principle, once the reductions or removals have occurred and have been verified. The project developer then sells carbon credits corresponding to the volume of emissions thus removed or reduced.⁸⁴ As explained by the Grantham Institute, the purchaser of a carbon credit buys the right to “claim responsibility for the avoidance or removal of emissions”.⁸⁵ Carbon registration organizations such as VERRA, Gold Standard, and the American Carbon Registry certify the projects and issue the carbon credits. **Appendix A** provides more information on these organizations.

Carbon offsets can relate to two types of GHG mitigation projects: emission removals and emission reductions.⁸⁶

- **Emission removals:** These credits relate to projects involving the capture and sequestration of GHGs previously released into the atmosphere through natural or technological solutions. Examples of emissions removals include reforestation projects and direct carbon capture technologies, which is still a developing field and has been criticized as too uncertain and possibly insufficiently scalable.⁸⁷
- **Emission reductions:** These credits relate to projects involving the prevention of GHG emissions that would otherwise have occurred in the absence of the project. Examples of emission reduction projects include investments in energy efficiency technologies and creating nature conservation areas, although this last category is particularly questionable, as discussed in **Appendix C**.

According to Ecosystem Marketplace, around 90% of carbon offsets sold in voluntary carbon

⁸³ Rob Macquarie, “What are carbon offsets?” (July 27, 2022), online: *Grantham Research Institute on Climate Change and the Environment* <<https://www.lse.ac.uk/granthaminstitute/explainers/what-are-carbon-offsets>>.

⁸⁴ *Idem*.

⁸⁵ *Idem*.

⁸⁶ *Idem*.

⁸⁷ Lincoln L Davies, Kristen Uchitel and John Ruple, “Understanding barriers to commercial-scale carbon capture and sequestration in the United States: An empirical assessment” (2013) 59 *Energy Policy* 745; Varun Rai, David G Victor and Mark C Thurber, “Carbon Capture and Storage at Scale: Lessons from the Growth of Analogous Energy Technologies” (2009, revised in 2012), 38:8 *Energy Policy* 4089, online: SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1400163>; James Temple, “Carbon removal hype is becoming a dangerous distraction” (July 8, 2021), online: *MIT Technology Review* <<https://www.technologyreview.com/2021/07/08/1027908/carbon-removal-hype-is-a-dangerous-distraction-climate-change/>>.

markets relate to GHG emission reduction projects.⁸⁸

Not all carbon credits have the same level of integrity and climate impact. For example, some credits only provide for the temporary sequestration of GHGs or guarantee that emissions will only be stored for a given number of years. In addition, it is sometimes difficult to verify whether an offset mechanism will effectively contribute to a net reduction in global GHG emissions or simply contribute to shifting emissions to another location. **Appendix C** provides additional information on these concerns and recommends some carbon offsets best practices.

3.5 TRANSITION PLAN AND DECARBONISATION STRATEGY

Setting corporate net-zero targets is relatively easy, but developing and implementing a transition plan to achieve them is much more complex and costly. The Taskforce on Climate Related Financial Disclosures (the “TCFD”) is an international non-governmental working group created by the Financial Stability Board to develop recommendations on climate-related financial risks. It defines a transition plan as “an aspect of an organization’s overall business strategy that lays out a set of targets and actions supporting its transition toward a low-carbon economy, including actions such as reducing its GHG emissions.”⁸⁹ There is currently no obligation in Canada for firms to develop and implement transition plans or decarbonisation strategies coherent with the national net-zero 2050 targets. Adopting CAFA would change this, as further discussed in section 4.3.

Various private organizations have recently developed guidance on transition planning. In an October 2021 guidance document on metrics, targets, and transition plans, the TCFD made seven recommendations to make transition plans more effective: According to these recommendations, transition plans should⁹⁰

- be aligned with the organization’s broader business and climate adaptation and mitigation strategies;
- incorporate trackable quantitative metrics and indicators;
- involve and be subject to oversight by the organization’s directors and officers;
- provide for specific actions that the organization can effectively implement;
- be sufficiently detailed such that users can assess its limitations, credibility, assumptions, and areas of uncertainty;
- be reviewed and updated at least as frequently as every five years; and

⁸⁸ Ecosystem Marketplace, *supra* note 82.

⁸⁹ Task Force on Climate-related Financial Disclosures, “Guidance on Metrics, Targets, and Transition Plans” (October 2021), online: *Task Force on Climate-related Financial Disclosures* <<https://www.fsb.org/wp-content/uploads/PI41021-2.pdf>>.

⁹⁰ *Idem*.

- be disclosed to stakeholders every year, including reporting on the progress made.

Along the same lines, the NZC Technical Guide sets out minimum requirements for the net-zero plans of participating companies. Among other things, participants' net-zero plans must include "an emissions inventory and baseline, interim targets, descriptions of the considered scenarios, pathways and mitigation strategies, and an outline of how net-zero planning will be incorporated into a company's governance".⁹¹

Transition planning is still a developing field. For instance, the United Kingdom recently launched the Transition Plan Taskforce (the "TPT") to develop rules and guidelines on transition planning best practices, including short-, medium- and long-term targets, climate mitigation, and adaptation strategies and investments.⁹² The TPT expects to publish detailed sectoral transition plan templates for companies and financial institutions in 2022-2023. As some countries have expressed their intention to require firms to prepare and disclose mandatory transition plans in the future, we can expect transition planning to become a key topic in the climate policy field in the upcoming years.⁹³

3.6 TRANSPARENCY AND PUBLIC DISCLOSURE

Companies setting net-zero targets can decide, subject to their financial reporting obligations, whether to disclose the information supporting their corporate pledges or marketing claims. While corporations claiming to be certified as complying with the standards of a particular target-setting body often need to disclose climate-related information to these organizations, this information is not always made available to the public. However, without adequate information on how climate-related claims are substantiated, stakeholders cannot gauge their seriousness and distinguish free-riders from climate leaders.

3.7 INTRINSIC LIMITATIONS OF CARBON NEUTRALITY PLEDGES

Beyond risks of climate-washing, the mere concept of carbon neutrality targets and claims has been the subject of significant criticism. For example, in 2021, 354 groups released a statement calling net-zero pledges a "dangerous, unjust distraction" from real climate action by companies and governments.⁹⁴ The same year, the Canadian Centre for Policy Alternatives

⁹¹ Government of Canada, *supra* note 17.

⁹² Transition Plan Taskforce, "Terms of reference" (undated), online: *Transition Plan Taskforce* <<https://transitiontaskforce.net/wp-content/uploads/2022/04/TransitionPlanTaskforce-TofR-3.pdf>>.

⁹³ Transition Plan Taskforce, "About" (2022), online: *Transition Plan Taskforce* <<https://transitiontaskforce.net/about>>.

⁹⁴ Indigenous Environmental Network, "More Than 350 Groups Condemn Corporate Net-Zero Pledges as a Dangerous, Unjust Distraction" (October 27, 2021), online: *Indigenous Environmental Network*

claimed that net-zero “has the potential to be a dangerous distraction that reduces the political pressure to achieve actual emission reductions in favor of wishful thinking about future technologies and “nature-based solutions.”⁹⁵ Similarly, according to Nafkote Dabi, Climate Change Lead for Oxfam International, net-zero pledges “provide a fig leaf for climate inaction”, and constitute a “dangerous gamble with our planet’s future”.⁹⁶

A common argument against carbon neutral claims is that they would give the impression that the private sector can solve the climate crisis without any form of structural change or public intervention.⁹⁷ According to this view, corporate climate commitments could hinder public support for enhanced environmental laws and carbon pricing and ultimately crowd out mandatory emission reduction measures. As argued by a group of science professors in 2021, while corporate climate targets might seem encouraging in theory, “in practice it helps perpetuate a belief in technological salvation and diminishes the sense of urgency surrounding the need to curb emissions now”, fostering a “burn now, pay later” approach.⁹⁸

A similar critique alleges that carbon neutrality claims may shift the responsibility for taking climate action from corporations to consumers, despite their limited leverage on the reduction of GHG emissions. According to this perspective, climate-related claims would imply that individual consumption decisions are global warming’s leading cause rather than the activities of major industrial polluters. For example, in 2004–2006, an oil company’s advertising campaign stressed the effects that daily individual activities and lifestyle choices can have on

< <https://www.ienearth.org/more-than-350-groups-condemn-corporate-net-zero-pledges-as-a-dangerous-unjust-distraction> >.

⁹⁵ Marc Lee, “Dangerous Distractions – Canada’s carbon emissions and the pathway to net zero” (June 2021), online: *Policy Alternatives* < https://policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2021/06/CCPA%20report_Dangerous%20Distractions%20Net%20Zero.pdf >.

⁹⁶ Oxfam International, “Net zero’ carbon targets are dangerous distractions from the priority of cutting emissions says new Oxfam report” (August 3, 2021), online: *Oxfam International* < <https://www.oxfam.org/en/press-releases/net-zero-carbon-targets-are-dangerous-distractions-priority-cutting-emissions-says> >.

⁹⁷ Jack Arnlord and Perrine Toledano, “Corporate Net-Zero Pledges: The Bad and the Ugly” (December 1, 2021), online: *Columbia Center on Sustainable Investment* < <https://ccsi.columbia.edu/news/corporate-net-zero-pledges-bad-and-ugly> >; Jesse Bragg, Souparna Lahiri and Rachel Rose Jackson, “The Big Con – How Big Polluters are advancing a “net zero” climate agenda to delay, deceive, and deny” (June 2021), online: *Corporate Accountability* < https://www.corporateaccountability.org/wp-content/uploads/2021/06/The-Big-Con_EN.pdf >.

⁹⁸ James Dyke, Wolfgang Knorr and Robert Watson, “Climate scientists: concept of net zero is a dangerous trap” (April 22, 2021), online: *The Conversation* < <https://theconversation.com/climate-scientists-concept-of-net-zero-is-a-dangerous-trap-157368> >.

the climate without mentioning the impacts of the firm's own fossil fuel production activities.⁹⁹

Others have argued that net-zero targets do not address the equity concerns raised by the climate crisis.¹⁰⁰ As previously indicated, planning the road to net-zero 2050 involves formulating transition paths with quantified carbon budgets for every country and sector of the economy for the upcoming decades. The principle of “common but differentiated responsibilities and respective capabilities” set in Article 2 (2) of the Paris Agreement implies that under certain transition scenarios, some countries should bear a greater responsibility for reducing global GHG emissions. In that respect, certain countries might need to reach a net *negative* carbon balance by 2050.¹⁰¹ In this context, net-zero 2050 targets by firms from these countries would not be sufficient to achieve the goals of the Paris Agreement.

Other equity issues also arise, such as the impact of pursuing net-zero on food security. According to a 2021 Oxfam report, “[u]sing land alone to remove the world's carbon emissions to achieve ‘net zero’ by 2050 would require at least 1.6 billion hectares of new forests, equivalent to five times the size of India or more than all the farmland on the planet. (...) If used at scale, land-based carbon removal methods such as mass tree planting could see global food prices surging by 80 percent by 2050.”¹⁰²

Finally, some critics have asserted that carbon neutrality does not encompass all the environmental effects of corporate activities, such as the disruption and destruction of ecosystems and biodiversity loss.¹⁰³ Climate change and nature loss are interrelated problems, as decreases in biodiversity can amplify the consequences of global warming and vice-versa. However, some actions meant to reduce GHG emissions may negatively impact the environment. For example, investments in producing renewable biofuels using monoculture energy crops and destroying ecosystems to build renewable energy infrastructures have

⁹⁹ Naomi Oreskes and Geoffrey Supran, “The forgotten oil ads that told us climate change was nothing” (November 18, 2021), online: *The Guardian* <<https://amp.theguardian.com/environment/2021/nov/18/the-forgotten-oil-ads-that-told-us-climate-change-was-nothing>>.

¹⁰⁰ Jesse Bragg, Souparna Lahiri and Rachel Rose Jackson, *supra* note 97.

¹⁰¹ Press Trust of India, “Developing nations need longer than 2050 to reach Net-Zero: Joint statement” (June 8, 2022), online: Business Standard <https://www.business-standard.com/article/current-affairs/developing-nations-need-longer-than-2050-to-reach-net-zero-joint-statement-122060800005_1.html>.

¹⁰² Oxfam International, *supra* note 96.

¹⁰³ Thomas Helm, “Biodiversity concerns set to be the next frontier after climate change” (February 21, 2022), online: *IFLR* <<https://www.iflr.com/article/2a647jipe3beilnnbt0qo/biodiversity-concerns-set-to-be-the-next-frontier-after-climate-change>>; Ashish Kothari, “The ‘net-zero’ greenwash” (July 13, 2021), online: *Economy & Politics* <<https://www.meer.com/en/66356-the-net-zero-greenwash>>.

adverse effects on biodiversity.¹⁰⁴ Focusing only on firms' carbon emissions may overshadow their broader environmental footprint and amplify the ongoing biodiversity crisis.

When combined with the challenges of adequately qualifying climate-related corporate claims, the above considerations have led some stakeholders to entirely reject the terms “carbon neutral” or “net-zero” when referring to an organization's climate performance.¹⁰⁵ In the next section, we will review which rules apply in Québec at the provincial level and in Canada at the federal level concerning the use of these expressions and other types of climate-related claims.

¹⁰⁴ Mick E. Hanley, Pete Manning and Gail Taylor, “Bioenergy, Food Production and Biodiversity – An Unlikely Alliance?” (February 3, 2014), online: *GCB Bioenergy* (7.4) <<https://onlinelibrary.wiley.com/doi/10.1111/gcbb.12173>>; Helmholtz Centre for Environmental Research, “The Value of Nature for Economy and Society. A Synthesis of Natural Capital Germany” (2018), online: *TEEB DE* <https://www.ufz.de/export/data/global/212779_Naturkapital-TEEBDE_Synthese_Englisch_BF.pdf>.

¹⁰⁵ Rob Macquarie, *supra* note 83.

4. Canadian regulatory landscape

As previously mentioned, consumer protection laws often constitute the legal basis of climate-washing litigation cases.¹⁰⁶ For instance, at least three climate-washing complaints filed in the last year in Canada were based on the false or misleading advertising provisions of the *Competition Act*, the principal federal consumer protection statute. This section reviews how two central Canadian consumer protection statutes, the federal *Competition Act* and Québec's *Consumer Protection Act*, can apply to corporate climate claims.¹⁰⁷ In addition, we look at other rules that could be the basis of climate-washing proceedings in Canada, such as provincial and federal GHG emissions disclosure and pricing rules, the federal *Consumer Packaging and Labelling Act*, *Textile Labelling Act*, and *Trademarks Act*, Ad Standards' *Canadian Code of Advertising Standards*, and the OECD's *Guidelines for Multinational Enterprises*.¹⁰⁸

4.1 CONSTITUTIONAL CONTEXT

In the absence of explicit jurisdictional attribution over deceptive commercial practices, the distribution of legislative powers provided by the *Constitution Act, 1867* has led to the adoption of both federal and provincial consumer protection legislation.¹⁰⁹ On the one hand, the federal Parliament has relied on its powers to legislate on the "Regulation of Trade and Commerce" and "Criminal Law" to adopt the *Competition Act*, which includes various civil and criminal provisions intended to promote the efficiency of Canadian markets.¹¹⁰ On the other hand, the provinces have relied on their exclusive jurisdiction over "Property and Civil Rights" to enact

¹⁰⁶ Lisa Benjamin et al., *supra* note 5.

¹⁰⁷ *Competition Act*, RSC 1985, c C-34 <<https://laws-lois.justice.gc.ca/eng/acts/c-34>>; *Consumer Protection Act*, CQLR c P-40.1 <<https://www.legisquebec.gouv.qc.ca/en/document/cs/p-40.1>>.

¹⁰⁸ *Consumer Packaging and Labelling Act*, RSC 1985, c C-38 <<https://laws.justice.gc.ca/eng/acts/C-38/index.html>>; *Textile Labelling Act*, RSC 1985, c T-10 <<https://laws.justice.gc.ca/eng/acts/t-10/index.html>>; *Trademarks Act*, RSC 1985, c T-13 <<https://laws-lois.justice.gc.ca/eng/acts/t-13>>; Ad Standards Canada, "The Canadian Code of Advertising Standards" (July 2019), online: *Ad Standards Canada* <<https://adstandards.ca/code/the-code-online>>; Organisation for Economic Co-operation and Development, "Guidelines for multinational enterprises" (2011), online: *Organisation for Economic Co-operation and Development* <<https://www.oecd.org/investment/mne>>.

¹⁰⁹ Louis-Philippe Lampron, "L'encadrement juridique de la publicité écologique fautive ou trompeuse au Canada : une nécessité pour la réalisation du potentiel de la consommation écologique?" (2005), online : *R.D.U.S. (35)* <<https://canlii.ca/t/2s3h>>.

¹¹⁰ *The Constitution Act, 1867*, 30 & 31 Vict, c 3, s. 91 (2) and (27), <<https://laws-lois.justice.gc.ca/eng/const/FullText.html>>.

provincial consumer protection laws, such as Québec's *Consumer Protection Act*.¹¹¹

While some litigants have challenged federal jurisdiction over consumer protection before the courts, the Supreme Court confirmed its validity in *General Motors of Canada Ltd. v. City National Leasing* while also recognizing the provinces' concomitant authority in competition matters:¹¹²

The [predecessor of the Competition Act – the “Act”] is geared to eliminating activities that reduce competition in the market-place and embodies a complex, well-integrated scheme of economic regulation to achieve that end. (...) The Act is clearly concerned with the regulation of trade in general, rather than with the regulation of a particular industry or commodity. (...)

The Act is of national scope aimed at the economy as a single integrated national unit rather than as a collection of separate local enterprises. The provinces jointly or severally would be constitutionally incapable of passing this legislation. Finally, the failure to include one or more provinces or localities would jeopardize successful operation of the legislation in other parts of the country. (...)

Competition, however, is not a single matter and the provinces may deal with it in the exercise of their legislative powers in such fields as consumer protection, labour relations and marketing.

The CA and the CPA have a slightly different nature: the CA is a market regulation law that focuses on ensuring the efficiency of the Canadian economy, whereas the CPA is dedicated to protecting individual consumers who do not have the extensive expertise and information of merchants.¹¹³ Ultimately, both tackle the same issue, namely information asymmetries in the market.

4.2 THE FEDERAL COMPETITION ACT

Legal framework

The full title of the CA is “An Act to provide for the general regulation of trade and commerce concerning conspiracies, trade practices, and mergers affecting competition”, which includes

¹¹¹ *Id.*, s. 92 (13).

¹¹² *General Motors of Canada Ltd. v. City National Leasing*, 1989 CanLII 133 (SCC) <<https://canlii.ca/t/1ft82>> (text from the headnote).

¹¹³ JurisClasseur Québec, “Droit de la consommation et de la concurrence” (December 14, 2014), online : Lexis Nexis <<https://store.lexisnexis.ca/fr/categories/product/jurisclasseur-quebec-droit-de-la-consommation-et-de-la-concurrence-skusku-cad-6498/details>>, JDCC 2.2 and 3.2.

deceptive marketing practices.¹¹⁴ The purpose of the CA is to “maintain and encourage competition in Canada to promote the efficiency and adaptability of the Canadian economy (...) in order to provide consumers with competitive prices and product choices”, among other things.¹¹⁵

The provisions of the CA are formulated in broad terms, as they are made to apply to various situations that the statute does not expressly enumerate. The CCB, a federal agency headed by the Commissioner of Competition, is responsible for its enforcement. The CCB operates under the responsibility of the Minister of ISI.

The CA’s false or misleading advertising provisions prohibit the making of misleading or false marketing representations and performance claims without adequate and proper testing. For instance, paragraph 52(1) states that:

*52 (1) No person shall, 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, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.*¹¹⁶

Paragraph 74.01 (1) of the CA formulates similar requirements:

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; [...].

To determine whether a representation is false or misleading in a material respect, the CA must

¹¹⁴ Quoted from the full title of the CA. The CA’s provisions on deceptive marketing practices can be found in parts “VI – Offences in Relation to Competition” and “VII.1 – Deceptive Marketing Practices”.

¹¹⁵ Section 1.1 of the CA.

¹¹⁶ In the case of a conviction on indictment, a breach of this provision can lead to a fine at the discretion of the court and/or to imprisonment for up to 14 years.

consider both its literal meaning and the general impression conveyed to the public.¹¹⁷ Furthermore, the Competition Tribunal's *Imperial Brush* decision provided additional guidance on the substantiation of performance claims, which shall involve proper and adequate tests complying with the principles listed below¹¹⁸:

In summary, and in respect of this case, I conclude that a "proper and adequate" test:

- *depends on the claim made as understood by the common person;*
- *must be reflective of the risk or harm which the product is designed to prevent or assist in preventing;*
- *must be done under controlled circumstances or in conditions which exclude external variables or take account in a measurable way for such variables;*
- *are conducted on more than one independent sample wherever possible (e.g. destruction testing may be an exception);*
- *results need not be measured against a test of certainty but must be reasonable given the nature of the harm at issue and establish that it is the product itself which causes the desired effect in a material manner; and*
- *must be performed regardless of the size of the seller's organization or the anticipated volume of sales.*

In its guidance on the substantiation of performance claims, which is not legally binding but provides insight into the CCB's interpretation of the CA, the agency recognizes the principles set in *Imperial Brush*.¹¹⁹ Furthermore, the CCB advises marketers to avoid making "broad or vague claims based on testing that is only partially relevant", such as relying on tests that are

¹¹⁷ See paragraphs 52(4) and 74.03(5) of the CA.

¹¹⁸ *The Commissioner of Competition v. Imperial Brush Co. Ltd. and Kel Kem Ltd. (c.o.b. as Imperial Manufacturing Group)*, 2008 CACT 2, par. 128, <<https://canlii.ca/t/22c9m>>.

¹¹⁹ Competition Bureau of Canada, "Performance claims not based on adequate and proper test" (June 24, 2022), online: Canada <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00520.html>>; <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04029.html#section2_5>.

not generalizable.¹²⁰

A breach of the CA's deceptive marketing provisions can lead to criminal fines, administrative monetary penalties, and various other sanctions. For instance:

- **Criminal remedies:** A contravention to paragraph 52 (1) is constitutive of an offense and can lead
 - (i) in the case of a conviction on indictment, to a fine in the discretion of the court, and/or to imprisonment for up to 14 years; and
 - (ii) in the case of a summary conviction, to a fine of up to C\$200,000 and/or to imprisonment for up to one year.¹²¹

Cases brought before the courts under paragraph 52(1) are typically led by the federal prosecution services, in collaboration with the CCB, often following complaints from the public.

- **Civil remedies:** A breach of paragraph 74.01(1) can lead to a court order requiring the contravening firm to stop the reviewable conduct, publish a corrective notice, and pay an administrative monetary penalty (“AMP”), among other things. AMPs can reach up to C\$10 million in the case of a firm for a first offense or three times the value of the benefit obtained from a breach.¹²² The CA sets a list of aggravating and mitigating factors that should inform the determination of the AMP, including the representation's frequency, duration, and materiality. Cases brought before the courts under paragraph 74.01(1) are typically led by the CCB – although the CCB's privileged way of action is to negotiate consent agreements with contravening firms. Parties must file their consent agreements with the court, typically containing terms similar to those found in a court order.¹²³

¹²⁰ *Idem.*

¹²¹ See paragraph 52(5) of the CA.

¹²² See section 74.1 (1) (c) of the CA, which also indicates that if the benefit derived from the violation “cannot be reasonably determined, the maximum penalty will be 3% of annual worldwide gross revenues.”

¹²³ As indicated in section 74.12, “(1) The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part may sign a consent agreement. (2) The consent agreement shall be based on terms that could be the subject of an order of a court against that person, and may include other terms, whether or not they could be imposed by the court.”

- **Class actions:** Both types of violations can also constitute a civil fault, triggering liability under the *Civil Code of Québec*'s civil liability regime, which can take the form of individual or class actions.¹²⁴

Application to environmental claims

Despite the vast powers granted to the CCB under the CA, 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.¹²⁵ In addition, contrary to other federal agencies and the OPC, the CCB does not need to publish a sustainable development strategy.¹²⁶ Likewise, the CA's purpose clause and substantive provisions make no express reference to environmentally harmful corporate practices. As such, it does not provide for any specific sanctions or prohibitions or mention of industry standards with respect to environmental protection.

Over the last decades, the CCB did rely on the CA's deceptive marketing provisions to initiate a few matters involving allegedly false or misleading environmental claims. For example, in the late 2000s, the agency agreed to a few consent agreements following allegedly false or misleading energy efficiency representations by spa retailers.¹²⁷ Likewise, in 2016 and 2018, the CCB entered into two consent agreements with vehicle distributors in connection with

¹²⁴ JurisClasseur Québec, *supra* note 113, JDCC 6.3. See also *Fédération des chambres immobilières du Québec v. DuProprio inc.*, 2016 QCCS 1633. Section 36 of the CA expressly contemplates the possibility of private remedies in the case of a breach of the statute's criminal provisions, including paragraph 52(1).

¹²⁵ Competition Bureau of Canada, "Competition in the digital age: The Competition Bureau's Strategic Vision for 2020–2024" (2020), online: *Canada* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04513.html>>; Competition Bureau of Canada, "2020–2021 Annual Plan: Protecting competition in uncertain times" (2020), online: *Canada* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04533.html>>; Competition Bureau of Canada, "2022–2023 Annual Plan: Competition, recovery and growth" (2022), online: *Canada* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04663.html>>. The 2022–2023 Annual Plan does mention that the "The Bureau will also hold a Summit focused on the role of competition policy and enforcement in the green economy. This Summit will be a chance for the Bureau to gather insight and better understand the challenges and opportunities with respect to the interplay between competition and the green economy." Remarks made during the Summit are mentioned below, but the Annual Plan does not include any upcoming enforcement initiatives concerning greenwashing.

¹²⁶ *Federal Sustainable Development Act*, SC 2008, c 33, s.5 <<https://laws-lois.justice.gc.ca/eng/acts/F-8.6/index.html>>.

¹²⁷ Consent Agreement, *Commissioner of Competition and 1327974 Alberta Ltd*, Doc CT-2009-009, online: *Canada* <<https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/463614/index.do>>.

representations on their vehicles' environmental performance and efficacy.¹²⁸ Under the agreement's terms, the firms had to pay a C\$17.5 million administrative monetary penalty and interrupt their representations. The conduct also led to the payment of C\$2.4 billion in damages pursuant to class actions settlements and fines of C\$196.5 million under Canadian environmental laws.¹²⁹

More recently, the CCB entered into a consent agreement with Keurig Canada following allegedly false or misleading claims on the recycling of single-use coffee pods.¹³⁰ According to the agency's investigation, Keurig Canada had given the general impression that consumers could recycle the pods by simply removing their lid and emptying their content before throwing them in the recycling bin. However, some local recycling programs did not accept the pods, raising concerns over the validity of the recycling claims. According to the terms of the agreement, Keurig Canada agreed to pay a C\$3 million administrative monetary penalty, make a C\$800,000 charitable donation to an environmental organization, update its marketing claims and publish corrective notices.

In 2008, the Canadian Standards Association published a best practice guide on environmental marketing claims in collaboration with the CCB (the "**Guide**").¹³¹ This document aims to help advertisers and marketers comply with the CA provisions regulating deceptive marketing practices. The Guide draws from the industry standard ISO 14021:2016 Environmental labels and declarations—Self-declared environmental claims (Type II environmental labeling) ("**ISO 14021**"). This standard formulates the general rule that self-declared environmental claims

¹²⁸ Consent Agreement, *Commissioner of Competition v. Volkswagen Group Canada Inc. and Audi Canada Inc.*, Doc CT-2016-017, online: *Canada* <<https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/462496/index.do?q=volkswagen>>. See also Consent Agreement, *Commissioner of Competition v Volkswagen Group Canada Inc. and Audi Canada Inc. and Porsche Cars Canada, Ltd.*, Doc CT-2018-003, online: <<https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/462469/index.do?q=volkswagen>>.

¹²⁹ Environment and Climate Change Canada, "Volkswagen Aktiengesellschaft ordered to pay \$196.5 million fine after pleading guilty to 60 charges for offences under federal environmental legislation" (2020), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/news/2020/01/volkswagen-aktiengesellschaft-ordered-to-pay-1965-million-fine-after-pleading-guilty-to-60-charges-for-offences-under-federal-environmental-legisla.html>>.

¹³⁰ Competition Bureau of Canada, "Keurig Canada to pay \$3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims" (January 6, 2022), online: *Canada* <<https://www.canada.ca/en/competition-bureau/news/2022/01/keurig-canada-to-pay-3-million-penalty-to-settle-competition-bureaus-concerns-over-coffee-pod-recycling-claims.html>>.

¹³¹ Canadian Standards Association, "Archived — Environmental Claims: A Guide for Industry and Advertisers" (June 2008), online: *Canada* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02701.html>>.

must not be false or misleading, irrespective of the claim's format or support (i.e., including statements, symbols, or graphics on the product or its package, product literature, traditional advertising or Internet publications).¹³² The Guide also identifies best practices for claims relating to sustainability, using symbols for environmental claims, and making selected claims on degradability, energy consumption, water consumption, and reusability.

The Guide has not been updated by the Canadian Standards Association or the CCB since its 2008 publication, even though the International Standards Organization (“ISO”) re-examined the ISO 14021 standard in 2016, and amended it in 2021 to provide guidelines on carbon neutrality claims.¹³³ In its 2022 consent agreement with Keurig Canada, the CCB indicated that it archived the Guide in November 2021 and that it “may not reflect the CCB’s current policies or practices, nor does the Commissioner consider that it reflects the latest standards and evolving environmental concerns”.¹³⁴

The CCB’s website currently includes a webpage dedicated to environmental claims and greenwashing.¹³⁵ The webpage provides generic advice on the substantiation of green marketing claims, such as recommending the avoidance of “vague” terms like “eco-friendly” or “safe for the environment”, which have the potential to “lead to multiple interpretations, misunderstanding, and deception”.¹³⁶ The webpage also includes a list of best practices for environmental claims, which marketers should ensure:

- are truthful and aren’t misleading;
- are specific: be precise about the environmental benefits of your product;
- are substantiated and verifiable: claims must be tested and all tests must be adequate and proper;
- do not result in misinterpretations;
- do not exaggerate the environmental benefits of your product; and

¹³² *Idem.*

¹³³ International Standards Organization, “ISO 14021:2016/AMD 1:2021 Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling) – Amendment 1: Carbon footprint, carbon neutral” (2021), online: International Standards Organization <<https://www.iso.org/standard/81242.html>>. These new versions of the standard have not been publicly endorsed by the CCB. However, in a call held with CCB agents during the preparation of this report, it was indicated that the CCB could potentially rely on the updated versions of the standard to determine whether a climate claim is false or misleading.

¹³⁴ Consent Agreement, *Commissioner of Competition and Keurig Canada Inc.*, Doc CT-2022-001, online: *Canada* <<https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/518827/index.do>>.

¹³⁵ Competition Bureau of Canada, “Environmental claims and greenwashing” (January 20, 2022), online: *Canada* <<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04607.html>>.

¹³⁶ *Idem.*

- do not imply that your product is endorsed by a third-party organization if it isn't; and,
- If you're unsure whether a claim will mislead or misrepresent, then don't make the claim!

On September 20, 2022, the CCB organized the “Competition and Green Growth Summit”, a conference on the interaction between environmental policy and competition law. In his introductory remarks, the Commissioner of Competition recognized that “the practice of making false or misleading eco-claims about a product or service, is on the rise”, and that the CCB team could help address it by “doing [its] day job or sharing [its] unique insights with policymakers”. However, the Commissioner warned that this may not involve “expanding the goals of competition law or changing the legal tests we apply” - but simply using the agency’s existing powers to “protect consumers from eco-fraud”. During the event, the CCB did not indicate whether it planned to issue new guidelines on environmental marketing, or whether more resources would be allocated to fight climate-washing in the future.

As summarized in section 2.3, three complaints filed with the CCB concerning climate-related corporate claims have been brought to the public’s attention in the past year. However, the CCB has not yet publicly responded to any of them. According to a CCB 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. Furthermore, none of the greenwashing cases taken on by the CCB in the past decades involved carbon neutrality claims, for which there is currently no publicly available guidance as to compliance with the CCB’s rules. For instance, it is presently difficult to know which net-zero standards would be considered truthful by the CCB, including concerning emissions scope, timeline, and carbon offsets.

The CCB sometimes relies on industry standards to determine how firms should substantiate their claims, including those endorsed by other governmental organizations. As such, the CCB could use the NZC Technical Guide as guidance on net-zero claims. Indeed, the NZC Technical Guide provides extensive information on how NZC participants should set net-zero plans, calculate their GHG Emissions, set interim and long-term targets, and publicly report on their progress. However, participation to the NZC is currently voluntary, and firms may decide to participate in more or less stringent target-setting and reporting initiatives. Consequently, some companies could claim that the NZC Technical Guide is only one of many industry standards and argue in favour of different substantiation requirements. In addition, the NZC only focuses on one type of climate-related claims, namely organization-level net-zero claims. As such, it does not provide comprehensive guidelines on other types of climate-related claims, such as generic “green” climate-related claims or carbon neutrality claims about a particular product or service.

4.3 PROVINCIAL CONSUMER PROTECTION LEGISLATION IN QUÉBEC

Legal framework

Québec's CPA was created to protect consumers in their dealings with merchants, manufacturers, and advertisers, acknowledging that consumers might lack the expertise, knowledge, or information necessary to trade with professional businesspeople on equal grounds.¹³⁷

The CPA's substantive provisions on deceptive marketing practices are similar to the CA's. Sections 219-221 and 238-239 of the statute provide that:

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

220. No merchant, manufacturer or advertiser may, falsely, by any means whatever,

- (a) ascribe certain special advantages to goods or services;*
- (b) hold out that the acquisition or use of goods or services will result in pecuniary benefit;*
- (c) hold out that the acquisition or use of goods or services confers or insures rights, recourses or obligations.*

221. No merchant, manufacturer or advertiser may, falsely, by any means whatever,

- (a) hold out that goods or services include certain parts, components or ingredients;*
- (b) hold out that goods have a particular dimension, weight, size or volume;*
- (c) hold out that goods are of a specified standard;*
- (d) represent that goods are of a particular category, type, model or year of manufacture;*
- (e) hold out that goods are new, reconditioned or used to a specified degree;*
- (f) hold out that goods have particular antecedents or have been used for a particular purpose;*
- (g) ascribe certain characteristics of performance to goods or services.*

238. No merchant, manufacturer or advertiser may, falsely, by any means whatever,

- (a) hold out that he is certified, recommended, sponsored or approved by a third person, or that he is affiliated or associated with the latter;*
- (b) hold out that a third person recommends, approves, certifies or sponsors certain goods or services;*

¹³⁷ JurisClasseur Québec, *supra* note 113, JDCC 2.2. The CPA initially only applied to consumer contracts but was expanded in 1978 to apply to advertising more broadly.

(c) state that he has a particular status or identity.

239. No merchant, manufacturer or advertiser may, by any means whatever,

- (a) distort the meaning of any information, opinion, or testimony;
- (b) rely upon data or analyses falsely presented as scientific.

According to s.216, in the context of these provisions, the term “representation” includes an affirmation, a behavior, or an omission. Contrary to the provisions of the CA, the CPA does not require that the representations be false or misleading “in a material respect”, which may suggest a lower application threshold in the provincial statute.¹³⁸ Furthermore, s.218 provides that to “determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account.” This provision, which is similar to what the CA provides for, has been interpreted by the Supreme Court of Canada in the *Richard v. Time* case.¹³⁹ According to this decision, the “general impression test must be applied from the perspective of the average consumer, who is credulous and inexperienced and takes no more than ordinary care to observe that which is staring him or her in the face upon first entering into contact with an entire advertisement.”

The *Office de la protection du consommateur* (the “OPC”) is responsible for the administration of the CPA and receives complaints from consumers.¹⁴⁰ All breaches of the CPA’s substantive provisions on deceptive marketing, which all constitute prohibited practices within the meaning of the CPA, can lead to three types of remedies: civil, administrative, and penal.¹⁴¹

- **Civil remedies** are provided in sections 271 and 272 of the CPA. Under section 272, the breach of a legal obligation under the CPA by a merchant or a manufacturer allows the consumer to demand the performance of that obligation, the reduction of their own obligations, the nullification of the contract, and punitive damages, among other things. Section 272 of the CPA requires the existence of a contract connecting a consumer with a merchant or a manufacturer. It could therefore not be invoked by claimants against stakeholders with whom they have not entered into a consumption contract, such as the advertiser, or in the context of discussions that did not lead to a transaction. Cases may be brought under section 272 by private parties or through class actions.

¹³⁸ *Idem*, JDCC 6.2.

¹³⁹ *Richard v. Time Inc.*, 2012 SCC 8 <<https://canlii.ca/t/fq9tg>>.

¹⁴⁰ See section 292 of the CPA.

¹⁴¹ See section 215 of the CPA.

- **Penal remedies** are provided in sections 277 to 290.2 of the CPA. Under section 277, a person who contravenes the provisions of the CPA can be found guilty of an offense, which can lead to the imposition of a fine of \$2,000 to \$100,00 for legal persons for a first offense.¹⁴² According to s.280, this fine shall reflect both the economic loss caused to consumers and the benefits derived by the offender. Cases brought under s.278 typically start with a consumer filing a complaint with the OPC, which then decides whether to refer the matter to the provincial prosecution services.
- **Administrative remedies** are provided in sections 311 to 317 of the CPA. For instance, section 312 allows the OPC to require that “a merchant, a manufacturer or an advertiser show the truthfulness of an advertisement.” In addition, sections 314 and 315 regulate the characteristics of voluntary undertakings. Voluntary undertakings constitute a valuable tool for the OPC to deal with widespread contraventions to the CPA across a sector or a group of corporations. The object of these undertakings is to govern “the relations between a merchant, or group of merchants, and consumers, in particular in order to determine the information to be given to consumers, the quality of the goods or services with which they are to be provided, standard contracts, methods of settling disputes or rules of conduct.” The OPC sets the terms and conditions of such undertakings, including for their publication and consumer compensation. Finally, under section 316, the OPC may apply to the court for an injunction ordering the cessation of a prohibited practice, among other things.¹⁴³

Application to environmental claims

While the provisions of the CPA do not explicitly refer to environmental or climate claims, they are sufficiently broad to apply to such representations. However, the fight against greenwashing does not appear to be a priority for the OPC. The monitoring of environmental

¹⁴² See also the first paragraph of section 288 of the CPA: “A judge may, on the application of the prosecutor, order that a person convicted of an offence under a provision of section 278 distribute, in accordance with the terms and conditions which the court considers appropriate to ensure a prompt and adequate communication to consumers, the conclusions of the judgment rendered against him, and the corrections, explanations, warnings and other information which the court considers necessary to re-establish the facts concerning any goods or services or any advertisement made in relation to any goods or services which have or could have misled consumers.”

¹⁴³ Section.316 al.2 of the CPA makes this remedy available to consumer advocacy bodies: “A consumer advocacy body that has been constituted as a legal person for at least one year may apply for an injunction under this section and is deemed to have the interest required for that purpose. The court may not decide on the application for injunction filed by such a body unless a notice, attached to the application to institute proceedings or the application for an interlocutory injunction, as the case may be, is notified to the president.”

claims is not mentioned anywhere in the organization's 2019–2024 strategic plan.¹⁴⁴ The OPC did issue a Sustainable Development Action Plan (the “**SDAP**”) for 2022–2023, in line with the 2015–2020 Sustainable Development Strategy of the Government of Québec (the “**SDS Strategy**”).¹⁴⁵ The SDAP identifies a few actions and targets the OPC wishes to achieve by March 2023, including considering sustainable development principles in planning the organization's structural actions. The SDAP also mentions helping consumers make more responsible consumption choices by publishing educational content on the provisions of the CPA and by raising awareness about misleading social media ads. However, none of the actions and indicators identified in the SDAP refer explicitly to greenwashing or climate corporate claims.

In 2020–2021, the OPC processed 25,525 cases, of which 21,565 led to a formal civil or penal complaint. However, the OPC has not disclosed how many of these cases are related to deceptive environmental claims.¹⁴⁶ Furthermore, to our knowledge, the OPC has never issued any guidelines concerning greenwashing, climate-washing, or environmental marketing claims. In addition, according to an OPC representative contacted for the preparation of this report, there are currently no ongoing initiatives aimed at reforming the CPA to address greenwashing specifically.

This lack of leadership on greenwashing is surprising, as one of the goals stated in Québec's SDS Strategy was to help consumers make more responsible choices by providing the public with more information on responsible consumption practices; regulating ecological labeling and certification; and internalizing environmental externalities into the price of goods.¹⁴⁷

It is even more surprising given that the SDS Strategy states:

“Furthermore, sustainability-labelling or ecolabelling is one of the main tools available to consumers to make responsible choices. However, this practice is barely regulated, which allows manufacturers to make vague claims. It is important to inform manufacturers and consumers about the

¹⁴⁴ Office de la protection du consommateur, “Plan stratégique 2019–2014” (2020), online : Québec <<https://cdn.opc.gouv.qc.ca/media/documents/a-propos/publication/Planification2019-2024.pdf?1591119599>>.

¹⁴⁵ Office de la protection du consommateur, “About the Office” (July 25, 2022), online : Québec <<https://www.opc.gouv.qc.ca/en/opc/the-office/sustainable-development>>.

¹⁴⁶ Office de la protection du consommateur, “Annexe I – Cas traités” (2021), online: Québec <https://cdn.opc.gouv.qc.ca/media/documents/a-propos/surveillance/OPC_RAG_2020-2021_annexeI.pdf?1632922877>.

¹⁴⁷ Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, “Stratégie gouvernementale de développement durable 2015–2020” (2015), online : Québec <<https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/environnement/publications-adm/developpement-durable/strategie-dd-2015-2020.pdf?1582816783>>.

rules that apply to communication in this area in order to fight against greenwashing.”¹⁴⁸

On its website, the Government of Québec does provide some resources to help firms and consumers make more sustainable decisions, such as providing a registry of ecolabels, which includes Energy Star, Fair Trade and organic certification labels.¹⁴⁹ The Government also refers to an article listing ten Québec-based carbon offsetting organizations.¹⁵⁰ However, the Government does not provide specific information or guidelines on climate-related corporate claims.

4.4 DISCLOSURE RULES AND CARBON PRICING FRAMEWORKS

Federal and provincial emission disclosure rules

Some provincial and federal statutes regulate the reporting and disclosure of GHG emissions for environmental purposes, but the CA and the CPA do not refer to any of them. The provisions of these statutes may not always be directly transposable to organization-level and product-level climate-related claims, as they typically focus on facility-level emissions. However, they can indicate which GHG accounting methods are officially mandated or endorsed by the legislators.

Under the *Canadian Environmental Protection Act* (the “**CEPA**”), facilities that emit 10,000 tons or more of GHGs in CO₂e units per year must report their emissions to the Government of Canada. Reporting facilities must follow a prescribed methodological framework to determine their GHG emissions, defined under CEPA’s 2021 disclosure notice as “direct releases to the atmosphere from sources that are located at the facility”.¹⁵¹ The information submitted under

¹⁴⁸ *Idem*, p. 45. Our unofficial translation of the official French version.

¹⁴⁹ Ministère de l’Environnement et de la Lutte contre les changements climatiques, “Consultez le Répertoire des écoétiquettes” (2022), online : Québec <<https://www.environnement.gouv.qc.ca/developpement/ecoetiquette/index.asp>>.

¹⁵⁰ Ministère de l’Environnement et de la Lutte contre les changements climatiques, “Consommation responsable” (2022), online : Québec <<https://www.environnement.gouv.qc.ca/developpement/consommation-responsable>>; <<https://unpointcinq.ca/agir/compensation-carbone-quebec>>.

¹⁵¹ Government of Canada, “About the Greenhouse Gas Reporting Program” (March 29, 2019), online: Canada <<https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/facility-reporting/about.html#:~:text=The%20Greenhouse%20Gas%20Reporting%20Program%20collects%20information%20on%20greenhouse%20gas,facilities%20every%20year%20since%202004>>. The Government defines a facility as “an integrated facility, a pipeline transportation system, or offshore installation. An

the CEPA does not need to be audited by a third party but must be verifiable.¹⁵² A breach of the CEPA's reporting obligations or providing false or misleading information constitutes an offense that can lead to various penalties, including fines of up to C\$500,000 for a large corporation for a first offense.¹⁵³ In 2020, 1,704 facilities representing 41% of Canada's GHG emissions reported their emissions under the CEPA.¹⁵⁴ Emissions data are publicly available on the Government of Canada's website for each facility.¹⁵⁵

Similar reporting and disclosure obligations exist at the provincial level under Québec's *Environmental Quality Act* (the "EQA") and the ensuing *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere*, which also sets a threshold of 10,000 tons CO₂e.¹⁵⁶ The Government of Québec has issued carbon accounting

integrated facility includes all buildings, equipment, structures, on-site transportation machinery, and stationary items that are: located on a single site, on multiple sites or between multiple sites owned or operated by the same person(s); and function as a single integrated site." Reporting facilities must disclose their emissions from each of four sources: stationary fuel combustion (e.g., burning fuel to generate electricity), industrial processes (e.g., chemical production), fugitive emissions (including venting, flaring, and leakage), on-site transportation (e.g., from using a vehicle on-site), waste (e.g., combustion of waste) and wastewater (e.g., from the treatment of wastewater). Facilities involved in certain industrial activities such as mining, ethanol production, and cement production are subject to additional reporting obligations. See: Government of Canada, "Reporting greenhouse gas emissions: questions and answers" (March 15, 2022), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/facility-reporting/reporting/questions-answers.html#toc9>>; Government of Canada, "Reporting greenhouse gas emissions data, technical guidance 2020: emissions reporting format" (February 15, 2021), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/facility-reporting/reporting/technical-guidance-2020/chapter-4.html#emissions4.1>>.

¹⁵² *Idem*.

¹⁵³ Canada Gazette, "Number 51: Notice with respect to reporting of greenhouse gases (GHGs) for 2021", *Canada Gazette* (t:155) <<https://www.gazette.gc.ca/rp-pr/pi/2021/2021-12-18/html/sup2-eng.html>>.

¹⁵⁴ Government of Canada, "Greenhouse gas emissions from large facilities" (May 26, 2022), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions/large-facilities.html#:~:text=Facilities%20are%20required%20to%20report,dioxide%20equivalent%20emissions%20per%20year>>.

¹⁵⁵ Government of Canada, "Greenhouse Gas Reporting Program (GHGRP) - Facility Greenhouse Gas (GHG) Data" (undated), online: *Canada* <<https://open.canada.ca/data/en/dataset/a8ba14b7-7f23-462a-bdbb-83b0ef629823>>.

¹⁵⁶ *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere*, CQLR c Q-2, r 15 <<https://www.legisquebec.gouv.qc.ca/en/document/ct/q-2,%20r.%2015>>.

guidelines to assist corporations with their reporting obligations (the “Accounting Guide”).¹⁵⁷ The Accounting Guide distinguishes:

- **Direct GHG emissions**, which are issued from projects or activities directly under the control of the emitter.
- **Indirect GHG emissions** relating to electricity consumption.
- **All other GHG emissions** outside of the direct control of the emitter, including upstream, downstream and life cycle emissions.¹⁵⁸

The Accounting Guide indicates that GHG emissions reports must be prepared by a qualified GHG quantification professional trained or certified under industry standards ISO 14 064 or ISO 14 065. The reports must minimally disclose, among other things: how the quantification was conducted; the quantification methodology used; the GHG emissions relating to the project; and the emission mitigation and reduction measures undertaken concerning the project.¹⁵⁹

The NZC Technical Guide integrates these disclosure requirements in its guidelines. For example, it states that “[in] addition to having a GHG emissions inventory, participants that have facilities that report to Canada’s Greenhouse Gas Reporting Program must provide the aggregate total emissions reported to the GHGRP from all facilities for scope 1 or submit scope 1 emissions for their Canadian operations.”¹⁶⁰ It also recommends that participants quantify their GHG emissions according to the federal government’s quantification guidance developed in relation with the CEPA.¹⁶¹

While these reporting and disclosure rules and guidelines are not tailored to carbon neutrality corporate claims, they provide helpful guidance on which carbon accounting standards are recognized by the provincial and federal governments. As such, they may provide a safe basis for determining what constitutes, in the eyes of relevant public bodies, adequate and proper substantiation of this portion of climate-related claims under the CA and the CPA, among others. In practice, this implies that when a company makes a climate-related claim, it would be prudent to already have on hand the type of information required by mandatory regimes such as the CEPA and the EQA, even if it is not otherwise subject to those regimes. The authorities charged with applying the CA and the CPA could interpret the current versions of

¹⁵⁷ Ministère de l’Environnement et de la Lutte contre les changements climatiques, “Guide de quantification des émissions de gaz à effet de serre” (2019), online : Québec <<https://www.environnement.gouv.qc.ca/changements/ges/guide-quantification/index.htm>>.

¹⁵⁸ *Idem*.

¹⁵⁹ *Idem*.

¹⁶⁰ Government of Canada, *supra* note 17, p. 13.

¹⁶¹ *Idem*, p. 16.

these acts as already requiring that this type of information be available for review, but the CA and CPA regulations should be amended to provide greater clarity for all. Best practices would go beyond requiring that this type of information be available for review, and recommend that this type of information be disclosed to the public at the same time as the climate-related claim is communicated to the public.

Federal and provincial emission carbon offsetting rules

In addition to establishing GHG emissions reporting obligations, the EQA establishes a cap-and-trade system for greenhouse gas emissions allowances.¹⁶² Under this system, emission allowances are issued to “covered emitters”, which can then trade them with other covered emitters based on their needs. The scheme applies to emitters reporting 25,000 t CO₂e units or more under the EQA’s GHG reporting framework.¹⁶³ The obligation to register only applies to emitters in certain sectors of activity currently limited to manufacturing, mining, oil and gas, energy production and distribution and steam and air-conditioning supply. More than one hundred emitters are registered.¹⁶⁴

The EQA’s cap-and-trade framework also provides for the issuance of carbon offsets. The *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* (the “**CAT Regulation**”), adopted under the EQA, establishes detailed rules for issuing these offsets. According to sections 70.2 and 70.3 of this regulation, promoters must file an issuance request for offset credits with the Minister of the Environment. The request must identify the applicable reporting period, the corresponding quantity of offset credits, a project report for each reporting period, and a verification report on the project report or reports consistent with the applicable ministerial regulations. In case illegitimate offset credits are issued, for example on the basis of false or misleading information, errors, or omissions, the Minister may require the promoter to replace them. Furthermore, if offset credits are canceled, the emitter must replace them by “placing an equivalent number of emission allowances in its compliance account”.¹⁶⁵ Only the credits recognized by the Minister and by other governments participating in the Western Climate Initiative are valid under the CAT Regulation.¹⁶⁶ For firms, a breach of sections 70.2 and

¹⁶² *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*, CQLR c Q-2, r 46.1 <<https://www.legisquebec.gouv.qc.ca/en/document/cr/Q-2,%20r.%2046.1>>.

¹⁶³ *Idem*.

¹⁶⁴ Ministère de l’Environnement et de la Lutte contre les changements climatiques, “Emitters covered by the regulation respecting a cap-and-trade system for greenhouse gas emission allowances (RSPEDE), by establishment and by year, and registered participants” (March 31, 2021), online: Québec <<https://www.environnement.gouv.qc.ca/changements/carbone/etablissements-SPEDE-en.pdf>>.

¹⁶⁵ *Idem*. See section 70.6 of the CAT Regulation.

¹⁶⁶ Ministère de l’Environnement et de la Lutte contre les changements climatiques, “Système de

70.3 of the CAT Regulation can lead to administrative monetary penalties of C\$2,500 and liability for an offense leading to a fine between C\$10,000 and C\$600,000.¹⁶⁷

Under the EQA, carbon offsets must comply with sector-specific regulations. As of August 2022, such rules only existed for landfill methane reclamation and destruction projects and halocarbon destruction projects.¹⁶⁸ However, additional regulations are currently under development, and the Ministry of the Environment has formulated general criteria applicable to offsets credits.¹⁶⁹ According to these guidelines, the emission reductions or removals provided by the offsets must be:

- **Additive:** They must not take place in the ordinary course of business or be mandated by law.
- **Tangible and quantifiable:** They must be quantified using recognized science-based methods, account for uncertainty and must not lead to leakage.
- **Permanent:** They must not be reversible and must capture GHGs for at least 100 years.
- **Verifiable:** Documentation must be available to allow an auditing organization to confirm if applicable standards are met.
- **Unique:** They must not allow the double-counting of GHG emissions.¹⁷⁰

A similar carbon offset regime exists at the federal level. In 2018, Canada enacted the *Greenhouse Gas Pollution Pricing Act*, which established the federal output-based pricing system (the “**OBPS**”). This system provides for carbon pricing for industrial emitters in provinces that have not implemented provincial pricing systems meeting a minimum stringency benchmark.¹⁷¹ The OBPS applies in part or in full in Yukon, Nunavut, Manitoba, Saskatchewan,

plafonnement et d'échange de droits d'émission de gaz à effet de serre du Québec" (July 2021), online : Québec <<https://www.environnement.gouv.qc.ca/changements/carbone/documents-spede/questions-reponses.pdf>>.

¹⁶⁷ See sections 71 and 73 of the CAT Regulation.

¹⁶⁸ *Regulation respecting landfill methane reclamation and destruction projects eligible for the issuance of offset credits*, CQLR c Q-2, r 35.5 <<https://www.legisquebec.gouv.qc.ca/en/document/cr/Q-2,%20r.%2035.5>>; *Regulation respecting halocarbon destruction projects eligible for the issuance of offset credits*, CQLR c Q-2, r 35.4 <<https://www.legisquebec.gouv.qc.ca/en/document/cr/Q-2,%20r.%2035.4>>.

¹⁶⁹ Ministère de l'Environnement et de la Lutte contre les changements climatiques, "Crédits compensatoires" (July 27, 2022), online: Québec <<https://www.environnement.gouv.qc.ca/changements/carbone/credits-compensatoires/index.htm>>.

¹⁷⁰ *Idem*.

¹⁷¹ Government of Canada, "Output-Based Pricing System" (June 29, 2022), online: Canada <<https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system.html>>. Although the OBPS is commonly

Ontario, and Prince Edward Island.¹⁷² Similar to Québec’s cap-and-trade system, the OBPS allows industrial emitters exceeding their annual emission allowances to purchase additional emission rights, and it allows emitters to issue surplus carbon credits or remit recognized carbon offsets.¹⁷³ Two types of offset credits are available under the OBPS.

First, “federal offset credits” are issued under Canada’s GHG Offset Credit System. Second, “recognized units” are carbon credits that appear on the List of Recognized Offset Programs and Protocols for the Federal OBPS, which Environment and Climate Change Canada maintains.¹⁷⁴ As of August 2022, this list only included the Alberta Emission Offset System and the British Columbia Greenhouse Gas Emission Offset System.¹⁷⁵

Federal offset credits issued under Canada’s Greenhouse Gas Offset Credit System must comply with the *Canadian Greenhouse Gas Offset Credit System Regulations* (“**CA Offset Regulations**”) established under the *Greenhouse Gas Pollution Pricing Act*.¹⁷⁶ According to the CA Offset Regulations, the federal government can set out federal offset protocols that identify

called a “carbon tax”, the Supreme Court of Canada has ruled that it is not a tax but a constitutionally valid regulatory charge. (Such debates are not rare. See for example: Patrick Brethour, “Why Canada does not have a carbon tax” (December 18, 2020), online: *The Globe and Mail* <<https://www.theglobeandmail.com/business/article-whats-in-a-name-liberals-aim-to-rebrand-carbon-tax/>>). A summary of the 405-page decision can be found on the Court’s website: Supreme Court of Canada, “References re *Greenhouse Gas Pollution Pricing Act*” (March 25, 2021), online: *Supreme Court of Canada* <<https://www.scc-csc.ca/case-dossier/cb/2021/38663-38781-39116-eng.aspx>>.

¹⁷² *Idem*.

¹⁷³ *Idem*.

¹⁷⁴ Government of Canada, “List of Recognized Offset Programs and Protocols for the Federal OBPS” (March 7, 2022), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system/list-recognized-offset-programs-protocols.html>>. Technically, the OBPS provides for three types of “credits”, but the third one is “surplus credits”: “the Minister of Environment and Climate Change issues surplus credits to persons responsible for covered facilities whose emissions are lower than the applicable emissions limit, provided that no material discrepancy exists with respect to the quantity of GHGs and production.” These are not offsets credits within the meaning used in this report because there is no actual offsetting. These surplus credits simply keep track of situations where a firm emitted fewer GHGs than it was allowed to. See: Government of Canada, “Output-Based Pricing System”, *supra* note 171, under the tab “Compensation, Credits and Credit and Tracking System”, under the heading “Issuing Surplus Credits”.

¹⁷⁵ *Idem*.

¹⁷⁶ Canada Gazette, “Canadian Greenhouse Gas Offset Credit System Regulations: SOR/2022-111” (May 20, 2022), online: *Canada Gazette* (I/156:12) <<https://gazette.gc.ca/rp-pr/p2/2022/2022-06-08/html/sor-dors111-eng.html>>; <<https://laws.justice.gc.ca/eng/acts/g-11.55>>.

which methodologies must be followed for eligible projects to qualify as federal offset credits. For instance, the CA Offset Regulations provide that verifications of offset projects must comply with the industry standards ISO 14064 and ISO 14065 and incorporate certain definitions from these standards. As of August 2022, the only existing federal protocol related to “Landfill Methane Recovery and Destruction”.¹⁷⁷ The Government is currently developing additional protocols on refrigeration systems, forest management, soil organic carbon, livestock feed management, and direct air carbon capture and sequestration.¹⁷⁸ The development of these additional protocols suggests that the number of available offsets is set to grow, despite the growing criticism mentioned in section 3.7 and Appendix C.

Similar to the GHG reporting and disclosure rules, the CAT regulation and the CA Offset Regulations do not expressly apply to voluntary carbon neutrality corporate claims and voluntary carbon offsets. Nevertheless, they indicate which carbon offsetting methodologies are used and endorsed by the provincial and federal governments. Such standards could be transposed to the assessment of voluntary carbon offsets under the CA and the CPA, among others.¹⁷⁹ A firm which complies with existing rules governing GHG emissions reporting and disclosure as well as the existing mandatory carbon offsetting methodologies could take the position that its climate-related claims are substantiated in those respects, and therefore that such claims are not false or misleading.

The Impact Assessment Act

The *Impact Assessment Act* establishes an assessment process for projects that have environmental impacts and touch upon a federal legislative power. The project proponent must submit certain information to the Impact Assessment Agency, generally in the form of an impact statement of their project.¹⁸⁰ This impact statement must, among other things, present what impacts the project may have on the attainment of Canada's international climate

¹⁷⁷ Government of Canada, “Landfill methane recovery and destruction” (June 2022), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system/federal-greenhouse-gas-offset-system/compendium-protocols/landfill-methane-recovery-destruction.html>>.

¹⁷⁸ Government of Canada, “Canada’s Greenhouse Gas Offset Credit System” (July 12, 2022), online: *Canada* <<https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system/federal-greenhouse-gas-offset-system.html>>.

¹⁷⁹ The NZC Technical Guide promotes this type of approach. Although it allows participants to purchase offsets from voluntary programs, the NZC Technical Guide strongly recommends that “participants only use offset credits that are issued by Canadian federal and provincial government offset systems”, such as those issued under the CAT Regulation and the CA Offset Regulations.

¹⁸⁰ Impact Assessment Act, S.C. 2019, c. 28, s. 18.

commitments, in particular Canada's GHG emissions reduction objectives for 2030 and 2050.¹⁸¹ The *Strategic Assessment of Climate Change* indicates how the issue of climate change should be addressed by the impact statement. The guide stipulates that the promoter of a project with a lifetime beyond 2050 must present a plan in order to achieve net zero emissions for 2050.¹⁸² Environment and Climate Change Canada has also produced a technical guide on the quantification of net GHG emissions.¹⁸³

Climate-related financial disclosure reform

Provincial securities laws require public issuers to disclose a wide range of information to investors, such as audited financial statements and corporate governance practices. In line with the groundwork completed by the TCFD, the different Canadian financial supervision agencies, including Québec's AMF, have recently concluded a joint public consultation on a policy proposal that would require the additional disclosure of climate-related financial information.¹⁸⁴ Under the proposed instrument, NI 51-107, reporting issuers would be required to disclose their GHG emissions (scope 1, 2, and 3) using the GHG Protocol methodology or another similar method.¹⁸⁵ The instrument would also require reporting issuers to disclose "material" information on climate-related risks and opportunities, the issuer's processes for managing these risks, and the targets used by the issuer in doing so.¹⁸⁶

During the consultation, the agencies asked the public whether the disclosure of each emission scope should be mandatory. Alternatively, the agencies proposed that issuers could have the discretion of either disclosing their emissions for each scope or explaining their reasons for not doing so, known as the "comply or explain" approach. While it remains to be seen which option will ultimately be chosen by the regulators, a review by the Canada Climate Law Initiative of

¹⁸¹ *Idem*, s. 109.

¹⁸² Environment and Climate Change Canada, "Strategic Assessment of Climate Change", online : Canada <<https://www.strategicassessmentclimatechange.ca/>>.

¹⁸³ Environment and Climate Change Canada, "Technical Guides Related to the SACC: Guidance on quantification of net GHG emissions, impact on carbon sinks, mitigation measures, net-zero plan and upstream GHG assessment" (August 2021), online : Canada <<https://www.canada.ca/en/environment-climate-change/corporate/transparency/consultations/draft-technical-guide-strategic-assessment-climate-change.html>>.

¹⁸⁴ Canadian Securities Administrators, "Consultation – Climate-related Disclosure Update and CSA Notice and Request for Comment – Proposed National Instrument 51-107 Disclosure of Climate-related Matters" (October 18, 2021), online: *Ontario Securities Commission* <https://www.osc.ca/sites/default/files/2021-10/csa_20211018_51-107_disclosure-update.pdf>.

¹⁸⁵ *Idem*.

¹⁸⁶ *Idem*.

the submissions filed during the consultation period showed that most submissions were supportive of mandatory disclosure of Scope 1 and 2 emissions but that the views were split for Scope 3 disclosure.

The proposed instrument NI 51-107 would only apply to reporting issuers under provincial securities laws. Privately held firms would not be subject to this scheme, nor would investment funds or other specifically excluded types of entities. Furthermore, the CSA initiated the consultation on NI 51-107 before the TCFD recommended that firms disclose information on their transition plans; the proposal does not refer to this type of disclosure.¹⁸⁷ In the consultation period, many organizations stressed the importance of this information, which is considered key for investors willing to understand how firms plan to mitigate their climate-related exposure over time.¹⁸⁸ It remains to be seen whether the regulators will adhere to these recommendations.

Bill S-243 introducing the Climate-Aligned Finance Act

In 2022, independent Canadian senator Rosa Galvez introduced Bill S-243, which proposes enacting the *Climate-Aligned Finance Act*, a new piece of legislation that would establish additional climate commitments and obligations for federal financial institutions and federal corporations.¹⁸⁹ The CAFA defines GHG emissions as “all direct and indirect emissions of greenhouse gases [...] that are associated with the full life cycle of an activity”, inclusive of emissions relating to all stages of production, distribution, disposal, land-use change, as well as emissions labeled as scope 2 and 3 by the GHG Protocol.¹⁹⁰ Additional information about the CAFA is provided in **Appendix D**, including a summary of its proposed disclosure requirements.

As of September 2022, Bill S-243 was at the second reading stage in the Canadian Senate¹⁹¹ If

¹⁸⁷ Jenaya Copithorne, Michael Irish and Janis Sarra, *supra* note 69.

¹⁸⁸ *Idem*.

¹⁸⁹ <<https://rosagalvez.ca/media/50901/2022-03-24-cafa-bill-en-fr-side-by-side-legisinfo.pdf>>. The Bill proposes to define the term “global carbon budget” as “an amount calculated based on the best available science and precaution and equal to the maximum cumulative emissions into the atmosphere above which there is no longer a high probability of limiting global temperature increase to 1.5 degrees Celsius (1.5°C) above pre-industrial levels.” In the bill, a “reporting entity means any of the following: (a) a federal financial institution; (b) a corporation within the meaning of the *Canada Business Corporations Act*; (c) a work, undertaking or business within the legislative authority of Parliament that is described in any of paragraphs (a) to (e) or (j) of the definition federal work, undertaking or business in section 2 of the *Canada Labour Code*; and (d) an entity listed in schedule III of the *Financial Administration Act*.”

¹⁹⁰ *Idem*.

¹⁹¹ Bill S-243, *An Act to enact the Climate-Aligned Finance Act and to make related amendments to*

adopted, the CAFA would potentially apply to more than 400,000 organizations, including 83 banks, 219 insurance companies, and thousands of federally-incorporated companies.¹⁹² However, it would not apply to all private entities, such as private equity funds or provincially-incorporated corporations that do not conduct any federal work, undertaking, or business. In addition, the CAFA focuses on targets and plans at the organization level, avoiding the topic of product-level marketing claims. Finally, the current draft of Bill S-243 does not include any mechanism for monitoring and sanctioning reporting entities in case of non-compliance with its requirements, shedding doubts on its practical impacts on corporate behavior.

4.5 OTHER MECHANISMS

Specific statutes

In addition to the CA, a few federal statutes prohibit false or misleading representations. For example, the *Textile Labelling Act* (the “**TLA**”) and the *Consumer Packaging and Labelling Act* (the “**CPLA**”), two federal statutes also administered by the CCB, provide for additional rules prohibiting deceptive marketing claims on product packages and labels.¹⁹³ The TLA and the CPLA could be invoked against false or misleading climate-related representations.

The federal *Trademarks Act* (the “**TA**”) also prohibits false or misleading statements.¹⁹⁴ For instance, paragraph 7(d) of the TA states:

7. No person shall

(...)

(d) make use, in association with goods or services, of any description that is false in a material respect and likely to mislead the public as to

(i) the character, quality, quantity or composition,

(ii) the geographical origin, or

(iii) the mode of the manufacture, production or performance of the goods or services.

other Acts, 1st Sess, 44th Leg, Canada, 2021 <<https://www.parl.ca/legisinfo/en/bill/44-1/s-243>>.

¹⁹² Office of the Honourable Rosa Galvez “Who does CAFA apply to?” (2021), online: *Senator Rosa Galvez* <<https://rosagalvez.ca/en/initiatives/climate-aligned-finance/organizations-list>>.

¹⁹³ *Consumer Packaging and Labelling Act*, RSC 1985, c C-38 <<https://laws.justice.gc.ca/eng/acts/C-38/index.html>>; *Textile Labelling Act*, RSC 1985, c T-10 <<https://laws.justice.gc.ca/eng/acts/t-10/index.html>>.

¹⁹⁴ *Trademarks Act*, RSC 1985, c T-13 <<https://laws-lois.justice.gc.ca/eng/acts/t-13/FullText.html>>.

As for consumer protection, the Canadian Constitution is silent on the jurisdiction over trademarks and unfair competition. As such, constitutional constraints may limit the use of the TA in the context of climate-washing claims.¹⁹⁵

Industry self-regulation process

Ad Standards is an industry-led, non-profit organization that administers the *Canadian Code of Advertising Standards* (the “**ASC Code**”), an industry self-regulation initiative.¹⁹⁶ The ASC Code was developed to improve the quality of advertising practices in Canada. It sets various criteria for how advertisers, advertising agencies, and the media should formulate their ads. For instance, Clause 1 of the ASC Code states that:¹⁹⁷

(a) Advertisements must not contain, or directly or by implication make, inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations.

(b) Advertisements must not omit relevant information if the omission results in an advertisement that is deceptive or misleading.

(c) All pertinent details of an advertisement must be clearly and understandably stated.

(d) Disclaimers and asterisked or footnoted information must not

¹⁹⁵ The constitutionality of the TA’s provisions has been challenged before the courts, including section 7. While the federal competence over trademarks has been recognized under the federal power to regulate trade and commerce, some provisions of the TA have been invalidated as considered to go beyond intellectual property infringement. For instance, a 1980 decision by the Ontario Court of Appeal ruled that the TA’s provisions on unfair competition, which include section 7, exceeded the federal legislator’s jurisdiction. However, in 2005, the Supreme Court of Canada confirmed that paragraph 7(b) of the TA was within the Parliament’s jurisdiction given its connection with “the exercise of its legislative power in relation to patents, copyrights, trade marks and trade names”. Applying a similar line of reasoning, a 2001 decision by the Federal Court had previously ruled that for 7(d) to be applicable, “the acts complained of must be alleged to be affected by the use of intellectual property or to affect intellectual property.” These statements suggest that paragraph 7(d) only applies to representations relating to intellectual property. See: Nathan Fan, Roger T. Hugues and Sanjukta Tole, “Halsbury’s Laws of Canada – Trademarks, Passing Off and Unfair Competition (2020 Reissue)” (2020); *Seiko Time Canada Ltd. v. Consumers Distributing Co.*, [1980] O.J. No. 3653; *CSI Core Specialties Inc v. Sonoco Ltd*, 2001 FCT 801, par. 9, online <<https://canlii.ca/t/nbx>>..

¹⁹⁶ Ad Standards Canada, “About Us” (2022), online: *Ad Standards Canada* <<https://adstandards.ca/about>>.

¹⁹⁷ Ad Standards Canada, *supra* note 108. As in the CA and the CPA, the ASC Code states that the assessment of the truthfulness and accuracy of an ad shall focus on the general impression it conveys.

contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly legible and/or audible.

(e) All advertising claims and representations must be supported by competent and reliable evidence, which the advertiser will disclose to Ad Standards upon its request. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with regard to the various costs of doing business.

Consumers and other advertisers can complain to Ad Standards if they suspect that an ad breaches the provisions of the ASC Code. Ad Standards also offers “pre-clearing services”, allowing firms to pre-emptively confirm that their representations do not breach the ASC Code’s prescriptions. The ASC Code is “soft law”; its rules are not legally binding, and firms are free to decide whether to comply with its requirements. However, decisions rendered by Ad Standards’ Council are public and can bear reputational consequences, as they are sometimes reported in the media. Considering that climate-related corporate claims are generally made voluntarily and often to bolster reputation, such reputational consequences should not be underestimated.

The ASC Code does not explicitly refer to greenwashing or climate-related claims. However, Ad Standard’s “Interpretation Guideline on Environmental Claims” indicates that when “evaluating complaints involving environmental claims that allegedly are misleading or deceptive, Standards Council may, in exercising its judgment, take into account the guidance of the Competition Bureau [i.e., the generic CCB webpage on greenwashing mentioned at section 4.2] and, where relevant, the [International Chamber of Commerce (“**ICC**”)] Framework for Responsible Environmental Marketing Communications”.¹⁹⁸

The ICC framework used by Ad Standards provides extensive guidance on the formulation of climate-related corporate claims and an environmental claims checklist to help marketers formulate adequate ads.¹⁹⁹ For example, for product-level claims, the framework indicates that “a claim that a component was produced with “30% lower carbon emissions” when the carbon

¹⁹⁸ Ad Standards Canada, “Interpreting the Code” (2022), online: *Ad Standards Canada* <<https://adstandards.ca/code/interpretation-guidelines>>.

¹⁹⁹ International Chamber of Commerce, “ICC Framework for responsible environmental marketing communications” (November 2021), online: *International Chamber of Commerce* <https://icc.se/wp-content/uploads/2021/11/20211123-Marketing-Environmental-framework_2021.pdf>.

emissions of the component are a small fraction of the emissions of the product as a whole would be misleading without qualification to contextualize the relatively low impact of the reduction in that specific component.”²⁰⁰ Similarly, for organization-level claims, the guidance states that “Marketing communications that reflect specific environmental commitments, even if aspirational and likely not to be met until many years in the future, such as net zero, carbon negative, climate positive claims and the like, require that the company is able to demonstrate that it has a reasonable basis to believe it has the capacity and methodological approach to achieve such a commitment in the specified timeframe.”²⁰¹ **Appendix E** provides the relevant excerpts from the ICC’s framework.

OECD MNE Guidelines

The OECD Guidelines for Multinational Enterprises (the “**MNE Guidelines**”) provide a list of recommended business practices to foster responsible business conduct.²⁰² The Guidelines cover various topics, including human rights, information disclosures, corruption, competition, and environmental issues. Some of the provisions of the MNE Guidelines could apply to misleading climate-related corporate claims. For instance, they indicate that enterprises should “provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance”.²⁰³ Furthermore, concerning consumer protection, they state that firms should:²⁰⁴

Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers’ ability to compare products.

Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

Any product and environmental claims that enterprises make should be based on adequate evidence and, as applicable, proper tests. Given consumers’ growing interest in environmental issues and sustainable

²⁰⁰ *Idem.*

²⁰¹ *Idem.*

²⁰² Organisation for Economic Co-operation and Development, *supra* note 108.

²⁰³ *Idem.*

²⁰⁴ *Idem.*

consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices.

Compliance with the principles set in the MNE Guidelines is voluntary. However, if a firm does not observe the recommendations specified in the MNE Guidelines, complaints can be filed as part of a grievance mechanism. Applicants must file their complaints with the appropriate National Contact Points (“**NCPs**”), which are offices created by the governments that have adhered to the MNE Guidelines, including Canada.²⁰⁵ The MNE Guidelines’ grievance mechanism is a non-adversarial dispute resolution process.²⁰⁶ The process is initiated after an individual, an organization, a community affected by a company’s activities, employees or their trade union, or a non-governmental organization submits a request to the NCP for review of an alleged non-observance.²⁰⁷ The NCP assesses the case and may decide to offer voluntary facilitated dialogue or mediation to the parties. The process ends with the publication of a final statement on the NCP’s website within 12 months of the request for review.

²⁰⁵ Global Affairs Canada, “Canadian National Contact Point process flowchart” (December 4, 2017), online: Canada <<https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/flowchart-organigramme.aspx?lang=eng>>.

²⁰⁶ Global Affairs Canada, “Procedures Guide for Canada’s National Contact Point for the Organization of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises” (2017, December 13), online: Canada <https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/procedures_guide_de_procedure.aspx?lang=eng#a5>, s.12.4: “Where the parties do not reach an agreement on the issue(s) raised or when a party is unwilling to engage in the procedures or participate in good faith, the NCP Final Statement will at a minimum describe the issue(s) raised, the reasons why the NCP decided that the issue(s) raised merited further examination and the procedures the NCP undertook to assist the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which will be included in the Final Statement. Where appropriate, the statement may also include the reasons why agreement could not be reached.”

²⁰⁷ *Idem*.

5. Policy options and recommendations

Considering the previous section outlining the current state of the law, we can definitively conclude that climate-washing is already illegal now and that it exposes those who engage in it to various risks, including civil, administrative, and penal liability, as well as substantial reputational risks. However, predictability is largely missing, as firms lack the guidance to know what the relevant authorities will consider to be climate-washing.

This may lead prudent organizations to avoid making climate claims altogether, which may have a chilling effect on corporate climate action.²⁰⁸ As indicated in section 3.7, the mere notion of carbon neutrality has been the subject of much criticism. As such, firms should focus their efforts and their advertising on the quantification of their GHG emissions reductions and the concrete environmental impacts of their activities. For those willing to make public climate claims, **Appendix B** presents some current best practices according to a subset of target-setting and reporting organizations.

However, if making and adequately substantiating corporate climate claims is to become a widespread phenomenon, decisive action on the part of policymakers is required to create a level playing field and promote meaningful climate action by firms.

According to a 2021 public consultation on Canada's 2030 Emissions Reduction Plan, citizens' interest in regulating climate-washing is growing.²⁰⁹ 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."²¹⁰ At the provincial level, according to a June 2022 Léger poll, the fight against climate change was one of the main political priorities of Québec voters.²¹¹ The time is now ripe for Canadian policymakers to respond to the public's concerns and to reform

²⁰⁸ For example, see Will Novosedllik, "How brands can avoid the greenwashing trap" (July 5, 2022), online: *Strategy Online* <<https://strategyonline.ca/2022/07/05/how-brands-can-avoid-the-greenwashing-trap>>. As reported in the article: "A lot more brands are frightened of greenwashing these days, says Ryan Skinner, co-author of a recent Forrester report. 'They don't want to go out into the market, set their foot wrong and have a big scandal blow up in their faces.'"

²⁰⁹ Environment and Climate Change Canada, "2030 Emissions Reduction Plan – Canada's Next Steps for Clean Air and a Strong Economy" (2022), online: *Canada* <https://publications.gc.ca/collections/collection_2022/eccc/En4-460-2022-eng.pdf>.

²¹⁰ *Idem*.

²¹¹ Fédération des travailleurs et travailleuses du Québec, "Les élections d'octobre prochain au Québec : La FTQ fait connaître ses priorités" (June 9, 2022), online: *Fédération des travailleurs et travailleuses du Québec* <<https://ftq.qc.ca/communiqués/elections-doctobre-prochain-quebec-ftq-connaître-priorités>>.

how climate-washing is addressed in Canada, both at the federal and provincial levels.

Such reform would align with the current federal policy goals. Indeed, last spring, the Canadian Minister of ISI initiated the first step of a reform of the CA, which is expected to continue in the second half of 2022.²¹² So far, the legislative agenda has not included the regulation of climate-related corporate claims. Nevertheless, the reform could be the perfect opportunity to provide Canada with a modern regulatory framework on climate-washing and greenwashing. It would also align with the mandate given to the Minister of ISI in its most recent mandate letter, issued in December 2021. According to this letter, the Minister is asked to review the mandate of the Commissioner of Competition with a view to protect Canadians “from anti-consumer practices in critical sectors, including in the oil and gas, telecommunications and financial services sectors.” The letter also requests the Minister to collaborate “with the Minister of Natural Resources on the development of model building codes, including publishing a net-zero emissions building code and model retrofit code by the end of 2024 that align with national climate objectives and provide a standard for climate-resilient buildings.”²¹³

Launched in August 2022, the NZC is a first step towards the development and endorsement by public officials of technical standards for climate-related claims. However, this initiative has major limitations. First, participation is voluntary, which means that only a subset of Canadian firms might decide to join the NZC and comply with its guidance. This leaves the door open for other firms to make claims that appear identical at first glance but which are essentially hollow in comparison, which denotes an uneven playing field. Second, the main sanction in case of breach of the NZC Technical Guide is the delisting of a firm from the NZC’s website. The NZC Technical Guide does mention that “other Government of Canada programs may be informed if a participant is not meeting the Net-Zero Challenge requirements or if the participant is removed from the program, if and only if such programs have a link to the Net-Zero Challenge.”²¹⁴ However, it remains to be seen whether this could eventually include grants, subsidies, or other forms of public financial programs. Third, as a voluntary program, the NZC sometimes avoids imposing stringent – but highly necessary – requirements to participants,

²¹² Bennet Jones LLP, “First Round of Competition Act Amendments Now in Force” (July 2022), online: *Lexology* <<https://www.lexology.com/library/detail.aspx?g=173ee6f4-dc48-4012-85b6-b4a3c585f9ef>>.

²¹³ Prime Minister of Canada Justin Trudeau, “Minister of Innovation, Science and Industry Mandate Letter” (December 16, 2021), online: *Canada* <<https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-innovation-science-and-industry-mandate-letter>>. We note that the Government of Canada is engaged in several policy initiatives involving the concept of net zero. For example, in December 2020, it announced a C\$8 billion investment in the “Net Zero Accelerator initiative”, which aims at supporting Canada’s net zero goals through investments in specific industrial sectors.

²¹⁴ Government of Canada, *supra* note 17, p.7.

such as the systematic inclusion of Scope 3 emissions in transition plans and GHG inventories, or the mandatory compliance with the CAT Regulation or CA Offset Regulations' carbon offsetting principles. Fourth, the NZC exclusively focusses on organization-level net-zero claims. As such, it does not provide guidelines on other types of climate-related claims, such as generic "green" claims or carbon neutrality claims about a particular product or service. Given these limitations, policymakers should depart from promoting voluntary initiatives and start developing comprehensive, mandatory rules on climate-related claims. Doing so would not imply an additional burden on most firms because climate-related claims are made on a voluntary basis.

When it comes to regulating deceptive climate-related claims, we identify four principles that constitute the foundations of an effective law administration regime.

- **Principle #1: Qualification.**

Firms should be required to qualify all their climate-related allegations based on their scope, attribution rules, time frame, the characteristics of the offset mechanisms on which they rely, and the quality of the claimant's transition plan. As explained in section 3, broad or vague climate-related corporate claims can easily be misleading, as it is difficult for the consumers to gauge their scope and implications. By qualifying every climate-related claim, firms must quantify the details of their commitments and achievements, closing to the door ambiguous statements.

- **Principle #2: Substantiation.**

Firms should be subject to specific rules that identify which information is needed to adequately substantiate climate-related claims. For example, advertisers should know exactly which evidence is required to claim that a product is carbon neutral. This type of instruction can take the form of guidelines, regulations, or references to methodologies developed by third parties. Considering that quick action is required and considering that third party methodologies are already abundant and robust, choosing not to "reinvent the wheel" and simply referring to such third-party methodologies is a sound approach.

- **Principle #3: Disclosure.**

Firms should be obligated to publicly disclose all supporting evidence on which they base their climate-related claims as soon as they make such claims available to the public. This type of disclosure allows the public, competitors, and monitoring bodies to assess the claims and make decisions accordingly.

- **Principle #4: Monitoring.**

Rather than rely mostly on complaints, enforcement agencies should proactively monitor representations made by firms to the public to ensure that corporate claims are qualified and substantiated by publicly disclosed evidence. Where warranted, enforcement agencies can police the marketplace and take measures, including instituting legal proceedings, against contravening firms.

Against this backdrop, we provide three sets of recommendations to Canadian and Québec policymakers on how to improve the legal and regulatory landscape and the monitoring of climate-related corporate claims. Our recommendations are guided by the four principles identified above, which should also guide firms who make climate-related claims or who develop legal compliance programs.

- **Recommendation #1:**

We propose that law reform begin with the low-hanging fruit of amending the CA and the CPA so that they explicitly target climate-washing, with specific infractions and sanctions, and create a pan-Canadian disclosure standard for corporate climate-related claims made to the public. This framework should include carbon accounting, offsetting, and reporting rules. Further law reform in other areas, such as accountability of all levels and bodies of government who make climate commitments, could be heavily inspired by the new consumer protection regimes.

- **Recommendation #2:**

Policymakers should set climate-washing as a top enforcement priority for the CCB and the OPC, which should establish investigation teams and publish guidelines dedicated to climate-related claims.

- **Recommendation #3:**

Governments should adopt a coherent and comprehensive climate policy approach that considers the various private initiatives and upcoming regulatory reforms relating to climate accounting, targets, and reporting.

These three recommendations should be implemented at both the federal and provincial levels, among other reasons because the two levels of government share the power to regulate matters relating to consumer protection.

POLICY RECOMMENDATION #1: MODERNIZE QUEBEC AND CANADA'S CONSUMER PROTECTION LAWS TO EXPLICITLY ADDRESS CLIMATE-WASHING

While the CPA and the CA (collectively, the “**CP Statutes**”) prohibit making false or misleading representations to consumers and the public, they do not address climate-washing explicitly. This situation was already noted more than 30 years ago by David S. Cohen, who criticized the lack of legally binding rules on environmental claims despite the “serious negative environmental impacts generated by this kind of misinformation in the consumer marketplace”.²¹⁵ Unfortunately, little has changed since then. For instance, none of the CP Statutes provides specific infractions or sanctions relating to climate-related claims. Furthermore, the provisions of the statutes do not expressly indicate how climate-related claims should be substantiated. For example, firms need to know under which conditions they can declare that their activities or products are “clean” or “low emissions”. They should also know which methodology and transition scenarios they are expected to apply to set interim and long-term emission reduction targets and net-zero claims. While the CCB did issue generic guidelines on environmental claims, they are either overly broad or outdated and archived. As a result, they do not allow firms to understand which standards they should rely on when communicating their targets, carbon footprint, or transition plans.

Here is a list of changes that should be incorporated into the two statutes to address this situation.

- a) **Add environmental considerations to the CP Statutes’ purposes:** The legislators could amend the CP Statutes to include a reference to the protection of consumers against greenwashing and expressly add the consideration of environmental issues to the OPC and the CCB’s mandates. The CPA currently does not include a purpose clause, and the CA’s purpose clause does not refer to sustainability or climate goals. As indicated above, if adopted, the CAFA would include the alignment with climate commitments within the purpose of various federal organizations, such as the Bank of Canada and the Office of the Superintendent of Financial Institutions (“**OSFI**”).²¹⁶ While these changes would not create new powers for these institutions, they would require that their existing capabilities be “deployed in a way that is in alignment with climate commitments”.²¹⁷ Adding the CCB and the OPC to the list of public organizations that must pursue an environmental agenda would facilitate an interpretation of the current provisions of the CP Statutes which is more consistent with Québec and Canada’s environmental

²¹⁵ David S. Cohen, «The regulation of green advertising: The State, the market and the environmental good» (1991) U.B.C.L.Rev. (25:225). Quoted from Louis-Philippe Lampron, *supra* note 109.

²¹⁶ Stéphane Laviolette, Karine Péloffy and Nick Zrinyi, *supra* note 23.

²¹⁷ *Idem*.

commitments. Finally, we understand that the federal government is planning to review the CCB's mandate, as indicated in the Minister of ISI's mandate letter. This process would constitute an ideal opportunity to incorporate environmental considerations into the agency's mandate.

- b) **Establish a taxonomy for climate-related claims:**²¹⁸ The CP Statutes do not refer to, support, or approve any climate disclosure, reporting, and target-setting framework. This situation is not specific to climate-related claims, as the CP Statutes, which are laws of general application, also omit other types of corporate standards. The broadness of the CP Statutes allows them to remain flexible regulatory tools that can apply to evolving corporate practices without having to be continuously updated.

However, there are a few instances where Canadian regulators have expressly recognized specific standards to ensure that corporate claims comply with a set of specifications:

- Under the *Safe Food for Canadians Regulations*, products that display an organic claim or the Canada Organic Logo must be certified according to the *Canadian Organic Standards*.²¹⁹ The Canadian Food Inspection Agency (“CFIA”) relies on a third-party service delivery model to oversee compliance with the *Canadian Organic Standards*. Under this model, the CFIA accredits certification bodies that verify that operators produce organic products in compliance with the Standards and certify food commodities.
- The Québec *Act Respecting Reserved Designations and Added-Value Claims* provides for specific reserved designations and added-value claims, which identify particular product characteristics, such as a method of production or preparation.²²⁰ Under section 5 of this statute, a product can qualify (i) for a reserved designation if it is certified by an accredited certification body as compliant with a specification manual; and (ii) for an added-value claim if it is certified by an accredited certification body as compliant with standards defined by the Government. This statute is administered by a provincial organization, the *Conseil des appellations réservées et des termes valorisants*.

²¹⁸ Already in 2005, Lampron was arguing in favor of an express reference to standard ISO- 14 021 in the CA in the general context of environmental claims. See Louis-Philippe Lampron, *supra* note 109.

²¹⁹ Government of Canada, “Regulating organic products in Canada” (February 18, 2021), online: *Canada* <<https://inspection.canada.ca/organic-products/regulating/eng/1328082717777/1328082783032>>.

²²⁰ *Act respecting reserved designations and added-value claims*, CQLR c A-20.03 <<https://www.legisquebec.gouv.qc.ca/en/document/cs/A-20.03>>.

We recommend that policymakers draw inspiration from these models to set a standard and certification mechanism for climate-related claims.²²¹ Such a standard should:

- Reflect the different characteristics of climate-related claims, including emissions scope, attribution rules, timeline (in case of forward-looking statements), type of carbon offsets used, transition plan features, and sector-specific characteristics.
- Refer to substantiation methodologies already used in the Canadian marketplace, such as the accounting standards of the GHG Protocol or the federal or provincial GHG disclosure rules.
- Provide for the accreditation by the regulators of third-party organizations to certify products, events, and organizations, as with organic claims and reserved designations.
- Prohibit vague or ambiguous terms and expressions that do not fit within the boundaries set by these standards, such as generic claims that a given product, activity, or organization is “clean”, “sustainable”, or “green”.²²² The European Union is currently contemplating including a similar requirement in a update of its Unfair commercial practices directive, which would impose “A ban of generic environmental claims used in marketing towards consumers, where the excellent environmental performance of the product or trader cannot be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), officially recognised eco-labelling schemes in the Member States, or other applicable Union laws, as relevant to the claim.”²²³ Examples of generic claims listed in the directive include using the terms “environmentally friendly”, “green”, “carbon friendly”, “carbon neutral”, “carbon positive”, “climate neutral” and

²²¹ Louis-Philippe Lampron made similar recommendations in the general context of environmental claims. See: Louis-Philippe Lampron, *supra* note 109.

²²² Firms using these terms could breach the existing provisions of the CP Statutes if their generic claims are misleading consumers. As such, we recommend that firms immediately avoid using these types of generic climate claims.

²²³ 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” (March 30, 2022), online: *EUR-Lex* <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143&qid=1649327162410>>.

“energy efficient”.²²⁴ Under the directive, these terms could not be used unless an official eco-labelling standard exists and sets the substantiation requirements underlying their use.²²⁵

The NZC Technical Guide could be used as the basis of this taxonomy. However, it would need to be expanded to apply to all types of climate-related aims and adapted to the context of regulatory standards.

- c) **Mandate the disclosure of supporting information by advertisers:** The CP Statutes do not require firms to disclose the evidence supporting their representations to the consumers and the public. However, without such information, stakeholders cannot verify whether advertisers have appropriately substantiated a particular claim.

Last spring, the French Environmental Code was amended to tackle this issue.²²⁶ Under the new rules, any advertiser indicating in an ad that a product is carbon neutral, zero carbon, climate neutral, or making similar claims is obligated to disclose every year:

- The product’s life cycle GHG emissions according to standard ISO 14067 or an equivalent standard.
- A synthetic report describing the product’s carbon footprint, and the way its GHG emissions are avoided, reduced, and offset.

The advertiser must disclose its report online and provide the report’s link or a QR code on its products or advertisements such that consumers can access it. It must include detailed information on the carbon accounting methodology used, the decarbonisation path associated with the advertised product (including quantified goals for each of the 10 upcoming years), and the characteristics of the carbon offsets used (including their cost per ton and assurances on double-counting). The rules also define which types of carbon offsets firms shall use. For instance, they shall not harm the conservation and restoration of ecosystems.

Similar requirements could be added to the CP Statutes in combination with the endorsement of a precise carbon neutrality standard to ensure that carbon neutrality claims are transparent and all rely on the same methodology.

- d) **Mandate the disclosure of climate-related risks and impacts:**²²⁷ In marketing campaigns, advertisers tend to use climate-related claims to promote their positive

²²⁴ *Idem.*

²²⁵ *Idem.*

²²⁶ République française, *supra* note 28.

²²⁷ For clarity, we note that recommendation #1d) relates to climate-related information that will be

climate actions and commitments, but they generally avoid communicating the negative consequences of their activities on the environment. In this context, some stakeholders have asked regulators to force GHG emitters to disclose their products and services' climate-related risks and impacts.²²⁸ Mandatory labeling obligations already exist concerning the health risks arising from the consumption of drugs and tobacco products in Canada.²²⁹ Disclosure rules might soon become mandatory for climate-related financial risks under the CAFA and instrument NI 51-107. Regulators could extend these types of disclosure requirements to all firms doing business in Canada which are making climate-related claims visible to the public or to specific sectors or products known to have a material climate or environmental impact, including the energy sector.²³⁰

- e) **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 that the behavior has caused environmental harm could be added

perceived positively by consumers, such as claims about the lower carbon footprint of a product, whereas recommendation #1e) relates to information on risks and potential harms caused using a product, which will be perceived negatively by consumers.

²²⁸ Canadian Association of Physicians for the Environment, "Fossil Fuel Advertising is Fuelling a Public Health Crisis: An Open Letter from Health Professionals in Canada" (June 8, 2022), online: *Canadian Association of Physicians for the Environment* <<https://cape.ca/letter-to-stop-fossil-fuel-ads>>.

²²⁹ Health Canada, "Tobacco Product Labelling" (November 21, 2011), online: *Canada* <<https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/legislation/tobacco-product-labelling.html#:~:text=The%20requirements%20include%3A,to%20understand%20toxic%20emissions%20statements>>. <https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/legislation/tobacco-product-labelling.html#:~:text=The%20requirements%20include%3A,to%20understand%20toxic%20emissions%20statements>>.

²³⁰ A recent study suggests that the emissions scenarios of large firms in the energy sector are incompatible with the goals of the Paris Agreement. See: Agence France-Presse, « Les objectifs climats de géants des hydrocarbures «incompatibles» avec l'accord de Paris », (August 17, 2022), online : *Le Devoir* <<https://www.ledevoir.com/environnement/745722/les-objectifs-climats-de-geants-des-hydrocarbures-incompatibles-avec-l-accord-de-paris>>.

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.

- f) **Allocate the funds collected from fines and penalties to emissions reduction projects:** 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.²³¹ 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.²³²
- g) **Extend the application of the provincial and federal carbon offsetting rules to voluntary carbon markets:** The CAT Regulation and the CA Offset Regulations set out extensive rules on the recognition of emission reduction and removal projects as accepted offset credits. However, these rules only apply to GHG emissions subject to the provincial and federal carbon pricing mechanisms. Firms relying on voluntary carbon markets to achieve carbon neutrality targets do not need to comply with them. While the certification by the state of all voluntary carbon offsets might be overly burdensome, firms could be obligated to abide by the CAT Regulation and the CA Offset Regulations to substantiate their marketing claims. The NZC Technical Guide formulates a similar recommendation to participants. Thus, claims based upon *voluntary* carbon market offsets would not be subject to the sanctions provided in the *mandatory* carbon pricing regulations, but monitoring for consumer protection could rely on this already-existing set of rules.

²³¹ Ecojustice, *supra* note 58.

²³² Although Quebec’s «Fonds vert» has been repeatedly criticised, funds allocated to it are more likely to promote positive environmental action than if the same funds are simply put into state coffers without any specific allocation.

POLICY RECOMMENDATION #2: SET CLIMATE-WASHING AS AN ENFORCEMENT PRIORITY

As previously mentioned, the fight against climate-washing and false or misleading environmental claims is not among the enforcement priorities of the CCB and the OPC (collectively, the “**Agencies**”). These themes do not appear in the Agencies’ strategic plans, and none of the organizations have dedicated teams of climate experts monitoring the marketplace, processing consumer complaints, or holding firms to account. Here is a list of areas where actions that could be implemented to correct this situation, in addition to modernizing the consumer protection regulatory landscape, as mentioned in Policy recommendation #1:

- a) **Update the strategic plans:** Monitoring climate-related claims should be listed as part of the top priorities identified in the Agencies’ strategic plans. The CCB should also be added to the list of federal agencies required to prepare a sustainable development strategy complying with and contributing to the Federal Sustainable Development Strategy. This plan should mention the concrete actions that the agency plans to take concerning climate-related claims. On the other hand, the OPC should update the SDAP to incorporate goals and actions relating to the fight against greenwashing.
- b) **Establish dedicated expert teams:** A few years ago, the CCB created the Digital Enforcement and Intelligence Branch, a team of experts focused on enforcing the CA in the digital economy.²³³ A similar expert group could be created to monitor climate-related corporate claims within the CCB and the OPC. There should also be enhanced collaboration between the Agencies and their respective expert teams regarding information sharing in greenwashing investigations. Such collaboration and exchange of information is already foreseen in the CA and should be included in the CPA.²³⁴ The Agencies should also collaborate with the newly created NZC, which is responsible for reviewing the annual progress reporting of participants and holds expertise on climate-related claims.
- c) **Actively monitor the marketplace:** Given the complexity of carbon accounting, reporting, and target-setting methodologies as well as current information asymmetries, it is difficult for individual consumers to identify which firms are formulating false or misleading statements regarding their transition plans, carbon footprint, or carbon offsetting practices. As such, the Agencies should actively monitor

²³³ Murad Hemmadi, “Competition Bureau building dedicated digital-economy branch” (November 3, 2021), online: *The Logic* <<https://thelogic.co/news/competition-bureau-building-dedicated-digital-economy-branch>>.

²³⁴ *Competition Act*, RSC 1985, c C-34, s 29.

the claims formulated by firms and avoid relying heavily on consumer complaints to initiate climate-related investigations.²³⁵ The CP Statutes already provide wide information gathering powers to the Agencies in connection with their law enforcement responsibilities.

- d) **Increase transparency by publishing guidelines on climate-related claims:** Many stakeholders interviewed during the preparation of this report indicated that they had little or no visibility of the Agencies' position on what constitutes a valid climate claim and what does not. Indeed, none of the Agencies have published detailed guidelines or position statements on the formulation of climate-related claims. Furthermore, none of the frameworks listed in **Appendix A** have been endorsed by the Agencies, despite their widespread use by Canadian firms. As such, the Agencies should establish and disclose their position on the different carbon accounting, net-zero, carbon neutrality, and carbon offsetting methodologies used in the marketplace, building upon some of the recommendations formulated in the NZC Technical Guide. In addition, the Agencies should draw inspiration from the Race to Zero's technical criteria, which in our opinion constitutes one of the most comprehensive and transparent carbon disclosure and reporting frameworks available at the moment. The Race to Zero's criteria are summarized in **Appendix B**.

The Agencies' guidelines on climate claims could also be similar to the ICC framework or the United Kingdom's Competition & Markets Authority's green code guidance (the "**Green Code**").²³⁶ Published in September 2021, the Green Code identifies how firms can "make truthful environmental claims".²³⁷ For example, 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 could be misled into thinking that products or processes themselves generate no (or few) emissions when this is unlikely to be the case."²³⁸

Even if these would not be legally binding, similar guidelines issued by the Agencies would provide helpful guidance for firms willing to adequately formulate and

²³⁵ For example, see s.11 of the CA and s.305 of the CPA.

²³⁶ HM Government, *supra* note 26.

²³⁷ *Idem*.

²³⁸ *Idem*.

substantiate their claims. This would also facilitate the identification of false or misleading ads by consumers. Such guidelines could provide additional information on the taxonomy for climate-related claims that could be developed according to our recommendation #1b) or lay the foundation for the future establishment of such a taxonomy. For example, the guidelines could set out under which conditions a net-zero 2050 claim can be formulated, e.g., when an organization has set a credible timeline of interim emission reduction targets, while accounting for Scope 1, 2 and 3 emissions, and only relying on offsets that meet the criteria of the CAT Regulation or the CA Offset Regulations.

Finally, while the CA prohibits representations that are “false or misleading in a material respect”, the statute does not define what qualifies as “material”. As such, the CCB could provide guidelines on its interpretation of which climate-related representations meet the CA’s materiality threshold.

- e) **Be creative:** The CA and the CPA already provide a wide range of tools to the Agencies to tackle climate-washing, including interim injunctions, consent agreements, and voluntary undertakings. This latter example could be one way for the OPC to tackle deceptive climate claims.²³⁹ This mechanism allows the OPC to enter into a binding agreement with a group of merchants breaching the CPA. It can provide for special remedies for consumers, and the government can extend the application of the undertaking to “all merchants in the same sector of activity, for all or part of the territory of Québec”.²⁴⁰

POLICY RECOMMENDATION #3: ENSURE COHERENCE WITH OTHER CLIMATE POLICY INITIATIVES

As outlined in this report, many public and private organizations are currently developing regulations, target-setting initiatives, industry standards, and reporting frameworks to determine how firms set and substantiate climate-related claims. The accounting and reporting rules promoted by these numerous initiatives can be challenging to track, especially for smaller organizations and businesses with limited resources. For example, many Canadian companies have already formulated climate commitments under the Science Based Targets initiative (“**SBTi**” – see Appendix A), while also being members of the UN’s Race to Zero or the Government of Canada’s NZC. Many of these firms are legally required to report their GHG emissions under the provincial and federal carbon pricing frameworks and GHG emissions

²³⁹ Guillaume Talbot-Lachance, “L’engagement volontaire en droit de la consommation québécois” (2010), online : <https://corpus.ulaval.ca/jspui/handle/20.500.11794/22036?locale=fr>. Université Laval

²⁴⁰ Section 315.1 of the CPA.

disclosure rules. Some of them are also reporting issuers under provincial securities laws, and as such, they will need to disclose information on their climate-related risk exposure and their scope 1, 2, and 3 emissions if instrument NI-51-107 becomes law. Similarly, if the CAFA is adopted, many Canadian corporations will have to set climate-aligned targets and publicly disclose their transition plan and decarbonisation strategy.

As such, further regulatory reforms should avoid adding entirely new and different requirements, but rather build upon the work already conducted by standard-setting organizations, industry associations, and NGOs while remaining coherent with other legal obligations under federal and provincial law. Policymakers should ensure that firms face consistent reporting and disclosure standards that apply to financial regulations, consumer protection laws, and other mandatory regimes.

Although further policy recommendations can surely be made, we submit that the ones proposed here are the most pressing and feasible in the short term.

Appendix A

Non-exhaustive list of carbon disclosure, reporting, and target-setting frameworks²⁴¹

AMERICAN CARBON REGISTRY

The American Carbon Registry (“**ACR**”) is a non-profit enterprise which is one of the world’s first private voluntary GHG registries.²⁴² ACR operates in both global voluntary and regulated carbon markets. For instance, since December 2012, ACR has operated as an approved Offset Project Registry (“**OPR**”) for the California Cap-and-Trade program. Similarly, in March 2020, ACR was approved by the Council of the International Civil Aviation Organization (“**ICAO**”) to supply eligible ACR-issued emission reduction units for compliance under the Carbon Offsetting and Reduction Scheme for International Aviation (“**CORSIA**”), a global market-based mechanism meant to achieve carbon neutral growth in international aviation. In the voluntary market, ACR oversees the registration and independent verification of projects that meet ACR’s standards and follow ACR-approved carbon accounting methodologies.

CARBON DISCLOSURE PROJECT

The Carbon Disclosure Project (“**CDP**”) is a charity that runs a global disclosure system for investors, companies, cities, states, and regions to manage their environmental impacts, including their risks and opportunities on climate change, water security, and deforestation.²⁴³ The CDP describes its disclosure framework as fully aligned with the TCFD recommendations.²⁴⁴ Over 13,000 companies have reported through CDP on climate change, water security, and forests, often at the request of their investors, purchasers, and city stakeholders.

²⁴¹ These descriptions reflect those publicly available on each initiative’s website. They have not been verified, do not necessarily represent our views, and should not be assumed to be any form of endorsement. They are presented in alphabetical order.

²⁴² American Carbon Registry, “What We Do” (undated), online: *American Carbon Registry* <<https://americancarbonregistry.org/how-it-works/what-we-do>>.

²⁴³ Carbon Disclosure Project, “What we do” (2022), online: *Carbon Disclosure Project* <<https://www.cdp.net/en/info/about-us/what-we-do>>.

²⁴⁴ Carbon Disclosure Project, “Why disclose as a company” (2022), online: *Carbon Disclosure Project* <<https://www.cdp.net/en/companies-discloser>>.

CLIMATE ACTION 100+

Climate Action 100+ is an initiative of investors that are engaging companies on improving climate change governance, cutting emissions and strengthening climate-related financial disclosure. In signing up to this initiative, investors commit to engaging with at least one of 166 “focus” companies on the initiative’s top issues: “implement a strong governance framework on climate change; take action to reduce greenhouse gas emissions across the value chain; and provide enhanced corporate disclosure”.²⁴⁵

CLIMATE ACTION RESERVE

The Climate Action Reserve (the “**Reserve**”) began as the California Climate Action Registry, which was created by the State of California in 2001 to address climate change through voluntary calculation and public reporting of emissions.²⁴⁶ The California Registry helped California-based companies, organizations, government agencies, and municipalities to voluntarily calculate and publicly report their GHG emissions. The Reserve now establishes standards for carbon offset projects, oversees independent third-party verification bodies, issues carbon credits generated from such projects, and tracks the transaction of credits over time in a publicly accessible system.

GLASGOW FINANCIAL ALLIANCE FOR NET ZERO

The Glasgow Financial Alliance for Net Zero (“**GFANZ**”) was launched in April 2021 to unite net-zero financial sector-specific alliances from across the globe into one industry-wide strategic alliance.²⁴⁷ GFANZ members currently include more than 450 member firms from across the global financial sector, representing more than \$130 trillion in assets under management and advice. GFANZ firms’ net-zero commitments must use science-based guidelines to reach net-zero emissions across all emissions scopes by 2050, include 2030 interim target settings and commit to transparent reporting and accounting in line with Race to Zero criteria. Consultation has just ended on GFANZ’s draft Net-zero Transition Plan framework, aimed at helping financial institutions to demonstrate – and stakeholders to judge – the credibility of their plans to limit global warming to 1.5°C.²⁴⁸

²⁴⁵ Climate Action 100+, “How we work” (undated), online: <<https://www.climateaction100.org/approach/how-we-work>>.

²⁴⁶ Climate Action Reserve, “About Us” (2022), online: *Climate Action Reserve* <<https://www.climateactionreserve.org/about-us>>.

²⁴⁷ Glasgow Financial Alliance for Net Zero, “About us” (2022), online: *Glasgow Financial Alliance for Net Zero* <<https://www.gfanzero.com/about>>.

²⁴⁸ Glasgow Financial Alliance for Net Zero, “GFANZ Releases Guidance on Credible Net-zero Transition Plans and Seeks Public Input to Accelerate Action” (June 15, 2022), online:

GLOBAL REPORTING INITIATIVE

The Global Reporting Initiative is an international organization that works with businesses, investors, policymakers, civil society, labor organizations and other experts to develop sustainability standards and promote their use by organizations around the world.²⁴⁹ The GRI standard “305: Emissions 2016” relates to disclosures about firms’ emissions-related impacts.²⁵⁰ The requirements for GHG emissions in this standard are based on the requirements of the GHG Protocol accounting frameworks.

GOLD STANDARD

Gold Standard was established in 2003 by the World Wildlife Fund and other international NGOs to improve the environmental integrity of projects aimed at reducing carbon emissions.²⁵¹ In total, Gold Standard has issued 191 million carbon credits from projects based in more than 98 different countries around the world.²⁵²

GREENHOUSE GAS PROTOCOL

Greenhouse Gas Protocol manages one of the world’s most used greenhouse gas accounting standards.²⁵³ GHG Protocol provides standards, guidance, tools and training for business and government to measure and manage climate-warming emissions. Building on a 20-year partnership between World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD), GHG Protocol works with governments, industry associations, NGOs, businesses, and other organizations.

INTERNATIONAL STANDARDS ORGANIZATION

The International Standards Organization is an independent, non-governmental worldwide federation of 167 national standards bodies.²⁵⁴ Through its members, it brings together experts

< <https://www.gfanzero.com/press/gfanz-releases-guidance-on-credible-net-zero-transition-plans-and-seeks-public-input-to-accelerate-action> >.

²⁴⁹ Global Reporting Initiative, “About GRI” (2022), online: *Global Reporting Initiative* < <https://www.globalreporting.org/about-gri> >.

²⁵⁰ Global Reporting Initiative, “How to use the GRI Standards” (2022), online: *Global Reporting Initiative* < <https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language> >.

²⁵¹ Gold Standard, “About Us” (2022), online: *Gold Standard* < <https://www.goldstandard.org/about-us/vision-and-mission> >.

²⁵² Gold Standard, “Environmental Markets” (2022), online: *Environmental Markets* < <https://www.goldstandard.org/impact-quantification/environmental-markets> >.

²⁵³ Greenhouse Gas Protocol, *supra* note 67.

²⁵⁴ International Standards Organization, “About Us” (undated), online: *International Standards*

to share knowledge and develop voluntary, consensus-based international standards. The work of preparing these standards is normally carried out through ISO technical committees where members have the right to be represented.²⁵⁵ ISO has published and is developing various standards relating to environmental management, including ISO 14021:2016/AMD 1:2021, which focuses on self-declared environmental claims, including carbon neutrality claims. Under this standard, the carbon footprint of a product is defined as the sum of GHG emissions and GHG removals in a product system, expressed as CO₂ equivalents and based on a life cycle assessment using the single impact category of climate change”. Standard ISO 14064, on the other hand, provides guidance on the quantification of GHG emissions and removal at the organization level (ISO 14064-1:2018), project level (ISO 14064-2:2019) and for the verification and validation of GHG statements (ISO 14064-3:2019).

RACE TO ZERO

Race to Zero is an UN-backed global campaign rallying non-state actors – including companies, cities, regions, financial and educational institutions – to halve global emissions by 2030 to work towards a zero carbon world.²⁵⁶ All members commit to reducing emissions across all scopes swiftly and fairly in line with the Paris Agreement, with action plans and near-term targets. It is intended to mobilize a coalition of net-zero initiatives, representing many regions, cities, companies, educational institutions, etc.

SCIENCE-BASED TARGETS INITIATIVE

The Science Based Targets initiative is a partnership between multiple international organizations that has developed a voluntary certification for companies committing to carbon neutrality.²⁵⁷ The SBTi “Net-Zero Standard” defines corporate net-zero as:

- “Reducing scope 1, 2, and 3 emissions to zero or to a residual level that is consistent with reaching net-zero emissions at the global or sector level in eligible 1.5°C-aligned pathways”; and
- “Neutralizing any residual emissions at the net-zero target year and any GHG emissions released into the atmosphere thereafter”.²⁵⁸

Organization <<https://www.iso.org/about-us.html>>.

²⁵⁵ International Standards Organization, *supra* note 133.

²⁵⁶ Race to Zero, *supra* note 42.

²⁵⁷ Science Based Targets, “SBTi Corporate Net-zero Standard” (October 2021), online: *Science Based Targets* <<https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>>.

²⁵⁸ *Idem*.

TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES

The Task Force on Climate-related Financial Disclosures was created in 2015 by the Financial Stability Board to develop recommendations on the types of information that companies should disclose to support investors, lenders, and insurance underwriters in appropriately assessing and pricing risks related to climate change.²⁵⁹ In 2017, the TCFD released climate-related financial disclosure recommendations designed to help companies provide better information to support informed capital allocation. These recommendations are structured around four thematic areas:

- **Governance:** Organization’s governance around climate-related risks and opportunities.
- **Strategy:** Actual and potential impacts of climate-related risks and opportunities on the organization’s businesses, strategy, and financial planning.
- **Risk management:** Processes used by the organization to identify, assess, and manage climate-related risks.
- **Metrics and targets:** Used to assess and manage relevant climate-related risks and opportunities.²⁶⁰

One of the Task Force’s key recommended disclosures focuses on the resilience of an organization’s strategy, taking into consideration different climate-related scenarios, including a 2° Celsius or lower scenario.²⁶¹ While compliance with the TCFD’s recommendations is voluntary in principle, some countries have started to incorporate them into their securities laws, including Canada and the United States.²⁶²

TRANSITION PATHWAY INITIATIVE

The Transition Pathway Initiative (“**TPI**”) is a global initiative led by asset owners and supported by asset managers. Aimed at investors and free to use, it assesses companies’ preparedness

²⁵⁹ Task Force on Climate-Related Financial Disclosures, “About” (2022), online: *Task Force on Climate-Related Financial Disclosures* <<https://www.fsb-tcfd.org/about>>.

²⁶⁰ Task Force on Climate-Related Financial Disclosures, “Recommendations of the Task Force on Climate-related Financial Disclosures” (June 2017), online: *Task Force on Climate-Related Financial Disclosures* <<https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>>.

²⁶¹ *Idem*.

²⁶² Canadian Securities Administrators, *supra* note 18; U.S. Securities and Exchange Commission, “SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors” (March 21, 2022), online: *United States* <<https://www.sec.gov/news/press-release/2022-46>>.

for the transition to a low-carbon economy, supporting efforts to address climate change.²⁶³ As of July 2022, 131 investors globally had pledged support for the TPI, representing over \$50 trillion combined Assets under Management and Advice. Using publicly disclosed company information, the TPI evaluates and tracks the quality of companies' management of their GHG emissions and of risks and opportunities related to the low-carbon transition, and evaluates how companies' planned or expected future carbon performance compares to international targets and national pledges made as part of the Paris Agreement. On its website, the TPI indicates being aligned with the requirements of the TCFD.

VERRA'S "VERIFIED CARBON STANDARD"

The Verified Carbon Standard ("VCS") is a voluntary GHG certification program.²⁶⁴ Once projects have been certified against the VCS Program's set of rules and requirements, project developers can be issued tradable GHG credits called Verified Carbon Units ("VCUs"). Those VCUs can then be sold on the open market and retired by individuals and companies to offset their emissions. All VCS projects are subject to desk and field audits by both independent third parties and Verra staff.

VOLUNTARY CARBON MARKETS INTEGRITY INITIATIVE

The Voluntary Carbon Markets Integrity Initiative ("VCMI") was launched in July 2021 with co-funding from the UK Government.²⁶⁵ The VCMI is a multi-stakeholder initiative that focuses on the integrity of use of voluntary carbon markets and what can be done on a global scale to ensure they actually support the goals of the Paris Agreement. In 2022, VCMI issued a draft Claims Code of Practice to guide the voluntary use of carbon credits and associated claims.²⁶⁶ In particular, the Code seeks to indicate what constitutes "high integrity" voluntary use of carbon credits by companies and other non-state actors, and provides guidelines on what companies and non-state actors can credibly claim about their use.²⁶⁷

²⁶³ Transition Pathway Initiative, "Overview of the TPI" (2022), online: Transition Pathway Initiative <<https://www.transitionpathwayinitiative.org/overview>>.

²⁶⁴ Verified Carbon Standard, "The VCS Program" (2022), online: Verified Carbon Standard <<https://verra.org/project/vcs-program>>.

²⁶⁵ Voluntary Carbon Markets Integrity Initiative, "Press Release: Global businesses invited to test world-first voluntary carbon credit Provisional Claims Code of Practice" (June 14, 2022), *Voluntary Carbon Markets Integrity Initiative* <<https://bit.ly/3fndTsz>>.

²⁶⁶ Voluntary Carbon Markets Integrity Initiative, "Consultation Hub" (undated), online: *Voluntary Carbon Markets Integrity Initiative* <<https://vcmintegrity.org/consultation-hub>>.

²⁶⁷ Voluntary Carbon Markets Integrity Initiative, "Provisional Claims Code of Practice – User Guide" (June 7, 2022), online: *Voluntary Carbon Markets Integrity Initiative* <<https://vcmintegrity.org/vcmi-claims-code-of-practice/>>.

Appendix B

Comparison between different net-zero frameworks

This table identifies the key requirements of some of the main net-zero target-setting and reporting frameworks and standards used in Canada and abroad. The inclusion of a framework or standard in this table does not mean that the authors endorse the practices they recommend. Moreover, this table is a high-level summary; as such, it does not provide a comprehensive description of the requirements set in the frameworks. Furthermore, we note that the science upon which net-zero frameworks are built is rapidly evolving. As such, standard-setting organizations tend to regularly update their guidance documents to reflect new developments. We, therefore, refer the reader to the standard-setting organizations' websites for the most detailed and recent information on the content of the frameworks and standards mentioned below.

Framework ²⁶⁸	Government of Canada’s Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi’s Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
Context/Purpose	<p>The NZC a voluntary initiative that aims to encourage businesses operating in Canada to develop and implement plans to transition to net-zero emissions by 2050. The NZC has three participation streams:</p> <ul style="list-style-type: none"> (i) Stream 1: Large industrial emitters (for example, from the oil & gas sector) 	<p>This standard provides a step-by-step guide for companies to use in quantifying and reporting their GHG emissions.</p>	<p>Race to Zero’s criteria set a minimum floor for the net-zero commitments of its members. Race to Zero is developing an accountability mechanism to ensure that members who persistently fail to comply with these criteria will be removed from the Race.</p> <p>There are two categories of criteria set by Race to Zero: (i) the “Starting line” criteria lay out minimum requirements for all members to meet, below which members cannot fall if</p>	<p>The SBTi’s Corporate Net-Zero Standard provides guidance, criteria, and recommendations to support corporations in setting net-zero targets through the SBTi. The intended audience for this Standard is corporations with more than 500 employees that wish to commit net-zero targets</p>	<p>The purpose of the Provisional Claims Code of Practice is to communicate guidance on how carbon credits can be voluntarily used and claimed by businesses and others as part of net-zero strategies. VCMI’s intention is to issue a final Claims Code in late 2022 or early 2023.</p>

²⁶⁸ The technical criteria set by ISO standards are only available to ISO’s paying customers. As such, we did not include these standards in our review.

²⁶⁹ Government of Canada, “Net-Zero Challenge Technical Guide” (July 2022), online: Canada <<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/challenge/technical-guide.html>>.

²⁷⁰ Greenhouse Gas Protocol, “A Corporate Accounting and Reporting Standard – Revised Edition” (March 2004), online: *Greenhouse Gas Protocol* <<https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>>.

²⁷¹ Race to Zero, “Starting Line and Leadership Practices 2.0” (2021), online: <<https://climatechampions.unfccc.int/wp-content/uploads/2022/06/Race-to-Zero-Criteria-3.0-4.pdf>>; Race to Zero Expert Peer Review Group, “Interpretation Guide” (2021), online: *Race to Zero* <<https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-EPRG-Criteria-Interpretation-Guide.pdf>>.

²⁷² Science Based Targets Initiative, “SBTi Corporate Net-Zero Standard – Version 1.0” (October 2021), online: *Science Based Targets Initiative* <<https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>>.

²⁷³ Voluntary Carbon Markets Integrity Initiative, “Provisional Claims Code of Practice – User Guide” (June 7, 2022), online: Voluntary Carbon Markets Integrity Initiative <https://vcmintegrity.org/wp-content/uploads/2022/07/Claims_Code_Pullout_Final_July-7-2022.pdf>.

Framework ²⁶⁸	Government of Canada’s Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi’s Corporate Net-Zero Standard ²⁷²	VCMi Provisional Claims Code of Practice ²⁷³
	<p>(ii) Stream 2: Financial institutions</p> <p>(iii) Stream 3: All other companies, including small- and medium-sized enterprises</p> <p>The NZC Technical Guide includes two types of requirements: minimum requirements and recommendations / best practices. NZC Participants must at least comply with the minimum requirements to remain in the initiative. If they comply with some of the recommendations, participants may also achieve one of five “participation tier” statuses, which range from Bronze to Diamond.</p>		<p>they wish to join and remain in the campaign; and (ii) the “Leadership practices” signal how leading entities can “light the way to a net-zero world.” In this table, we only refer to the “Starting Line” criteria.</p>	<p>through the SBTi.</p>	

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
<p>Timeline of pledge (interim and final)</p>	<p>Net-zero pledge By signing a commitment letter, participants agree to:</p> <ul style="list-style-type: none"> (i) Set a net-zero emissions target for 2050 or earlier; (ii) Develop a preliminary net-zero plan within 12 months of joining the Challenge and a comprehensive net-zero plan within 24 months of joining; (iii) Set at least two interim emissions reduction targets consistent with achieving net-zero emissions by 2050 or earlier <p>Base year Participants with established GHG emissions inventories can use their current baseline as part of the challenge even if it</p>	<p>N/A.</p>	<p>Net-zero pledge Members shall pledge at the head-of-organization level to reach net-zero GHGs as soon as possible and by 2050 at the latest. Members should reduce emissions to absolute zero with no remaining residual emissions or go further and ensure their activities remove more GHGs than they produce.</p> <p>Base year Members are expected to specify a base year for their emissions reduction targets.</p> <p>Interim targets Members should also set an interim target to achieve in the next decade, which reflects maximum effort toward or beyond a “fair share” of the 50% global reduction in CO₂ by 2030.</p> <p>Members should set specific targets for the short-term reduction of methane and other GHGs. They should also pledge to reduce methane emissions by at least 34% by 2030,</p>	<p>Net-zero pledge Companies that aim to reach a state of net-zero emissions in a timeframe that exceeds 10 years shall set both near-term and long-term “science-based” emission reduction targets.</p> <p>Base year Tracking emissions performance over the target period requires companies to establish a base year. It is recommended that companies choose the most recent year for which data are available as the base year. The base year should be representative of a company's typical GHG profile.</p>	<p>Long-term targets Before making voluntary use of carbon credits (and making a VCMI claim), companies must make a public commitment to achieve “science-aligned” long-term net-zero emissions no later than 2050, covering Scopes 1, 2, and 3.</p> <p>Interim targets Before making voluntary use of carbon credits, companies must also publicly set interim emission reduction targets that:</p> <ul style="list-style-type: none"> (i) include a first near-term emission reduction target for 2025, or within two years of making a

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
	<p>dates back several years and only includes a portion of their Scope 3 emissions, so long as participants expand their baseline GHG emissions inventory to include all emissions in their net-zero plans, as per the minimum requirements. For the latter, the baseline should be set as close to the present date as possible, but no earlier than five years prior to developing the preliminary plan.</p> <p>Interim targets Participants must develop at least 2 interim targets, unless their net-zero target is set for 2040 or earlier. The interim targets must be anchored to specific years, such as 2030 or 2040.</p> <p>(i) The first interim target must be set at least</p>		<p>in line with the IPCC's 6th Assessment Report, and make near-term pledges to reduce other high global warming potential GHG emissions.</p> <p>Review and update Members should review their pledge on a 5-year cycle, in line with the Paris Agreement.</p>	<p>Long-term targets Long-term targets shall have a target year no later than 2050. For companies in sectors that reach net-zero before 2050 (e.g., power generation), long-term targets covering relevant activities must have a target year no later than the sector's year of net-zero in eligible 1.5°C pathways.</p> <p>Interim targets Interim targets must cover a minimum of 5 years from the base year and a maximum of 10 years from the date the target is submitted to the SBTi for official validation. The SBTi offers a cross-sector</p>	<p>public long-term net-zero commitment;</p> <p>(ii) include subsequent emissions reduction target(s) with target dates no more than five years apart, established by the date of the preceding target; and</p> <p>(iii) follow SBTi guidance for setting the target boundary and emissions coverage.</p> <p>Different standards The Code provides for three different certification standards, which involve different levels of stringency: VCMI Gold, Silver and Bronze.</p> <p>VCMI Gold</p>

Framework ²⁶⁸	Government of Canada’s Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi’s Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
	<p>five years from the date of joining the Challenge, but no later than 2035.</p> <p>(ii) The second interim target must be set at least five years from the date of the first interim target, but no later than 2045.</p> <p>Long-term targets Participants must have a net-zero target that meets the following requirements:</p> <p>(i) The net-zero target must be set no later than 2050.</p> <p>(ii) The net-zero target can include the use of offset credits.</p> <p>(iii) The net-zero target must include all the GHG emissions</p>			<p>pathway and sector-specific pathways for setting science-based targets. Companies in the power generation sector and forestry, land-use, and agriculture (FLAG) sectors are required to set targets using sector-specific pathways. For all other companies, the cross-sector pathway is eligible and recommended for setting absolute targets. Using the cross-sector pathway, companies can set near-term targets that reduce emissions at a linear annual rate of 4.2%; however, some sector-specific pathways vary significantly from the cross-sector pathway in the near term.</p>	<p>To achieve VCMI Gold, a company must be on track to achieve its next interim target for Scopes 1, 2, and 3 through emissions reductions within its value chain and have covered 100% of its remaining unabated emissions through the purchase and retirement of “high-quality” carbon credits.</p> <p>VCMI Silver To achieve VCMI Silver, a company must be on track to achieve its next interim target for Scopes 1, 2, and 3 through emissions reductions within its value chain and have covered at least 20% of all remaining unabated emissions through the purchase and retirement of “high-quality”</p>

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
	<p>included in the GHG emissions inventory, including scope 1, scope 2, and if applicable, scope 3 emissions. This includes required scope 3 emissions categories and scope 3 emissions categories that participants choose to include in their net-zero plans. The net-zero target may be expressed as an absolute emissions reduction target or an emissions intensity target.</p>				<p>carbon credits. The proportion of remaining unabated emissions covered through the purchase and retirement of carbon credits must increase over time. In other words, if a company purchases and retires carbon credits to cover 20% of its remaining unabated emissions in the first year it makes a VCMI Silver claim, it must purchase and retire credits to cover more than 20 percent in the following year in order to retain the claim.</p> <p>VCMI Bronze To achieve VCMI Bronze, a company must be on track to achieve its next interim target for Scopes 1 and 2 through emissions</p>

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
					<p>reductions within its value chain. It must also reduce its Scope 3 emissions through a combination of emissions reductions within its value chain and the purchase and retirement of carbon credits (up to a maximum of 50% of its Scope 3 footprint) to the level required for its interim target. In addition, it must have covered at least 20% of all remaining unabated emissions through the purchase and retirement of high-quality carbon credits. The VCMI Bronze claim is only available until 2030, by which time a company must be fully on track to achieve its next interim target for Scope 3 through internal emissions reductions only and</p>

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
					thereby "graduate" to VCMI Silver.

Framework ²⁶⁸	Government of Canada’s Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi’s Corporate Net-Zero Standard ²⁷²	VCMI Provisional Claims Code of Practice ²⁷³
<p>Scope and attribution rules</p>	<p>Accounting rules The Net-Zero Challenge also references the GHG Protocol and recommends that participants follow its guidance to develop and update their GHG emissions inventory. Participants can also use other widely accepted methodologies and tools to develop their GHG emissions inventory, such as ISO 14064. In addition to having a GHG emissions inventory, participants that have facilities that report to Canada’s Greenhouse Gas Reporting Program must provide the aggregate total emissions reported to the GHGRP from all facilities for scope 1 or submit scope 1 emissions for their Canadian operations.</p> <p>As much as possible,</p>	<p>Consolidation approach For corporate reporting, two distinct approaches can be used to consolidate GHG emissions: the equity share and the control approaches. Companies shall account for and report their consolidated GHG data according to either approach.</p> <p>General guidance on Scope 1-2-3 Three “scopes” (Scope 1, Scope 2, and Scope 3) are defined for GHG accounting and reporting purposes. Scopes 1 and 2 are carefully defined in this standard to ensure that two or more companies will not account for emissions in the same scope. This makes the scopes amenable for use in GHG programs where double</p>	<p>General guidance on Scope 1-2-3 Targets must cover all greenhouse gas emissions, including Scope 1, 2, and 3 for businesses and other organizations. For financial entities, targets shall include all portfolio/financed/facilitated/insured emissions.</p> <p>Reductions versus removals Members should set twin targets for reductions and removals. In addition to their emissions reduction targets, they should compensate for any unabated emissions year on year through investment in “high quality” carbon credits, disclose neutralization milestones that demonstrate the integrity of commitments to neutralize unabated emissions, and state how they plan to ultimately neutralize any residual emissions by 2050 through “high-quality”, permanent removals.</p> <p>Scope 3 Net-zero targets should cover, on average, 90% of emissions, including scope 3</p>	<p>Consolidation It is recommended that companies submit targets only at the parent or group level, not the subsidiary level. Parent companies must include the emissions of all subsidiaries in their target submission. In cases where both parent companies and subsidiaries submit targets, the parent company’s target must also include the emissions of the subsidiary if it falls within the parent company’s emissions boundary given the chosen inventory consolidation approach.</p> <p>The SBTi strongly recommends that a</p>	<p>See the “Timeline of pledge” column.</p>

Framework ²⁶⁸	Government of Canada's Net-Zero Challenge ²⁶⁹	GHG Protocol Corporate Accounting and Reporting Standard ²⁷⁰	Race to Zero Criteria ²⁷¹	SBTi's Corporate Net-Zero Standard ²⁷²	VCMi Provisional Claims Code of Practice ²⁷³
	<p>participants' GHG emissions inventories should centre on Canadian domestic operations.</p> <p>Consolidation approach Participants may use any of the GHG Protocol Corporate Standard's approaches when defining their organizational boundary.</p> <p>General guidance on Scope 1-2-3 The key difference between the NZC's three streams is in the scope of emissions that are required in the net-zero plan. All participants must include scope 1 and 2 emissions, while there are different requirements for scope 3 emissions. If a participant does not have scope 1 or 2 emissions to report, this must</p>	<p>counting matters. Companies shall separately account for and report on scopes 1 and 2 at a minimum.</p> <p>Double counting The GHG Protocol Corporate Standard is designed to prevent double counting of emissions between different companies within scopes 1 and 2. When used in external initiatives such as GHG trading, the robustness of the scope 1 and 2 definitions combined with the consistent application of either the control or equity share approach for defining organizational boundaries allows only one company to exercise ownership of scope 1 or scope 2 emissions.</p>	<p>upstream and downstream, or the equivalent territorial scope, where they are material to total emissions and where data availability allows them to be measured "sufficiently". This includes land use emissions.</p> <p>Scope 3 for financial institutions should mean including portfolio/loan book/insured/facilitated emissions, which are composed of the investee companies and/or clients' emissions, including Scope 3 of the underlying investee companies and/or clients.</p> <p>While the initiative recognizes that data availability is a limitation, it interprets "sufficiently" to imply a low bar for inclusion. Furthermore, the initiative considers it incumbent on actors setting net-zero pledges to work to expand data availability to capture all non-trivial emissions over time as part of their overall effort to reach net-zero.</p>	<p>company's organizational boundary, as defined by the GHG Protocol Corporate Standard, is consistent with the organizational boundary used in the company's financial accounting and reporting procedures.</p> <p>General guidance on Scope 1-2-3 The targets must cover all relevant GHGs as required per the GHG Protocol Corporate Standard. The targets must cover company-wide scope 1 and scope 2 emissions, as defined by the GHG Protocol Corporate Standard. At a minimum, scope 1 and scope 2 targets must be consistent with the level of</p>	

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	<p>be explained in the Participation Checklists.</p>			<p>decarbonization required to keep the global temperature increase to 1.5°C compared to pre-industrial temperatures. This applies to both interim and long-term targets.</p> <p>Scope 1-2 Companies may exclude up to 5% of scope 1 and scope 2 emissions combined in the boundary of the inventory and target.</p> <p>Scope 3 If a company's relevant scope 3 emissions are 40% or more of total scope 1, 2, and 3 emissions, scope 3 must be included in the interim targets.</p>	

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				<p>All companies involved in the sale or distribution of natural gas and/or other fossil fuels shall set scope 3 targets for the use of sold products, irrespective of the share of these emissions compared to the total scope 1, 2, and 3 emissions of the company. All companies shall include emissions from all relevant scope 3 categories in long-term targets.</p> <p>Companies must set one or more emission reduction targets and/or supplier or customer engagement targets that collectively cover(s) at least two-thirds (67%) of total scope 3 emissions</p>	

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				<p>considering the minimum boundary of each category in conformance with the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard.</p> <p>The boundary of long-term science-based targets shall cover at least 90% of total scope 3 emissions. Exclusions in the GHG Inventory and target boundary must not exceed 10% of total scope 3 emissions.</p> <p>At a minimum, interim scope 3 targets must be aligned with methods consistent with the level of decarbonisation required to keep global temperature increase well</p>	

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				<p>below 2°C compared to pre-industrial temperatures. For long-term scope 3 targets, this minimum ambition is increased to 1.5°C.</p>	

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<p>Offsets and credits</p>	<p>Prioritize own reductions Participants should first seek to avoid and reduce as much of their own scope 1, 2, and 3 emissions as possible, and then use offset credits as a last resort to compensate for any residual emissions, including hard-to-abate emissions.</p> <p>Characteristics of “high quality” credits Participants must explicitly state whether or not they plan to use offset credits and for which scope(s) of emissions. Offset credits can be purchased by the participant from compliance-based offset systems or voluntary programs.</p> <p>Participants should ensure that all offset credits used reflect additional, quantified, verified,</p>	<p>Offsets quantification Project reductions that are to be used as offsets should be quantified using a project quantification method, such as the GHG Protocol Project Quantification Standard. This standard requires the:</p> <ul style="list-style-type: none"> (i) selection of a baseline scenario that represents what would have happened in the absence of the project; (ii) demonstration of additionality, i.e., whether the project has resulted in emission reductions or removals in addition to what would have happened in the absence of the project; (iii) identification of relevant secondary effects (e.g., the small, unintended GHG 	<p>Priority to internal emissions reductions Members are required to prioritize internal emissions reductions in line with global efforts to halve emissions by 2030 and reach global net-zero by 2050 through deep decarbonization.</p> <p>In parallel – but by no means as a substitute for reducing their own emissions – entities are encouraged to contribute beyond their value chain or territory to a global net-zero state by mobilizing resources towards protecting biodiversity, building resilience, and removing carbon to compensate for unabated emissions on their pathway towards the end state net-zero.</p> <p>Characteristics of “high quality” credits Where carbon credits are purchased (whether they are from within the value chain or beyond the value chain), they should be of high quality and should be independently verified against standards to ensure that they deliver real and quantifiable mitigation, e.g., by:</p>	<p>Restricted use for reduced emissions The use of carbon credits must not be counted as emission reductions toward the progress of companies’ interim or long-term science-based targets. Carbon credits may only be considered to be an option for neutralizing residual emissions or to finance additional climate mitigation beyond their science-based emission reduction targets.</p> <p>Separate accounting for avoided emissions Avoided emissions fall under a separate accounting system from corporate inventories and do not count toward</p>	<p>Definition of “high-quality” All credits used as the basis for credible claims must be “high quality” and meet “basic criteria”. VCMI does not provide detailed guidance for what constitutes a high-quality carbon credit; instead, VCMI acknowledges the work of CORSIA and the ICVCM to identify cross-cutting quality criteria for carbon credits.</p> <p>Third-party certification To meet the “basic criteria” for “high-quality credits” used toward any claim, the credits must be associated with a recognized and “credibly governed” standard-setting body that provides transparent,</p>

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	<p>unique, permanent, and real emissions reductions. In a given year, participants should aim to use offset credits that have been issued no more than 8 years ago. In addition, if an offset credit is used, and is then found to be invalid at a later time, the participant must add those emissions back to their GHG emissions inventory or compensate for those emissions by purchasing and retiring additional offset credits.</p> <p>Prioritize government offset systems Participants may choose to purchase domestic offset credits generated from the voluntary offset market. For Canadian operations, it is strongly recommended that</p>	<p>consequences of a project such as changes in the availability or quantity of a product or service that results in changes in GHG emissions elsewhere) as well as changes in GHG emissions up- and downstream of the project;</p> <p>(iv) considerations of irreversibility; and</p> <p>(v) avoidance of double counting.</p> <p>No generally accepted methodologies There are currently no generally accepted methodologies for quantifying GHG offsets. The uncertainties that surround GHG project accounting make it difficult to establish that an offset is</p>	<p>(i) applying accurate, conservative baselines,</p> <p>(ii) ensuring additionality,</p> <p>(iii) including measures to fully address the risk of reversals,</p> <p>(iv) minimizing and account for leakage,</p> <p>(v) without double counting.</p> <p>Companies should report transparently on the use of carbon credits, verification standards used, and the quantity and quality of gross emissions and credits retired.</p> <p>Companies should pay a “fair price” for carbon credits and enhance transparency to account for the costs developing countries and private project developers incur in ensuring “high integrity” supply.</p>	<p>interim or long-term science-based emission reduction targets.</p>	<p>independent, and robust processes for quantification, validation, registration, monitoring, verification, approval, and retirement tracking”.</p> <p>Basic criteria Carbon credits must</p> <p>(i) reflect reductions and/or removals that go beyond those that would occur in the absence of demand for carbon credits;</p> <p>(ii) be monitored, measured, robustly quantified, and independently verified by a credible, independent third party; and</p> <p>(iii) be generated from activities that have measures in place to</p>

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	<p>participants only use offset credits that are issued by Canadian federal and provincial government offset systems, as doing so can help ensure that the offset credits meet all of the general guidelines mentioned above and can help participants achieve a higher participation tier.</p> <p>To achieve the NZC’s highest participation tier, participants must ensure that 100% of the offset credits used to reduce emissions at their Canadian operations and facilities, for current and future reporting years, are issued by Canadian federal or provincial government offset systems. If the credits are not purchased from government offset systems, it is strongly</p>	<p>equivalent in magnitude to the internal emissions it is offsetting. This is why companies should always report their own internal emissions in separate accounts from offsets used to meet the target, rather than providing a net figure. It is also important to carefully assess the credibility of offsets used to meet a target and to specify the origin and nature of the offsets when reporting. Information needed includes:</p> <ul style="list-style-type: none"> (i) the type of project; (ii) geographic and organizational origin; (iii) how offsets have been quantified; and (iv) whether they have been recognized by external programs. 			<p>address material risks of non-permanence and leakage.</p> <p>They must also comply with different rules on environmental quality, human rights, and socio-economic impact (see column “SDGs”).</p>

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	<p>recommended that participants seek offset credits generated from voluntary offset programs that align with the <i>Pan-Canadian Greenhouse Gas Offsets Framework</i>.</p>				
<p>Transition plan and actions</p>	<p>Preliminary transition plan A preliminary net-zero plan must be developed within 12 months of joining the Challenge. It is required that the preliminary net-zero plan include a net-zero 2050 pledge, a GHG emissions inventory baseline and information on climate-related financial disclosures.</p>	<p>N/A.</p>	<p>Delay to submit Within 12 months of joining, members should publicly disclose a "Transition Plan" or equivalent which outlines how all other Race to Zero criteria will be met, including what actions will be taken within the next 12 months, within 2-3 years, and by 2030, and outline efforts for any plans to remove carbon from the atmosphere.</p> <p>Duty to update Transition plans shall be updated on a</p>	<p>N/A</p>	<p>Before making voluntary use of carbon credits (and making a VCMI claim), companies must provide information on the plans and strategies adopted to achieve their targets, including the current and expected use of "high-quality" carbon credits, within and outside supply</p>

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	<p>Comprehensive transition plan A comprehensive net-zero plan must be developed within 24 months of joining the Challenge. In addition to the information contained in the preliminary plan, the comprehensive plan must include:</p> <ul style="list-style-type: none"> (i) at least one of the two interim targets and the net-zero target; (ii) a high-level description of the scenario analysis conducted to identify net-zero pathways; (iii) a high-level description of some mitigation strategies; and (iv) a description of the corporate governance strategy. <p>Updating the comprehensive</p>		<p>regular basis, demonstrating progress made and updated ambition where relevant.</p> <p>GHG reduction path Transition plans should specify the amount and nature of planned GHG reductions and removals, both internal and external.</p> <p>Governance Transition plans should indicate who is responsible for deciding and implementing the different elements of the plan.</p>		<p>chains, and associated risks and opportunities, consistent with recognized guidance (e.g., the International Sustainability Standards Board).</p>

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	<p>transition plan The comprehensive net-zero plan should be reviewed and updated at least once every five years.</p>				
<p>Disclosure obligations</p>	<p>Reporting format Participants must submit Participation Checklists attesting to the development of their preliminary and comprehensive net-zero plans. These checklists ask a series of questions to determine whether the participant has met the minimum requirements and to determine placement in the participation tiers. For each response in the Participation Checklists, participants must provide evidence in support of their response. Completed Participation Checklists submitted to Environment and</p>	<p>User-friendly Information needs to be recorded, compiled, and analyzed in a way that enables internal reviewers and external verifiers to attest to its credibility.</p> <p>Disclosure of exclusions and gaps Specific exclusions or inclusions need to be clearly identified and justified, assumptions disclosed, and appropriate references provided for the methodologies applied and the data sources used. The information should be</p>	<p>Annual reporting At least annually, members should publicly report progress against both interim and longer-term targets, as well as the actions being taken.</p> <p>Disclosure of exclusions and gaps Any exclusion of emissions from quantitative scope 3 targets above the proposed 90% inclusion should be motivated and explained.</p> <p>Organizations should also develop and publish measurable plans to narrow data gaps in their targets and target monitoring, expand coverage of Scope 3 emissions, and improve overall data quality over time.</p> <p>Channel</p>	<p>Target disclosure Companies shall publicly set a net-zero target that communicates each of the relevant components of the target, including:</p> <ul style="list-style-type: none"> (i) net-zero target year; (ii) magnitude of emissions reductions that will be achieved for interim and long-term targets; and (iii) base year. <p>GHG inventory and progress The company shall publicly report its</p>	<p>Public GHG emissions inventory Before making voluntary use of carbon credits (and making a VCMI claim), companies must maintain a publicly available GHG emissions inventory that follows the GHG Protocol (or equivalent). The inventory must cover all Scope 1, 2, and 3 emissions. The company must also make a public statement declaring that the company's advocacy activities – either individually or through trade bodies of which it is a</p>

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	<p>Climate Change Canada can be made publicly available upon request.</p> <p>Reporting timeline Participants are required to report on progress annually by filling out the Annual Progress Participation Checklist. The first Annual Progress Participation Checklist must be submitted within 18 months of submitting the Comprehensive Net-Zero Plan Participation</p> <p>No obligation to publish a report Participants must report on progress annually by completing the Annual Progress Participation Checklist. In addition,</p>	<p>sufficient to enable a third party to derive the same results if provided with the same source data. A “transparent” report will provide a clear understanding of the issues in the context of the reporting company and a meaningful assessment of performance.</p> <p>External verification Independent external verification is a good way of ensuring transparency and determining that an appropriate audit trail has been established and documentation provided.</p> <p>Required information A publicly available GHG</p>	<p>Reporting may be done through any public channel, in a standardized and open format, ideally including those that feed into the United Nations Framework Convention on Climate Change’s Global Climate Action Portal. This aggregator relies on partnerships with data providers like the Carbon Disclosure Project, Local Governments for Sustainability, and others.</p> <p>Interim progress Reports should provide clarity both on progress toward interim targets as well as the steps entities are taking to deliver that progress.</p> <p>Affiliations Reports should disclose the trade associations an entity is affiliated with and should highlight how an entity is aligning its policy activities with its net-zero operations.²⁷⁴</p>	<p>company-wide GHG emissions inventory and progress against published targets on an annual basis. Companies shall publicly report information pertaining to progress against validated targets, including separately reporting emissions and removals in the annual GHG Inventory, as specified by current SBTi criteria.</p> <p>Channel There are no specific requirements regarding where the inventory and progress against published targets should</p>	<p>member – are consistent with the goals of the Paris Agreement and do not represent a barrier to ambitious climate regulation.</p> <p>Third-party verification Compliance with all the prerequisites needed to make a VCMI claim must be confirmed by a credible, independent third party.</p> <p>Companies may make a claim in any year, provided that they can demonstrate – through verification by a credible, independent third party – that their emissions and ongoing</p>

²⁷⁴ Some authors argue that the private sector should depart from traditional lobbying practices and advocate for *more* stringent climate policy. See: James Temple, “We must fundamentally rethink

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	<p>participants are strongly encouraged to publicly disclose as much of their net-zero planning as possible on their websites, and to report on their progress annually. In the simplest form, a stand-alone net-zero report should be a downloadable document that includes all the required elements in the comprehensive net-zero plan.</p>	<p>emissions report that is in accordance with the GHG Protocol Corporate Standard shall include:</p> <ul style="list-style-type: none"> (i) a description of the company and inventory boundary, including emissions data for all six GHGs separately (CO₂, CH₄, N₂O, HFCs, PFCs, SF₆) in metric tonnes and in tonnes of CO₂ equivalent; (ii) the methodologies used to calculate or measure emissions, providing a reference or link to any calculation tools used; and <p>any specific exclusions of sources, facilities, and/or</p>	<p>Separate reporting for credits Entities are encouraged to report their carbon credits and efforts beyond their value chain (or equivalent) as separate from their operational emissions reductions.</p> <p>Disclosure of negative impacts Entities are encouraged to publicly report negative impacts related to the company that do not fall under Scopes 1-3, and to identify opportunities to drive these down.</p>	<p>be disclosed, as long as it is publicly available.</p>	<p>decarbonization plans are consistent with the claim. This means that for every year a company wishes to make or maintain a claim, the company must meet the VCMI Prerequisites and demonstrate progress toward achievement of its next interim goal as confirmed by a credible, independent third party.</p> <p>Reporting format and content Companies must report full information in publicly available annual corporate sustainability or similar reports to demonstrate that prerequisites and claim</p>

"net-zero" climate plans. Here are six ways." (August 24, 2022), online: *MIT Technology Review* <<https://www.technologyreview.com/2022/08/24/1058459/we-must-fundamentally-rethink-net-zero-climate-plans-here-are-six-ways-how>>.

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SDGs		operations.			<p>requirements have been met.</p> <p>Companies must also convey in these reports how they use carbon credits toward their climate commitments, goals, targets, and claims, including by providing specific information on the quantity and characteristics of the credits (including project name, registry used, etc.).</p>
	<p>Corporate governance As part of the comprehensive net-zero plan, participants must provide a description of their corporate governance strategy. This should demonstrate how net-zero</p>	N/A	<p>Nature Members shall pledge to halt deforestation and protect biodiversity. They should also pledge to make finance consistent with "climate resilient development" including ending deforestation and conversion of other natural ecosystems, and respecting</p>	<p>Beyond value chain mitigation Companies should take action or make investments outside their own value chains to mitigate GHG emissions in addition to their interim</p>	<p>Human rights To meet the "basic criteria" for "high-quality credits", carbon credits must come from activities that, "where relevant, are compatible with human rights". This</p>

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	<p>planning, climate change targets, and, more broadly, climate change risks and opportunities, are incorporated into business and/or investment decisions.</p> <p>Climate-related financial risks As part of the preliminary and comprehensive net-zero plan, all participants (except SMEs) must provide information on climate-related financial disclosure. based on the recommendations identified by the Task Force on Climate-Related Financial Disclosures.</p> <p>Land use impacts Participants are strongly encouraged to include changes to land use that result in the release of GHG emissions when developing</p>		<p>biodiversity.</p> <p>Cross cutting principles The criteria set cross cutting principles that include the importance of considering the broader societal/social consequences and impacts of mitigation actions, including on race, gender and intergenerational equity.</p> <p>Nature-positive carbon credits Companies should seek to purchase carbon credits which support the most urgent and underfinanced parts of the low carbon transition, for example, restoring peatlands, ending deforestation and conversion of other natural ecosystems, and which deliver co-benefits linked to wider Sustainable Development Goals, including biodiversity and local livelihoods (for example by ensuring that rural communities are able to engage in and benefit from carbon markets).</p>	<p>and long-term science-based targets. For example, a company could provide annual support to projects, programs and solutions that provide quantifiable benefits to climate, especially those that generate additional co-benefits for people and nature. Companies should report annually on the nature and scale of those actions pending further guidance.</p>	<p>means, at a minimum, they (a) do not discriminate on the basis of identity, gender, race, ethnicity, income, or any other social status, and (b) protect rights related to gender, labor, health, education, adequate living standards, background, and personal security and safety.</p> <p>Land, food and Indigenous Peoples Rights relating to land, food, and Indigenous Peoples must be respected in private-sector climate actions. This means that stakeholders must function as partners (and Indigenous Peoples as rightsholders) – and not merely beneficiaries – both through active participation</p>

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	<p>and reporting on their net-zero plans.</p> <p>Consideration of social and economic goals when selecting credits When purchasing credits, participants may also wish to consider the project type, as well as other social or economic goals such as job creation, economic opportunities for local and Indigenous communities and supporting broader efforts related to reconciliation. Once purchased, offset credits are retired, voluntarily cancelled, or otherwise removed from circulation in the associated offset system registry.</p>				<p>in market design and governance as well as in project design and implementation. It also means respect for the rights of Indigenous Peoples and local communities to the free use of and property rights for lands, territories, waters, and resources, according to their customary sustainable use.</p> <p>SDGs Carbon credits must also come from activities that, “where relevant, promote equity, apply social safeguards, and demonstrate positive socio-economic impacts, such as those identified by the United Nations Sustainable Development</p>

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					<p>Goals". This means that carbon credit purchases and the activities they support should result in positive outcomes for local communities and adhere to social safeguards to avoid, reduce and mitigate adverse impacts, with specific attention to vulnerable populations. Whenever possible, co-benefits across the Sustainable Development Goals should be maximized and reflect the concept of a "just transition" toward low-carbon and climate-resilient development that aligns with the latest climate science and maintains social and environmental standards (like those of the United Nations Development</p>

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					<p>Programme), in addition to protecting basic rights. Benefits should be equitably shared.</p> <p>Nature-positive projects Carbon credits must also come from activities that, “where relevant, contribute to the protection and enhancement of environmental quality.” At minimum, projects and programs must include environmental safeguards that avoid, minimize, and mitigate adverse impacts, and all carbon credits must comply with the environmental laws in the jurisdictions of the project. Activities should strive to generate environmental co-benefits, such as improving water quality,</p>

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					enhancing biodiversity, creating more resilient energy delivery, and improving soil health.

Appendix C

Best practices for voluntary carbon markets

Voluntary carbon markets are in rapid expansion and are expected to keep growing in the next few years following the net-zero commitments made by companies and various state and non-state entities.²⁷⁵ Before addressing how voluntary carbon markets should be designed, it is important to reiterate that carbon offsets should not be used as the primary tool to fight climate change. As mentioned in section 3.7, there is a risk that putting too much emphasis on offsetting GHG emissions in the future could distract from the urgent need to reduce emissions in the present. We recommend that firms prioritize reducing their own GHG emissions and only participate in a voluntary carbon market to offset emissions that cannot reasonably be eliminated. That is also what most frameworks summarized in Appendix B are advocating.

Furthermore, considering the growing criticism aimed at the role of offsetting in the fight against climate change, entities who plan to make claims suggesting that they are “leaders” in climate action should seriously consider abandoning advertising their offsetting practices in connection with “net-zero”, “carbon neutral” or similar climate-related claims.²⁷⁶ Companies’ social and environmental contributions do not need to rely on this terminology to be meaningful. In fact, other types of corporate social contributions, such as making charitable donations and supporting various public interest projects that are not climate-related, do not usually mention the need to “offset” the harmful impacts of business activities.

As such, we recommend that particular attention be paid to the distinction that must exist between climate action and “leadership” in climate action. Those who claim to be in the latter category can continue to participate in voluntary carbon removal and reduction efforts without advertising net-zero targets. Some companies have already started this shift in their approach:

“The questionable quality [of old carbon credits] has created a stigma. California limited the use of offsets in its statewide cap-and-trade system, with polluters allowed to use the credits only for about 4% of their

²⁷⁵ Taskforce on Scaling Voluntary Carbon Markets, “Final report” (January 2021), online <https://www.iif.com/Portals/1/Files/TSVCM_Report.pdf> at page 55.

²⁷⁶ James Temple, “We must fundamentally rethink “net-zero” climate plans. Here are six ways” (August 24, 2022), online: *MIT Technology Review* <<https://www.technologyreview.com/2022/08/24/1058459/we-must-fundamentally-rethink-net-zero-climate-plans-here-are-six-ways-how/>>: “Going forward, the purchase of such credits should at best be thought of as an act of climate philanthropy, but not as a realistic method for scratching off tons of emissions from corporate carbon ledgers.”



*emissions. Some companies [...] recently announced they will steer away from using offsets to hit their sustainability targets.*²⁷⁷

Currently, voluntary offsetting is still generally used to make net-zero claims. This Appendix contains an overview of best practices, within that current approach, relating to voluntary carbon markets.

Online registries, where corporations can buy carbon credits, set rules that projects must follow to be validly counted as offsets. The projects are screened by third-party verifiers but such verifiers only check for compliance with the registries' rules, which is not an audit of the project's overall impact on GHGs. This gap leads to situations where offsets are purchased and accounted for net-zero targets despite their unlikely contribution to emissions reductions, such as the "protection" of trees which were already in a long-standing conservation program.²⁷⁸ More robust standards are needed in this context where the credibility and efficiency of voluntary carbon markets is under fire.

In 2020, a group of researchers from the University of Oxford released the "Oxford Principles for Net Zero Aligned Carbon Offsetting" (the "**Oxford Principles**"), which can be used in making choices with respect to voluntary carbon credits.²⁷⁹ The Oxford Principles formulate four main principles for carbon offsets users.

- **First, users should "Cut emissions, use high-quality offsets, and regularly revise [their] offsetting strategy as best practice evolves".** GHG emitters should first focus on reducing their carbon footprint before turning to offsetting. If they still need to use carbon credits, they should ensure that they are verifiable and correctly accounted for, with a "low risk of non-additionality, reversal, and creating negative unintended consequences for people and the environment". Finally, users should be disclosing information on the characteristics of the type of offsets they rely on.

²⁷⁷ Ben Elgin, "These Trees Are Not What They Seem" (9 December 2020), online: *Bloomberg* <<https://www.bloomberg.com/features/2020-nature-conservancy-carbon-offsets-trees/#xj4y7vzkg>>.

²⁷⁸ Ibid: Even offsets used in mandatory cap-and-trade schemes can be subject to such criticism. For example, see Grayson Badgley, "Systematic over-crediting of forest offsets" (29 April 2021), Online: <<https://carbonplan.org/research/forest-offsets-explainer>>.

²⁷⁹ Myles Allen and al, "The Oxford Principles for Net Zero Aligned Carbon Offsetting" (September 2020), online <<https://web.archive.org/web/20201101054355/https://www.smithschool.ox.ac.uk/publications/reports/Oxford-Offsetting-Principles-2020.pdf>>.

- **Second, users should “Shift to carbon removal offsetting”.** According to the Oxford Principles, most carbon credits currently traded relate to projects planned to reduce GHG emissions instead of projects aiming at the removal of GHGs from the atmosphere.²⁸⁰ As such, users should “increase the portion of their offsets that come from carbon removals, rather than from emission reductions, ultimately reaching 100% carbon removals by mid-century to ensure compatibility with the Paris Agreement goals.”
- **Third, users should “Shift to long-lived storage” of carbon.** Some carbon credits only guarantee a temporary offsetting of GHG emissions, leading to a risk that their issuance will only lead to a reduction in GHG emissions in the short term. The Oxford Principles hold that long-lived carbon storage should be prioritized, which involves relying on “methods of storing carbon that have a low risk of reversal over centuries to millennia, such as storing CO₂ in geological reservoirs or mineralizing carbon into stable forms.”
- **Fourth, users should “Support the development of net zero aligned offsetting”.** The authors of the Oxford Principles argue that the market for carbon credits complying with the second and the third principles outlined above is still in its early days. As such, they hope that users foster the development of higher-quality offsets by promoting the Oxford Principles and creating sector-specific alliances, among other things.

As mentioned above in **Appendix A**, in 2022, the Voluntary Carbon Market Integrity Initiative published a “Provisional Claims Code of Practice” (“**Code of Practice**”) establishing guidelines for companies using voluntary carbon markets as part of their climate commitment. It states that the first prerequisite “requires that companies only use carbon credits in addition to—not as a substitute for—science aligned decarbonization across their value chains.”²⁸¹ It also sets criteria for high-quality carbon credits.

Similarly, the Integrity Council for the Voluntary Carbon Market aims to set global standards for

²⁸⁰ Examples of emission reductions listed in the Oxford Principles (page 8) include “the deployment of renewable energy to replace planned fossil fuel power plants, programmes to update inefficient cook stoves, and the destruction of potent greenhouse gases like methane and nitrous oxide before they reach the atmosphere.” On the other hand, carbon removals are described as “offsets generated by projects that remove carbon dioxide directly from the atmosphere”, such as “biological carbon sequestration (planting trees, soil carbon enhancement, etc.), bioenergy with carbon capture and storage (BECCS), direct air capture with geological storage (DACCS), or converting atmospheric carbon back into rock through remineralisation.”

²⁸¹ Voluntary Carbon Markets Integrity Initiative, “Provisional Claims Code of Practice” (7 June 2022), online <<https://vcmintegrity.org/wp-content/uploads/2022/06/VCMI-Provisional-Claims-Code-of-Practice.pdf>> at page 20 [Provisional Claims Code of Practice].

high-quality carbon credits and recently proposed a draft “**Assessment Framework**” for public consultation.²⁸²

In the Canadian context, the “Pan-Canadian Greenhouse Gas Offsets Framework”²⁸³ (the “**Pan-Canadian Framework**”) developed by the Canadian Council of Ministers of the Environment provides non-binding guidance for GHG offsets programs. While the Pan-Canadian Framework targets both regulatory and voluntary programs developed by jurisdictions in Canada, the concerns it identifies echo the Oxford Principles and other standards. Environment and Climate Change Canada also published the NZC Technical Guide to oversee voluntary net-zero claims by Canadian firms.²⁸⁴ Overall, the NZC Technical Guide recommends as best practices that companies prioritize reducing their own emissions and only use offset credits from federal or provincial government systems.²⁸⁵

In the paragraphs below, we highlight some of the considerations mentioned in the Oxford Principles, the Pan-Canadian Framework, the Code of Practice and the Assessment Framework.

LEAKAGE

In the context of carbon markets, leakage corresponds to the risk that the emissions reduced or removed by a project will be emitted or released by someone else outside the project, leading to no actual reduction of GHGs in the atmosphere or reductions that fall short of those expected following the climate-related claims.²⁸⁶ Offset projects based on avoided or reduced emissions are particularly vulnerable to leakage.²⁸⁷ For example, the emission reductions made by consuming less fossil fuel do not lead to real reductions if the fuels end up being consumed by someone else.²⁸⁸ The Pan-Canadian Framework recommends that the risk of leakage be assessed before approving an offsets project and monitored afterwards²⁸⁹, while the Assessment Framework provides a step-by-step protocol to quantify potential leakage.²⁹⁰

²⁸² Integrity Council for the Voluntary Carbon Market, “Assessment Framework” (July 2022), online <<https://icvcm.org/wp-content/uploads/2022/07/ICVCM-Public-Consultation-FINAL-Part-4.pdf>>.

²⁸³ Canadian Council of Ministers of the Environment, “Pan-Canadian Greenhouse Gas Offsets Framework” (2019), online <<https://ccme.ca/en/res/pan-canadianghgasoffsetsframeworken1.0secured.pdf>> [Pan-Canadian Framework].

²⁸⁴ Government of Canada, *supra* note 17.

²⁸⁵ *Idem*, p. 11.

²⁸⁶ *Idem* at page 7; Provisional Claims Code of Practice, *supra* note 281 at page 38.

²⁸⁷ Pan-Canadian Framework, *supra* note 283 at page 7.

²⁸⁸ *Idem*.

²⁸⁹ Pan-Canadian Framework, *supra* note 283 at page 7.

²⁹⁰ Assessment Framework, *supra* note 282 at pages 71-72.

DOUBLE COUNTING

Double counting refers to a situation where two entities claim credit for the same reduction or removal of GHG emissions. This can occur between two private entities or between the buyer of an offset credit and the country hosting the project claiming the credit in its international carbon assessment.²⁹¹ Double counting undermines the credibility of offset programs, but it also distorts the determination of worldwide GHG reductions, giving a false picture of the efforts still required. The Pan-Canadian Framework emphasizes the need for sharing and tracking information on the ownership of offset credits to ensure only one entity can claim them.²⁹² The Assessment Framework proposes the creation of a joint registry and database to anticipate, identify and avoid double counting.²⁹³ In its NZC Technical Guide, the Canadian government urges for transparency in offset credits systems to avoid double-counting.²⁹⁴

QUANTIFIED USING COUNTERFACTUAL BASELINE (ADDITIONALITY)

According to the Oxford Principles, carbon offsets should represent a net reduction or removal of carbon compared to a counterfactual baseline that captures what would have happened to emissions in the absence of the offset.²⁹⁵ For instance, if a carbon credit serves to fund the acquisition of low-GHG emissions technology that would have been purchased anyway by a firm, or if the offset serves to fund the conservation of unthreatened, already existing carbon-negative ecosystems, then it is not removing any “new” emissions from the atmosphere.²⁹⁶

The choice of counterfactual baseline on which to calculate the reduction or removal of emissions is crucial, but it remains uncertain as to the GHGs that would have been emitted

²⁹¹ Environmental Defense Fund, “How to avoid double counting of emissions reductions” <<https://www.edf.org/sites/default/files/documents/double-counting-handbook.pdf>>; Provisional Claims Code of Practice, *supra* note 281 at page 48.

²⁹² Pan-Canadian Framework, *supra* note 283 at page 7.

²⁹³ Assessment Framework, *supra* note 282 at page 23.

²⁹⁴ Government of Canada, *supra* note 17, p. 23.

²⁹⁵ Oxford Principles, *supra* note 279 at page 5.

²⁹⁶ Ben Elgin and Zachary Mider, “The Real Trees Delivering Fake Corporate Climate Progress” (17 December 2020), online: *Bloomberg* <<https://www.bloomberg.com/news/features/2020-12-17/the-real-trees-delivering-fake-climate-progress-for-corporate-america#xj4y7vzkg>> : “But climate policy experts say carbon offsets work only if they trigger a carbon reduction that wouldn’t have happened otherwise. In other words, the money from the corporations buying the offsets has to be the reason that trees are being planted or protected. “You have to be able to show that buying the offsets caused this benefit to happen,” says Danny Cullenward, a lecturer at Stanford and the policy director at CarbonPlan, a nonprofit that analyzes carbon solutions. If offset projects pay people who were already reducing emissions for other reasons, he says, “they’re only selling hot air.”

without the project.²⁹⁷ Nevertheless, the Pan-Canadian Framework indicates that at a minimum, the offset credits should result from an activity that is beyond the legal requirement and business-as-usual expectations to ensure that the reduction or removal was truly caused by the project.²⁹⁸ The Assessment Framework provides a multi-step assessment of additionality, based on the typical financial viability and implementation obstacles for the specific type of project, the legal requirements in the jurisdiction of the project and the timescale of the project.²⁹⁹

PERMANENCE

Permanence is the guarantee that the reduced or removed GHG emissions from an offset project will remain out of the atmosphere for a sufficient length of time. According to the Assessment Framework, offsets should be permanent, when risks of reversals exist they should be assessed, and when offsets are reversed they should be compensated.³⁰⁰ This concern is relevant for both types of projects: those based on the removal of carbon as well as those based on the reduction of emissions.

Most notably, projects removing carbon through reforestation are vulnerable to fire, diseases and human activities.³⁰¹ For example, an offset project based on the protection of forests in California planned a certain amount of additional offsets as a buffer, with the goal of ensuring that the credited GHG emissions would be removed for 100 years.³⁰² In fact, the excess offsets were depleted in 10 years by forest fires because the project did not account for the effect of global warming. Another offset project guaranteed that the trees associated with the carbon credits it had issued would remain untouched for at least 40 years – though this was not always aligned with the length of its contracts with landowners.³⁰³

The third of the four Oxford Principles addresses permanence. Offsets should be based on permanently removing carbon from the atmosphere with a technique that presents minimum risks of release. Rather than using forests to store carbon, geological reservoirs or mineralization should be prioritized, according to the Oxford Principles. The Pan-Canadian Framework states

²⁹⁷ Oxford Principles, *supra* note 279 at page 5.

²⁹⁸ Pan-Canadian Framework, *supra* note 283 at page 5.

²⁹⁹ Assessment Framework, *supra* note 282 at pages 44-57.

³⁰⁰ *Idem* at page 59.

³⁰¹ Oxford Principles, *supra* note 279 at page 6.

³⁰² Camilla Hodgson, “Wildfires destroy almost all forest carbon offsets in 100-year reserve, study says” (5 august 2022), online: *Financial Times* <<https://www.ft.com/content/d54d5526-6f56-4c01-8207-7fa7e532fa09?emailId=62ec99d512dea7002323364d&segmentId=2201lee7-896a-8c4c-22a0-7603348b7f22>>.

³⁰³ Ben Elgin and Zachary Mider, *supra* note 296.

that offset projects must establish a contingency plan to replace offsets that might be reversed.³⁰⁴ Contingency plans should be enforceable regardless of who is responsible for the project in the future and whether its original developer is still solvent.³⁰⁵

FORWARD-SELLING

Forward-selling refers to the lag between the purchase of the credit and the implementation of the emissions reduction project and its impacts on global warming. Some projects may take decades to realize, leading to an emission glut in the short or medium term. It leads to greater uncertainty on the realization of the project's promised outcome that are already counted as "achieved" emission reductions by clients.³⁰⁶ The Oxford Principles insist on minimizing the time gap between the purchase of an offset by a client and the actual removal or reduction of GHG emissions to correctly reflect the real benefit of the project.³⁰⁷

SOCIAL AND ENVIRONMENTAL IMPACTS

In addition to taking into consideration their impact on the global climate, offset projects must also consider other aspects of sustainability, such as empowering local communities and protecting biodiversity. Projects can either be co-beneficial, creating positive externalities in addition to removing GHGs from the atmosphere, or they can exacerbate inequity in the communities hosting the projects.³⁰⁸ Carbon markets should not prioritize offsetting GHG emissions over the social and environmental conditions of local communities,³⁰⁹ which are often located in developing countries or on lands used by indigenous communities.

The Oxford Principles mention the risk that offset projects based on the protection of ecosystems could lead to loss of livelihood for local communities that subsist from agriculture or forest products.³¹⁰ Projects can also have unintended consequences for biodiversity and local ecosystems, for example, in the case of low-diversity tree plantations. The Assessment Framework and Code of Practice provide an extensive set of criteria on environmental and

³⁰⁴ Pan-Canadian Framework, *supra* note 283 at page 5.

³⁰⁵ *Idem*.

³⁰⁶ Duncan P McLaren and al, "Beyond "Net-Zero": A Case for Separate Targets for Emissions Reduction and Negative Emissions" (21 august 2019), online: *Frontiers in Climate* <<https://www.frontiersin.org/articles/10.3389/fclim.2019.00004/full>>; Sabine Fuss, "Betting on negative emissions" (21 September 2014), online: *Nature Climate Change* <<https://www.nature.com/articles/nclimate2392>>.

³⁰⁷ Oxford Principles, *supra* note 281 at page 5.

³⁰⁸ Provisional Claims Code of Practice, *supra* note 277 at page 31; Assessment Framework, *supra* note 282 at pages 32-42.

³⁰⁹ Oxford Principles, *supra* note 279 at page 12.

³¹⁰ *Idem* at page 6.

social safeguards including labor conditions, land acquisition, indigenous rights, stakeholder engagement and gender equality.³¹¹ In the NZC Technical Guide, the Canadian government also urges participants to the NZC to consider the social and economic impacts of the credits they are purchasing.³¹²

Voluntary carbon markets are expected to keep expanding as more and more companies and entities commit to reaching carbon neutrality in the next decades. Addressing the concerns outlined in this Appendix can increase the credibility of offsets, but carbon offsetting should not be used as a substitute for potential reductions of GHG emissions. Some authors have suggested that targets and reporting on “negative” GHG emissions should be accounted for and managed separately from those relating to emissions reductions.³¹³ According to them, the two categories are not perfect substitutes, as carbon removed from the atmosphere might leak and increase our reliance on removal projects in the future while reducing emission has more long-term impacts on GHG concentration in the atmosphere and contributes to the necessary decarbonisation of our economies³¹⁴.

³¹¹ Assessment Framework, *supra* note 282 at pages 32-42; Provisional Claims Code of Practice, *supra* note 281 at pages 30-31

³¹² Government of Canada, *supra* note 17.

³¹³ Duncan P McLaren and al, *supra* note 306.

³¹⁴ *Idem*.

Appendix D

CAFA's disclosure and reporting obligations

Under the CAFA, reporting entities would have to demonstrate how they align with the Paris Agreement and the CANZEA by disclosing the progress made on their climate commitments. Climate alignment reports would need to be publicly disclosed by reporting entities within the 60 days following the end of each financial year.³¹⁵ The table below identifies which information must be disclosed by reporting entities under the CAFA.³¹⁶

Theme	Information
Targets	<ul style="list-style-type: none">• The reporting entity must disclose its climate targets and set out how they align with a pathway that respects the global carbon budget and is consistent with limiting global temperature increase to 1.5 degrees Celsius (1.5°C) over pre-industrial levels, with no or low overshoot.• Targets must be minimally disclosed for 2025, 2030, 2035, 2040, 2045, and 2050.• For financial institutions, targets must include absolute emissions targets established at the sectoral and portfolio level and for individual investment holdings across all classes of debt and equity.• The reporting entity must provide details of the material assumptions about its climate commitments.

³¹⁵ See section 7 of the draft statute.

³¹⁶ The CAFA also provides for the disclosure of conflicts of interests and lobbying.

<p>Transition plans</p>	<ul style="list-style-type: none"> • The reporting entity must disclose its plans to achieve its climate targets. The plans must include: <ul style="list-style-type: none"> (a) measures to prioritize and encourage <ul style="list-style-type: none"> (i) immediate and ambitious action; (ii) emissions reductions within the value chain; and (iii) change and innovation to replace emissions-intensive activities; (b) measures on operational and capital allocation for existing and new lines of business to ensure the achievement of targets; and (c) consideration of how the entity’s executive compensation, governance, and strategy can be deployed to achieve targets.
<p>Carbon accounting</p>	<p>The reporting entity must specify the sources of information used to calculate its emissions, any assumptions, the methods used to verify the calculations, and any other relevant information with respect to the quality of the information the entity reports concerning its emissions.</p>
<p>Carbon offsets</p>	<ul style="list-style-type: none"> • Reporting entities can only use offsets as a replacement for reducing emissions if: <ul style="list-style-type: none"> (i) the entity has undertaken the maximum feasible mitigation of emissions; (ii) the offsets are produced through proven emissions removal methods; and (iii) the offsets are strictly necessary to neutralize minimal residual emissions that reporting entities cannot abate with available technology. • Offsets cannot rely on or presuppose the future invention, discovery, or large-scale deployment beyond the remit of the entity’s activities of any emissions removal, capture or storage technology, tool, or technique to claim or promise reductions in emissions for the purpose of justifying continued or increased fossil fuel activities.

	<ul style="list-style-type: none"> • The reporting entity must provide detailed information that sets out and explains the quality, certification, and third-party assurance verification used to justify reliance on offsets and how the use of those offsets aligns with climate commitments. <p>If plans or targets rely on or assume the future invention, discovery, or large-scale deployment beyond the remit of the entity’s activities of emissions removal, capture, or storage, the entity must contribute directly to making such future invention, discovery, or large-scale deployment feasible and available within the relevant time frame; and include detailed information, including an economic analysis, on how the reliance or assumption meets the above requirements and aligns with climate commitments.</p>
<p>Equity considerations</p>	<p>The reporting entity must describe how its targets and plans represent responsible stewardship of an equitable allocation of the global carbon budget based on the entity’s historical emissions and the different development needs of regions and communities.</p>
<p>Reporting on progress</p>	<p>The reporting entity must provide details on its progress in achieving its targets and implementing its plans.</p>

The CAFA would also allow the Government to issue additional guidance, on the recommendation of Canada’s Net-Zero Advisory Body, on the development of climate targets, transition plans, and reporting.³¹⁷ Finally, the draft legislation would modify the mandate of various federal institutions, such as the Bank of Canada and the OSFI, to require them to exclusively exercise their powers in concordance with Canada’s climate commitments.

³¹⁷ See section 8 of the draft statute.

Appendix E

Excerpts from the ICC Framework for Responsible Environmental Marketing³¹⁸

ICC Principles – General provisions on advertising and marketing communication practice	ICC Principles chapter E – Environmental claims in marketing communications	Other considerations in environmental marketing communications
<p>Article 5. Marketing communication should not contain any statement, or audio or visual treatment which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead the consumer, in particular, but not exclusively, with regard to: - Compliance with standards. - Official recognition or approval.</p>	<p>Article E1. Vague or non-specific claims of environmental benefit, which may convey a range of meanings to consumers, should be made only if they are valid, without qualification, in all reasonably foreseeable circumstances. If that is not the case, general environmental claims should either be qualified or avoided.</p>	<p>Information and claims about a product’s environmental attributes should be judged by the likely perception of the reasonable consumer. Scientific terminology or references are acceptable provided they are relevant and used in a way that can be readily understood by the reasonable consumer to whom the message is directed. Vague or non-specific claims (sometimes called “general” claims) include claims such as “environmentally friendly,” “ecosafe,” “planet-,” “earth-“ or “nature- friendly,” “green,” “sustainable,”</p>

³¹⁸ International Chamber of Commerce, *supra* note 199.



ICC Principles – General provisions on advertising and marketing communication practice	ICC Principles chapter E – Environmental claims in marketing communications	Other considerations in environmental marketing communications
		<p>“earth healthy,” “ozone safe,” “carbon neutral” and similar statements that communicate that the product, component or service is generally good for the environment has no harmful effects on the environment</p>

Selected environmental claims in marketing communications	Application of ICC Principles and other considerations in environmental marketing communications
<p>Carbon Footprint, Carbon Offset, Carbon Neutral</p> <p>“Carbon” is a characteristic of greenhouse gas emissions. Claims related to carbon emissions, such as carbon footprint, carbon offset or carbon neutral claims, have emerged in the marketplace. A “carbon footprint” is a way of reporting the global warming aspects of the product during its life cycle. Carbon offsets, which may implicate carbon neutral claims or carbon footprint claims, generally relate to reductions from other actions designed to capture carbon, like tree planting, methane capture and other actions. “Offsets” or credits may be purchased in the marketplace and traded to individuals or businesses in an effort to reduce the “carbon footprint,” and</p>	<p>Because all human activity will potentially involve the release of substances linked to carbon generation and global warming, the method of calculating the carbon contributions throughout the product life cycle within the product system and substantiating information on the measures taken to limit, reduce or offset carbon contributions, and the scientific basis for such claims, should be readily available. Carbon neutral claims mean that the carbon footprint is zero, but zero or neutral carbon can only be achieved using offsets or credits. The science of calculating carbon footprint and offsets continues to evolve. Consumer perception research recently released in the U.S., however, suggests that there is</p>

therefore may also implicate or rely on renewable energy certificates.

not a common understanding of many carbon-related advertising claims, but that the timing of offsets may be important to consumers. Consequently, offsets that will not occur within a reasonably short period of time (e.g., two years) should be disclosed. As with all claims, the advertiser should have competent and reliable evidence to support any carbon-related claim. Qualifiers should be included if offsets will occur in the future. Some jurisdictions may restrict carbon offset or related carbon claims associated with activities that must be taken by the advertiser under applicable law. Qualifiers may also be needed to avoid consumer misperception that the carbon claim means that the product or package poses no adverse impact on the environment.