PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

September 27, 2024

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

[Sent via email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca]

Re: Public consultation on the *Competition Act*'s new greenwashing provisions

The Prospectors and Developers Association of Canada (PDAC) is the voice of Canada's mineral exploration and development industry. On behalf of over 8,000 corporate and individual members, we appreciate the opportunity to comment on future enforcement guidance from the Competition Bureau about environmental claims. As an organization, we strive to improve responsible and sustainable best practices of the mineral exploration and mining industry and offer our members thought leadership and practical tools to move the industry forward.

The relationship between mining and environmental stewardship is symbiotic; responsible mining practices contribute to sustainability goals, while advancements in sustainability drive demand for more efficient and less environmentally impactful mining methods.

In an era where environmental impacts are increasingly scrutinized, "greenwashing" has emerged as a significant concern. New provisions were added to the *Competition Act* to explicitly target misleadingly positive claims of environmental benefits from products, services, businesses, and business activities. This submission explores why avoiding greenwashing is particularly important for mineral exploration and development companies and how they must balance this with the need for effective communication about their work.

Greenwashing undermines genuine progress; exaggerated or false environmental claims can damage a company's credibility and reputation while also leading to financial and legal consequences. This issue is particularly salient for mining companies as the industry is fundamentally tied to the land and environment. While presenting a positive environmental profile is strategically advantageous for any company, the consequences of greenwashing and breaking commitments are amplified within the minerals industry.

Every mineral exploration, development, and extraction-stage company that exists as a public issuer must legally disclose and communicate potential environmental impacts and mitigation efforts to the public regularly. Looking at the mining industry, the vast majority of companies performing exploration or extraction activities around the world are public issuers. Disclosure is heavily scrutinized and a lack of veracity in reporting creates material risk and potential loss of market value for public companies in the mineral industry. Irresponsible mining practices often lack multi-stakeholder risk assessments, environmental controls, and standards - where critical oversights have compounded into long-lasting damage. The legacy of poorly managed projects stagnates public tolerance for all forms of mining including discovering and developing the critical minerals projects needed to start the supply chain of green technologies.

The term critical mineral is one that has a spectrum of definitions around the globe but in simplest form, they are defined as essential materials for modern technology such as rare-earth elements in everyday phones and laptops, low-carbon fuel sources, or renewable energy infrastructure including solar panels, wind turbines, and energy storage systems. Responsibly developing these critical mineral projects and sharing the success stories is crucial to building the momentum needed to achieve sustainability goals.

The amendments to the *Competition Act* create a large burden of proof to disclose efforts and goodwill in terms of both social and environmental impacts to move a project forward. A new mine can take over a decade to acquire the social and environmental approvals to move forward and at every step, the mining sector is scrutinized by regulators and stakeholders, and thus transparency is crucial for maintaining credibility and trust. PDAC promotes that engagement must start at the beginning of a mineral exploration project, to avoid misunderstandings and mitigate the likelihood of false information being disseminated before a junior exploration company may have a physical presence on the ground.

Small and medium-sized enterprises (SMEs) are taking steps to be transparent; by publicly acknowledging both achievements and areas for improvement, companies create a framework for ongoing progress. For instance, if a company has implemented a previously untested technology that reduces water usage or measures biodiversity, sharing this information can showcase its commitment to sustainability. This can extend even further to unassured claims based on internal assessments or preliminary data, whether it is disclosing internally calculated emissions from drilling projects or projecting land use change impacts. For many junior exploration companies, these sustainability assessments are conducted on a case-by-case basis to address the specific interests of its board, community, investor, or other stakeholders. Researching every environmental statistic (especially if the impact is too low to even constitute a meaningful materiality risk) or having an external company assure or audit the numbers is too costly.

Despite the risks associated with presenting claims that might not be fully assured, these SMEs still want, and are requested by their stakeholders, to communicate their efforts and achievements. As more and more risks and data points become measured, many companies voluntarily publish consolidated information in a sustainability report.

We also see the potential for unintended consequences stemming from the proposed changes, which include heavily enforced provisions in the amended *Act*, whereby companies may reduce the amount of public disclosures around positive initiatives and outcomes. This could lead to a paradox where the intended transparency of the *Act* results in even less visibility into corporate environmental practices.

For many emerging or junior companies, limited resources are a significant factor. A study by IBM highlights that companies integrating sustainability across their operations tend to achieve better sustainability and financial results. However, the same study showed spending on sustainability reporting often exceeds spending on actual sustainability innovation by 43%. In this context, a responsible early-stage exploration company with constrained personnel and capital is likely to prioritize genuine environmental practices over investing in comprehensive disclosure efforts.

To support companies in their environmental stewardship, PDAC offers a range of free resources designed to help them implement effective sustainability practices, known as Driving Responsible Exploration (DRE). While we hope that these resources might eventually lead to greater transparency and disclosure, we recognize that many sections might not necessarily meet the "adequate and proper substantiation in accordance with internationally recognized methodology" requirement of the *Competition Act* amendments.

A company is likely to modify and adapt sections of the DRE toolkits for their specific projects. For example, a successful re-vegetation project that receives support from local and regional governments will differ significantly from one undertaken independently by a proponent. A field practitioner may pull from the Environmental Stewardship toolkit the sub-section on minimizing vegetation removal and the section on stockpiling topsoil and then claim that they have taken steps to reduce erosion at their project sites. For an early-stage exploration company, a claim like this might be the entirety of what is published on their website in terms of "business activities undertaken for protecting or restoring the environment".

These common environmental actions do not receive adequate or proper substantiation according to internationally recognized methodologies because they are considered too commonplace or of minor impact. This discrepancy arises because standard methodologies are often designed to measure and validate larger-scale or more innovative sustainability efforts, leaving everyday, incremental actions by junior companies without formal recognition despite their cumulative importance in promoting environmental sustainability. Minor deviations from guidance notes at such a scale an impact does not warrant non-compliance with the *Competition Act*.

It is a shared goal of the amendments to the *Competition Act* and PDAC to encourage companies to honestly communicate their environmental claims, but such disclosure does not inherently provide proof or assurance of the sustainability practices themselves. Thus, PDAC's primary goal in this domain is to empower companies to practice environmental stewardship, rather than solely focusing on disclosure.

While transparency is crucial, the *Competition Act* enforcement will need to provide an allowance for companies to differentiate between predicted claims, assured claims, and unassured claims. Assured claims are likely to meet the criteria of "adequate and proper substantiation in accordance with internationally recognized methodology" and will have been verified by independent third parties, while unassured claims are based on internal assessments or preliminary data. Engaging in open dialogue with stakeholders about environmental practices, including areas of uncertainty, can build trust and foster collaboration. This approach allows for constructive feedback and creates opportunities for improvement.

For further information and detailed responses to the consultation questions please read the answers on the following pages.

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?

Mining companies frequently highlight their environmental initiatives in several key areas:

One of the most common claims is efforts to **track and reduce greenhouse gas emissions** through energy efficiency improvements, renewable energy adoption, and carbon offset programs. Terms like "Net Zero," "Net Zero Carbon," and "Carbon Neutral" are widely used in the media but often lack clear regulation and are used interchangeably despite their distinct meanings. These popular terms can encompass a range of practices—such as emissions offsetting, sequestration, and buying carbon credits—that differ in their implications and the level of detail or justification they require.

For emissions measurement, exploration-stage projects will often report the CO_2-e per meter drilled, while development-stage mineral projects will often create projections on the CO_2-e per tonne of ore. This provides insight into the intensity of the emissions.

Around **water management**, companies claim responsible practices such as recycling water, reducing consumption, and protecting local water sources. Mining companies may focus on minimizing their impact on local water supplies and enhancing water management.

In terms of **biodiversity and land reclamation**, companies often assert their commitment to land rehabilitation, reforestation, creating wildlife corridors, and protecting critical habitats. The common claim in this domain is “Nature-Positive”.

Waste management is another common area of focus, with mining companies claiming responsible handling of waste materials, including tailings, and highlighting their efforts to reduce waste, recycle, and use eco-friendly disposal methods.

Junior exploration companies may also emphasize their efforts to engage with local communities and stakeholders, ensuring that their exploration activities align with **local environmental and social expectations.**

These claims are prevalent because they are the current most topical environmental issues for the industry and will often arise from a company’s materiality assessment, reflecting common environmental concerns from multistakeholder groups.

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?

Companies often promote standard low-impact practices as part of their environmental stewardship. These practices include minimizing disturbance during exploration or operational activities, using energy-efficient technologies, implementing waste reduction strategies, and adopting measures to protect local wildlife and habitats. While these practices are generally recognized as beneficial and can help mitigate environmental impacts, their effectiveness can vary depending on the specific context and execution. Consequently, while such practices are valuable, they often need to be supported by robust data and long-term monitoring to demonstrate their true impact and align with internationally accepted standards.

Claims about future reductions in environmental impacts, such as commitments to achieve net zero emissions by a specific year, are difficult to substantiate because they rely on projections and plans rather than current, verifiable data. The complexity of reaching these goals, coupled with uncertainties like market changes and technological advancements, makes it challenging to provide concrete evidence that aligns with internationally recognized methodologies at the time of the commitment.

Similarly, claims about restoring ecosystems or biodiversity after mining operations face difficulties in verification. Reclamation efforts often take years or even decades to yield visible results, and their success depends on numerous factors such as local species, climate conditions, and ongoing land management. While international standards exist for assessing biodiversity and ecosystem recovery, they typically require long-term monitoring and comprehensive data, which companies may not be able to provide immediately.

Additionally, carbon credits, which are often poorly understood by the general public, can make it easy for companies to claim emissions offsets or carbon neutrality without implementing substantial changes to their business operations. Terms like "sustainable development" or "sustainable operations" further complicate the issue, as they are generic and lack a universal definition, making it easy to apply them broadly to any business activity. Even regulatory frameworks like the Impact Assessment Act struggle with defining and proving what truly "contributes to sustainability," leading to ambiguity and challenges in assessing environmental claims.

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?

There is a proverbial alphabet soup of internationally recognized sustainability standards, initiatives, and methodologies that relate to the environmental impact of businesses and business activities.
To name a few there are the United Nations' Sustainable Development Goals (UN SDG's), the International Organization for Standardization (ISO standards 14001 and 14064), and the GHG Protocol.

There are unifying and consolidation efforts underway, notably the International Sustainability Standards Board (ISSB) aims to support investor/company communication around climate and sustainability-related financial information. The ISSB Standards incorporate the Task Force on Climate-related Financial Disclosures (TCFD) and Sustainability Accounting Standards Board (SASB) frameworks as well as collaborating with the Global Reporting Initiative (GRI) to ensure interoperability.

This effort is also underway in the mining industry with the Consolidated Mining Standard Initiative (CMSI), a collaboration between the Mining Association of Canada's (MAC) Towards Sustainable Mining (TSM), The Copper Mark, ICMM, and World Gold Council (WGC) to consolidate their different voluntary responsible mining standards into one global standard. This would have protocols on climate change, tailings management, biodiversity conservation management, and water stewardship. The suggested standard would be supervised by an impartial, multi-stakeholder Board and supported by an assurance and audit procedure.

Also prevalent in the mining industry is the Initiative for Responsible Mining Assurance (IRMA) which is similarly supervised by an impartial, multi-stakeholder Board and supported by an assurance and audit procedure.

Junior companies, especially in the early stages, might find it challenging to meet the above listed environmental disclosure standards and acquire third-party certifications due to factors such as complexity, cost, varying stakeholder expectations, and lack of expertise. Additionally, many mining standards focus on active operations and activities that are irrelevant to an exploration camp. As stated in our cover letter, PDAC provides our Driving Responsible Exploration (DRE) resources, which are internationally recognized, as a tool to help our members begin their environmental stewardship journey, eventually enabling them to understand, use, and achieve compliance with their relevant standards.

As a caution, environmental standards and methodologies continue to evolve as new scientific insights emerge. What may be considered adequate substantiation today could be seen as outdated or inadequate in the future.

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 clause regarding the acceptance of voluntary standards should be considered in enforcing the provisions of the *Competition Act*. Many voluntary standards are self-regulated and have different levels of multistakeholder review as well as different requirements for certification. While this leaves some voluntary standards as susceptible to misuse in greenwashing, others also offer valuable tools for promoting genuine environmental responsibility. Well-designed voluntary standards can set clear benchmarks for environmental performance and provide companies with a structured approach to improving their practices. When implemented rigorously, these standards can help distinguish genuinely sustainable companies from those engaged in greenwashing. Global environmental standards may not be uniformly applicable across different industries or regions, which complicates ensuring consistent application. Solely within the mining industry different stages of the mining lifecycle, from exploration to closure, have vastly different impacts. To address this challenge, the Bureau should generate clear and precise definitions for which key terminology will be enforced under the *Competition Act* such as "sustainable," "green technology," "net zero," "carbon neutral," "energy transition," "environmentally responsible," and "carbon footprint", etc. These definitions should be publicly available to enable investors and stakeholders to conduct thorough due diligence. Finally, incorporating language that indicates aspirational goals—such as "aiming to be" or "striving for"—can allow businesses to use these terms as long as it is clear that they represent targets rather than current achievements. It is acceptable for companies to state that they are working towards specific environmental objectives or designing future activities to meet these goals, provided they are transparent about the status of their progress.

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

Compliance with new environmental regulations can be particularly challenging for small and medium-sized enterprises (SMEs) due to the high costs and complexities associated with obtaining proper substantiation and assurance. Although many SMEs are striving for transparency—such as by disclosing internally calculated emissions from exploration projects—external auditing and assurance might be prohibitively expensive. This financial strain could result in some companies opting not to disclose their information, potentially leading to a new form of greenwashing known as "greenhushing."

At the onset of applying this new provision, businesses will need adequate time to update their mission statements, logos, and both internal and external documents to align with new standards. This process may involve significant rebranding efforts, which is not a quick turnaround. Additionally, companies should be granted leniency regarding "historic" materials like old flyers and advertisements issued before the new regulations took effect. It is impractical to expect businesses to update every past document, especially those that may have circulated beyond their control.

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

The Bureau should consider the impact on investment. Across different industries, companies are already starting to pull back on making public environmental commitments or targets. A first-time violation for deceptive marketing practices and non-compliance with the *Competition Act* for corporations under civil provisions is up to the greater of $10 million and three times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenue. With the threat of penalties or even criminal provisions for currently ambiguous definitions of what constitutes a misleading environmental claim, the motivation for companies to be environmentally transparent is diminished. The investment community has long been advocating for companies to provide more comprehensive reporting on environmental issues. This is crucial for understanding the potential risks associated with climate change and forthcoming policies. However, there is now a concern that more and more companies may opt not to disclose their environmental performance data. This lack of transparency could hinder efforts to attract investment in this sector. While this might be temporary and the information may become available in a year or so, when the Bureau provides more clarity, amendments to the *Competition Act* are currently creating a pause on investment, which is contrary to the goal. Many mining companies voluntarily invest in clean technology. These companies often have historical greenhouse gas emissions and set goals to improve them, which motivates them to invest in or purchase technologies that can help reduce these emissions. If they cannot publicly advertise their efforts to reduce emissions, there is little motivation to invest, as there is no benefit if this information cannot be shared. The minerals industry is striving to create and foster an environment that encourages capital investment in decarbonization, clean technology, oil and gas, carbon capture and storage (CCS), large industrial emitters, steel, fertilizer, and other sectors. Creating this level of uncertainty drives investors away.