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## Ottawa scales back greenwashing rules, but scope of change remains unclear

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The Canadian Press

**T**ORONTO Canada's greenwashing rules are being scaled back, but it remains to be seen what the changes mean for businesses wanting to talk about their environmental record.

In the federal budget released last week, the government said it plans to remove parts of the greenwashing laws, passed in June last year, that are part of the Competition Act.

\*These greenwashing provisions are creating investment uncertainty and having the opposite of the desired effect with some parties slowing or reversing efforts to protect the environment," the government said in the budget.

Specifically, the government says it plans to remove the rule that business environmental claims have to be backed up by internationally recognized methodology, as well as removing the option for third parties such as environmental groups to be able to challenge claims.

There has been criticism that the wording around the methodology standard is

too vague. While the Competition Bureau has given guidelines, they're not enforceable and still undefined in Canadian law.

In an analysis of the budget's proposed changes, law firm Gowling WLG says it doesn't seem the government plans to remove the rules requiring that a product's "green" benefits be backed up by adequate testing, but does seem to lower the bar for evidence backing up those claims.

McMillan LLP says in a bulletin that the rules will still prevent businesses from making misleading or false environmental claims, but that it's not yet clear what the scope of the proposed amendments may be.

Jennifer Quaid, a professor at the University of Ottawa's Faculty of Law, said it's not clear yet if the government plans to remove the entire rule about business claims, or just the part about the kind of evidence they need to back them up.

"It's not clear to me whether the government is really going to scrap it, whether there's going to be any overture or possibility to amend the language or clarify

Prime Minister Mark Carney and Finance Minister Francois-Philippe Champagne on their way into the Commons last week for the tabling of the federal budget. JUSTIN TANG, THE CANADIAN PRESS

it."

Other countries have taken their own approaches on greenwashing laws, such as Switzerland, which requires green claims be based on "objective and verifiable criteria" that, Quaid said, at least can be defined.

She said that while the law could be improved, the government shouldn't back down on rules around greenwashing as they help to reward companies making real progress.

"If you want to encourage innovation in the sustainability space, you've got to make sure that those who actually invest get the rewards," said Quaid.

Environmental groups have criticized the pullback of the rules, while business groups have been supportive.

The Canadian Chamber of Commerce said it was encouraged by the government's COMMITMENT to remove aspects

of the greenwashing provisions to provide more certainty, while the Business Council of Alberta said it welcomed the review of greenwashing provisions.

Many companies have removed disclosures since the law Was passed, including the Pathways Alliance group of oil-sands producers that wiped its social media and website the day it came into effect.

Other companies have been having to take a more methodical approach, combing through all their various disclosures and statements for anything that could trip an investigation.

A KPMG assessment found that there were one to two potential misrepresentations per page of sustainability disclosure, with close to a third being for overly broad language.

Conor Chell, national leader in ESG law at KPMG in Canada, said that even more than year after the law came into effect, companies still hadn't fully adjusted to the law.

“When you actually look at the disclosures, the sustainability disclosures, we were still observing quite a noticeable gap between what those disclosures were and organization’s ability to actually back them up.”

While removing the provision around business claims might provide some more clarity, he wonders how much will actually change. Quaid noted that the new law did put the responsibility on the company making the claim to back it up, rather than require the Competition Bureau to prove it's false, but it's not clear if that requirement will survive the amending.