

# Canada Passes Laws Prohibiting Greenwashing



On June 20, 2024, Canada's House of Commons passed [Bill C-59](#), which includes significant amendments to the [Competition Act](#) aimed at [reforming the current landscape of competition law](#). Bill C-59 contains provisions aimed at curbing greenwashing and requires companies to provide substantial evidence for any environmental claims they make, applying not just to specific products but also to business and business activity. This captures, for example, statements made by businesses about commitments to carbon neutrality and net-zero goals. These new regulations on green advertising and certain other efforts to address deceptive marketing practices introduced by Bill C-59 have already come into force upon receiving Royal Assent while other important legislative updates will come into force on June 20, 2025.

## **Green Advertising** (already in force)

Green advertising is any literal or implied representation regarding the impact of a product or service on the environment. This includes claims touting a positive impact on the environment, meeting certain environmental standards or certifications, claims that there is a reduction of harm, as well as comparisons between the environmental impact of past versions of the same product/service, or those of competitors. Check out [our article on How to Avoid Greenwashing in Canada](#) for more information.

Bill C-59 introduces special prohibitions against greenwashing, and places the burden of proof on businesses to demonstrate that their green advertising claims are based on “adequate and proper test” for statements relating to a product’s benefits for the environment or “adequate and proper substantiation in accordance with internationally recognized methodology” for representations made about the environmental benefits of a business or business activity. While greenwashing was arguably already prohibited by the general prohibitions against false or misleading representations, these specific provisions will no doubt reduce barriers to enforcement.

### **Drip Pricing** (already in force)

In addition, Bill C-59 makes further changes to the recently introduced rules specifically prohibiting drip pricing. Drip pricing was introduced last year as a specifically-prohibited deceptive marketing practice under both the civil and criminal provisions of the *Competition Act*, prohibiting pricing claims that do not include non-optional fees. Bill C-59 now clarifies that the exemption for obligatory charges imposed by federal or provincial laws only extends to those payable by the purchaser (e.g. retail sales/commodity taxes).

### **Ordinary Selling Price** (already in force)

Another key change under Bill C-59 is that advertisers now have the burden of proof to substantiate regular price claims, either under the substantial volume test or the time test. Companies should keep detailed records to substantiate these pricing claims and be prepared to face stringent administrative monetary penalties for non-compliance (i.e. the greater of \$10 million CAD, 3x the benefit received and 3% of annual global revenues).

### **Civil Right of Action and Disgorgement Remedy** (comes into force on June 20, 2025)

Disgorgement is a legal remedy requiring profits obtained through misconduct to be surrendered and usually distributed among affected parties. Bill C-59 introduces a lowered legal threshold for obtaining leave from the Competition Tribunal, allowing the Competition Tribunal to grant leave to private parties if it is in the public's interest to do so. In addition to the above potential administrative monetary penalties, the Competition Tribunal could also order disgorgement of profits obtained due to civilly deceptive marketing practices.

## Conclusion

The changes introduced by Bill C-59 signify a commitment to reinforcing and regulating deceptive marketing practices in Canada. These are part of generational amendments to advertising and other competition laws, and will likely usher in new era of significant legal risks.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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