September 26, 2024

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
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greenwashingconsultationecoblanchiment@cb-bc.gc.ca

Attention: Commissioner Matthew Boswell

Subject: **Competition Bureau Consultation Regarding the New Greenwashing Provisions in the *Competition Act***

Dear Mr. Boswell:

We write on behalf of the Canadian Association of Energy Contractors ("**CAOEC or Association**") to provide feedback to the Competition Bureau (the "**Bureau**") regarding the new greenwashing provisions in the *Competition Act* (the "**New Provisions**").

CAOEC represents 95 drilling rig and service rig companies, which constitutes nearly 100% of the industry, and over 200 energy service organizations on the frontlines of Canada's energy security and evolution. We aim to promote a strong energy services industry through safe and efficient operations using innovation and a skilled workforce. We have provided additional information about CAOEC in Appendix A hereto.

CAOEC members continually strive to mitigate the impact of our businesses on the environment and take compliance with all legal obligations very seriously. Many of our members have made considerable investments in sustainability initiatives and are leaders in emissions reduction innovation. CAOEC has also been actively engaged with various provincial and federal stakeholders on the work our members spearhead in technology deployment, decarbonization, and skilled workforce development. The sub-surface extraction of Canada's diverse energy and critical mineral resources, such as lithium for EV batteries, helium for semiconductors, geothermal heat to generate electricity, potash, or storage for carbon dioxide or hydrogen, will require energy services and contractors. Simply put, the success of an inclusive and thriving energy future depends heavily on a healthy and thriving drilling rig and service rig sector.

Thus, the enactment of the New Provisions has raised significant concerns regarding its practicality, its ability to promote innovation, and the flow of investment into our sector and energy future. These concerns will impact the future of the energy workforce, the energy security of communities across the country, and the success of emerging Indigenous economic participation within our industry.

We hope the Bureau will provide clarity and certainty through common-sense greenwashing guidelines (the "**Guidelines**") for companies like those represented by CAOEC. Our Association has worked diligently with members to provide recommendations in response to the Bureau's consultation questions (please see Appendix B hereto).

Primary Concerns and General Recommendations for the Guidelines

A. Ambiguity of "Internationally recognized methodology"

The New Provisions require environmental representations and disclosures to be substantiated in accordance with an "internationally recognized methodology." The term is undefined in the New Provisions, leaving businesses uncertain about how to comply with this legal requirement. In fact, environmental representations and disclosures that are true but technically not substantiated in accordance with an "internationally recognized methodology" could be found in violation of the New Provisions. Businesses should not be subject to significant penalties for disclosing true environmental statements or disclosures. Accordingly, the New Provisions have already deterred many businesses from disclosing any statements regarding their sustainability efforts, which has already started to impact Canada's ability to attract key investments across industries.

Currently, multiple international methodologies exist for sustainability and climate-related disclosures, creating a fragmented regulatory framework. In addition, multiple Canadian jurisdictions have regulatory requirements that mandate the disclosure of various environmental information. The New Provisions are silent as to how these Canadian requirements would interact with the "internationally recognized methodology" directive.

The Guidelines should provide a clear roadmap for businesses to assess whether an international methodology is "internationally recognized" to comply with the New Provisions. Canadian national and provincial standards should also be considered as part of this methodology to ensure that the Guidelines are relevant and feasible for businesses operating within Canada. For example, if the Canadian Securities Administrators required particular environmental disclosures, compliance with such requirements, even though they are not "internationally recognized," should be considered "substantiated."

B. Movement of goalposts on decarbonization

The Bureau has specifically identified and criticized the use of certain instruments, such as carbon credits, in the latest edition of the Deceptive Marketing Practices Digest. CAOEC is concerned that this action may signify the Bureau's endeavour to influence energy policy without possessing the requisite authority to do so. The Canadian government has invested considerable political capital and resources into shaping its domestic and international climate narrative. Extensive discussions regarding the definitions of 'decarbonization' and 'net zero' have occurred across various government departments over the years, resulting in the establishment of multiple goalposts with varying degrees of flexibility concerning the methods and technologies employed to achieve collective greenhouse gas reduction targets. However, the Bureau's recent remarks imply that the Guidelines may seek to shift these goalposts—a move that exceeds

the enforcement agency's jurisdiction. This will only serve to restrict movement and innovation across multiple industries.

The Guidelines should not impose more stringent and restrictive definitions of 'green activity' than those already established by the government. The standards must align with the federal government's commitment to advancing an energy future that accommodates diverse solutions. Failure to do so risks unduly hindering Canadian energy security objectives and federal net zero benchmarks.

C. Private litigation involving perceived instances of greenwashing

The New Provisions entitle private litigants to initiate legal proceedings by seeking leave from the Competition Tribunal to challenge and seek fines against businesses providing environmental representations and disclosures. This creates a substantial risk that well-intentioned and substantiated disclosures could be unfairly challenged based on technicalities related to the methodologies used by businesses. The threat of frivolous or politically directed litigation against businesses will only harm the public policy interests of encouraging businesses to disclose their efforts to mitigate environmental harm.

The Guidelines should provide processes that protect disclosures that are made in good faith and supported by credible evidence. Private litigants should face substantive procedural hurdles to initiate such legal proceedings. Without such protections, the Bureau risks inviting a flood of litigation and fostering a risk-averse business environment. **The Guidelines constitute an important signal of how the Bureau views public policy interests and whether the Competition Tribunal will grant leave for applications that are consistent with the Guidelines.**

D. Equal application across all industries and sectors, including environmental organizations

The Bureau is charged with implementing the *Competition Act* broadly throughout all business activities, including non-profit organizations. The New Provisions seek to provide transparency on environmental matters by requiring factual accuracy through substantiation of any environmental-related statement or claim.

The Guidelines should explicitly specify that all parties, including climate advocacy groups, are subject to the same standards as businesses. This would include any environmental communications and representations made by such organizations. We believe it is essential in promoting fairness and transparency that all market participants are treated equally.

E. Safe harbour protections

Under Canadian securities laws, reporting issuers are subject to liability for making false or misleading disclosures, subject to materiality standards and other potential defences, i.e., "safe harbour" protections. This "safe harbour" protection includes providing a disclaimer with disclosures to investors regarding forward-looking information that may prove inaccurate. When making such statements, reporting issuers must have a reasonable basis or must undertake a reasonable investigation to ensure the accuracy of any such disclosures. This conflicts generally with the "substantiation" requirements of the New Provisions.

To ensure that businesses are able to comply with applicable Canadian securities laws and the New Provisions, **the Guidelines should seek a reasonable way to reconcile the different standards. The development of a "safe-harbour" or a similar forward-looking information disclaimer** that is applicable to the New Provisions would be welcomed as the disclosure requirements evolve.

Conclusion

CAOEC and its members appreciate the opportunity to provide feedback on the New Provisions.

We caution against an approach that would lead to several negative consequences, including the following:

- Economic Impact. An overbroad approach to the New Provisions will create an uncertain business climate, deterring investment in Canada and hampering efforts to maintain energy affordability and job creation across all Canadian industries. On average, one active drilling rig, regardless of what it is being drilled for, i.e., lithium, geothermal, natural gas, creates 220 direct and indirect jobs, generates over $1 million in taxes per year, and supports 38 related subcontractors for each wellsite drilled. The energy services sector employs thousands of women and men in rural, remote, and Indigenous communities and is especially vulnerable to this negative impact given the significant effort, time, and resources put towards emissions reduction and environmental stewardship.

- Technological Innovation. The energy sector drives the technological advancements necessary to reduce emissions and maintain our standard of living. If not carefully implemented, the New Provisions will restrict communications about these innovations, hindering progress and public awareness. This will stifle research and development by creating a challenging environment for innovation. The energy services sector has yet to see our needs represented in policy and legislation. The New Provisions, if irresponsibly enforced, will continue to hinder our decarbonization efforts in the pursuit of diverse energy streams.

In drafting its Guidelines, we hope that the Bureau will focus on outlining specific types of false and misleading statements that it intends to pursue under the New Provisions, including how it will approach factual statements about sustainability initiatives. Moreover, the Guidelines should indicate that the Bureau will not normally exercise its enforcement discretion to pursue representations that are true and are not misleading.

The future of Canada's energy industry runs through our people; the energy services sector is at the very centre of a rapidly growing energy world. Our members and their people already possess the skillset necessary to be the industry's frontline for emissions reduction.

Thank you for taking the time to consider our perspective.

We direct your attention to the attached Appendix B, which contains our detailed responses to the specific consultation questions proposed by the Bureau.

Sincerely,

Mark A. Scholz
President & CEO

Appendix A

About CAOEC

CAOEC represents 95 drilling rig and service rig companies (nearly 100% of the industry) and over 200 energy service organizations on the frontlines of Canada's energy security and evolution. The membership operates a fleet of 385 land drilling rigs and 712 service rigs in Saskatchewan, northeast British Columbia, Alberta, and southwest Manitoba, and offshore drilling rigs operating off the coast of Newfoundland.

CAOEC's members are varied and diverse. Many of our members are large, small, and medium sized businesses that have been leaders in creating opportunities for young people, Indigenous communities, and middle-class workers to access the energy we need in Canada and around the world.

For decades, our membership has included Indigenous representation. From Indigenous-owned companies such as Pimee Well Servicing, Homeland Oil Well Servicing, and Onion Lake Cree Nation Well Servicing, to business partnership ventures, ownership stakes, and Indigenous training programs, CAOEC members create meaningful work in remote communities and exemplify an inclusive transformation in the energy services sector.

CAOEC remains true to what its founding members envisioned in 1949: to promote a strong industry through safe, efficient, and sustainable operations in Canada's drilling and service rig sector. CAOEC's vision and mission are driven by our member companies and the many volunteers that form our Association's extensive network. Working together, our members identify where collaboration can contribute to the continuous development of our industry as we strive to be the best in the world.

CAOEC is committed to:

- Safety, environmental, and operational excellence in the industry;
- Acting in the best interests of its member companies, their employees, and the industry;
- Responding to climate change through sustainable solutions;
- Reconciliation and the participation of Indigenous peoples in energy development; and
- A strong tradition of leadership and cooperation.

Additional information about CAOEC, including a full directory of our members across Canada, can be found here.

Appendix B

CAOEC's Detailed Response to Competition Bureau Consultation Questions

We believe the recent amendments will impact businesses across Canada, regardless of their sector. Clear guidance from the Bureau is critical to ensure all businesses can confidently communicate their environmental accomplishments and future ambitions. In this appendix, CAOEC addresses specific questions on which the Bureau has invited feedback.

1. **What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?**

Environmental targets, such as commitments to achieving "Net Zero," are among the most frequently made claims in the marketplace concerning businesses and their activities. "Net Zero" refers to a company's stated objective of becoming carbon neutral by a specified date. These commitments are prevalent across all sectors of the Canadian economy, primarily due to the federal government's benchmarks set through Canada's "Net Zero Challenge" and other similar policies. These initiatives aim to make net-zero planning a standard business practice in Canada.

As part of promoting the Net Zero Challenge, the federal government highlighted several potential benefits for participants, including gaining a competitive advantage in an increasingly decarbonized economy and attracting new investments from key stakeholders. Additionally, businesses were informed they would receive public acknowledgment of their commitments, which would enhance public and investor confidence in their net-zero strategies. Similarly, claims centred on "reducing emissions" are also common across various industries.

Common claims often pertain to corporate actions aimed at mitigating environmental impacts or improving historical environmental performance. Many companies highlight initiatives such as implementing energy-efficient technologies, reducing waste, or transitioning to renewable energy sources. For example, companies in the manufacturing sector may claim to have reduced their energy consumption by upgrading equipment or streamlining production processes. In the retail and consumer goods sectors, corporations frequently emphasize their efforts to reduce packaging waste or shift to more sustainable materials.

Moreover, businesses frequently highlight their efforts to improve historical environmental performance. They often reference past initiatives, such as restoring natural habitats, reducing water consumption, or decreasing their carbon footprint through participation in offsetting programs. For instance, a mining company might highlight reclamation projects aimed at restoring ecosystems impacted by previous operations. Similarly, companies in the transportation industry might emphasize historic reductions in emissions by optimizing routes or transitioning to lower-emission fleets. These claims not only showcase efforts to minimize ongoing environmental impacts but also demonstrate corporate accountability and a commitment to long-term sustainability.

2. **Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on "adequate and proper substantiation in accordance with internationally recognized methodology"? Is there something about those types of claims that makes them harder to substantiate?**

It is challenging to address the issue of proper substantiation without clearer guidance on what constitutes being "adequately and properly substantiated" according to "internationally recognized methodologies." Currently, there is no universally accepted set of such methodologies.

In particular, substantiating claims about the environmental benefits of emerging or developing technologies may be difficult as there may not yet be a recognized scientific method to fully assess their environmental impacts[1], let alone an internationally recognized standard.

If the substantiation requirement is not adjusted to account for qualitative, forward-looking, and normative statements, there is a risk that those statements could be deemed non-compliant with the law. For example, CAOEC is unaware of any internationally recognized methodology that would substantiate the statement made by the Minister of Energy and Natural Resources, Jonathan Wilkinson, when acknowledging Canadian companies included in the Global Cleantech 100 list for "Taking Action on the Climate Crisis." The Minister's statement asserted that these companies were making significant contributions toward national and global net-zero targets, and that they are key drivers of Canada's leadership in the cleantech sector, which contributed $31 billion to Canada's GDP in 2020[2].

It is likely that this statement is based on several assumptions, some of which may be grounded in recognized methodologies and others not. This does not imply that the statement is false or unverifiable; rather, it is reasonable to assume that reliable calculations support the claims. However, Guidelines that do not consider qualitative, forward-looking, and normative statements will not be compatible with much of the federal government's messaging and goals, both at home and abroad.

As long as there is reasonable justification for making such claims regarding the environmental benefits of a business activity—claims that are not false or misleading—the Guidelines should clarify that enforcement action is not warranted. This justification could include substantiated, quantified data logically linked to qualitative or forward-looking statements.

Furthermore, predictions should not be held to the same substantiation standards as current statements. Forecasts inherently involve assumptions, such as the successful implementation of ongoing projects or advances in technology. In line with the European Commission's proposed directive on substantiating

[1] See European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims* (March 22, 2023) at para 29, online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN.

[2] Government of Canada: Statement by Minister Wilkinson Congratulating Canadian Clean Technology Companies (available online: https://www.canada.ca/en/natural-resources-canada/news/2022/01/statement-by-minister-wilkinson-congratulating-canadian-clean-technology-companies.html).

environmental claims[3], forward-looking statements should not be deemed inadequately substantiated if the underlying assumptions are clearly identified and articulated[4].

3. **What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been "adequately and properly substantiated"? Are there limitations to these methodologies that the Bureau should be aware of?**

The Guidelines should not favour certain internationally recognized methodologies over others, create a hierarchy among them, or promote specific methodologies based on criteria beyond "international recognition." Instead, the Guidelines should provide clear criteria on what qualifies as an internationally recognized methodology and what it means to substantiate claims according to such a methodology, leaving it to businesses to determine which methodology is most appropriate for their claims.

This flexibility will allow internationally recognized methodologies to evolve naturally through collaboration between companies and environmental experts. The goal of the new section 74.01(b.2) is to ensure fair competition by requiring companies to make credible environmental claims, not to turn the Bureau into an environmental regulator. Any methodology—whether developed by a government body, scientific community, or industry organization (e.g., the Ipieca GHG Protocol)—should be considered valid under this provision, provided it has gained international recognition.

Furthermore, the Guidelines should clarify that there may not be a single universally accepted methodology for every activity. It is natural for internationally recognized guidelines to vary or even yield different conclusions as global stakeholders work to establish the most effective ways to measure the environmental impact of business operations.

Additionally, the Guidelines should recognize that for some claims, there may not yet be an internationally recognized methodology. In such cases, companies should have the option to substantiate their claims using other reasonable methods. Denying businesses the ability to make sustainability-related statements where no international methodology exists is impractical and would hinder innovation.

If Canadian companies are required to wait for international consensus on methodologies, they will be effectively excluded from contributing to the development of these standards. This would disadvantage Canadian businesses in the global marketplace.

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[3] European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims* (March 22, 2023), online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN

[4] In contrast, the Bureau's Deceptive Marketing Practices Digest — Volume 7 states that "there is a significant risk that [net-zero claims] might become greenwashing". Accordingly, the Bureau advises businesses to "be careful about their forward-looking claims to ensure that they are factual rather than aspirational." This statement is contradictory. Goals, such as net-zero goals, are inherently prospective (or as the Bureau states, "aspirational") and cannot be "factual."

There may be cases where internationally recognized methodologies exist, but Canadian or provincial standards are more appropriate or represent the local application of an international standard under Canadian law or guidelines. The Guidelines should make clear that the Bureau will not take enforcement action against companies that rely on Canadian or provincial/local standards.

Canada is a global leader in energy, environmental monitoring, and reporting. It would be unreasonable to disregard calculations based on Canadian best practices when evaluating environmental claims. Rejecting Canadian standards would not only hinder Canadian businesses but also prevent Canadian standards from gaining influence internationally. Imposing undue reliance on foreign standards would undermine Canada's leadership in the energy sector, which would turn Canada into a follower rather than a standard-setter.

4. **What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on "adequate and proper substantiation in accordance with internationally recognized methodology"?**

A key consideration for the Bureau should be the date on which the representation in question was made. Representations should be evaluated based on the internationally recognized methodologies available, if any, at the time the statement was issued. Furthermore, statements made before June 20, 2024, should not be required to meet the substantiation standards of the New Regulations, even if they remain accessible after that date. Despite believing in the accuracy of previous statements, some members and Canadian companies have removed such statements because they may no longer be deemed acceptable. Given the breadth of public statements across various platforms, it will be onerous for companies to amend or remove all past representations.

The Bureau should assess whether a representation is genuinely misleading. For example:

- Statements based on calculations that deviate from an internationally recognized methodology should be considered acceptable if they clearly disclose how the calculations differ from the recognized methodology, or if they provide the results that would have been obtained using the relevant methodology.
- Statements that cannot be supported by an internationally recognized methodology, because no such methodology exists, should not be deemed improper if they include a disclaimer indicating that no such methodology is available to substantiate the claim.

This approach would allow Canadian companies to continue contributing to the development of new methodologies while ensuring that consumers are not misled or deceived by unsubstantiated claims. It strikes a balance between promoting innovation and ensuring transparency in environmental representations.

5. **What challenges may businesses and advertisers face when complying with this new provision of the law?**

A key challenge that businesses and advertisers will face in complying with the New Provisions is related to compulsory statements. Companies may be subject to legal requirements or significant commercial pressure to make certain environmental claims that may not be fully substantiated by internationally recognized methodologies. For example, as acknowledged in other jurisdictions[5], Canadian or foreign laws, regulations, and rules may require businesses to make representations regarding the environmental impact of their operations[6]. Additionally, companies may be compelled to make statements in response to regulatory guidance or government recommendations. However, the nature of these required or suggested statements may not lend themselves to substantiation according to internationally recognized methodologies.

Another example of this challenge comes from proxy advisory firms like Glass Lewis[7] and ISS[8], which can pressure Canadian companies to make sustainability-related disclosures. These firms may go so far as to withhold support for board members if sustainability disclosure thresholds are not met. Furthermore, the Canadian Coalition for Good Governance (CCGG) has issued guidelines recommending that companies incorporate investor perspectives into their ESG-related disclosures. CCGG encourages companies to ensure robust climate governance and clear disclosure of climate-related governance practices.

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[5] European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims* (March 22, 2023), online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN at para 8.

[6] This might include disclosure required under securities laws (such as under the proposed National Instrument 51-107 – Disclosure of Climate-related Matters ("**NI 51-107**") or under foreign law to which a company making representations in Canada is subject, such as the Corporate Sustainability Reporting Directive ("**CSRD**").

[7] For example, Glass Lewis' guidelines provide that TSX 60 companies operating in industries where the Sustainability Accounting Standards Board ("**SASB**") has determined that companies' greenhouse gas emissions represent a financially material risk should provide thorough climate-related disclosures in line with the recommendations of the Task Force on Climate-Related Financial Disclosures ("**TCFD**") and have explicit and clearly defined oversight responsibilities for climate-related issues. If these disclosures are absent or significantly lacking, Glass Lewis may recommend voting against responsible directors. Evaluation of board responsiveness generally involves a review of publicly available disclosures (in respect of which Glass Lewis explicitly refers to a company's website). As such, companies could be exposed to the risk of a negative voting recommendation if they fail to make such disclosures. Glass Lewis will also review TSX-listed companies' overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Glass Lewis will recommend voting against the governance committee chair of a company included in the S&P/TSX Composite Index which fails to provide explicit disclosure concerning the board's role in overseeing these issues.

[8] ISS generally recommends voting against the incumbent chair of the responsible committee of a company (or other directors on a case-by-case basis) in cases where ISS determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy. Along with appropriate greenhouse gas emissions reduction targets in line with ISS's guidelines, "minimum steps" are defined as: "Detailed disclosure of climate-related risks, such as according to the framework established by the TCFD, including board governance measures, corporate strategy, risk management analyses, and metrics and targets."

Since statements made in compliance with laws, government guidance, or other forms of compulsion are not driven primarily by commercial interests, the Guidelines should clarify that such statements are presumptively not made to promote a business interest. Consequently, these compelled statements should not be considered contrary to section 74.01(b.2) of the New Provisions. Bureau enforcement of greenwashing provisions should not disproportionately target sustainability-related information disclosed under securities laws, such as Annual Information Forms, Management Discussion & Analysis (MD&A), or Annual Reports.

Another challenge arises from the conduct of foreign affiliates. Many companies with Canadian operations also maintain a significant foreign presence, and their foreign affiliates operate under the laws of their local jurisdictions. These affiliates may have limited knowledge of Canadian laws. Representations made by foreign affiliates may be accessible to Canadian consumers through websites or securities disclosure documents. This creates a risk that statements from foreign affiliates might not meet the standards of an "internationally recognized methodology" (for example, if they rely on local methodologies). The Guidelines should clarify that statements not intended for the Canadian public, such as those on a U.S.-specific version of a company's website, are not subject to section 74.01(b.1).

A further challenge relates to the evolving nature of "internationally recognized methodologies." These methodologies are not static; they are developed, revised, and adapted to new contexts and may fall out of favour over time. As a result, representations that are properly substantiated at the time they are made may later become non-compliant as methodologies evolve. The Guidelines should clarify that representations made based on the most recent version of a methodology available at the time the statement is issued should not be subject to enforcement, even if the methodology has been amended later. Similarly, if a company relies on the most recent internationally recognized version of a methodology, it should be deemed compliant with the *Competition Act*, regardless of subsequent amendments.

6. **What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?**

First, it would be helpful for the Guidelines to clarify how the Bureau intends to exercise its enforcement discretion and its approach to seeking remedies from the Competition Tribunal. Specifically:

- The Guidelines should confirm that the Bureau will generally refrain from pursuing enforcement action against representations that are accurate and not misleading.

- The Guidelines should explain the circumstances under which the Bureau will seek administrative monetary penalties (AMPs) in addition to a prohibition order. Given the evolving nature of methodologies for substantiating environmental claims, it should be made clear that AMPs will typically not be appropriate when a representation is found to violate section 74.01(b.2) of the New Provisions for technical reasons or when the entity has made a good-faith effort to substantiate the claim.

- The Bureau should clarify how the due diligence defence will apply in cases of alleged violations under sections 74.01(b.1) and (b.2) of the New Provisions. For example, a party that relies on a well-known firm to calculate emissions, a reputable agency's forecasts for future emissions, or calculations prepared by a company's sustainability team should not face enforcement actions if inadvertent errors result in unsubstantiated statements.

Second, it would be highly beneficial if the Guidelines included examples and case studies to provide clarity on how to interpret the New Provisions. While the Canadian business community is committed to complying with the law, the ambiguity and broad scope of the New Provisions have led many companies to retract past claims regarding the environmental benefits of their activities. The potential costs and reputational risks associated with litigation—even frivolous claims—often far exceed the benefits of making such representations. Providing examples would help businesses adapt their practices to limit litigation risk while continuing to provide the information consumers and investors need to make informed choices.

We suggest the Guidelines include examples addressing at least the following topics:

- Net Zero and Carbon Neutrality Targets: The example should clarify whether a net zero target can be substantiated according to internationally recognized methodologies and, if so, outline what such substantiation would require.

- Representations on Lowering Emissions Intensity: The example should affirm that businesses can make accurate claims about lowering emissions intensity, provided they are properly substantiated, without incurring liability under the New Provisions (regardless of whether total emissions have increased or decreased).

- Scope 1, 2, and 3 Emissions: The example should provide guidance on how companies should apply internationally recognized methodologies when discussing emissions reduction achievements and targets, particularly with regard to Scope 1, Scope 2, and Scope 3 emissions.

- Statements Not Capable of Substantiation by Internationally Recognized Methodologies: The Guidelines should include examples of statements that cannot serve as the basis for enforcement because they cannot be substantiated using internationally recognized methodologies. For instance, a statement like "The energy transition is accelerating the development of technologies that can support our GHG emission reduction efforts" would not be subject to enforcement.

- **Normative Statements that Require No Substantiation**: Examples should include normative statements that do not require substantiation, such as "natural gas will be critical to the energy transition," which represents the speaker's opinion based on values and assumptions rather than verifiable data.

These examples would provide much-needed clarity and help companies confidently navigate the New Provisions while ensuring that Canadian consumers continue to receive the information necessary to make informed decisions.