ESG and Sustainability:

Key Trends in Canada

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This publication reviews key developments in Canada during 2024, and their potential impact in 2025 and beyond. For further information, please speak to one of our contacts listed on page 18.

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Foreword

The environmental, social and governance ("ESG") and sustainability landscape in Canada continues to evolve rapidly, driven by shifting regulatory frameworks, market expectations and stakeholder activism. As businesses and investors navigate this complex terrain, staying informed about key legal and policy developments is essential to managing risk, seizing opportunities and advancing ESG/sustainability goals.

This publication is our inaugural Canadian ESG and sustainability retrospective. We have gathered our most relevant 2024 articles and added new articles on breaking trends in one, easy-to-read guide.

Topics include enhanced tools under the *Competition Act* to crack down on greenwashing, updates to due diligence requirements under Canada's modern slavery legislation, Canadian developments in ESG and sustainability disclosure, the growing influence of shareholder activism in support of and in opposition to ESG/sustainability initiatives, key litigation trends in climate-related disputes, the use of green bonds, the proposed global carbon market, Canada's plastic registry, and regulatory advancements in Canada's energy transition.

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Under the Green Lens: New Greenwashing Provisions Under the *Competition Act*

By Michael Caldecott and Daphné Anastassiadis

Amendments to the *Competition Act*, which took effect on June 20, 2024, introduce more stringent protections against "greenwashing," a term commonly used to describe deceptive claims regarding the environmental attributes of a product, service or business activity. These amendments follow a period of focused enforcement activity in respect of potentially deceptive environmental claims on matters such as a product's carbon neutrality, recyclability of packaging, or a company's climate change or sustainability targets.

Armed with a codified statute that prescribes specific infringements for greenwashing, and reverses the onus on defendants to substantiate their claims, we can expect these developments to drive the Competition Bureau (the "Bureau") towards further enforcement in 2025. The groundswell of accompanying media and political attention is also likely to fuel more complaints from consumers and public interest groups as public awareness of sustainability issues continues to rise. While the underlying analytical frameworks used to assess conduct under the amended regime may not change significantly, companies should prepare for stricter scrutiny of their environmental marketing claims. Companies should also revisit their compliance policies to avoid potential penalties and litigation.

Prior to the 2024 amendments, there already existed a civil prohibition against "representations to the public that are false or misleading in a material respect," which captured environmental claims and was the basis for the Bureau's historic enforcement activity. However, the *Competition Act* now explicitly prohibits deceptive environmental claims, imposing a duty on businesses to substantiate environmental claims about a business or product in accordance with "internationally recognized methodologies." This term has not yet been defined, creating significant uncertainty for the business community, as well as a heightened risk of complaints and associated reputational consequences. As well, companies facing Bureau enforcement action can face monetary penalties of up to 3% of worldwide revenues.

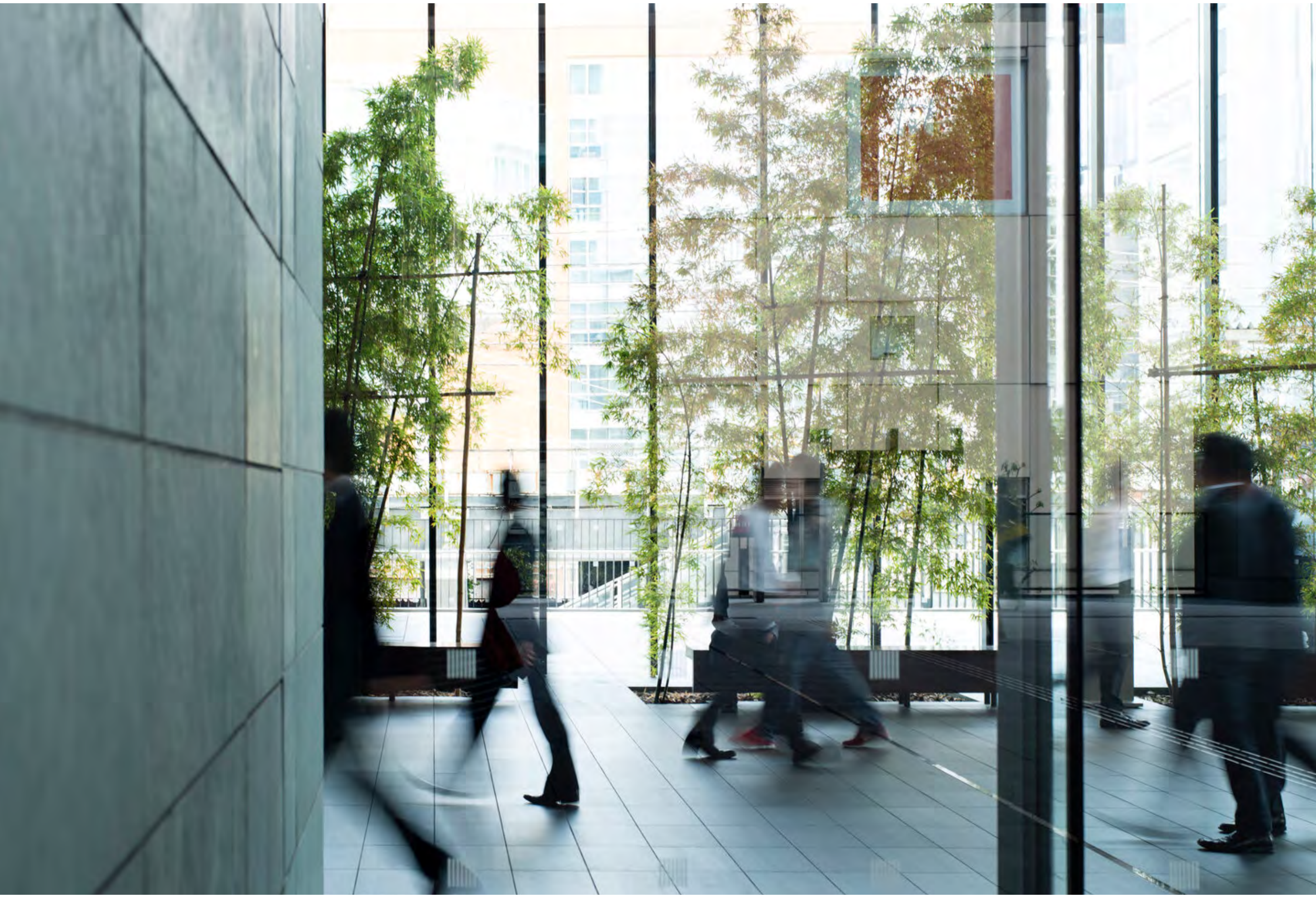
Recognizing the need for clarity on the scope of the new greenwashing provisions, the Bureau conducted an expedited consultation process in 2024, and released draft guidance on the subject – itself subject to consultation – in late December 2024. These guidelines will replace the Bureau's summary guidance on environmental claims and greenwashing published in 2021, and are hoped to provide advertisers with a more detailed toolkit to self-assess their environmental claims in light of the expanded regime and heightened enforcement climate. Once published, we anticipate that the Bureau will dedicate significant resources to greenwashing investigations, a number of which are already ongoing, to leverage on these new tools.

To add further fuel to fire, the *Competition Act* has also been amended to permit private parties – not just the Bureau – to bring actions directly to the Competition Tribunal ("Tribunal") from June 2025 onwards. Until then, the Bureau remains the gatekeeper for greenwashing enforcement in Canada, albeit it remains statutorily bound to commence an inquiry on receipt of "six-resident complaints," a mechanism whereby six residents of Canada can file a complaint to compel the Bureau to begin an inquiry. This tactic has been widely used by environmental and social justice groups, leading to several ongoing greenwashing investigations in the retail, banking, energy, and forestry industries, many of which were initiated by a complaint filed by six residents.

Moving forward, however, the same environmental groups (and other private litigants) will be able to bring private applications to the Tribunal to challenge environmental and other deceptive marketing claims. Litigants will need to obtain leave from the Tribunal to bring a case, but recent amendments arguably lower the hurdle for obtaining leave, requiring that the Tribunal be satisfied than an application is "in the public interest." It will be the Tribunal's responsibility to strike a balance between ensuring that the bar to leave is low enough to broaden the scope of potential litigants but not so low as to open the floodgates to vexatious claims.

The next 12 months promise to be a period of transition in greenwashing enforcement in Canada as the Bureau, companies that make environmental claims and potential complainants acclimatize to the contours and enforcement possibilities of the amended deceptive marketing regime under the *Competition Act*.

For more information on the amendments to the *Competition Act*, please refer to our in-depth analysis **here**.



Canada Looks at Due Diligence Requirements to Tackle Modern Slavery

By Martha Harrison and Gajan Sathananthan

On October 16, 2024, the Government of Canada announced the launch of consultations (the "Consultations") on its latest proposed measures to address modern slavery in Canadian supply chains. Most notably, the Government of Canada is contemplating a due diligence requirement for certain goods at higher risk of being made in whole or in part from forced labour.

The Consultations, which concluded in November, indicated that the Government of Canada was considering the following measures:

— Publication of a list of specified goods at risk of forced labour informed by the International Labour Organization's forced labour indicators and definitions, and supplemented by other sources of information.

— Creation of a supply chain "minimum traceability" process in which importers of specified goods appearing on the above-cited public list would be required to provide documentation regarding the imported goods' supply chain journey.

— Changes to the cost-recovery model whereby the importer of goods deemed to be made by forced labour would be responsible for the payment of all costs associated with the detention, removal, abandonment and/or forfeiture of such goods, including any transport, storage, and/or disposal fees.

— Creation of a streamlined mechanism to settling disagreements between importers and the Government of Canada on decisions that prevented the entry into the market of specific goods.

— Strengthening of the legislative and regulatory authorities regarding information collection/sharing, enforcement and disposition within North America.

The Consultations also make clear that these proposals are in addition to existing measures that are in place, including the prohibition on importing goods mined, manufactured or produced, in whole or in part, with forced labour or child labour. The proposals would also be in addition to the reporting obligation found in the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, which would continue to apply broadly to businesses with a nexus to Canada.

The measures proposed in the Consultations align with the Government of Canada's promise to introduce additional legislation to tackle modern slavery in Canadian supply chains. However, there remains significant ambiguity in how these proposed measures could be implemented. For example, the Consultations do not discuss in detail the "minimum traceability" process that would be required of importers, and the breadth of this obligation. They also do not discuss in detail how the determination would be made whether a good is at risk of forced labour, and if there will be an opportunity for stakeholders to discuss the goods proposed to be included in the list prior to their publication.

The Consultations are another significant development for companies considering how to mitigate the risks of forced labour and child labour across their supply chains. Though the Consultations are now closed, we encourage businesses to continue engaging with the Government of Canada on these issues while simultaneously preparing for the possible rollout of the proposed measures.

For more information on the Consultations, please refer to our in-depth analysis **here**.

Regulatory Developments in Canadian Sustainability & ESG Reporting

By Sonia Struthers, Alyson Goldman, Ashley Wilson and Sheema Rezaei

With a growing emphasis on sustainability and ESG practices and disclosure, there is a corresponding drive to build a regulatory framework in Canada that requires companies to provide comprehensive and standardized disclosure on sustainability and ESG matters. This regulatory framework seeks to provide investors with the information necessary to make more informed decisions that are aligned with their views on sustainability and ESG. The following outlines recent Canadian legislative and regulatory advances aimed at enhancing the transparency and reliability of sustainability and ESG reporting.

1. MADE-IN-CANADA SUSTAINABLE INVESTMENT FRAMEWORK

In October 2024, the Government of Canada announced preparations for voluntary sustainable investment guidelines (the "Taxonomy") to assist investors and lenders in identifying sustainable activities. The Taxonomy aims to help identify "green" and "transition" activities by classifying economic activities based on emissions and net-zero alignment. It is also expected to include company-level requirements for "green" and "transition" labelling, such as net-zero targets, transition plans and climate disclosures. These requirements would become eligibility criteria for companies seeking to rely on the Taxonomy for certain economic activities. Independent third-party organizations are expected to prepare the Taxonomy with input from a variety of stakeholders, including financial market participants, industry experts, climate scientists and Indigenous partners. The Government of Canada has committed to releasing a Taxonomy for two to three priority sectors within 12 months of the third-party organizations beginning their work. For more information on the Taxonomy, please refer to our in-depth analysis **here**.

2. DO NO HARM: THE IMPACT OF THE *21ST CENTURY BUSINESS ACT* ON CANADIAN BUSINESSES

In May 2024, Bill S-285: The *21st Century Business Act* ("Bill S-285") was introduced and proposes to amend the *Canada Business Corporations Act* ("CBCA") to incorporate social and environmental obligations into corporate duties and decision-making. If adopted, Bill S-285 would mandate directors and officers of CBCA companies to consider prescribed stakeholder constituencies, including the environment, when acting in the best interests of the company. Bill S-285 would also require annual reporting of a company's social and environmental impacts. Non-compliance would enable a "complainant" to bring a derivative action, allowing a shareholder to bring a claim against directors and officers for a breach of fiduciary duty. Bill S-285 also expands the definition of "complainant" under the CBCA, allowing any person to bring a derivative action, increasing the ability of persons to bring claims against directors and officers for a breach of duty. Bill S-285 was introduced as a private bill in the

Senate without the support of any political party. For more information on Bill S-285, please refer to our in-depth analysis **here**.

3. CBCA AMENDMENTS PROPOSED FOR LARGER PRIVATE COMPANIES

In October 2024, the Government of Canada announced plans to amend the CBCA to mandate climate-related financial disclosures for large, federally incorporated private companies. The substance of the proposed disclosure requirements will be the subject of an upcoming regulatory process and will be aimed at helping investors understand how businesses manage climate risks and ensure capital allocation aligns with a net-zero economy. The government plans to work with provincial and territorial partners for broad climate-related disclosure across Canada and to harmonize these requirements with those required by securities regulators for public companies. For more information on these proposed amendments to the CBCA, please refer to our in-depth analysis **here**.

4. CANADIAN SUSTAINABILITY STANDARDS BOARD ADOPTS CANADIAN SUSTAINABILITY DISCLOSURE STANDARDS

In March 2024, the Canadian Sustainability Standards Board ("CSSB") released its first proposed Canadian Sustainability disclosure standards for public comment: *General Requirements for Disclosure of Sustainability-related Financial Information* ("CSDS 1") and *Climate-related Disclosures* ("CSDS 2," together with CSDS 1, the "CSSB Standards").

The proposed CSSB Standards substantially align with the International Sustainability Standards Board ("ISSB") IFRS S1 and S2 standards (collectively, the "ISSB Standards") – which are designed to serve as the global baseline for comprehensive, comparable and consistent reporting of climate-related disclosure – with minor modifications to address Canadian circumstances, primarily to extend the timeline for compliance and provide additional transition relief through a lengthier phase-in for Scope 3 greenhouse gas ("GHG") emissions disclosures.

Echoing the ISSB Standards, CSDS 2 works in conjunction with CSDS 1 to offer (i) specific requirements for climate-related disclosures, including mandatory reporting of Scopes 1, 2 and 3 GHG emissions; (ii) the extent of assets' and business operations' vulnerability to climate impacts; and (iii) the reporting of quantitative and qualitative information such as capital expenditure, financing and investments deployed addressing climate-related risks and opportunities. Moreover, CSDS 2 would require mandatory scenario analysis gauging entities' resilience to climate change. For more information on these proposed amendments to the CSSB Standards, please refer to our in-depth analysis **here**.

The CSSB adopted final CSSB Standards in December 2024 with few changes, see here **Detailed Changes of CSDS 1 and CSDS 2: From Exposure Drafts to Final Standards**. For the CSSB Standards to become mandatory for any Canadian entity, a Canadian regulator such as the Office of the Superintendent of Financial Institutions ("OSFI") or the Canadian Securities Administrators ("CSA") must adopt the CSSB Standards.

5. OFFICE OF SUPERINTENDENT OF FINANCIAL INSTITUTIONS UPDATES GUIDELINE ON CLIMATE RISK MANAGEMENT AND DISCLOSURE

The OSFI released in April 2024 an updated version of **Guideline B-15: Climate Risk Management** (the "Guideline"). In particular, OSFI updated Annex 2-2 to the Guideline, Minimum Mandatory Climate-related Financial Disclosure Expectations ("Annex 2-2"). The updated Guideline seeks to align its climate-related disclosure framework with the ISSB standard, IFRS S2 Climate-related Disclosures ("IFRS S2"), by incorporating several of IFRS S2's key elements and applies to financial institutions beginning either as of the end of their 2024 or 2025 financial year-end.

6. CANADIAN SECURITIES ADMINISTRATORS PROVIDE UPDATE ON CLIMATE-RELATED DISCLOSURE PROJECT

In December 2024, following the publication of the final CSSB Standards, the CSA issued a notice to provide an update on its own efforts in connection with climate-related disclosures. The CSA stated that it is continuing to work towards a revised version of its proposed rule that will consider the CSSB Standards, and may include modifications considered appropriate in the Canadian context. The CSA also stated that it continues to work towards a balanced approach that supports the assessment of material climate-related risks, responds to stakeholder requests for consistent, comparable and decision-useful climate-related disclosures, and contributes to efficient capital markets, mindful of issuers of different sizes, needs and capabilities and regulatory developments in the United States. The CSA further advised that it will publish a revised rule for public comment and will encourage feedback on specific issues, including the scope of the rule's application and the need for additional time or guidance for reporting issuers to comply with certain disclosure requirements. The CSA anticipates consulting on concerns regarding liability with respect to new requirements for climate-related disclosure.

Turning Up the Heat: Groundbreaking Climate Litigation in Europe and Canada

By Una Radoja and Rachel Abrahams

In 2024, Europe's highest human rights court found that the Swiss government violated the rights of its citizens by failing to do enough to combat climate change. The case, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* ("KlimaSeniorinnen"), is the first instance of a court finding that climate inaction violates human rights. KlimaSeniorinnen underscores the potential for human rights law to be used as a tool to hold governments accountable for their climate policies.

Hinting to the possibility of similar developments in Canada, the Ontario Court of Appeal took a significant step in the development of climate-related litigation. In ***Mathur v. Ontario***, the Court of Appeal for Ontario clarified that climate-related issues can be challenged in court and clarified the analytical framework for doing so on the bases of Sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter").[1]

SWITZERLAND'S CLIMATE POLICES VIOLATE THE RIGHT TO LIFE

This landmark ruling will undoubtedly be looked to as a guide for future climate change cases against governments in other jurisdictions, including Canada. The decision may also have trickle-down effects on corporate liability.

The case was brought by an association of over 2,000 senior women known as KlimaSeniorinnen, or Senior Women for Climate Protection. They argued that Switzerland's climate inaction put them at risk of dying from excessive heat caused by climate change. The court found that Switzerland had failed to adopt the necessary legislative and administrative pre-industrial levels, exposing these senior women to serious heat-related health risks and thereby violating their human rights.

The court's ruling emphasized that the right to life and the right to respect for private and family life, as enshrined in the European Convention on Human Rights (the "Convention"), encompass a right to effective protection by the state from serious adverse effects of climate change. The court found that Switzerland's efforts to meet its emission reduction targets had been woefully inadequate, with critical gaps in the country's policies to tackle climate change, including failing to quantify reductions in greenhouse gases ("GHG").

1 Being the rights to life, liberty, security of the person (Section 7); and equality under the law without discrimination (Section 15).

CLIMATE-RELATED HUMAN RIGHTS CHALLENGES IN CANADA

KlimaSeniorinnen may serve as a springboard for further climate change litigation. The decision could influence Canadian courts to recognize the link between climate inaction and violations of the Charter, potentially leading to increased government and corporate accountability for climate policies.

In Canada, there is increasing litigation geared towards achieving constitutional recognition of the right to a healthy environment by interpreting the right to life, liberty and security of the person – enshrined in Section 7 of the Charter – to include the right to a healthy environment. Section 7 of the Charter is the closest equivalent in Canadian law to Article 8 of the Convention, which was the basis for liability in KlimaSeniorinnen. Both Section 7 of the Charter and Article 8 of the Convention protect the human right to life.

While a climate change action grounded in Section 7 of the Charter has yet to succeed on its merits, courts across Canada have held that climate change lawsuits are justiciable, meaning that they are suitable for determination by a court. In ***Mathur v. His Majesty the King in Right of Ontario***, a group of seven young climate change activists commenced a constitutional challenge against the Ontario government in response to legislation that substantially weakened targets for the reduction of GHG emissions in the province. The applicant-activists argued that Ontario's adoption of weaker GHG reduction targets would lead to climate catastrophe, violating the rights of Ontario youth and future generations under Sections 7 and 15 of the Charter.[2]

The Superior Court interpreted the applicants' claim as a request for the recognition of positive rights – which would require proactive government intervention – rather than a complaint of government restriction. The Superior Court's primary basis for rejecting the claim was that the Charter does not place positive obligations on governments to set higher or more restrictive legislative targets. The applicants appealed and sought an order to compel Ontario to adopt a science-based emissions reduction target and revise its climate change plan to align with international standards.

The Court of Appeal agreed with the applicants, finding that the Court of Justice erred in characterizing the applicants' claim as an attempt to impose a positive obligation on Ontario to combat climate change. Ontario had voluntarily assumed a statutory obligation to combat climate change. As such, the applicants were entitled to seek a declaration that Ontario's statutorily imposed obligation to combat climate change was not constitutionally compliant.

The Court of Appeal rejected Ontario's position that it is beyond the competence of the courts to assess the sufficiency of climate policies, stating that "[t]he appellants are not challenging the inadequacy of the Target or Ontario's inaction, but rather argue the Target itself, which Ontario is statutorily obligated to make, commits Ontario to levels of greenhouse gas emissions that violate their

2 Being the rights to life, liberty, security of the person (Section 7); and equality under the law without discrimination (Section 15).

Charter rights."[3] Courts are capable of assessing the Charter compliance of legislation and state action "even when the issues are complex, contentious and laden with social values."[4] The Court of Appeal also accepted that "[i]f a breach of the appellants' Charter rights is declared, there are clear international standards based on accepted scientific consensus that can inform what a constitutionally compliant Target and Plan should look like."[5]

The question of whether Ontario's climate change policies violates the Charter has been remitted back to the Superior Court to consider under the correct analytical framework. As such, it remains to be determined whether Ontario's climate policies breach Sections 7 and 15 of the Charter. If this question is answered affirmatively, it would be the first time a court has held that a government's insufficient climate change policies amounted to a violation of the Charter.

TAKEAWAY FOR INDUSTRY

The increasing feasibility of climate change claims grounded in the Charter – which only applies to government action – does not directly bear on the power to bring cases against corporations for climate change impacts. Nevertheless, an increase in the risk of a successful claim against the government for climate change laws is likely to result in an increased level of regulation and regulatory scrutiny.

Both the KlimaSeniorinnen case and the Mathur case represent significant developments in the field of climate litigation and human rights law. They demonstrate the growing recognition of the impact of climate change on human rights and courts' increasing willingness to order governments to take urgent action to address the climate. KlimaSeniorinnen in particular, since it succeeded on its merits, is likely to inspire similar cases in other jurisdictions, as citizens and advocacy groups seek to hold governments and corporations accountable for their climate policies. Risk management strategies in this regard are complex and industry specific, but should be considered as part of good corporate governance before claims are advanced and need to be defended.

For more information on the Mathur case, please refer to our in-depth analysis **here**. For more information on KlimaSeniorinnen, please refer to our in-depth analysis **here**.

3 **2024 ONCA 762** at para 41.
4 *Ibid* at para 36.
5 *Ibid* at para 70.

ESG Stakeholder Activism: Another Dynamic Year in Canada

By Robert Richardson and Rebecca Wieschkowski

ESG considerations continue to impact the landscape of corporate accountability, with stakeholder (especially shareholder) activism emerging as a key mechanism for change. In Canada, this trend continues to gain momentum as diverse stakeholders demand greater transparency and action on ESG issues such as climate change, diversity and corporate governance. With evolving regulatory standards and societal norms, ESG activism continues to shape the way Canadian companies operate and communicate with their stakeholders.

RISE OF ESG SHAREHOLDER ACTIVISM

Building upon a decade of an increasing trend in stakeholder activism globally, 2024 set a record in terms of the total number of public campaigns launched.[1] Seventy-six shareholder activism campaigns were launched in Canada in 2024 and many of the top campaigns launched in 2023 are still ongoing.[2] While record amounts of activism were seen on both sides of the Canada-U.S. border, the growth rate in Canada is much more significant than that of the United States, having increased by 10% in 2024 alone.[3]

While activist activity continues to be primarily focused on board change, there has been a rise in ESG-themed activism campaigns in the past three years.[4] For example, ESG-related shareholder proposals have increased steadily, with some groups notably now sponsoring "anti-ESG" proposals. Between January 2021 and June 2024, shareholders were invited to vote on 238 ESG-related shareholder proposals.[5]

ESG factors also increasingly shape investment decisions, driven largely by institutional investors with ESG mandates. Although there has been a slight decline in reported responsible investment assets under management over the past couple years,[6] a recent study found 70% of limited partners already incorporate ESG considerations into their investment policies.[7]

ENVIRONMENTAL

Climate change continues to be one of leading topics in environmental activism, with shareholders, governments and the public increasingly urging companies to take meaningful steps to reduce their climate impact. Shareholder proposals are frequently used to raise environmental matters with corporate management and directors, by leveraging the soapbox afforded by annual meetings. Canadian companies have been subject to environmentally motivated shareholder proposals targeting net-zero commitments, emissions disclosure and say-on-climate proposals, among others.

1 Kingsdale Advisors, ***2024 Proxy Season in Review***.
2 Kingsdale Advisors, ***2024 Proxy Season in Review***.
3 Kingsdale Advisors, ***2024 Proxy Season in Review***.
4 Sodali & Co's *2024 Canadian Proxy Season Review*.
5 Sodali & Co's *2024 Canadian Proxy Season Review*.
6 Laurel Hill Advisory Group, ***2024 Trends in Corporate Governance Report***.
7 Bain & Company, ***Sustainability and ESG in 2023***.

Environmental activism in Canada may also be influenced by global trends supporting climate disclosure. For instance, the Canadian Sustainability Standards Board (the "CSSB") adopted final climate-related disclosure standards in December 2024 applicable to Canadian companies modeled off the International Sustainability Standards Board's IFRS S1 and IFRS S2 standards. Until the CSSB's standards are adopted by a Canadian regulator, they are voluntary for Canadian companies, and it remains to be seen whether shareholder proposals will emerge demanding companies to adopt the standards.

SOCIAL

As activism relates to social issues, the most prominent continue to be shareholder calls for increased diversity and inclusion on boards and in management. The Canadian Securities Administrators and institutional proxy advisory firms have also updated their voting guidelines on board diversity to align with growing stakeholder expectations regarding diversity. For instance, Institutional Shareholder Services ("ISS") now recommends voting against or withhold from chairs of nominating committees (or equivalent) of S&P/TSX Composite Index issuers that have boards with no apparent racially or ethnically diverse members, subject to certain exceptions.[8]

GOVERNANCE

As activism relates to governance, shareholders often target companies to push for enhanced transparency, shareholder rights and executive compensation reforms. Following the COVID-19 pandemic, there has been a dramatic increase in shareholders demanding companies to host their annual meetings in-person or in a hybrid format. Moreover, shareholder scrutiny of executive compensation has increased in recent years, which has led to more opposition to "say-on-pay" proposals.[9] With economic challenges and market volatility impacting corporate performance in 2024, we expect investors to continue pursuing activist campaigns to secure strong returns.

8 ISS, ***Canada Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations***, (January 2024).
9 Sodali & Co's *2024 Canadian Proxy Season Review*.

Rise of ESG and Sustainable Bonds in Canada

By Robert Richardson, Sonia Struthers, Rebecca Wieschkowski and Stephan Possin

ESG bonds, also known as sustainable bonds, are financial instruments designed to fund "conscientious capitalism" projects or activities that align with specified ESG criteria. These bonds cater to investors seeking to support sustainable development goals while earning a financial return. There are different types of ESG bonds, including, among others:

1. **Green Bonds:** Finance environmentally beneficial projects, such as renewable energy and sustainable agriculture.

2. **Social Bonds:** Fund projects aimed at achieving positive social outcomes, such as education, healthcare and employment generation.

3. **Transition Bonds:** Raise funds for financing the transition of high-carbon emission industries, such as the coal industry and the utility industry.

4. **Blue Bonds:** Finance marine and ocean-based projects, focusing on sustainable water management and the preservation of aquatic ecosystems.

5. **Sustainability-Linked Bonds:** General-purpose bonds where the issuer commits to achieving predefined sustainability or ESG performance targets.

To ensure comparability and credibility, as Canada (unlike the European Union) currently has no obligatory or voluntary sustainable finance taxonomy or other standards, most Canadian issuers of these bonds are guided by frameworks established by the **International Capital Market Association**. Many ESG bonds also undergo third-party verification, where external organizations certify their alignment with their purported ESG goals.

Interest in sustainable investing continues to grow among individual investors, as shown most recently in a 2024 **report** revealing that 77% of respondents expressed interest in investments that combine financial returns with positive social or environmental impacts. Climate action emerged as the top priority for sustainable investing themes, followed by healthcare, water solutions and the circular economy. However, concerns about greenwashing and a lack of transparency and trust in ESG data remain key barriers to achieving greater levels of acceptance for sustainable investments. In fact, the Canadian capital market has witnessed some pullback in ESG investing over the past two years.[1]

Governments and regulators are also playing a significant role in the rise of ESG bonds by encouraging or mandating sustainability efforts. For instance, the Government of Canada's **Green Bond Program**, initiated in March 2022, aims to mobilize capital to support the country's climate and environmental

1 Laurel Hill Advisory Group, ***2024 Trends in Corporate Governance Report***.

objectives. The inaugural issuance of the 7.5-year, C$5 billion green bonds attracted substantial interest, with a final order book exceeding C$11 billion, indicating strong demand for green investments backed by Canada's AAA credit rating.

In October 2024, the Government of Canada announced preparations for voluntary sustainable investment guidelines (the "Taxonomy") to assist investors, issuers and lenders in identifying sustainable activities. The Taxonomy aims to help identify "green" and "transition" activities by classifying economic activities based on emissions and net-zero alignment. It is also expected to include company-level requirements for "green" and "transition" labelling, such as net-zero targets, transition plans and climate disclosures. These requirements would become eligibility criteria for companies seeking to rely on the Taxonomy for certain green-labelled economic activities such as sustainable or green bonds. For more information on the Taxonomy, please refer to our in-depth analysis **here**.

For companies, ESG bonds serve as a strategic tool for demonstrating their commitment to sustainability, often offering tangible and reputational benefits. By issuing ESG bonds, companies can align their financial strategies with ESG objectives, addressing stakeholders' concerns and meeting societal expectations for improving responsible corporate behavior. As climate concerns and responsible investment priorities grow, ESG bonds position companies as forward-thinking leaders in the transition to a more sustainable future.

Despite their benefits, ESG bonds face several challenges. Greenwashing remains a significant concern, where projects or outcomes are sometimes misrepresented to appear more sustainable than they actually are. Additionally, the lack of a uniform global taxonomy and other standards complicates the evaluation and comparison of ESG bonds across different markets. Another challenge is the high cost of independent certification and reporting, which can be a financial burden for issuers aiming to achieve credibility.

ESG bonds can be powerful tools for driving sustainability while delivering financial returns, aligning investors and issuers with critical global goals. Despite some challenges, these bonds reflect a shift toward responsible investing and corporate accountability. ESG bonds increasingly stand at the forefront of the transition to a more sustainable future.

The Road from COP 29: Paving the Way for a Global Carbon Market

By Selina Lee-Andersen and Thomas McInerney

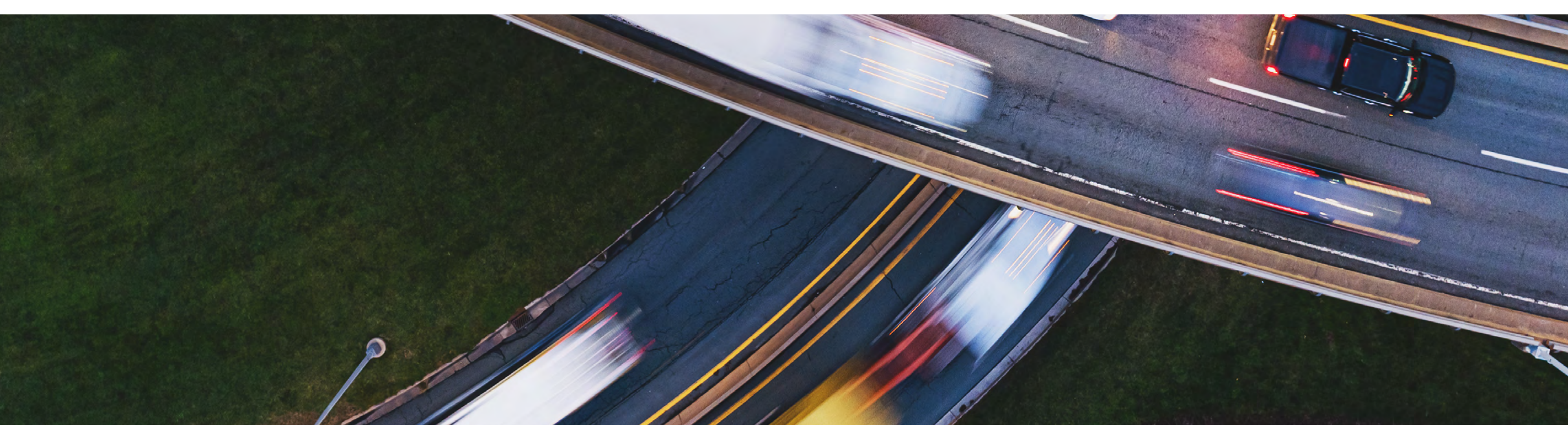
The 29th Conference of the Parties ("COP 29") to the United Nations Framework Convention on Climate Change was held in Baku, Azerbaijan from November 11 to 22, 2024. COP 29 got off to a quick start when negotiators approved the **framework** for Article 6.4 of the Paris Agreement on the first day of the conference. The framework establishes standards for a United Nations-led global carbon market, which is expected to benefit developing nations looking to finance greenhouse gas ("GHG") emission reduction projects in their countries.

Article 6 introduces mechanisms for collaborative, market-based approaches to support the objectives of the Paris Agreement. Among these mechanisms is Article 6.4, which provides a centralized trading system that will enable GHG emission reductions or removals to be transferred internationally. The Article 6.4 mechanism, which will be overseen by the United Nation's **Article 6.4 Supervisory Body**, will replace the Kyoto Protocol's Clean Development Mechanism.

The approval of the Article 6.4 framework came after the Article 6.4 Supervisory Body finalized two key standards related to **carbon removal** and **developing and assessing project methodologies** in October 2024. The Article 6.4 framework marks a significant new chapter after the Kyoto Protocol. Key next steps include the registration of project methodologies and the establishment of operational guidelines, which are expected to be in place by mid-2025. Once the Article 6.4 market is operational, project developers will be able to apply to register their projects. A project must be approved by both the Article 6.4 Supervisory Body and the host country where it is being implemented before it can receive UN-issued carbon credits. These credits, known as Article 6.4 emission reductions or "A6.4ERs," can be authorized by the host country to be transferred to other countries or private organizations, or to be used for other climate change mitigation purposes.

The finalization of the Article 6.4 rules will likely have implications for existing carbon markets and programs. But it is not yet clear how A6.4ER methodologies will interact with compliance markets, voluntary programs (such as Verra and the Gold Standard) and the more recently established quality standards under the Integrity Council for the Voluntary Carbon Market. The core principles that provide the foundation for quality carbon credits, such as additionality and the avoidance of double counting, are expected to be impacted by the Paris Agreement market mechanisms. As a result, carbon market participants will be closely observing how governments implement Article 6.4 authorization processes and governance frameworks, how corresponding adjustments are applied and how access to high-quality projects will be impacted. Participants will also be looking at whether emission reductions generated under Article 6.4 will meet the quality criteria to enable them to be used in other compliance markets such as the European Union's Emission Trading System. To encourage market convergence and provide a robust marketplace for the development and financing of emission reduction/removal projects, existing carbon market standards will likely need to align with Article 6.4 rules. As compliance and voluntary markets shift towards consolidation, more project developers and investors may find the regulatory certainty they seek to move forward with project investments and carbon market transactions.

For more information on the carbon market in Canada, please refer to our overview **here**.



Paving the Path to Net Zero: Energy Transition Developments in Canada for 2024

By Kerri Howard, Kimberly J. Howard, Derek Baker, Gwenyth Wren, Riley Thackray and Stephan Possin

Canada's energy transition – a shift toward cleaner, more sustainable energy sources – continues to accelerate through significant policy and regulatory actions. Several key initiatives were introduced or developed in 2024, including emissions caps for the oil and gas sector, advancements in nuclear and hydrogen strategies and updated clean electricity regulations. This article highlights the most important developments from the past year, offering insight into their implications for Canada's journey to net-zero emissions.

1. PROPOSED *OIL AND GAS SECTOR GREENHOUSE GAS EMISSIONS CAP REGULATIONS*

On November 4, 2024, the Government of Canada released its proposed ***Oil and Gas Sector Greenhouse Gas Emission Cap Regulations*** (the "Regulations"), establishing a cap-and-trade system that will apply to a wide range of industrial activities within the oil and gas sector, including onshore and offshore oil and gas production, oil sands production and upgrading, natural gas production and processing and liquefied natural gas production. The Federal government's cap-and-trade system will set a maximum annual emissions threshold and issue free allowances equal to the cap, with regulations coming into force on January 1, 2025. The initial cap, based on 2026 emissions, is expected to reduce emissions by 27% for 2030–2032, representing a 35% decrease from 2019 emission levels. For more information on the Regulations, please refer to our in-depth analysis **here**. In light of recent federal political developments, we note that the approval process for regulations can continue despite the proroguing of Parliament until March 24, 2025. However, it is uncertain at this time whether the Regulations will ultimately be enacted into law.

2. SMALL MODULAR REACTORS: THE FUTURE OF NUCLEAR ENERGY INNOVATION

Nuclear energy reached another pivotal milestone at 29th Conference of the Parties ("COP 29") to the United Nations Framework Convention on Climate Change in 2024, where six more countries endorsed nuclear power as essential for achieving net-zero emissions and committed to **tripling nuclear capacity by 2050**, bringing the total number of nations endorsing this initiative to 31. Advanced technologies like small modular reactors ("SMRs") are central to this expansion, and Canada is leading with the GE Hitachi BWRX-300 SMR project at the Darlington Nuclear Generating Station in Ontario, set to be the first commercial SMR construction in North America by 2025 and operational by 2028. The Darlington Nuclear Generating Station, already a major facility, is being expanded by Ontario Power Generation, which plans to add three more BWRX-300 reactors, further cementing its role in Canada's clean energy strategy.

3. KEY UPDATES TO CANADA'S HYDROGEN STRATEGY

In May 2024, the Government of Canada published a **progress report** highlighting numerous developments related to the **Hydrogen Strategy for Canada**, including the introduction of investment tax credits for hydrogen production, clean technology and manufacturing methods and carbon capture, utilization and storage ("CCUS"). Canada has also implemented various policies and programs to promote low-carbon hydrogen production and use, focusing on tax credits like the **Clean Hydrogen Investment Tax Credit** and broader initiatives such as the **Clean Fuels Fund** and **Strategic Innovation Fund**. These measures provide significant financial incentives, including up to 40% credit for eligible projects, and support infrastructure development through investments in hydrogen refuelling, electrolysis and zero-emission transportation. Regulatory frameworks like the ***Clean Fuel Regulations***, and carbon pollution pricing further incentivize the adoption of low-carbon hydrogen across industries. For more information on the Clean Hydrogen Investment Tax Credit, please refer to our in-depth analysis **here**.

4. ALBERTA ANNOUNCES CARBON CAPTURE INCENTIVE PROGRAM

On April 3, 2024, the Government of Alberta announced the **Alberta Carbon Capture Incentive Program**, which aims to accelerate the development of CCUS infrastructure in Alberta, providing $3.2 to $5.3 billion in support from 2024 to 2035 (the "Program"). The Program also complements Federal government programs like the **CCUS Investment Tax Credit** and offers a 12% grant for new CCUS capital costs, paid in installments over three years. Eligibility is limited to Alberta-based projects involved in carbon capture, utilization or storage, excluding those already funded under other Alberta programs, with retroactive cost coverage starting January 1, 2022. Funding covers capital costs for approved equipment and modifications, but excludes expenses like pilot projects, engineering studies or dual-purpose equipment unless further supports are developed. For more information on the Program, please refer to our in-depth analysis **here**.

5. FEDERAL GOVERNMENT ENACTS FINALIZED CLEAN ELECTRICITY REGULATIONS

On December 18, 2024, the Government of Canada enacted the finalized ***Clean Electricity Regulations*** ("CERs"). The CERs are the culmination of nearly three years of feedback from provinces, territories, Indigenous communities and industry. Initially released in August 2023, the draft CERs received significant pushback, particularly regarding the prohibition against electricity generation units emitting more than an annual average of 30 tonnes of carbon emissions per GWh (t/GWh) of electricity generated. In response, the Federal government updated the proposed CERs in February 2024, introducing key changes such as unit-specific annual emission limits and the possibility of exceeding these limits through the remittance of offset credits.

Notably, the now-finalized CERs push back the date to decarbonize electricity grids from 2035 to 2050. The CERs aim to achieve net-zero emissions by 2050, with interim emission intensity limits set for the period from 2035 to 2049. The CERs also permit the exclusion of emissions associated with the combustion of biomass and renewable natural gas, as well as emissions captured by carbon capture and storage projects and emissions generated during an emergency circumstance. For more information on the CERs, please refer to our in-depth analysis **here**.

6. FEDERAL GOVERNMENT INTRODUCES 100% TARIFF ON CHINESE ELECTRIC VEHICLES

On October 1, 2024, the Government of Canada **implemented** a 100% tariff (the "Tariff") on Chinese-made electric vehicles ("EVs"). This measure applies to electric and certain hybrid passenger automobiles, trucks, buses and delivery vans. and aims to bolster Canada's domestic EV industry and support the country's energy transition.

Acknowledging the potential challenges for businesses reliant on Chinese EVs and components, the Federal government has also introduced a tariff remission framework. This process allows Canadian businesses to apply for exemptions if they can demonstrate that the Tariff adversely affects their operations or that alternative suppliers are not readily available.

This push for domestic production aligns with broader regulatory changes in Canada, including the ***Regulations Amending the Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations***, which mandate that a specified percentage of manufacturers' and importers' fleets of new vehicles sold in Canada must be zero-emission vehicles ("ZEV"). The ZEV sales targets will take effect with the 2026 model year and progressively increase until achieving full compliance by 2035, when all new vehicles sold in Canada must be zero-emission.

Canada Cracks Down on Plastic: New Federal Plastics Registry

By Selina Lee-Andersen and Rebecca Wieschkowski

On April 20, 2024, the Government of Canada established a Federal Plastics Registry (the "Registry"), marking a significant move toward achieving its goal of zero plastic waste by 2030. The Registry is being implemented under the *Canadian Environmental Protection Act, 1999* pursuant to a **Section 46 notice** published in the Canada Gazette, Part I (the "Notice") and aims to track plastic from production by creating a national resource to support and inform Canada's efforts in tackling plastic pollution.

The Registry requires certain prescribed companies to report annually to the Minister of the Environment on the quantity and types of plastic they manufacture, import and place on the market, including the quantity of plastic collected for diversion, reused, repaired, remanufactured, refurbished, recycled, processed into chemicals, composted, incinerated and landfilled. Reporting entities will also be required to report on the methods used to determine the amounts of plastic reported. Reporting requirements will be introduced in phases each year (from 2024 to 2027, and beyond 2027) to allow time for obligated entities to meet reporting requirements. Phase 1 requires reporting on plastic placed on the market in three categories for 2024, while Phases 2 and 3 will expand the categories for reporting. Phase 4 reporting requirements will be covered in a future notice.

WHO IS REQUIRED TO REPORT?

An entity is required to report annually if it:

— manufactures, imports and places certain plastic resins listed in Schedule 1 of the Notice on the market in Canada;

— produces prescribed plastic products listed in Schedule 1 of the Notice;

— generates packaging and plastic product waste at an industrial, commercial or institutional facility; or

— is a service provider for the management of certain plastics or plastic products listed in Schedule 1 of the Notice (for example, incinerating, recycling or landfilling).

However, an entity is exempt from reporting if it:

— manufactures, imports or places on the market less than 1,000 kg of plastic products or packaging per calendar year;

— generates less than 1,000 kg of packaging and plastic product waste at their industrial, commercial or institutional facility per calendar year; or

— manages less than 1,000 kg of plastic via management services or activities per calendar year.

WHAT IS REQUIRED TO BE FILED?

Reporting entities will be required to complete an annual report outlining certain prescribed information on the Registry's online portal by September 29 of the following year. The report must also be certified by an authorized representative of the reporting entity, certifying that all information submitted pursuant to the report is true, accurate and complete.

NEXT STEPS

The Notice mandates reporting for calendar years 2024 to 2026, and the first report with respect to the 2024 calendar year is due on September 29, 2025. Reporting entities were provided with access to the online portal in the fourth quarter of 2024.

Looking forward, businesses involved in producing, importing, distributing or managing plastic products should begin defining reporting roles across the supply chain and establishing systems to accurately collect and submit data.

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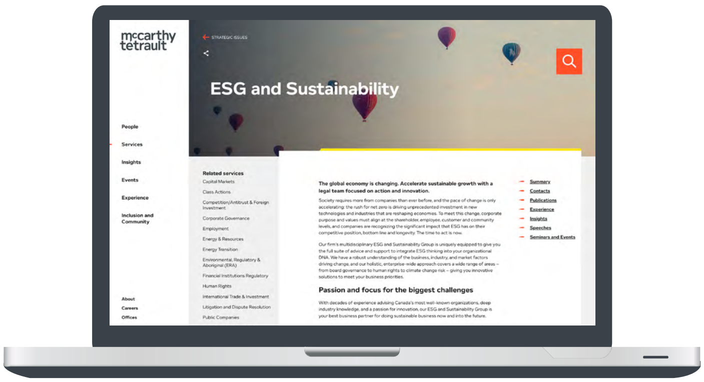

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With decades of experience advising Canada's most well-known organizations, deep industry knowledge, and a passion for innovation, our ESG and Sustainability Group is your best business partner for doing sustainable business now and into the future.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

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