mccarthy tetrault

ESG and Sustainability:

Key Trends in Canada 2025

This publication reviews key developments in Canada during 2025, and their potential impact in 2026 and beyond. For further information, please speak to one of our contacts listed on **page 21**.

Editor-in-Chief:
Sonia J. Struthers, Partner & Co-Lead, ESG and Sustainability Strategic Issues Group

Editors:
Robert J. Richardson, Rebecca Wieschkowski, Gurvir Sangha, Christopher Yam and Gwenyth Wren.

Preface

In early 2025, I was invited to speak to the legal department of one of our Firm's largest clients about the then-current state of "Environmental, Social & Governance" (ESG) and what we all might expect for its future. Donald J. Trump's second term as President of the United States had just begun and the headlines frequently predicted the "death of ESG." During my presentation, I read out loud a eulogy that I had written just for the occasion.

Speaking to a sophisticated audience that included some of Canada's most dedicated and thoughtful ESG proponents about the potential death of a beloved acronym was a risky move. For the past several years, ESG has served as a key cornerstone of corporate governance in the U.S., Canada and Europe, as evidenced by a quick Google search revealing more than 660 million hits. I hedged my bets, however, by ending on a cautiously optimistic note.

Today, a year later, I am struck by how prescient my cautious optimism was: **as the nine articles in this publication make abundantly clear, the principles of ESG are still very much alive in Canada. As a brand, the "ESG" acronym is waning but, as a strategic consideration, risk management discipline and source of invaluable investor data, among other things, ESG is just beginning to hit its stride in Canada.**

North American companies have pivoted, sometimes scrubbing the acronym from their public communications, while still continuing the important work of pursuing substantive sustainability and enhancing their sustainability reporting. One recent source that we reviewed found that, that while roughly 40% of S&P 500 firms had used "ESG" in their report titles in 2024, that percentage has dropped to less than 25%.

More and more, companies are replacing "ESG" with terms like "business resilience," "long-term value," and "operational efficiency," while simultaneously enhancing data collection to meet new and more prescriptive disclosure requirements and – more importantly – investor demands for reliable information about an enterprise's sustainability.

Note that when it comes to ESG, there are distinct differences between U.S. and Canadian approaches. Since taking office in early 2025, the Trump administration has moved aggressively to dismantle key components of the U.S. federal ESG framework:

— the United States Securities and Exchange Commission (SEC) ceased defending its landmark proposed climate-related disclosure requirements and withdrew its proposed rules for ESG reporting by investment advisors;

— a series of Presidential Executive Orders targeted proxy advisory firms and institutional investors on ESG issues, while also directing the United States Department of Justice and SEC to scrutinize their methodologies and public disclosures; and

— the United States withdrew from the Paris Agreement, for a second time.

Meanwhile, Canada has doubled down by formalizing swaths of the ESG and Sustainability landscape, including by taking the following actions, each of which we have written about previously:

— in 2024, Canada passed Bill C-59, which amended the *Competition Act* (Canada) to require companies to back up any environmental claims with "adequate and proper substantiation." Failure to do so can result in significant regulatory fines–up to C$15 million or 3% of global revenue.

— also in late 2024, the Canadian Sustainability Standards Board (CSSB) finalized the first *Canadian Sustainability and Climate-Related Disclosure Standards* (CSDS 1 and 2). While voluntary, this Canadian-tailored disclosure framework provides a standardized "baseline," based on preeminent international standards, that most institutional investors now expect to see from companies looking to raise capital in the Canadian market; and

— in 2025, Canada's federal financial institutions regulator (the Office of the Superintendent of Financial Institutions, or OSFI) implemented *Guideline B-15 – Climate Risk Management*, requiring federally regulated banks, insurers and trust companies to manage and disclose climate-related risks. The first Guideline B-15 reports have already been published by banks and large insurers and has resulted in "trickle-down" compliance and disclosure effects, as these institutions now often demand ESG data from the companies they lend to or insure.

While the acronym "ESG" is under threat, substantive practices such as measuring carbon footprints, providing transparency about supply chain risks and mitigation strategies, and managing workforce stability appear to have become permanent fixtures of modern business strategy and risk management.

We hope you will enjoy our annual ESG Trends publication.

Robert J. Richardson, CD
Partner & Co-Lead, ESG and Sustainability Strategic Issues Group

TABLE OF CONTENTS

Institutional Proxy-Voting Practices: Who Are Your Shareholders?

Authors: *Alyson Goldman, Rebecca Wieschkowski and Patricia Doiron*

Recent changes to the institutional-investor landscape highlight the importance of understanding who your shareholders are and how voting unpredictability may impact your business.

THE PROXY ADVISORY FIRM LANDSCAPE

Large institutional investors, such as pension plans or asset-management branches of banks, often maintain extremely broad investment portfolios, requiring them to cast votes at thousands of shareholder meetings each year, across tens of thousands of proposals. Given the time, cost and expertise required to manage this process internally, many institutional investors turn to proxy advisory firms, like Institutional Shareholder Services ("ISS") and Glass Lewis ("GL"), to advise them on how to vote the shares they beneficially own. This process includes reading the meeting materials produced by companies and determining how investors should vote based on standardized criteria published by the proxy advisory firms each year – criteria which often reflect principles of good governance, diversity and sustainability.

THE MOVE AWAY FROM A SINGLE SET OF VOTING RECOMMENDATIONS

In fall 2025, GL **announced** that it plans to discontinue its universal benchmark proxy-voting guidelines in 2027. This means that they will no longer provide a single annual set of voting recommendations and instead will offer custom voting frameworks in an effort to enable all their clients to vote in alignment with their own policies. GL cited two driving forces behind this change: (i) advances in technology, including AI, which allow for customizable approaches to voting; and (ii) differing investor priorities related to fiduciary duties, sustainability and engagement.

GL's shift may also be influenced by political and regulatory pressure in the United States. A December 2025 **executive order** criticized ISS and GL for promoting diversity, equity and inclusion and environmental, social and governance agendas and directed the Federal Trade Commission to examine whether proxy-voting frameworks violate federal antitrust law.

ISS has not announced whether they will maintain their practice of providing a single set of voting recommendations.

THE RISE OF PASS-THROUGH VOTING

Even before GL's announcement, institutional investors had increasingly explored alternative-voting structures, with recent years seeing a growing adoption of pass-through voting.

Pass-through voting allows investors to determine how their votes should be cast from voting policies or individual preferences, rather than defaulting to a single set of voting recommendations from a proxy advisory firm. Institutional investors have also begun splitting their proxy-voting functions into distinct teams, each with separate decision makers, policies and approaches.

Recently, J.P. Morgan Asset Management **announced** that it will no longer rely on voting recommendations or data from third-party proxy advisors in the United States, and will instead rely on internal AI tools to conduct research and make voting decisions.

WHAT YOUR COMPANY NEEDS TO KNOW MOVING FORWARD

These developments introduce greater uncertainty in voting outcomes. Support from a single proxy advisor will no longer guarantee alignment among your investors or ensure that a resolution passes. Instead, votes will increasingly reflect the unique policies and priorities of each institutional investor.

As a result, the way companies engage with shareholders may need to evolve. It is crucial for companies to maintain ongoing shareholder engagement and closely monitor proxy advisor developments to ensure their boards are prepared for these changes.

Clean Economy Tax Credits: Winter 2026 Update

Authors: *Matt Kraemer, Jeremy Ho, Adam Unick and Justin Ng*

In the 2025 federal budget released on November 4, 2025 ("*Budget 2025*"), the federal government expanded on its previous commitment to build Canada's clean economy by announcing a new climate-competitiveness strategy. The strategy is intended to create an investment environment that positions Canadian businesses to compete and succeed globally. As part of this strategy, the Government of Canada reiterated its commitment to modernize the country's electrical grid and build Canada's clean economy through tax credits.

On November 18, 2025, Bill C-15, the *Budget 2025 Implementation Act, No. 1*, was tabled and received first reading in the House of Commons in the First Session of the 45th Parliament. Among other measures, Bill C-15 included legislation to enact the Clean Electricity Investment Tax Credit ("CE ITC") and legislation enacting prior proposals to update the existing Clean Economy Tax Credits.

This article highlights some of the recent developments relating to Canada's Clean Economy Tax Credits. All statutory references are to the *Income Tax Act* (Canada) as proposed to be amended by Bill C-15.

UPDATE ON CANADA'S ENACTED CLEAN ECONOMY TAX CREDITS

A suite of Clean Economy Tax Credits was enacted by Bills C-59 and C-69, which both received Royal Assent on June 20, 2024. These previously enacted Clean Economy Tax Credits are:

— the Investment Tax Credit for Carbon Capture, Utilization and Storage ("CCUS ITC"), available in respect of the capital cost of eligible property acquired on or after January 1, 2022. The CCUS ITC is a refundable tax credit for eligible expenditures, which generally include equipment used to capture, transport or store CO_2 in respect of an eligible project;

— the Clean Technology Investment Tax Credit ("CT ITC"), available in respect of the capital cost of eligible property acquired and available for use on or after March 28, 2023. The CT ITC is a refundable tax credit for eligible expenditures, which include eligible clean-technology property (e.g., very generally, equipment used to generate electricity from geothermal, solar, water and wind sources) in Canada;

— the Clean Hydrogen Investment Tax Credit ("CH ITC"), available in respect of the capital cost of eligible property acquired and available for use on or after March 28, 2023. The CH ITC is a refundable tax credit for eligible expenditures, which include eligible clean-hydrogen property (e.g., very generally, hydrogen-producing equipment from electrolysis or CO_2 emission-based reforming) in respect of an eligible project; and

— the Clean Technology Manufacturing Investment Tax Credit ("CTM ITC"), available in respect of the capital cost of eligible property acquired and available for use on or after January 1, 2024. The CTM ITC is a refundable tax credit for eligible expenditures, which generally include manufacturing and processing machinery and equipment for the extraction of critical minerals or the production of certain clean-energy equipment.

Budget 2025 confirmed the Government of Canada's intention to implement certain outstanding legislative proposals intended to expand the eligibility criteria for the CT ITC, CTM ITC and CH ITC with retroactive effect, including:

— expanding eligibility under the CTM ITC to include eligible property acquired for use in polymetallic mining activities on or after January 1, 2024. Additionally, the list of critical minerals eligible for the CTM ITC was also expanded to include antimony, indium, gallium, germanium and scandium;

— expanding eligibility under the CH ITC to include eligible property used in methane pyrolysis projects that is acquired and becomes available for use on or after December 16, 2024;

— providing the CT ITC for eligible property acquired for use in certain waste biomass generation projects that is acquired and becomes available for use on or after November 21, 2023; and

— expanding eligibility for the CT ITC for property used in small modular nuclear reactors by removing the megawatt-electric threshold and modularity requirement and increasing the megawatt-thermal threshold for nuclear fission reactors effective for property that is acquired and becomes available for use on or after March 28, 2023.

Legislation effecting the above proposals, other than the expansion of the CH ITC to promote investments in methane-pyrolysis projects, was included in Bill C-15.

Draft legislative proposals relating to expanding the CH ITC to promote investments in methane-pyrolysis projects was included in the series of draft legislative proposals released by the Department of Finance on January 29, 2026, with a comment period ending on February 27, 2026.

Also included in Bill C-15 was legislation to effect the *Budget 2025* proposal to extend the availability of full credit rates for the CCUS ITC until December 31, 2035. Eligible expenditures incurred between January 1, 2036 and December 31, 2040 would be subject to the reduced CCUS ITC rates.

CLEAN ELECTRICITY INVESTMENT TAX CREDIT

Bill C-15 also included legislation to enact the CE ITC. The CE ITC is an up-to-15%-refundable tax credit applicable to investments in eligible property that is acquired and becomes available for use on or after April 16, 2024 unless the relevant project commenced construction before March 28, 2023.

The legislation tabled in Bill C-15 also effects the following *Budget 2025* proposals relating to the CE ITC:

— including the Canada Growth Fund as an eligible entity under the CE ITC and creating an exemption such that financing provided by the Canada Growth Fund will not reduce the capital cost of clean-energy property for the purposes of computing the CE ITC. Such measure will apply in respect of eligible property that is acquired for use on or after November 4, 2025; and

— removing the net-zero commitment and the requirement to pass along the benefit of the CE ITC to ratepayers as conditions imposed on provincial and territorial governments for their Crown corporations to be eligible to claim the CE ITC.

DOMESTIC CONTENT CONSULTATION

Budget 2025 announced the Government of Canada's intention to consult on the possibility of introducing domestic-content requirements for the CT ITC and the CE ITC. A consultation on these new requirements will remain open until March 13, 2026.

ELECTRIC VEHICLE SUPPLY CHAIN INVESTMENT TAX CREDIT

On February 21, 2025, the federal government released draft legislation to implement the Electric Vehicle Supply Chain Investment Tax Credit ("EV ITC"). Despite having been included in Prime Minister Mark Carney's election platform, no reference was made to the EV ITC in either *Budget 2025* or the federal government's timeline for delivering the clean-economy tax credits. This has led to some uncertainty regarding the ultimate implementation of the EV ITC.

Over the past year, the federal government introduced several tax proposals as part of its climate-competitiveness strategy, marked most notably by *Budget 2025* and the tabling of Bill C-15. These measures deepen the federal government's commitment to building a sustainable, clean economy by modernizing the electricity grid, expanding the scope of existing tax credits and strengthening incentives for clean energy, manufacturing and critical-mineral development. For more information on tax measures contained in *Budget 2025*, please refer to our in-depth analysis **here**.

More Enforcement Clarity and Legislative Ambiguity: 2025 Developments in Greenwashing under the *Competition Act*

Authors: *Dominic Thérien, Michael Caldecott and Madison Bruno*

The last 12 months have provided both much-needed clarity on how the Competition Bureau will interpret the *Competition Act's* newly minted deceptive-marketing regime for environmental claims, as well as increased uncertainty at the legislative and policy level following the Carney government's November 2025 announcement that it plans to tweak some of those provisions. We start a new year waiting to see whether the federal government's intention to water down some of the 2024 reforms signals a cooling in the enforcement climate for green claims under the *Competition Act*.

BUREAU FINALIZES GREENWASHING GUIDELINES AT LAST

The first notable development occurred in June 2025, when the Bureau published its *Environmental claims and the Competition Act Enforcement* guidelines. This document comprises official guidance on how companies should apply the new *Competition Act* environmental claims provisions to their marketing activities. These guidelines reflect changes from the Bureau's December 2024 draft guidelines, discussed in last year's edition of this publication, and offer a clearer picture of how the Bureau intends to approach greenwashing oversight going forward.

Among the most notable clarifications, the guidelines emphasized the Bureau's focus on marketing and promotional representations made to the public "for the purpose of promoting a product or business interest" rather than, for example, securities-law environmental disclosures. The guidelines also clarified that a methodology recognized in two or more countries will generally qualify as "internationally recognized" for the purposes of substantiating claims about the environmental benefits of a business or business activity. Because the requirement to substantiate these claims with an "internationally recognized methodology" was an entirely new concept under the *Competition Act* with the addition of the environmental-claims provisions, the guidelines serve as the first – and currently only – source of interpretative guidance on its meaning. As discussed below, such guidance appears likely to be moot if the federal government's plan to remove the concept of "internationally recognized methodology" from the legislation succeeds.

Finally, companies making forward-looking environmental claims are expected to ensure that such statements are realistic, supported by credible plans, and capable of being acted upon. However, grey areas remain. For example, the guidelines do not address whether investment funds and private-equity firms may rely on the environmental disclosures made by underlying portfolio companies to satisfy the new substantiation requirements – a question raised

by multiple stakeholders in their submissions to the Bureau on the draft guidelines.

By way of comparison, the guidelines are considerably less prescriptive than equivalent documents released by peer agencies, such as the U.S. Federal Trade Commission's *Green Guide* and the UK Competition and Markets Authority's *Green Claims Code*. With a broad and flexible approach, the Bureau can assess environmental claims on a case-by-case basis. Based on the very limited public evidence of enforcement activity in 2025, it appears that the Bureau is waiting to find egregious cases to use its new greenwashing enforcement toolkit.

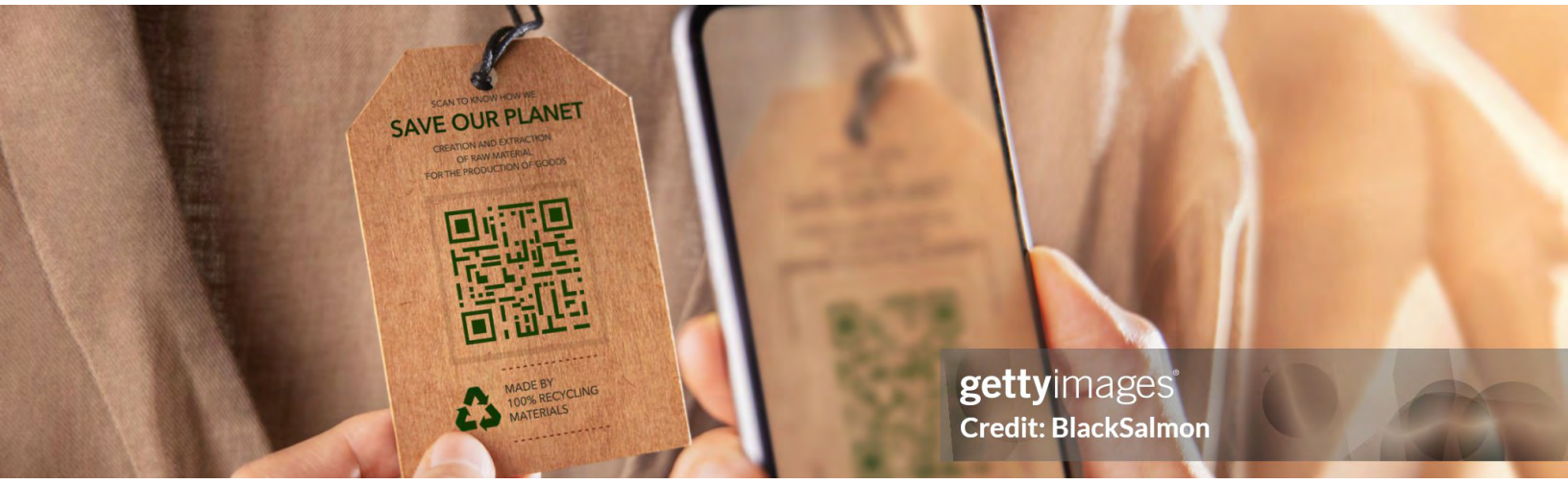
ANOTHER CHANGE IN COURSE – FURTHER LEGISLATIVE AMENDMENTS EXPECTED

Just as the dust was settling on the new regulatory landscape, the Carney government announced plans to edit parts of the new regime, which arguably would have the effect of weakening the hand of the Competition Bureau, and especially private litigants, seeking to find infringements under the greenwashing provisions. In November 2025, the federal government tabled *Budget 2025: Canada Strong*, which includes two proposed amendments to the greenwashing provisions.

First, the Government of Canada plans to remove the requirement for businesses to substantiate claims related to the environmental benefits of a business or business activity "in accordance with internationally recognized methodology." While these amendments do not eliminate the need for substantiation, as claims must still be based on "adequate and proper substantiation," the concept of "internationally recognized methodologies" had become a focal point for criticism of the new regime; a range of stakeholders cited the increased costs associated with verifying claims against foreign methodologies – if such methodologies even existed – as symptomatic of a new regime that placed too great a compliance burden on advertisers. The Government of Canada appears to have listened to this feedback and plans to revert the substantiation of claims to their original framework.

Second, the proposed amendments also narrow the ability of third parties to bring greenwashing complaints directly to the Competition Tribunal; private parties would no longer be able to seek leave for claims concerning the environmental benefits of a business or business activity, though they could still apply for leave for claims about a product's environmental benefits. Ultimately, private parties can still apply for leave to bring applications regarding environmental and any other claims relating to the benefits of the business under the general deceptive-marketing provisions of the *Competition Act*. If enacted, these changes could reduce litigation risk for businesses in 2026 and may further reinforce the Bureau's cautious enforcement posture.

Despite proposed legislative changes softly signaling a less-draconian enforcement environment, we are seeing companies self-correcting and retreating from environmental claims in light of Bureau enforcement and numerous "six-resident" complaints – whereby six Canadian residents can file a complaint compelling a Bureau inquiry – spurred by environmental groups. Although the Bureau is investigating these claims, it is quietly shutting down inquiries without formal action, a trend we expect to continue in 2026. We also expect companies will continue scaling back environmental claims and potentially broader environmental efforts as activist groups drive scrutiny via this complaint mechanism.



ICJ Clarifies States' Legal Duties to Prevent Climate Change's Harmful Impacts

Authors: *Vasuda Sinha and Gwenyth Wren*

On July 23, 2025, the International Court of Justice ("ICJ") released a highly anticipated **advisory opinion** addressing the obligations of States concerning climate change under international law (the "Advisory Opinion").

The Advisory Opinion arose from referral from the United Nations General Assembly, which sought the ICJ's answer to two questions:

1. What are the obligations of States under international law to protect the climate and environment from anthropogenic greenhouse gases for both other States and present and future generations; and

2. What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

    a. States, including, in particular, small-island developing States, which due to their geographical circumstances and level of development are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change, and

    b. people and individuals of the present and future generations affected by the adverse effects of climate change?

While the Advisory Opinion is not itself legally binding, the ICJ's conclusions are authoritative statements regarding the content of international law. In that light, in the Canadian context the Advisory Opinion is relevant to the various stakeholders (including government organs, private parties or non-governmental organizations) that determine or seek to influence law and policy in areas related to climate change.

KEY TAKEAWAYS FROM THE ADVISORY OPINION

State Obligations in Respect of Climate Change

The ICJ concluded that States have various obligations to protect the climate and environment from anthropogenic greenhouse-gas emissions. These obligations can be owed to other States or to peoples or individuals. They consist of:

— implementing mitigations with respect to the presence of greenhouse gases in the atmosphere;

— adapting State practices to moderate harm or exploit opportunities in light of climate change; and

— cooperation between States, such as with respect to information and technology sharing.

As to the sources of these obligations, the ICJ considered various climate change-related treaties such as the ***United Nations Framework Convention on Climate Change*** ("UNFCCC") which established the ultimate objective, basic principles and general obligations and the ***Kyoto Protocol*** and ***Paris Agreement***, which translated those principles into more specific interrelated obligations. It noted that other environment-related treaties, such as the ***Vienna Convention for the Protection of the Ozone Layer*** and ***Montreal Protocol on Substances that Deplete the Ozone Layer***, and international human-rights law also define States' climate-change obligations.

In addition, the ICJ considered customary international law as a source of States' obligations and found two obligations to arise:

— The duty to prevent significant harm to the environment ("duty to prevent"): This is an obligation to act with due diligence that itself consists of several components, such as "precautionary measures, which take account of scientific and technological information, as well as relevant rules and international standards, and which vary depending on each State's respective capabilities"; and

— the duty to cooperate for the protection of the environment ("duty to cooperate"): This requires States to work together to prevent significant climate and environmental harm, on the basis that uncoordinated efforts may not garner useful results.

Additionally, the ICJ concluded that principles such as sustainable development, common-but-differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the precautionary approach must be considered when determining the applicable law.

Consequences of a Breach of State Obligations

The ICJ observed that breaches by a State of its climate and environment obligations "may give rise to the entire panoply of legal consequence provided for under the law of State responsibility." Those consequences include having to:

— perform the relevant obligation, notwithstanding the breach;

— immediately cease any ongoing breach and implement measures to prevent any repeat of the breach; and

— provide reparation for harm caused.

No doubt, issues of attribution and causation will be critical to determining any specific claim against a State. While acknowledging the complexity of such considerations, the ICJ concluded that they do not, in principle, exclude the possibility of establishing State responsibility within the context of climate change.

CONCLUSION

The Advisory Opinion is one of the most significant developments in international climate law since the Paris Agreement and is likely to influence the future of developments in law, policy and disputes related to climate change. Stakeholders should consider its contents and its implications for all manner of public-private interactions that may have climate-related impacts. These include energy, infrastructure and transportation projects, but may also extend to sectors that have not previously been the focus of climate-related action, such as consumer goods and technology.

Black Boxes and Board Duties: AI as the Next ESG Flashpoint

Authors: *Rebecca Wieschkowski, Ashley Wilson and Marcus Smith*

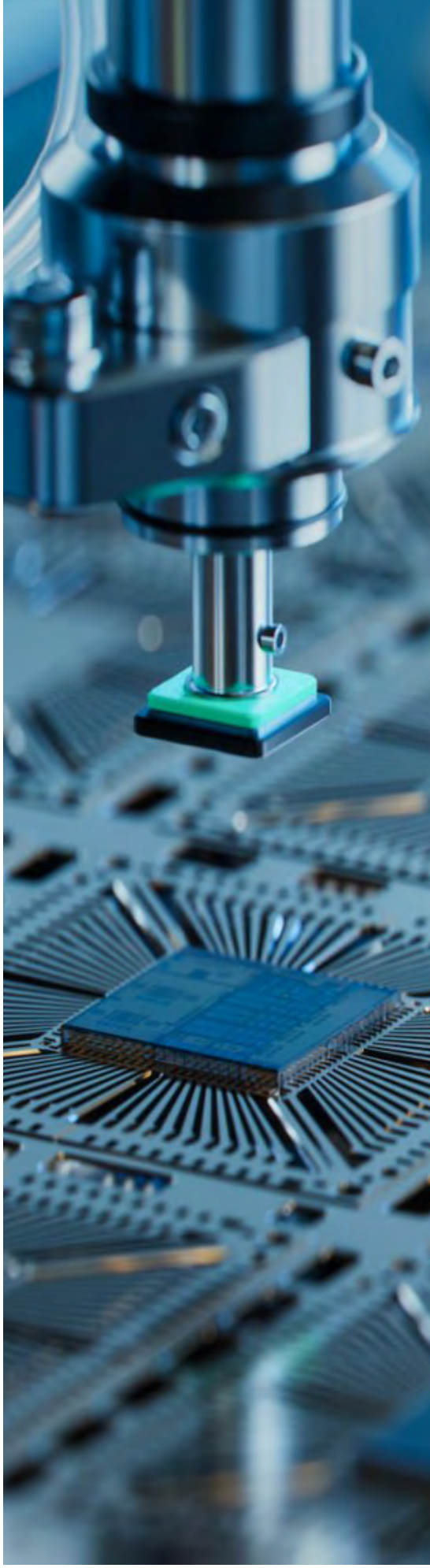
History is full of examples of what happens when transformative systems operate without effective oversight (i.e., regulations). The collapse of stock market giant Enron, driven by opaque financial engineering and governance failures, or the predatory-lending practices that fueled the 2008 global financial crisis, illustrate how innovation untethered from accountability can lead to catastrophic economic and social harm. As artificial intelligence ("AI") increasingly reshapes business models, shareholders are placing pressure on companies to avoid repeating similar mistakes by embedding AI governance within broader ESG frameworks.

Across Canadian public companies, shareholders are proposing greater alignment with AI governance standards, particularly with Canada's ***Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems*** (the "Code"). During the 2025 proxy season, a variety of Canadian companies received near-identical proposals from shareholders requesting that the boards of directors commit to the Code and align governance structures with the principles outlined in it. The proposals reflect the growing concern regarding the risks of AI, including biases, misuse, health and safety impacts and broader systemic threats.

At other companies, shareholders went further by urging companies to anchor AI governance in international human rights frameworks such as the ***UN Guiding Principles on Business and Human Rights***. The emphasis in these proposals is ongoing human rights due diligence, stakeholder consultation, transparency and mechanisms to address AI-related harms, particularly when AI is deployed in high-risk contexts like financial services or predictive analytics.

Notwithstanding these proposals, boards of directors are consistently recommending that shareholders vote "no." Their reasoning follows common themes. Boards argue that they have already developed and deployed AI-governance structures that are fit for their purposes. One company, for example, stressed that it is not in the business of developing or deploying AI systems and that it already enforces acceptable-use policies that are aligned with fairness, accountability and transparency principles. Another company points to its model risk management frameworks and board-level oversight, arguing that the voluntary Code would be overly prescriptive and duplicative – particularly when read alongside Bill C-27. Boards also emphasize flexibility, asserting that internally developed policies are better suited for the age of AI as they can respond to the rapidly evolving landscape.

The rapid growth of AI in society underscores why AI governance is now a core ESG issue. AI raises material environmental, social and governance risks: biased decision making, privacy violations, opaque "black-box" models, workforce displacement and even environmental strain from water-intensive data centres. As with mismanaged companies, poorly governed AI systems create a significant risk of exposing companies to litigation, regulatory sanctions, reputational damage and erosion of public trust, precisely the types of risks ESG frameworks are meant to identify and mitigate.



In 2022, the federal government proposed Bill C-27, which included the ***Artificial Intelligence and Data Act*** (the "Act"). The Act sought to regulate high-impact AI systems by requiring risk identification, bias mitigation, compliance oversight and criminal penalties for reckless or fraudulent deployment. However, despite years of extensive committee study, Bill C-27 died on the Order Paper following Parliament's prorogation in January 2025, leaving Canada's AI regulatory framework incomplete.

Until binding legislation emerges, it is likely that shareholder proposals seeking AI safeguards will continue to increase in Canada. As companies increasingly rely on internally designed AI governance frameworks, the question remains whether such discretion is sufficient to maintain investor confidence and public trust, or whether external standards are necessary to provide credible accountability. Similarly, as AI-related risks become more systemic and consequential, boards will be forced to confront whether AI governance is simply a matter of strategic choice, or whether it is evolving into a core obligation of modern corporate stewardship.

Public Safety Canada Issues Updated Guidance Ahead of the 2026 Reporting Cycle for the *Supply Chains Act*

Authors: *Martha Harrison, Gajan Sathananthan and Vino Wijeyasuriyar*

Public Safety Canada ("PSC") has released updated guidance (the "Updated Guidance") that refines and clarifies certain concepts under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "Act"). These updates, issued ahead of the May 31, 2026 reporting deadline, aim to simplify previous materials, address frequent issues seen in earlier reporting cycles, and incorporate lessons learned since the Act came into force. While the updates do not represent a significant shift in PSC's overall approach, they provide meaningful practical direction for organizations assessing the applicability of the Act and preparing their annual reports.

CHANGES TO THE SCOPE OF THE REPORTING OBLIGATION

Enforcement Position on Solely Selling and Distributing Activities

One notable change is the removal of explicit language concerning PSC's enforcement posture where an entity engages only in selling or distributing goods. Previously, PSC's guidance explicitly stated that it would *not* pursue enforcement in instances where entities only engaged in selling and distributing and did not file a report under the Act. The Updated Guidance now omits that assurance of non-enforcement.

However, PSC's guidance continues to indicate that if a business is involved solely in selling or distributing – and not in producing or importing goods – PSC does not expect it to report under the Act. The removal of the enforcement statement does not appear to be intended to expand the scope of reporting obligations.

Clarifying "Very Minor Dealings"

Another important change in the Updated Guidance relates to PSC's interpretation of "very minor dealings." While this concept does not appear in the Act, PSC had previously indicated that entities only engaged in such minor dealings would not be expected to file a report. Outside of general commentary linking "very minor dealings" to "generally accepted principles of *de minimis*" (matters too trivial to warrant legal action or scrutiny), PSC offered little specificity on how to define the concept.

The Updated Guidance now clarifies that entities whose production or importation activities are "incidental, low-volume, or not central to its core business" may consider those activities as "very minor dealings." PSC also instructs entities to apply judgment based on the scale, frequency and relevance of these activities within their broader operations. This may provide

some comfort to entities that are seeking to define their activities within this concept to secure exclusion from the Act's reporting requirements.

CHANGES TO REPORT CONTENT REQUIREMENTS

PSC has introduced several targeted adjustments affecting what must be included in annual reports. A few key changes are summarized below under the relevant report topic.

- **Steps taken to prevent and reduce risks:** The Updated Guidance now suggests (but does not require) having this section describe who within the organization is responsible for identifying, assessing and responding to risks, as well as the governance mechanisms providing senior-level oversight. It also recommends describing how the organization engages with external stakeholders – such as non-governmental organizations, industry bodies, unions and government agencies – on supply-chain risk prevention.
- **Structure, activities and supply chains:** PSC has narrowed this section's focus by removing references to "services" and "service providers," signaling that the Act remains concerned primarily with goods-related supply chains. Additionally, the prior expectation that entities should describe the activities of controlled entities has been softened. The emphasis is now on identifying and disclosing the sources of goods – reflecting PSC's objective to encourage continuous improvement in supply-chain mapping.
- **Assessing effectiveness:** The Updated Guidance now states that entities should set goals to ensure the organization makes year-on-year progress in identifying, preventing and responding to risks, and demonstrate in their report the short-, medium- and long-term plans to achieve those goals.

INTERNATIONAL REPORTING TEMPLATE

Finally, the Updated Guidance now links to the **optional multi-jurisdictional reporting template** developed jointly by Canada, the United Kingdom and Australia last year. Entities subject to reporting obligations in multiple jurisdictions may use this template to streamline compliance, although they remain responsible for ensuring that the distinct legal and administrative requirements across all applicable jurisdictions are met.

We provide guidance on this new template in greater detail in our client alert: ***Supply Chains Act Alert: Canada, UK, and Australia Jointly Release New Multi-Jurisdictional Modern Slavery Reporting Template***.

CONCLUSION

Although the Updated Guidance contains important updates, it does not constitute a fundamental departure from PSC's prior guidance. PSC appears to be developing further consistency and stability in its interpretation of the Act.

Entities subject to reporting requirements should remain attentive to ongoing updates to PSC's administrative positions, as we expect it to continue to refine its approach. While PSC's initial priority has been to promote education and awareness of the Act, the improved stability and understanding within the reporting community may prompt PSC to become more proactive in overseeing and enforcing the Act's obligations.

The Need for Speed: Major-Project Development Set to Accelerate Across Canada

Authors: *Selina Lee-Andersen, Laura Weingarden and Gwenyth Wren*

In 2025, both the federal and provincial governments rolled out sweeping legislative changes to fast-track the development of major energy, infrastructure and critical-minerals projects in Canada. These reforms respond to pressing economic priorities, support the clean-energy transition and aim to clear long-standing regulatory bottlenecks that have added time and complexity to major project approvals. This article highlights key 2025 legislative and policy measures designed to streamline planning, permitting and construction for large-scale projects.

FEDERAL – BILL C-5

On June 26, 2025, the federal government passed Bill C-5, ***An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act*** (the "Act"), a new framework that consolidates federal permitting for projects deemed to be in the national interest, providing a streamlined federal-review process intended to enhance regulatory certainty. The new process contemplates two steps: (i) designation as a project in the national interest, and (ii) issuance of a single federal authorization, which replaces the need to obtain multiple federal permits and authorizations under specified federal legislation. The newly created Major Projects Office will review and designate major projects of national interest. To date, the federal government has referred **15 projects** to the Major Projects Office for review.

BRITISH COLUMBIA – BILLS 14 AND 15

On May 29, 2025, the provincial government passed ***Bill 14: Renewable Energy Projects (Streamlined Permitting) Act*** and ***Bill 15: Infrastructure Projects Act***, which are aimed at streamlining project-permitting processes in British Columbia. Bill 14 provides the legislative foundation for the **Clean Action Power Plan**. Bill 14 applies to the following projects: (i) the nine wind-energy projects that were selected by BC Hydro through its 2024 call for power, (ii) the North Coast Transmission Line Project, and (iii) other renewable-energy projects to be prescribed by regulations, which includes facilities for the generation or storage of renewable energy or an electric-transmission line or related facilities, but excludes hydroelectric projects that include a dam. Bill 15 streamlines the delivery of provincially funded infrastructure projects (including schools and hospitals) and applies to projects delivered by non-provincial governmental entities (including proponents and Indigenous Nations). Bill 15 sets out several different streamlining processes, which will be detailed in the regulations to be released under the ***Infrastructure Projects Act***.

ONTARIO – ONE PROCESS, ONE FRAMEWORK AND ENVIRONMENTAL ASSESSMENT COOPERATION

In October, 2025, Ontario launched the ***One Project, One Process*** framework to streamline the permitting process for mine exploration and development projects in the province. This new framework will enable proponents to seek designation for advanced exploration and mine development projects, allowing them to move through a single, integrated permitting process. The One Project, One Process framework is intended to reduce government-review timelines by half and provide a more transparent pathway for consultation with Indigenous Nations. These measures are also intended to improve project certainty for proponents and affected Indigenous Nations.

On December 18, 2025, the Ontario government and federal government signed the **Ontario and Canada Cooperation Agreement on Environmental Assessment**, establishing a formal partnership between the federal and provincial governments to streamline major-project reviews. The agreement adopts a "**one project, one assessment, one decision**" model that reduces duplication by aligning federal and provincial environmental-assessment processes, allowing Canada to rely on Ontario's assessment processes or integrate provincial requirements into a coordinated federal-provincial review. The agreement also requires early notification and information sharing between the Impact Assessment Agency of Canada and Ontario's Ministry of the Environment, Conservation and Parks, and commits both parties to avoid redundant review processes where possible. The agreement does not change existing legal powers under federal or provincial law, can be amended by mutual consent, and includes provisions for regular review and termination with notice.

QUÉBEC – BILL Q-5

Draft Bill Q-5, **An Act to accelerate the granting of the authorizations required to carry out priority national-scale projects** ("Bill Q-5") was introduced at the national assembly on December 9, 2025. Bill Q-5 has similar objectives as the federal Bill C-5, namely, to establish a mechanism for faster development of designated large-scale priority projects through a streamlined authorization process. Under Bill Q-5, designated projects would receive a single authorization issued by the Government of Québec, replacing all permits and authorizations otherwise required for the project. Bill Q-5 also empowers the Government of Québec to modify the application of any provisions in the laws and regulations to be listed in Schedule I, though none have yet been identified. The bill further provides that work on a designated project may begin before the single authorization is granted, and that early work would generally not be subject to additional environmental impact-assessment requirements unless existing environmental laws impose heightened protections, such as in conservation areas. No projects have yet been designated, but large-scale power and critical-minerals projects may benefit from the measures in Bill Q-5, particularly those aligned with Québec's priorities to accelerate renewable-energy production and strengthen its critical-mineral sector.

Key Trends in Canadian Water Sovereignty: Governance, Scarcity and International Pressures

Authors: *Awanish Sinha, Owen Bourrie and Jason Quinn*

Water sovereignty is moving rapidly from a niche policy concern to a national strategic priority, driven by rising domestic demand, increasing global scarcity and international pressure. Although Canada holds significant freshwater resources, per-capita consumption remains high and is straining supplies, necessitating the focus on governance, stewardship and long-term resilience.

Water sovereignty is increasingly relevant to ESG performance, especially for companies reliant on water-intensive operations. Responsible water stewardship aligns with environmental goals, mitigates regulatory and reputational risks and supports social licence to operate.

GOVERNANCE: MULTI-LAYERED AUTHORITY, CONVERGING ACCOUNTABILITY

Canadian provinces are primarily responsible for water, exercising ownership and regulatory authority over waters within their borders, while the federal government coordinates through the ***Canada Water Act*** and specific mandates such as fisheries and transboundary waters. Municipalities face drinking-water obligations and must align with federal environmental requirements, creating a multi-layered compliance environment between levels of government. Additionally, Indigenous water rights and co-governance are increasingly important, with consultation and shared management becoming standard expectations for major projects. Water's importance is reflected by efforts to strengthen national coordination. In 2023–24 the federal government launched the **Canada Water Agency** to advance a national strategy, signalling heightened policy cohesion and oversight.

SCARCITY, PRICING AND EMERGING ASSET CHARACTERISTICS

Water scarcity is intensifying in Canada. Drought stress and allocation limits are driving interest in reallocation mechanisms and conservation technology. Ongoing environmental problems, including algal blooms, nutrient runoff and water contamination, often result in boil-water advisories that disproportionately affect Indigenous communities, highlighting ongoing challenges in water quality and public health, despite water-conservation efforts. To make matters worse, the impacts of infrastructure fragility lead to real-time consequences as demonstrated by recent **water main failures in Calgary**.

Scarcity is leading to significant perspective changes on water resources. Certain provinces now use differentiated pricing for large water takings and administrative costs can be significant, indicating a shift toward greater economic concern in water allocation. For example, since 2006, Alberta has operated a regulated

marketplace for water-licence transfers within the South Saskatchewan River basin, effectively enabling water-rights trading subject to environmental checks and governmental approval. Globally, investors have started trading in **water futures**, demonstrating the economic significance of water-supply reliability and infrastructure resilience. In Canada, **federal investments** in water infrastructure and technology aim to generate private partnerships and innovation across treatment, conservation and systems upgrades.

INTERNATIONAL PRESSURES: SOVEREIGNTY, TRADE AND SECURITY

Recent years have seen growing international pressure – most notably from the United States – on Canada's freshwater resources. In 2024, United States ("U.S.") President Trump publicly suggested diverting Canadian water to drought-stricken California, calling it a "**very large faucet**," sparking widespread Canadian backlash. While international law and trade agreements like the ***Canada-United States-Mexico Agreement*** ("CUSMA") affirm that water in its natural state is *not* a tradeable commodity, geopolitical instability and U.S. rhetoric have raised concerns about potential future challenges to these norms. The U.S. has also paused Columbia River Treaty negotiations, possibly using water as leverage in broader trade disputes. Canada's legal framework, including the ***Transboundary Waters Protection Act***, prohibits bulk-water exports, and public opinion remains firmly opposed.

However, intensifying global water scarcity is producing international debates on water sharing or **commodification**. Security narratives increasingly frame water as a strategic resource, with American officials citing national-security concerns. Canada has responded by reinforcing its legal protections, investing in domestic water governance (e.g., the Canada Water Agency), and asserting its sovereignty in diplomatic forums. While the legal and political barriers to foreign access remain strong, Canada continues to prepare for scenarios where international pressure could test its control over freshwater resources. Sovereignty and sustainability remain central to its stance.

WHAT TO WATCH

Accelerating climate-adaptation measures may tighten allocation rules and elevate compliance expectations for industry and municipalities, and policy developments on Indigenous water rights could potentially lead to co-governance. Regulation of emerging contaminants will drive new monitoring and liability frameworks. Export and commodification debates will persist as scarcity intensifies, which may challenge Canada's bans on bulk exports or existing policy guardrails.

Canada's water-sovereignty landscape is dynamic, and it remains to be seen how Canada will fare in a fast-evolving field where strategic planning and effective execution will define the future.

McCarthy Tetrault's brand new Water Law Initiative – with more information on our website to come later this year – recognizes the growing importance of water for Canadian businesses and possesses the legal expertise to assist with your navigation of "troubled waters."

OSFI Releases Updated Guideline on Climate-Risk Management

Authors: *Sonia Struthers, Hartley Lefton and Christopher Yam*

The Office of the Superintendent of Financial Institutions ("OSFI"), Canada's federal bank, insurance company and trust company solvency and prudential regulator, published an updated version of ***Guideline B-15: Climate Risk Management*** (the "Guideline") on March 7, 2025. The Guideline has aligned OSFI guidance with corresponding requirements of the Canadian Sustainability Standards Board ("CSSB") final sustainability and climate-related disclosure standards released in December 2024 to ensure interoperability between the Guideline and the CSSB standards.

This article is the latest in our firm's ongoing series of publications tracking the development of OSFI's climate-risk management framework. In earlier publications, we examined the initial consultation feedback and publication of Guideline B-15, subsequent updates, and OSFI's evolving expectations as it worked towards alignment with the emerging CSSB standards in Canada. Our prior articles include:

— ***Final Guideline on Climate Risk Management and Disclosure for Financial Institutions Issued by OSFI***, and

— ***OSFI Updates Guideline for Federal Financial Institutions on Climate Risk Management and Disclosure***.

Building on that evolution, this article provides a high-level overview of the most recently published Guideline.

The Guideline was issued shortly after an OSFI **letter to industry** on February 20, 2025, which announced that some climate-related reporting requirements would be delayed in order to align the Guideline with the CSSB standards. Accordingly, there will be:

— a three-year delay (from 2025 to 2028) for the expectation to disclose Scope 3 greenhouse gas emissions of federally regulated financial institutions ("FRFIs"),

— a four-year delay (from 2025 to 2029) to provide additional and specific information on Scope 3 disclosure for asset-management activities, and

— a three-year delay (from 2025 to 2028) to disclose industry-based metrics.

KEY REQUIREMENTS OF THE GUIDELINE

The Guideline outlines OSFI's expectations for FRFIs in managing climate-related risks. It "aims to support FRFIs in developing greater resilience to, and management of, these risks." Accordingly, the Guideline expects each FRFI to achieve three core outcomes:

— understand and mitigate the potential impacts of climate-related risks on its business model and strategy,

— ensure it has appropriate governance and risk-management practices to manage climate-related risks, and

— remain financially resilient through severe, yet plausible, climate-risk scenarios, and operationally resilient in the face of climate-related disasters.

To achieve these outcomes, the Guideline provides specific expectations for FRFIs, discussed below.

GOVERNANCE AND RISK-MANAGEMENT EXPECTATIONS

Governance

FRFIs should "have the appropriate governance and accountability structure in place to manage climate-related risks." Senior management should hold overall accountability and each FRFI should consider incorporating climate-related risk considerations into their senior management compensation structure.

FRFIs should also "incorporate the implications of physical risks from climate change and the risks associated with the transition to a low-greenhouse gas ("GHG") economy" into their business models and strategies. This includes, for instance, identifying and understanding the impact of climate-related risks to short-term and long-term strategic, capital and financial plans, as well as implementing a Climate Transition Plan to help manage the "increasing physical risks from climate change, and the risks associated with the transition towards a low-GHG economy."

Risk Management

To manage climate-related risks effectively, FRFIs should incorporate climate-related risks into their risk appetite, enterprise risk management and internal control frameworks. OSFI expects FRFIs to put in place policies, procedures and personnel to assist in identifying and managing climate-related risks, including implementing tools and models to collect and measure relevant climate-risk data and metrics. FRFIs should also have internal reporting systems that could monitor and report any relevant climate risk to assess and support its climate-risk management.

Climate-Scenario Analysis and Stress Testing

OSFI expects FRFIs to "use climate-scenario analysis to assess the impact of climate-related risks on [their] risk profiles, business strategies, and business models."

This analysis should "consider a range of plausible and relevant models and climate scenarios, over various time horizons," including scenarios that consider both physical and transition risks.

In addition to the climate-scenario analysis conducted internally at an FRFI, OSFI will also require FRFIs to conduct standardized climate-scenario exercises that allow OSFI to compare FRFI approaches to climate-scenario analysis.

Capital and Liquidity Adequacy

Finally, FRFIs should "maintain sufficient capital and liquidity buffers" for climate-related risks. This involves, for instance, incorporating climate-related risks in the FRFIs' Internal Capital Adequacy Assessment Process or Own Risk and Solvency Assessment Process, as well as incorporating the impact of climate-related drivers on FRFIs' liquidity-risk profiles and accounting for severe, yet plausible, climate-related stress events into FRFIs' assessments of their liquidity buffers.

CLIMATE-RELATED FINANCIAL DISCLOSURES

The Guideline reinforces OSFI's "climate-risk management expectations through climate-related financial disclosure expectations." These disclosures help protect depositors, creditors and policyholders, and contribute to "public confidence in the Canadian financial system, by ensuring relevant information is publicly available."

To that end, each FRFI should disclose information that is:

— **Relevant:** Information "specific to the current and potential future impact of climate-related risks and opportunities on its markets, businesses, corporate or investment strategy, financial statements and reports, and future cash flows;"

— **Specific and comprehensive:** Information relating to "its exposure to current and potential future impacts of physical and transition risks; the potential nature and size of such impacts; the FRFI's governance, strategy, processes for managing these risks, and performance with respect to managing climate-related risks and opportunities;"

— **Clear, balanced, and understandable:** Information that is presented in a way that "serves the needs of a range of users (i.e., sufficiently granular to inform sophisticated

users but also provide concise information for those who are less specialized);"

- **Reliable and verifiable:** Information that is of high-quality, free from bias, and verifiable through traceable sources; and
- **Appropriate for its size, nature, and complexity:** A "volume and level of detail of disclosure" commensurate to the FRFI itself. For a larger FRFI, for example, OSFI expects a higher degree of disclosure.
- **Consistently reported:** OSFI expects FRFIs to disclose the information required by the Guideline at least annually – and to make it publicly available within 180 days after the fiscal year-end. The format for disclosure is flexible and can be presented in whichever format best suits the FRFI, including but not limited to a report to shareholders or a standalone "ESG" report.

IMPLEMENTATION TIMELINES AND COMPARATIVE PERIOD DISCLOSURE

The Guideline includes various annexes that complement the Guideline's expectations, including examples of physical and transition risks. Importantly, FRFIs should carefully review Annexes 2-1 and 2-2 of the Guideline, which provide further information on GHG-emissions accounting and reporting standards expected of FRFIs and disclosure-expectation timelines for climate-related financial disclosures.

Disclosure-expectation timelines are staggered for FRFIs depending on the type of climate-related financial disclosure. Domestic Systemically Important Banks ("DSIBs") and OSFI-regulated Internationally Active Insurance Groups ("IAIGs") would have begun implementing the applicable expectations set out in Annexes 2-1 and 2-2 as of their 2024 fiscal year-end, whereas small and medium-sized deposit-taking institutions ("SMSBs") and all other federally regulated insurers (Life, P&C, and Foreign-Insurance Branches) are required to begin meeting the applicable disclosure expectations by their 2025 fiscal year-end. Certain disclosure elements – such as Scope 3 absolute GHG-emission metrics and industry-specific metrics – will not be expected until 2028 fiscal year-end for all FRFIs, while cross-industry metrics are expected to be disclosed by DSIBs and IAIGs starting 2025 fiscal year-end and by SMSBs and all other federally regulated insurers by their 2026 fiscal year-end.

In the reporting period after the implementation of the Guideline's expectations, OSFI expects FRFIs to disclose comparative-period numbers and to the extent that these are helpful to understanding its disclosures comparative period narrative information.

HOW MCCARTHY TÉTRAULT CAN HELP

Whether you are a new entrant to Canada's financial services market or a financial institution with a long track record in Canada, we are here to help. By leveraging our deep industry expertise and experience – including in **ESG and Sustainability** – we help our clients navigate Canada's complex, highly regulated financial-institutions environment to achieve their business goals. Please contact a member of our **Financial Institutions Regulatory** group if you have any questions or need assistance.

FOR MORE INFORMATION, PLEASE CONTACT:

Sonia Struthers
Partner and co-Lead ESG & Sustainability Group
sstruthers@mccarthy.ca
514-397-4232
Montréal

Robert Richardson
Partner and co-Lead ESG & Sustainability Group
rrichardson@mccarthy.ca
416-601-7632
Toronto

Michael Caldecott
Partner
mcaldecott@mccarthy.ca
416-601-7738
Toronto

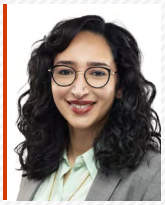
Alyson Goldman
Partner
agoldman@mccarthy.ca
403-260-3680
Calgary

Martha Harrison
Partner
mharrison@mccarthy.ca
416-601-8864
Toronto

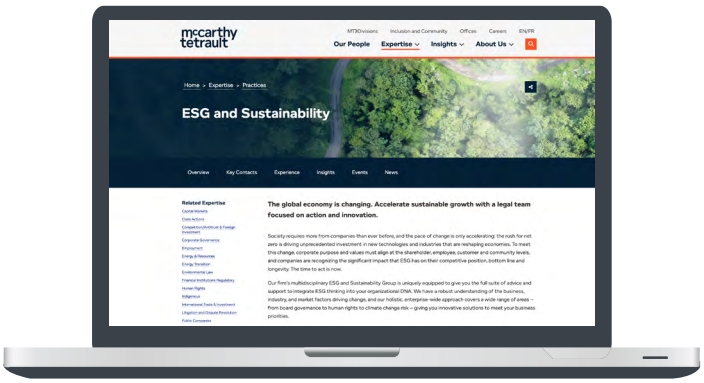
Matthew Kraemer
Partner
mkraemer@mccarthy.ca
403-260-3749
Calgary

Selina Lee-Andersen
Partner
slandersen@mccarthy.ca
604-643-7124
Vancouver

Awanish Sinha
Partner
asinha@mccarthy.ca
416-601-8030
Toronto



Vasuda Sinha
Partner
vsinha@mccarthy.ca
416-601-8440
Toronto



About McCarthy Tétrault's ESG and Sustainability Group

Our national, multi-disciplinary ESG and Sustainability Group is uniquely equipped to give you the full suite of advice and support to integrate ESG thinking into your organizational DNA. We have a robust understanding of the business, industry, and market factors driving change, and our holistic, enterprise-wide approach covers a wide range of areas – from board governance to human rights to climate change risk – giving you innovative solutions to meet your business priorities.

With decades of experience advising Canada's most well-known organizations, deep industry knowledge, and a passion for innovation, our ESG and Sustainability Group is your best business partner for doing sustainable business now and into the future. Find out how our ESG and Sustainability Group can help you today.

For more information, please visit McCarthy Tétrault's **ESG and Sustainability Overview**.

About McCarthy Tétrault

McCarthy Tétrault LLP provides a broad range of legal services, providing strategic and industry-focused advice and solutions for Canadian and international interests. The firm has substantial presence in Canada's major commercial centres as well as in New York and London.

Built on an integrated approach to the practice of law and delivery of innovative client services, the firm brings its legal talent, industry insight and practice experience to help clients achieve the results that are important to them.

For further information about McCarthy Tétrault, or any of the above, please contact **media@mccarthy.ca**.

mccarthy tétrault

VANCOUVER
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

CALGARY
Suite 4000, 421 7th Avenue SW
Calgary, AB T2P 4K9

TORONTO
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto, ON M5K 1E6

MONTRÉAL
Suite MZ400
1000 De La Gauchetière Street West
Montréal, QC H3B 0A2

QUÉBEC CITY
500, Grande Allée Est, 9e étage
Québec, QC G1R 2J7

NEW YORK
55 West 46th Street, Suite 2804
New York, New York 10036
United States of America

LONDON
1 Angel Court, 18th Floor
London EC2R 7HJ
United Kingdom