



DENTONS

Legal framework applicable to Greenwashing

Country focus: Canada

Grow | Protect | Operate | Finance

Canada	
Legal definition of greenwashing	X
Targeted greenwashing legislation	X
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	X
Soft law guidance or standards on greenwashing	✓
Applicability of existing national legal frameworks to greenwashing (depending on facts)	✓

Summary of relevant laws and provisions

In Canada, greenwashing, or the use of misleading or deceptive environmental claims, is regulated by various legal frameworks, such as consumer protection law, contract law, tort law, competition law, and criminal law.

1. The *Consumer Packaging and Labelling Act* prohibits the sale, import, or advertising of products that have on them a false or misleading label. False or misleading is defined as any description or illustration regarding the product's type, quality, performance, function, origin or method of manufacture that may reasonably be regarded as likely to deceive a consumer. The *Textile Labelling Act* similarly prohibits false or misleading labels and includes a more specific definition covering any expression, word, figure, or symbol that may reasonably be regarded as implying that a textile product contains any fibre not contained in the product. Furthermore, Ontario's *Consumer Protection Act* targets misleading claims that a product has someone's approval or sponsorship.
2. Canadian law imposes implied obligations in contracts, even if these obligations are not explicitly agreed to by the parties. First, the duty of good faith and honest performance is breached if a party unreasonably exercises discretion and misleads another party. Second, the *Sale of Goods Act* reads into contracts an implied warranty of fitness, meaning that goods must be reasonably fit for their intended purpose.
3. Several torts may also apply to greenwashing. An action in negligence allows a consumer who has been injured to be compensated if the product was manufactured or designed negligently, or if they were not adequately warned about the risks related to it. Fraudulent misrepresentation that causes loss grounds an action in civil fraud. This tort requires that the representation is material to the transaction, that it induced the consumer to act, and that the person making the representation knew or ought to have known that it was false.
4. The *Competition Act* prohibits false or misleading representations including those conveyed via electronic messages. This offence is generally pursued civilly but may be pursued criminally when the following criteria are met: (1) clear and compelling evidence that the accused knowingly or recklessly made the representation, and (2) criminal prosecution is in the public interest. When determining the public interest, the Competition Bureau takes into account the severity of the allegations and any mitigating factors.
5. Canada's *Criminal Code* prohibits false product descriptions regarding the kind, quality, performance, composition, geographical origin, or mode of manufacture. To be found criminally liable, a seller must have intended to deceive or defraud, and the false description must concern a material aspect of the product.



Summary of guidance and soft law

In addition to the legal frameworks mentioned above, there are also some guidance and soft law instruments that aim to prevent or reduce greenwashing in Canada. These include:

1. The Competition Bureau, Canada's competition law agency, enforces prohibitions on deceptive marketing practices. The Bureau has released [guidance](#) regarding "greenwashing", defined as false or misleading environmental ads or claims about "green" type products.
2. Advertising Standards Canada, a self-regulating industry body, administers and enforces the [Canadian Code of Advertising Standards](#). When evaluating complaints involving misleading environmental claims, the Standards Council considers the guidance of the Competition Bureau (above) and, where relevant, the ICC Framework for Responsible Environmental Marketing Communications

Claims & enforcement

Greenwashing claims can be brought by various actors and bodies, depending on the legal framework and the type of remedy sought. These include:

1. Consumers and other interested third parties such as NGOs can submit complaints to the Competition Bureau, which then decides whether to launch an investigation. Complainants can also commence a six-person application which will *require* the Bureau to investigate the matter.
2. Competitors can sue a business for engaging in the misleading promotion of a product or other offences under the *Competition Act*. They can recover damages to compensate them for the harm suffered and the costs of investigating the matter.

3. The federal Public Prosecution Service of Canada and the attorneys general of the provinces can also prosecute offenses under the *Competition Act*.
4. Attorney generals in the relevant jurisdiction can also lay charges and prosecute *Criminal Code* offenses. Further, there is a mechanism for private persons to initiate a prosecution by presenting information related to the alleged offense to a justice of the peace who then determines whether to issue a criminal charge.
5. Purchasers can commence a civil lawsuit alleging negligence or fraudulent misrepresentation.

Sanctions & remedies

The sanctions and remedies for greenwashing vary according to the legal framework and the nature and gravity of the infringement. For example, under the *Competition Act* sanctions include:

1. Fines of up to \$200,000 for a summary conviction or a fine at the discretion of the court for an indictable conviction.
2. Administrative monetary penalties of up to \$10,000,000, three times the value of the benefit derived from the deceptive conduct, or 3% of the corporation's annual worldwide gross revenue.
3. Imprisonment of up to 14 years, depending on the offence committed and the aggravating factors.
4. Damages to compensate for the harm suffered by the victims of misrepresentations, such as the loss of customers.
5. A court order that a person cease the deceptive marketing practice.
6. Publication of the decision, which can be ordered by judicial authorities, to inform the public of the greenwashing practice.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. In general, the following principles apply:

1. The plaintiff in a civil suit must prove the elements of the tort, breach of contract, or statutory cause of action their claim is based on and the injuries they have suffered as a result.
2. When prosecuting criminal offenses under the *Competition Act* or the *Criminal Code*, prosecutors must prove beyond a reasonable doubt that the accused committed the offense. The accused can then raise a defence (for example due diligence) which they must prove on a balance of probabilities.
3. When prosecuting civil offenses under the *Competition Act*, the Competition Bureau must prove the elements of the offense on a balance of probabilities.
4. Offenses under the *Textile Labelling Act* and the *Consumer Packaging and Labelling Act* are strict liability offenses and must be proven by prosecutors beyond a reasonable doubt.
5. Public officials, such as the Competition Bureau, have investigative powers and can apply to courts for search warrants and/or orders requiring businesses to produce documents or present witnesses for examination.

Recent litigation

1. In January 2022, Keurig Canada Inc. paid \$3 million as part of a settlement with the Competition Bureau to resolve an investigation into the company which had concluded that Keurig's claims regarding the recyclability of its single-use coffee pods were false or misleading in areas where they are not accepted for recycling. Outside the provinces of British Columbia and Quebec, K-Cup pods were not widely accepted in municipal recycling programs.
2. In May, 2023, the Bureau began investigating a group of oil sands producers following a complaint alleging that their advertising campaign involved false and misleading representations with respect to the producers' net zero commitments. The complaint took issue with the producers' emissions accounting, expanding production levels and claims regarding carbon capture technology.
3. The Competition Bureau, in 2022, launched an investigation into a Canadian bank based on a complaint that the bank's continued financing of certain energy projects made its representations with respect to being a climate leader materially false or misleading.

Key contact



Barbara L. Grossman
Partner, Toronto

D +1 416 863 4417
barbara.grossman@dentons.com



Alex MacWilliam
Partner, Calgary

D +1 403 268 7090
alex.macwilliam@dentons.com



Adam Goodman
Partner, Toronto

D +1 416 862 3416
adam.goodman@dentons.com



Margot Patterson
Partner, Ottawa

D +1 613 783 9693
margot.patterson@dentons.com



Emma Irving
Partner, Vancouver

D +1 604 648 6502
emma.irving@dentons.com



Camila Maldí
Associate, Toronto

D +1 416 863 4572
camila.maldi@dentons.com