Red, White, and Green? Statutory Prohibitions on "Greenwashing" in Canada and the Next Frontier for Canadian Environmental Class Actions

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CANADIAN laws and regulations are increasingly making environmental, social, and governance ("ESG") issues top-of-mind for companies doing business in Canada. New legislative rules with respect to "greenwashing", and concerns about climate change and contamination from "PFAS" (perfluoroalkyl and polyfluoroalkyl substances), mean that litigation, and particularly class actions, will continue to increase in these areas, creating potentially significant legal, financial, operational, and reputational business risks. Businesses must develop strategic responses to proactively and effectively minimize these risks.

This article discusses recent trends in environmental class actions in Canada and the evolving landscape that has made them hot topics in the business and legal communities. It also examines global trends that directly influence and impact Canadian class actions.

I. Federal Legislation to Prohibit Alleged "Greenwashing"

Since 2022, the Canadian government has enacted a flurry of significant amendments to expand the scope of the federal *Competition Act*,[1] including to make "greenwashing" a prohibited practice. "Greenwashing", making untested or unsubstantiated claims about the environmental benefits of a product or business, has been attracting significant attention globally and in Canada.

In June 2024, the Canadian government amended section 74.01 of the *Competition Act* to expressly prohibit certain types of greenwashing, arguably creating substantial uncertainty, risks, and potential liabilities for businesses in Canada.[2] Section 74.01(1) now provides that a person engages in "reviewable conduct" (i.e., prohibited conduct) who, "for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever":

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> (b.1) makes a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social, and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation; [or]
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> (b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation;[3]

These two prohibitions, which we refer to as the "Product Benefit

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[1] R.S.C. 1985, c. C-34 (hereinafter, the "*Competition Act*").

[2] Bill C-59, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess., 44th Parl. (Can.), at cl. 236(1) (assented to June, 20 2024) (hereinafter, "*Bill C-59*").

[3] *Id*.

Prohibition" and "Business Activity Prohibition" may overlap in some circumstances but also create distinct prohibitions with key differences. Notably, they both place the onus of proof on the person making the representation. The Competition Bureau has stated that the function of these prohibitions is to stop businesses from making environmental claims that are deceptive because they are false, misleading, or not adequately and properly tested or substantiated.[4]

The Product Benefit Prohibition addresses specific claims regarding the resources manufacturers use to manufacture a product or the emissions a manufacturer saves by a product's manufacture or use. The testing requirement for this prohibition is based on the existing requirement for "performance claims"— representations regarding the performance, efficacy, or length of life of a product in section 74.01(1)(b) of the *Competition Act*. The Competition Bureau's existing guidance for "performance claims" states that testing must: (i) be conducted before the performance claims are made, (ii) be done under controlled circumstances to eliminate external variables, (iii) eliminate subjectivity as much as possible, (iv) reflect the real-world usage of a product (such as in-home or outdoor use), and (v) support the general impression created by the marketing claims.[5]

The Business Activity Prohibition concerns claims about businesses or business activities more generally. The prohibition accordingly creates a "substantiation" requirement for which there is no existing analog in the *Competition Act*. The substantiation standard, which requires companies to base representations on "adequate and proper substantiation in accordance with internationally recognized methodology," is new and undefined. It is unclear how it will be finally applied by the Competition Bureau in practice and, ultimately, by the Competition Tribunal, the judicial body from which the Competition Bureau generally seeks orders enforcing the *Competition Act*.

The Competition Bureau released draft guidance on these new prohibitions in December 2024, following a public consultation

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[4] Competition Bureau Canada, "Message from the Commissioner of Competition", THE DECEPTIVE MARKETING PRACTICES DIGEST (July 22, 2024), available at competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/deceptive-marketing-practices-digest-volume-7 (last accessed June 20, 2025).

[5] Competition Bureau Canada, "Performance claims not based on adequate and proper test" (June 24, 2022), available at competition-bureau.canada.ca/en/deceptive-marketing-practices/types-deceptive-marketing-practices/performance-claims-not-based-adequate-and-proper-test (last accessed June 20, 2025).

process it initiated in July 2024.[6] Among other things, this guidance states that "substantiation" requires that businesses establish representations by "proof or competent evidence", and that while "substantiation does not necessarily involve testing in a lab, businesses should ensure that the methodology selected is suitable for the claim, having regard to all the relevant circumstances." A methodology will be "internationally recognized" if it is "recognized in two or more countries." In considering any representation, the Competition Bureau will consider not only the literal meaning of the claim, but also the general impression being conveyed to the public. The Competition Bureau is expected to release final guidance by mid-2025.

There are considerable risks associated with contravening the Product Benefit Prohibition or Business Activity Prohibition, particularly in light of 2022 amendments to the *Competition Act* that significantly increased the potential administrative monetary penalties that may be imposed in respect of "reviewable conduct".[7] Pursuant to the 2022 amendments, the Competition Bureau can seek an order from the Competition Tribunal, the Federal Court, or a provincial superior court imposing an administrative monetary penalty on a company that is the greater of (i) C$10 million (C$15 million for each subsequent order), or (ii) three times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues.[8]

Further, as of June 20, 2025, private parties will also be entitled to seek leave from the Competition Tribunal to commence proceedings against companies for this relief.[9] The only requirement will be that the Competition Tribunal satisfy the standard that granting leave is in the public interest. To the extent a statement also contravenes the general prohibition in section 74.01(1)(a) of the *Competition Act* against representations to the public that are false or misleading in a material respect, a private party

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[6] Competition Bureau Canada, "Environmental claims and the *Competition Act*" (Apr. 16, 2025), available at competition-bureau.canada.ca/en/how-we-foster-competition/consultations/environmental-claims-and-competition-act (last accessed June 20, 2025). The Bureau's public consultation on the draft guidance took place from December 23, 2024 to February 28, 2025 and is now closed. The Bureau has yet to post the written responses submitted for the consultation, and it is presently finalizing its guidance.

[7] Bill C-19, *An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures*, 1st Sess., 44th Parl. (Can.), 2022 at cl. 260 (assented to June 23, 2022).

[8] *Competition Act*, s. 74.1(1)(c)(ii).

[9] Bill C-59 at cl. 248(1).

could also seek an order for restitution.[10]

These amendments were enacted after a period of activity in recent years by both the Competition Bureau and private litigants relating to potentially deceptive claims involving carbon neutrality, climate change and sustainability targets, and recyclable packaging. In Canada, section 36 of the *Competition Act* provides a private right of action for damages resulting from conduct contrary to the criminal prohibitions in Part VI of the *Competition Act*, including the criminal prohibition in section 52 on knowingly or recklessly making a representation to the public that is false or misleading in a material respect for the purpose of promoting, directly or indirectly: (i) the supply or use of a product, or (ii) any business interest. Class actions based on sections 36 and 52 of the *Competition Act* are common, as are class actions based on consumer protection legislation, which in most jurisdictions in Canada renders actionable deceptive or misleading representations made in the context of a consumer transaction.[11]

One of the most prominent greenwashing investigations by the Competition Bureau was its pre-2024 amendment inquiry into claims made by Keurig Canada Inc. ("Keurig") about the recyclability of its single-use coffee pods. After its investigation, the Competition Bureau concluded that Keurig's claims about its pods were false or misleading because most municipalities outside of British Columbia and Quebec did not accept Keurig's coffee pods for recycling, or required that consumers take complicated steps to do so.[12] In January 2022, Keurig entered into a settlement with the Competition Bureau in which Keurig agreed to, among other things, pay a C$3-million penalty, donate C$800,000 to an environmental charity, and pay C$85,000 for the cost of the Competition Bureau's

[10] *Competition Act*, ss. 74.01(1)(a) and 74.1(1)(d).

[11] *See, for example,* British Columbia's *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 4-5, 171 (the "*BPCPA*").

[12] News Release, Competition Bureau Canada, "Keurig Canada to pay $3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims" (Jan. 6, 2022), available at canada.ca/en/competition-bureau/news/2022/01/keurig-canada-to-pay-3-million-penalty-to-settle-competition-bureaus-concerns-over-coffee-pod-recycling-claims.html (last accessed June 20, 2025).

investigation.[13] Beyond this settlement with the Competition Bureau regarding these issues, proposed class actions have also been commenced in Ontario, British Columbia, and in the Federal Court of Canada against Keurig on behalf of Canadian consumers relating to these greenwashing allegations involving Keurig's coffee pods.[14]

The commencement of class proceedings is common in Canada after a business faces enforcement action by the Competition Bureau, and the Keurig case shows the potential follow-on private litigation that may result even after a resolution with the Canadian Competition Bureau.

The Competition Bureau similarly probed Volkswagen AG and a number of its Canadian subsidiaries in relation to the "dieselgate" scandal, allegations that the defendants materially misrepresented from 2009 to 2015 the tailpipe emissions of certain diesel-powered vehicles, causing consumers to believe those models were "cleaner" than they actually were. After various plaintiffs launched private class action claims, the parties approved a national class settlement in April 2017 for C$2.1-billion over claims relating to vehicles with two-liter diesel engines.[15] This was one of the largest consumer settlements in Canadian legal history. In 2018, the parties approved a subsequent settlement of C$290.5-million for three-liter diesel vehicles.[16] The Competition Bureau participated in these settlements and additionally reached consent agreements providing for additional monetary penalties totalling at least $17.5 million.[17]

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[13] Keurig Canada Inc. - Registered Consent Agreement, CT-2022-001 at paras. 5-7 (Jan. 6, 2022), available at decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/518827/index.do (last accessed June 20, 2025).

[14] *See* Buis v. Keurig Canada Inc., [2022] ONSC 3652, para. 2 (Can. Ont. Sup. Ct.).

[15] Quenneville v. Volkswagen, [2017] ONSC 2448 (Can. Ont. Sup. Ct.) (C$2.1-billion settlement approved).

[16] Quenneville v. Volkswagen Group Canada, Inc., [2018] ONSC 2516 (Can. Ont. Sup. Ct.) (C$290.5-million settlement approval).

[17] News Release, Competition Bureau Canada, "Up to $290.5 million in compensation for Canadians in Volkswagen, Audi and Porsche emissions case" (Jan. 12, 2018), available at canada.ca/en/competition-bureau/news/2018/01/up_to_290_5_millionincompensationforcanadiansinvolkswagenaudiand.html (last accessed June 20, 2025) (notice of $2.5 million AMP); News Release, Competition Bureau Canada, "Volkswagen and Audi to pay up to $2.1 billion to consumers and $15 million penalty for environmental marketing claims" (Dec. 19, 2016), available

Given the recent amendments to the *Competition Act*, we expect more greenwashing claims in Canada from the Competition Bureau and private litigants through class actions or direct claims before the Competition Tribunal.

II. Provincial Legislation Regulating Environmental Statements

A. Securities Legislation

Canada has a patchwork of different securities regulators for each of its 13 provinces and territories,[18] each operating under provincial or territorial securities legislation.[19] These regulators have been taking steps related to ESG announcements made by public companies and funds. In January 2022, the Canadian Securities Administrators (the "CSA"), a body consisting of all Canadian securities regulators, issued guidance about disclosures for ESG funds, emphasizing the importance of accurate reporting to avoid misleading or inaccurate impressions of sustainability.[20] CSA updated these guidelines in

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at canada.ca/en/competition-bureau/news/2016/12/volkswagen-audi-pay-up-2-1-billion-consumers-15-million-penalty-environmental-marketing-claims.html (last accessed June 20, 2025) (notice of $15 million AMP).

[18] The regulators are the: Alberta Securities Commission; British Columbia Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission (New Brunswick); Securities Commission of Newfoundland; Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Superintendent of Securities, Nunavut; Ontario Securities Commission; Superintendent of Securities, Prince Edward Island; Autorité des marchés financiers or, where applicable, the Bureau de décision et de révision en valeurs mobilières; Saskatchewan Securities Commission; and Superintendent of Securities, Yukon Territory. *See* National Instrument 14-101, *Definitions*, Appendix C (unofficial consolidation, Sept. 13, 2023), available at https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/1-procedure-related-matters/current/14-101/14101-ni-september-13-2023 (last accessed June 20, 2025) ("NI 14-101").

[19] See NI 14-101, Appendix B. The statutes are: Securities Act, R.S.A. 2000 (Alberta), c. S-4; Securities Act, R.S.B.C. 1996, c. 418 (British Columbia); Securities Act, R.S.M. 1988, c. S50 (Manitoba); Securities Act, S.N.B. 2004, c. S-5.5 (New Brunswick); Securities Act, R.S.N.L 1990, c. S-13 (Newfoundland); Securities Act, S.N.W.T. 2008, c. 10 (Northwest Territories); Securities Act, R.S.N.S. 1989, c. 418 (Nova Scotia); Securities Act, S.Nu. 2008, c. 12 (Nunavut); Securities Act, R.S.O. 1990, c. S.5 (Ontario); Securities Act, R.S.P.E.I. 1988, c. S-31 (Prince Edward Island); Securities Act, An Act respecting the Autorité des marches financiers, R.S.Q., c. A-33.2 and Derivatives Act, S.Q. 2008, c. 24 (Quebec); The Securities Act, 1988, S.S. 1988-89, c. S-42.2 (Saskatchewan); Securities Act, S.Y. 2007, c. 16 (Yukon).

[20] CSA Staff Notice 81-334, *ESG-Related Investment Fund Disclosure* (Jan. 19, 2022), available at osc.ca/sites/default/files/2022-01/csa_20220119_81-334_esg-related-investement-fund-disclosure.pdf (last accessed June 20, 2025).

March 2024,[21] and in December 2024, the CSA issued its first Canadian Sustainability Disclosure Standards ("CSDS"), which provide general requirements for the disclosure of material information on climate-related risks and opportunities and sustainability.[22] The CSDS are voluntary until mandated by provincial or territorial securities legislation.

Canadian securities regulators have also conducted reviews of select investment fund managers, portfolio managers, and others with respect to their ESG practices and claims.[23] They have sought to confirm that representations made in continuous disclosure materials and marketing materials about a registrant's ESG principles as part of their investment decision-making processes were consistent with their actual policies and procedures. They have also sought to evaluate the current state of climate-related disclosure by Canadian issuers.

Canada is moving towards mandatory climate-related standards (for example, the CSDS) and disclosure for financial institutions and public companies. These developments may usher in a new wave of securities litigation by shareholders and private investors arising from climate-change or other ESG-related disclosures.

B. Consumer Protection Legislation

Canada also has a patchwork of consumer protection legislation across its provinces and territories (and federally). Such protection

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[21] News Release, Canadian Securities Administrators, "Canadian securities regulators publish updated guidance on ESG-related investment fund disclosure" (Mar. 7, 2024), available at securities-administrators.ca/news/canadian-securities-regulators-publish-updated-guidance-on-esg-related-investment-fund-disclosure/#N81334 (last accessed June 20, 2025); CSA Staff Notice 81-334 (Revised), *ESG-Related Investment Fund Disclosure* (March 7, 2024), available at https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-334/csa-staff-notice-81-334-revised-esg-related-investment-fund-disclosure (last accessed June 20, 2025).

[22] Media Release, Financial Reporting and Assurance Standards Canada, "Canadian Sustainability Standards Board Releases Landmark Standards to Drive Consistency and Comparability in Sustainability Reporting" (Dec. 18, 2024), available at frascanada.ca/en/cssb/news-listings/cssb-media-release-csds-1-and-2-launch (last accessed June 25, 2025).

[23] James Langton, "Regulators target 'greenwashed' products," INVESTMENT EXECUTIVE (May 17, 2021), available at investmentexecutive.com/newspaper_/news-newspaper/regulators-target-greenwashed-products/ (last accessed June 20, 2025); Canadian Securities Administrators, *Consultation: Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107*, *Disclosure of Climate-related Matters*, at "PART 4 – Summary of findings of 2021 Climate-related Disclosure Issue Oriented Review" (Oct. 18, 2021), available at osc.ca/sites/default/files/2021-10/csa_20211018_51-107_disclosure-update.pdf (last accessed June 20, 2025).

legislation may make "deceptive" or "misleading" business acts or practices civilly actionable. For example, in British Columbia, the provincial *Business Practices and Consumer Protection Act*[24] prohibits "deceptive" representations (which may include exaggerated or ambiguous representations) by a business in the supply of goods or services to a consumer.[25] Section 171 of the *BPCPA* renders deceptive representations actionable by private litigants. Examples of similar provisions exist in consumer protection legislation in other Canadian provinces. Along with the *Competition Act* and securities legislation referenced above, consumer protection legislation may provide further opportunity for private litigants to seek recourse through Canadian courts with respect to ESG-related statements made by businesses.

III. Court Proceedings Regarding Environmental Impacts

A. Climate Change Litigation

In Canada, parties have commenced climate-change litigation against the federal and provincial governments for alleged inaction related to climate change. These proceedings have had mixed success to date. Questions remain about whether some of the issues raised by these proceedings ought to be reserved for Canada's provincial and federal legislatures.

The issue of the justiciability of climate-change policy was central in a proposed climate-change class action filed in Quebec in 2018 against the Canadian government by environmental non-profit ENVironnement JEUnesse, purportedly on behalf of Quebec residents under the age of 35. The plaintiff sought a declaration that the Government of Canada had failed in its obligations to protect the fundamental rights of young people under the *Canadian Charter of Rights and Freedoms*[26] (*"Charter"*) and the Quebec *Charter of Human Rights and Freedoms*.[27] The plaintiffs also sought punitive damages. The action alleged that the government violated young people's rights by setting targets for reducing greenhouse-gas emissions that were insufficient to avoid dangerous climate-change impacts and lacking an adequate plan to reach its emissions target.

In 2019, the Superior Court of Quebec dismissed the motion for authorization (certification) of a class proceeding, finding that the issues were justiciable but that the proposed class definition and age

[24] *BPCPA*, S.B.C. 2004, c. 2.

[25] *BPCPA*, s. 1(1) (Definitions), ss. 4-5 (Deceptive Acts or Practices).

[26] Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, 1982, c. 7, 15 (UK).

[27] R.L.R.Q., c. C-12.

cap of 35 were arbitrary.[28] The plaintiff unsuccessfully appealed the decision. The Quebec Court of Appeal concluded that the issues were not justiciable.[29] An application for leave to appeal to the Supreme Court of Canada was dismissed on July 28, 2022,[30] marking the end of this proposed climate-change class action.

However, there have been other recent cases, albeit not class actions, in which Canadian courts have found that climate-related issues are justiciable. One example is *Sierra Club of British Columbia Foundation v. British Columbia (Minister of Environment and Climate Change Strategy)*.[31] In this case, the Sierra Club of British Columbia filed a petition with the Supreme Court of British Columbia seeking declarations that the Minister of Environment and Climate Change Strategy breached statutory obligations in preparing the 2021 Climate Change Accountability Report, which did not include plans focused on meeting the province-wide targets set for the future. While the court concluded that a review of British Columbia's compliance with the statutory requirements of the *Climate Change Accountability Act*[32] was justiciable,[33] it was satisfied that the Minister had met the required statutory reporting obligations related to future targets.[34]

Ontario courts found a challenge of government action in respect of climate change to be justiciable in in *Mathur v. His Majesty the King in Right of Ontario*.[35] In this case, seven Ontario youths commenced a proceeding against the Province of Ontario related to: (i) its target for reducing greenhouse-gas emissions, and (ii) decision to repeal the *Climate Change Mitigation and Low-carbon Economy Act, 2016.*[36] These youths alleged that, in so doing, Ontario had violated their section 7 and 15 rights under the *Charter* (concerning life, liberty, and security of the person, and equality, respectively). They sought declarations that the target set, and the provisions of the underlying legislation, were unconstitutional. They also asked for orders directing the province to set a science-based target for allowable levels of greenhouse-gas emissions consistent with Ontario's share of the limits necessary to limit climate

[28] *See* Environnement Jeunesse c. Procureur général du Canada, [2019] QCCS 2885, para. 121 (Can. Que. Superior Ct.).
[29] *See* Environnement Jeunesse c. Procureur général du Canada, [2021] QCCA 1871, para. 40 (Can. Que. C.A.).
[30] *See* Environnement Jeunesse c. Procureur général du Canada, [2022] CanLII 67615 (Sup. Ct. Can.).
[31] [2023] BCSC 74 (Can. B.C. Sup. Ct.).
[32] S.B.C. 2009, c. 42.
[33] *Sierra Club*, *supra* note 31, at paras. 38-43.
[34] *Id.* at para. 81.
[35] [2023] ONSC 2316 (Can. Ont. Sup. Ct.).
[36] S.O. 2016, c. 7.

change to the standards set out in the Paris Agreement and revise its climate plan accordingly. The Ontario Superior Court of Justice found these issues were justiciable but dismissed the application because Ontario's actions had not infringed the applicants' *Charter* rights.[37] It opined that a mere change in the law could not be the basis for a *Charter* violation and that courts could not impose a freestanding positive obligation on the government to enact remedial legislation.[38] However, on appeal, the court ordered a new hearing.[39] The new hearing will likely deal with the question of whether societal preservation or ecological sustainability are unwritten constitutional principles that deserve protection in Canada.[40] This unanimous ruling from the Court of Appeal for Ontario sets a significant precedent for climate change litigation in Canada,[41] especially since leave to appeal to the Supreme Court of Canada was dismissed on May 1, 2025.[42] The new hearing has yet to be heard.

In addition, in *La Rose v. Canada*,[43] a 2023 Federal Court of Appeal (FCA) decision, the court recognized that there may be viable challenges to climate-change legislation under section 7 of the *Charter*. *La Rose* was an appeal from two Federal Court decisions—*La Rose v. Canada*[44] and *Misdzi Yikh v. Canada*[45] — striking claims that challenged the federal government's climate-change response. The first action was brought by a group of young people from across Canada. The second was commenced by members of two Indigenous groups. In both cases, the plaintiffs asserted that Canada failed to adequately address the problem of climate change. Specifically, they claimed that existing Canadian policies, laws, and actions for greenhouse-gas reduction are insufficient and, therefore, violate several constitutional rights and doctrines. The plaintiffs did not identify specific legislation or regulations that they alleged were unconstitutional, but rather

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[37] *Mathur*, *supra* note 35, at paras. 106, 171, 183.
[38] *Id.* at paras. 114, 138-139.
[39] Mathur v. Ontario, [2024] ONCA 762 (Can. Ont. C.A.).
[40] *Id.* at para. 77.
[41] Jonathan W. Kahn, Lana Finney, Christopher DiMatteo, and Humna Wasim, "Ontario Court Overturns Dismissal of Youth-Led Constitutional Challenge to Climate Change Policy," BLAKE, CASSELS & GRAYDON LLP (Oct. 21, 2024), available at blakes.com/insights/ontario-court-overturns-dismissal-of-youth-led-constitutional-challenge-to-climate-change-policy/ (last accessed June 20, 2025).
[42] His Majesty the King in Right of Ontario v. Sophia Mathur, a minor by her litigation guardian Catherine Orlando, et al., [2025] CanLII 38373.
[43] [2023] FCA 241 (Can. Fed. C.A.).
[44] [2020] FC 1008 (Can. Fed. Ct.).
[45] [2020] FC 1059 (Can. Fed. Ct.).

challenged the government's policy as a whole.

Plaintiffs sought remedies under the peace, order, and good government provision of the *Constitution Act, 1867*,[46] the public trust doctrine, and sections 7 and 15 of the *Charter*. While most of the claims were not allowed to proceed, the FCA found that the lower court had erred in striking down the section 7 claims without permitting the plaintiffs to amend their pleadings.[47]

La Rose indicates that, with sufficiently specific pleadings, these types of claims may survive a motion to strike and proceed to trial. This, however, does not guarantee any particular outcome on the merits.

Although Canada has not yet faced similar proposed class actions to those in the United States and Europe, this may change. A growing number of municipalities in British Columbia have signed up to support the commencement of a potential class action against large companies involved in the oil and gas industry, claiming damages for costs associated with climate-change adaptation or mitigation.[48] Spearheaded by an environmental advocacy group, this movement appears to be influenced by similar class actions commenced by municipalities in the United States. Governments are not the only entities that have been sued over climate-change issues. More recently, greenwashing class actions have been brought in Quebec against several retailers for the alleged misleading display of certain "eco fees" charged by the retailer, and for allegedly falsely claiming their bags are recyclable.[49]

B. PFAS Class Actions

Claims have been commenced in Canada related to perfluoroalkyl and polyfluoroalkyl substances, or PFAS, which are synthetic chemical compounds commonly used in non-stick cookware, firefighting foam, stain and water-resistant fabrics and carpeting, waterproof clothing and outdoor gear, and grease-resistant food packaging such as fast-food wrappers, pizza boxes, microwave popcorn bags, and candy wrappers. The general allegation in PFAS litigation is that these substances take a long time to break down and consequently accumulate in animals and humans, which is alleged to cause adverse health

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[46] 30 & 31 Vict, c 3 at s 91 (UK), reprinted in RSC 1985, App II, No 5.

[47] *La Rose*, *supra* note 43, at para. 135.

[48] *See, for example,* "About Sue Big Oil", WEST COAST ENVIRONT'L L., available at wcel.org/about-sue-big-oil (last accessed June 20, 2025). The nine municipalities that have committed to date are: Burnaby, Cumberland, Gibsons, Port Moody, Qualicum Beach, Sechelt, Slocan, Squamish, and View Royal.

[49] *See* Ohayon c. Dollarama, [2024] QCCS 1363 (Can. Que. S.C.) (settlement); Cohen c. Dollarama, [2024] QCCS 2087 (Can. Que. S.C.)(granting certification (authorization) of the class action in part).

consequences, including various types of cancer, declines in fertility, reduced response to vaccines, and liver and kidney damage.

PFAS litigation is relatively new to Canada and still in the early stages. Canadian cases filed to date have focused on drinking-water contamination, particularly near military and firefighting sites, and have been brought on behalf of individuals and by governments seeking damages for alleged harms resulting from PFAS contamination. Proposed class actions related to PFAS will likely continue to be active in Canada for years to come.

IV. Conclusion

Recent trends suggest that an increase in environmental litigation in Canada, and class actions in particular, are likely to increase, as is regulatory scrutiny over ESG-related statements and advertising. In response to these recent developments, and to avoid legal, financial, and reputational repercussions, businesses in Canada must continually reassess the evolving landscape and develop strategies to help minimize these risks.