British Institute of International and Comparative Law

Banks and Climate Litigation: Canada Report

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The views expressed in this report are those of the author and do not necessarily reflect those of BIICL.

Introduction

This report forms part of the British Institute of International and Comparative Law (BIICL)'s ***Banks and Climate Litigation Project***, which examines emerging legal pathways for climate litigation against banks and, separately, claims concerning other environmental impacts of activities or projects financed by banks, in selected jurisdictions. It builds on BIICL's 'Global Toolbox on Corporate Climate Litigation', applying a similar analytical focus to the banking sector.

Climate litigation continues to develop globally, with the Grantham Research Institute identifying 249 new cases in 2025.[1] To date, however, relatively few climate cases have been brought against banks. This is notable given the role that the banking sector plays in climate change and in the transition to a low-carbon economy through the allocation and pricing of capital. Through lending, banks directly provide capital to borrowers; through underwriting and other financial services, they can also facilitate access to capital markets. The availability, cost and conditions of finance can in turn help enable, constrain or shape capital expenditure on both high-emitting and low-carbon activities. In capital-intensive sectors, continued access to finance may therefore support the development, expansion or continuation of long-lived assets associated with future greenhouse gas emissions, although the real-world effect of any particular financing decision will depend on factors including the financing structure and the availability of alternative sources of capital. The scale of bank financing to the fossil fuel sector remains substantial. According to the *Banking on Climate Chaos 2026* report, the world's 65 largest banks committed $906 billion to fossil fuel companies in 2025, including $508 billion to companies expanding fossil fuel developments and related infrastructure.[2]

The project examines the potential causes of action that may arise in each jurisdiction, together with relevant procedural, evidentiary and remedial issues. Each national report reflects the particular features of the relevant legal system, existing and emerging litigation, and applicable legal and regulatory frameworks.

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[1] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2026 Snapshot* (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2026) 6.

[2] Rainforest Action Network and others, *Banking on Climate Chaos: Fossil Fuel Finance Report 2026* (Banking on Climate Chaos Coalition 2026) 8.

In Canada, climate litigation involving banks remains at an early stage. The report identifies potential avenues for Bank Climate Claims principally through securities and consumer protection law, as well as through duties applicable to financial institutions and their directors and officers. These avenues concern, in particular, climate-related representations, disclosure and risk management. At present, however, the report does not identify these causes of action as providing a direct legal pathway for challenging bank financing of carbon-intensive projects.

Against this background, this report:

- provides background on the Canadian legal system and its climate law and regulatory framework (section I);
- summarises key relevant cases and developments in Canadian climate and environmental litigation (section II);
- identifies and analyses potential causes of action for Bank Climate Claims in Canada (section III); and
- examines procedural and evidentiary issues (section IV) and remedies (section V) relevant to those potential causes of action.

For analytical purposes, the project uses the term "Bank Climate Claims" broadly to refer to any form of litigation or complaint against banks that predominantly concerns climate change. This includes, without limitation, claims concerning a bank's alleged contribution to climate-related impacts through its financing activities, as well as claims concerning a bank's climate-related governance, risk management, disclosure and other legal obligations. The term "Bank Local Impact Claims" refers to any litigation or complaint against a bank concerning localised environmental impacts, other than climate-related impacts, arising from activities or projects financed by the bank. The category does not require the claim to have any climate-related dimension. These terms are analytical categories developed for the purposes of the project and do not represent established legal classifications. This report focuses on Bank Climate Claims and does not separately examine Bank Local Impact Claims.

I. Background on the Legal System

A. General Overview of the Legal System

Canada is a federation, a constitutional monarchy and a parliamentary democracy. The *Constitution Act, 1867* assigns exclusive legislative authority over specific matters to each of the federal and provincial governments. Municipal government is carried on by local governments that are established by and receive all their power from the provincial legislatures, and which do not otherwise have constitutional status.[3] Laws enacted at either level are called statutes, legislation, or acts.[4]

The Constitution gives the federal government the authority to make laws relating to shipping, interprovincial trade and commerce, criminal law, fishing, and anything for the general "peace, order, and good government" of Canada, which can encompass environmental legislation. Matters of provincial jurisdiction include powers over property and civil rights within the province as well as forestry, mining and hydroelectricity, and agriculture. Thus, both the federal and provincial governments have jurisdiction over issues relevant to environmental protection and climate change.[5]In a recent judgment, the Supreme Court of Canada upheld the constitutionality of major federal carbon-pricing legislation, concluding that its enactment was within the jurisdiction of the federal government.[6]

Parliament and provincial and territorial legislatures will often authorize government ministers or other administrative bodies to make specific laws called "regulations", which carry out the purposes of general laws or expand on them and have the force of a law.[7] Regulations are developed under a separate process from Acts.[8]

There are three sources of primary law in Canada: Canada's Constitution set out in the *Constitution Act, 1867* and the *Constitution Act, 1982* (including the *Canadian*

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[3] Canadian Environmental Law, 3rd Ed., Chapter 3, Constitutional Powers; *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 45 at para. 34.
[4] Government of Canada, *About Canada's System of Justice – Where our legal system comes from*, online: https://www.justice.gc.ca/eng/csj-sjc/just/03.html
[5] Canadian Environmental Law, 3rd Ed., Chapter 3, Constitutional Powers
[6] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.
[7] Government of Canada, *How new laws and regulations are created*, online: https://www.justice.gc.ca/eng/laws-lois/index.html
[8] Government of Canada, *How new laws and regulations are created*, online: https://www.justice.gc.ca/eng/laws-lois/index.html

Charter of Rights and Freedoms); legislation, including acts passed by the federal Parliament or a provincial legislature, as well as regulations and municipal bylaws; and the common law, the law developed by judicial decisions and precedent.[9] The Constitution is the supreme law in Canada, such that any laws that are inconsistent with it are of no effect.[10]

Historically, Canada was conceived as being "bijural", as matters of private law in the Province of Quebec are governed by the civil law, while the common law and equity govern private law issues in the other provinces. Federal bills and regulations must respect both types of systems, and the legal concepts within these laws must be expressed in both English and French.[11]

More recently, courts and other commentators have characterized Canada has having a "multijural" legal system, which incorporates both the laws of Indigenous peoples and international law.[12]

Due to Canada's federal structure and each province having the constitutional authority over matters of property and civil rights, both the substantive and procedural laws applicable to climate claims, including Bank Climate claims, vary between jurisdictions. In this Report, we have sought to make reasonable generalizations about the laws applicable to climate claims while acknowledging local distinctions.

Further, as legal practitioners based in Ontario, we acknowledge that most of the specific examples provided reflect Ontario law. Ontario is Canada's largest province in terms of population and economic output, is a centre of finance including the headquarters of the main Canadian securities exchanges, is where five of Canada's "Big Six" banks and most actors in the "shadow banking" sector are headquartered,[13] and is the site of much corporate and commercial litigation. However, depending on the circumstances, it will often be appropriate for Bank Climate Claims to be brought in other jurisdictions.

It is relevant to note that the size of Canadian financial markets are between 2.5-3% of global financial markets. Within Canadian markets, energy accounts for

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[9] Government of Canada, *About Canada's System of Justice – Where our legal system comes from*, online: https://www.justice.gc.ca/eng/csj-sjc/just/03.html

[10] *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11, s. 52(1).

[11] Government of Canada, *About Canada's System of Justice – Where our legal system comes from*, online: https://www.justice.gc.ca/eng/csj-sjc/just/03.html

[12] See e.g. *R. v. Chief Dsta'hyl*, 2026 BCCA 176 at paras. 55-58.

[13] The "Big Six" banks are the Royal Bank of Canada, Toronto-Dominion Bank, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, and National Bank.

about 20% of the Toronto Stock Exchange (TSX) and financial about 32%, and combined are the most active sectors in the TSX. Canadian banks are among the largest providers of finance globally to the oil and gas sector, typically ranking in the top 20 providers globally.

B. The Climate Law Framework in the Jurisdiction

1. National Climate Targets & Framework for their Adoption/Implementation

Canada's overarching climate objectives are set out in the *Canadian Net-Zero Emissions Accountability Act*, which legislates Canada's commitment to achieve net-zero greenhouse gas emissions by 2050. This legislation establishes a legally binding process to set national emissions-reduction targets and establishes the legislated greenhouse gas emissions target for 2030 as Canada's Nationally Determined Contribution under the Paris Agreement.[14]

However, Canada is not expected or projected to meet its 2030 emissions target. The federal government has backtracked on several climate measures, including the suspension of the federal fuel charge (carbon pricing for individuals), postponement of regulations aimed at increasing electric car sales, scrapping minimum electric vehicle quotas for manufacturers, lifting the emissions cap on the oil and gas sector, and exempting "Canada's worst polluter" from clean electricity regulations.[15] Most recently, Prime Minister Mark Carney called the prior climate targets "too expensive".[16]

2. Relevant Federal Legislation

- *Canadian Environmental Protection Act, 1999*: as the flagship federal environmental statute, it has two main purposes: (1) to consolidate and strengthen many of the pre-existing environmental protection statutes

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[14] Government of Canada, *Canadian Net-Zero Emissions Accountabilit Act*, online: https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/canadian-net-zero-emissions-accountability-act.html

[15] Stéphane Dion, "Two uncomfortable climate truths", *Policy Options*, 20 April 2026, online: https://policyoptions.irpp.org/2026/04/climate-backlash-risk/; David Thurton, "What does suspending Alberta's clean electricity regulations mean for Canada's climate goals?", *CBC News*, 2 December 2025, online: https://www.cbc.ca/news/politics/clean-electricity-regulations-alberta-9.6999432

[16] D Thruton, "Carney says Trudeau-era climate plan was "too expensive" and "divisive", CBC, June 30 2026: https://www.cbc.ca/news/politics/carney-trudeau-carbon-emissions-climate-change-9.7254619.

administered by the Department of Environment; (2) to extend federal regulatory authority to ensure uniform national standards for the life cycle control and management of toxic substances. The *Act*'s requirements are backed by a diverse array of enforcement powers, including ministerial emergency orders, civil rights of action for injunctions, and a ticketing procedure for minor offences.[17] Criminal liability is imposed on directors and officers of corporations that commit offences under the *Act*, relating to manufacture, use, disposal, handling, or release of chemicals that may be toxic or hazardous or any other corporate activities that could adversely affect the environment.[18]

- *Extractive Sector Transparency Measures Act*: requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad.[19]
- *Greenhouse Gas Pollution Pricing Act*: aims to address climate change through two pricing mechanisms: the federal fuel charge, which is the carbon tax that Canadians pay on gasoline, diesel, natural gas, and other hydrocarbon fuels; and the output-based pricing system (OBPS), which applies a charge to large industrial emitters.
    - On April 1, 2025, the federal government removed the federal fuel charge, commonly referred to as the "consumer carbon tax", through a federal regulation, meaning the tax no longer applies to fuels like gasoline, natural gas, and diesel consumed by households and small businesses in provinces and territories under the federal backstop system, while the OBPS remains in effect in backstop jurisdictions and continues to apply to industrial facilities.[20]

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[17] Canadian Environmental Law, 3rd Ed., Chapter 4, Federal Regulatory Controls, at 4.28

[18] D. Saxe, "The Impact of Prosecution of Corporations and Their Officers and Directors upon Regulatory Compliance by Corporations" (1991), 1 J.E.L.P. 91 at p. 109., cited in Canadian Environmental Law, 3rd Ed., Chapter 4, Federal Regulatory Controls, at 4.29.

[19] PwC Canada, "Steps to prepare your sustainability regulatory compliance - *Extractive Sector Transparency Measures Act*", online: https://www.pwc.com/ca/en/services/sustainability/insights/prepare-your-esg-regulatory-compliance.html

[20] Kirthana Singh Khurana – Canada Climate Law Initiative, "Sustainability and climate-related regulations impacting Canadian technology companies", 3 June 2025, online: https://ccli.ubc.ca/sustainability-and-climate-related-regulations-impacting-canadian-technology-companies/; Protect Our Winters Canada, "Carbon Pricing", online: https://www.protectourwinters.ca/carbon_pricing?gad_source=1&gad_campaignid=10030106152&gclid=CjwKCAjwxITRBhBYEiwA6mZm7e93txiGnIsZRt6Zf6CWTtkcRnaDppHGBz2erMskTpC-pJ1w1DIRcRoCmGsQAvD_BwE

Provincial governments have also passed legislation relevant to environmental litigation. For instance, provinces have typically enacted general environmental protection legislation,[21] as well as legislation requiring the completion of environmental assessments for certain projects (with varying degrees of effectiveness).[22]

Uniquely, Ontario has an *Environmental Bill of Rights*, which is progressive legislation which, at least notionally, protects the right of the people of Ontario to a "healthful environment".[23] This legislation has some application to disputes between private parties, including, notably, the abolition of the requirement to establish "special damage" in a claim for public nuisance.[24] However, the *Environmental Bill of Rights* has been weakened in recent years through legislative amendments, and efforts to use it as a litigation tool to enforce government accountability have had mixed results.[25]

3. Regulatory Obligations

Canada has a number of sustainability reporting requirements, including:

- Office of the Superintendent of Financial Institutions' B-15 Guidance: sets expectations for federally regulated financial institutions (FRFIs) to integrate climate-related risks faced by these institutions—both physical and transition risks—into governance, risk management, and financial planning. FRFIs are required to publicly disclose information in four key areas: governance, risk identification and management, scenario analysis and climate resilience, and financial impacts with strategic responses.[26]
- Federal Plastics Registry: requires certain manufacturers and importers of plastic resins, producers of plastic products, generators of plastic waste and service

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[21] See e.g. Alberta's *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, and Ontario's *Environmental Protection Act*, R.S.O. 1990, c. E.19.
[22] See e.g. British Columbia's *Environmental Assessment Act*, S.B.C. 2018, c. 51, and Nova Scotia's *Environmental Assessment Regulations*, N.S. Reg. 26/95.
[23] *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28.
[24] *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, s. 103(1).
[25] Canadian Environmental Law Association, "Blog: Ontario Axes Independent Environmental Watchdog", 4 February 2019, online: https://cela.ca/ontario-axes-independent-environmental-watchdog/; *Greenpeace Canada v. Minister of the Environment (Ontario)*, 2019 ONSC 5629 (Div. Ct.).
[26] Office of the Superintendent of Financial Institutions, Guideline B-15 – *Climate Risk Management*, online: https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/climate-risk-management

providers in plastic management to report annually on the quantities and types of plastics they place on the Canadian market and how those plastics flow through the economy.[27]

- Canadian Securities Administrators (CSA) Staff Notice 51-358 "Reporting of Climate Change-related Risks": requires boards and management to assess their wherewithal and expertise vis-à-vis climate-related risks; ensure corporation-specific, comparable, and relevant information; avoid vague disclosures; and consult published and reliable disclosure frameworks.[28]
    - On April 23, 2025, the CSA paused the development and implementation of new mandatory climate-related disclosure rules in response to shifting global economic and geopolitical conditions, as well as changes in the regulatory landscape in the US and Europe.

4. Sustainable Finance Regulation

In May 2021, the federal government launched the Sustainable Finance Action Council (SFAC) to help lead the Canadian financial sector towards integrating sustainable finance into standard industry practice. The SFAC was composed of 25 of Canada's largest financial institutions, including banks, insurance companies, and pension funds.[29] In March 2023, the SFAC recommended that Canadian governments establish a climate investment taxonomy to help support private and public investments in environmentally sustainable projects. The taxonomy would serve as a standardized framework to help investors assess which projects would serve to reduce fossil fuel emissions from hard-to-decarbonize sectors, including Canada's massive oil and gas sector, in line with Canada's climate goals the global objective of limiting warming to 1.5 °C.[30]

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[27] PwC Canada, "Steps to prepare your sustainability regulatory compliance – Federal Plastics Registry", online: https://www.pwc.com/ca/en/services/sustainability/insights/prepare-your-esg-regulatory-compliance.html

[28] This staff notice has been adopted by provincial regulators: see e.g. Ontario Securities Commission, CSA Staff Notice 51-358 Reporting of Climate Change-related Risks, 1 August 2019, online: https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-358/csa-staff-notice-51-358-reporting-climate-change-related-risks

[29] Department of Finance Canada, "Government advances Made-in-Canada sustainable investment guidelines to accelerate progress to net-zero emissions by 2050", 9 October 2024, online: https://www.canada.ca/en/department-finance/news/2024/10/government-advances-made-in-canada-sustainable-investment-guidelines-to-accelerate-progress-to-net-zero-emissions-by-2050.html

[30] Jonathan Arnold – Canadian Climate Institute, "Fueling the oil and gas transition with Canada's climate investment taxonomy", 23 January 2024, online:

In December 2025, the federal government announced two years of seed funding to develop a sustainable finance taxonomy. The Canadian taxonomy will build on the work of the SFAC and establish criteria for "green" investments as well as "transition" investments.[31] The taxonomy would categorize investments based on scientifically determined eligibility criteria that are consistent with the goal of reaching net-zero emissions by 2050 and limiting global temperature rise to 1.5 °C above pre-industrial levels, and would also establish a "transition" category to identify and increase investments for credible pathways to decarbonize emissions-intensive sectors.[32]

The development of the Canadian taxonomy will initially focus on the following sectors for the Canadian economy: electricity, transportation, buildings, agriculture and forestry, manufacturing, and extractives, including mineral extraction and processing, and natural gas. Once finalized, the Canadian taxonomy will be available for entities such as financial institutions, lenders, and companies to use on a voluntary basis. The federal government has stipulated that the adoption of the Canadian taxonomy will not be mandatory.[33]

5. Regulation of the Canadian Financial Industry

Canadian banks and other financial actors are subject to regulation by federal and provincial governments. The features of this regulatory scheme are relevant to the forms in which Bank Climate Claims may be pursued.

The Canadian banking sector is dominated by the "Big Six" banks, which together control about 93% of all assets in the Canadian banking system.[34] The "Big Six"

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https://climateinstitute.ca/publications/fueling-the-transition-categorizing-emissions-reducing-oil-and-gas-projects-according-to-canadas-climate-investment-taxonomy/; Canadian Climate Institute, "Developing Canada's Sustainable Investment Guidelines", 18 December 2025, online" https://climateinstitute.ca/news/developing-canadas-sustainable-investment-guidelines/

[31] Canadian Climate Institute, "Developing Canada's Sustainable Investment Guidelines", 18 December 2025, online" https://climateinstitute.ca/news/developing-canadas-sustainable-investment-guidelines/

[32] Department of Finance Canada, "Government advances Made-in-Canada sustainable investment guidelines to accelerate progress to net-zero emissions by 2050", 9 October 2024, online: https://www.canada.ca/en/department-finance/news/2024/10/government-advances-made-in-canada-sustainable-investment-guidelines-to-accelerate-progress-to-net-zero-emissions-by-2050.html

[33] Department of Finance Canada, "Government advances Made-in-Canada sustainable investment guidelines to accelerate progress to net-zero emissions by 2050", 9 October 2024, online: https://www.canada.ca/en/department-finance/news/2024/10/government-advances-made-in-canada-sustainable-investment-guidelines-to-accelerate-progress-to-net-zero-emissions-by-2050.html

[34] Bank of Canada, "The International Exposure of the Canadian Banking System", p. 1, online: https://www.bankofcanada.ca/wp-content/uploads/2025/01/swp2025-1.pdf.

banks are all public corporations whose shares are traded on the Toronto Stock Exchange (TSX). These banks are subject to the *Bank Act*, federal legislation which regulates banks' internal governance as well as aspects of their consumer practices. Banks' consumer practices are also regulated by provincial Consumer Protection Acts and the federal *Competition Act*.[35]

Canada has a substantial "shadow banking" sector, which includes non-bank financial entities such as investment funds and mortgage finance companies.[36] Canada's central bank, the Bank of Canada has defined the "shadow banking" sector as consisting of entities and markets that "conduct or facilitate a chain of credit intermediation, involve a material degree of maturity or liquidity transformation, and are at least partly outside the perimeter of prudential regulation."[37] These entities are not regulated by the *Bank Act*, but may be regulated by other provincial or federal legislation pertaining to securities transactions, mortgages, and consumer protection.

Canada has a significant energy and fossil fuel sector, which amounts to approximately 9.2% of its total annual economic output.[38] A substantial proportion of the financing for oil and gas projects comes from public sources, with one major environmental organization estimating that there had been nearly $30 billion in subsidies and public financing for the industry in 2024 alone.[39] These funds came from a range of public entities, including a $7.5 billion contribution from Export Development Canada, a state-owned corporation which provides financing for Canadian exports. Canada' large public pension funds are also major sources of financing for fossil fuel projects, with assets totalling at least $92.08 billion as of December 2025.[40] The Canada Pension Plan Investment Board, Canada's largest

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[35] *Bank of Montreal v. Marcotte*, 2014 SCC 55.

[36] Chang et al., *Monitoring Shadow Banking in Canada: A Hybrid Approach*, Bank of Canada, 2016, online: https://www.bankofcanada.ca/wp-content/uploads/2016/12/fsr-december-2016-chang.pdf, p. 26.

[37] Chang et al., *Monitoring Shadow Banking in Canada: A Hybrid Approach*, Bank of Canada, 2016, online: https://www.bankofcanada.ca/wp-content/uploads/2016/12/fsr-december-2016-chang.pdf, p. 25.

[38] Canada Energy Regulator, "Energy in Canada", online: https://www.cer-rec.gc.ca/en/about/publications-reports/annual-report/2018/energy-in-canada.html.

[39] Julia Levin – Environmental Defence, "Fossil Fuel Funding in 2024", online: https://environmentaldefence.ca/wp-content/uploads/2025/04/Canadas-Fossil-Fuel-Funding-in-2024_EDC_April-2025-1.pdf.

[40] Shift: Action for Pension Wealth and Planet Health, *2025 Canada Pension Climate Report Card*, p. 27, online: https://static1.squarespace.com/static/5b9a9754d274cbec1ca7f8f8/t/69778bb4d0582e1d08d96e92/1769442228730/2025+Canadian+Pension+Climate+Report+Card.pdf.

pension manager, committed at least $7.1 billion in new financing for oil and gas projects between 2024 and 2025 alone.[41]

6. International Law

Canada's international law obligations are also relevant to the domestic law applicable to banks and non-bank financial actors. The Supreme Court of Canada has confirmed that courts and administrative decision-makers (such as regulators) should have regard to international law when interpreting domestic legislation, and should strive for interpretations that conform with the requirements of international law.[42] In one recent decision, the Federal Court of Canada confirmed that this principle applies in relation to the International Court of Justice's advisory opinion on the obligations of states in respect of climate change.[43] Going forward, regulators may have to justify their decisions in light of the ICJ's advisory opinion, including the duty to prevent significant harm to the climate system.

Accordingly, the developing international law norms around climate action should assist with the formulation of Bank Climate Claims in Canadian domestic law.

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[41] Shift: Action for Pension Wealth and Planet Health, *2025 Canada Pension Climate Report Card*, p. 8, online: https://static1.squarespace.com/static/5b9a9754d274cbec1ca7f8f8/t/69778bb4d0582e1d08d96e92/1769442228730/2025+Canadian+Pension+Climate+Report+Card.pdf.

[42] See *R. v. Hape*, 2007 SCC 26 at para. 53; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 114.

[43] *Lho'Imggin v. Canada*, 2025 FC 1586 at para. 63.

II. Relevant Cases, Trends and Literature

A. Key Relevant and/or Analogous Cases

Kukpi7 Judy Wilson, Chief of the Skat'sin te Secwepemc-Neskonlith Indian Band and others v. Royal Bank of Canada

In April 2022, six individuals requested that the Competition Bureau open an inquiry into misleading advertising by one of Canada's major banks about its commitments to climate action while continuing to finance fossil fuel development.[44] The applicants alleged that the bank had violated the federal *Competition Act*, which includes consumer protection provisions that prohibit deceptive marketing practices.[45]

The complaint alleged that the bank has publicly portrayed itself as a supporter of the Paris Agreement but instead engaged in a pattern and practice of financing companies and projects that are emitting greenhouse gases, undermining climate goals.

The applicants requested that the Bureau order the bank to remove all representations around its support for the Paris Agreement and sustainable financing, and that it impose a fine of $10 million, to be credited to environmental or indigenous-led organizations in Canada.[46]

In October 2023, the Bureau launched its inquiry into alleged false and misleading environmental representations made by the bank. [47] As of June 2026, there has not yet been a report issued on the investigation.

The legal rules relied on by the complainants in this matter were enhanced in 2025, when the *Competition Act* was amended to specifically prohibit the practice of

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[44] Ecojustice, "Members of the public submit complaint claiming RBC advertising on climate action is misleading" (Ecojustice, 21 April 2022) <https://ecojustice.ca/news/members-of-the-public-submit-complaint-claiming-rbc-advertising-on-climate-action-is-misleading/>

[45] Ecojustice, "Application for inquiry regarding the Royal Bank of Canada's apparent false and misleading representations about action on climate change while continuing to finance fossil fuel development" (Ecojustice, 10 June 2022) <https://ecojustice.ca/wp-content/uploads/2022/07/2022-06-10-Complaint-to-Competition-Bureau-re_-RBC-climate-representations-Final.pdf> ; *Competition Act*, ss. 74.01(1)

[46] Mark Kalegha, "The Royal Bank of Canada's climate policy has come under close scrutiny from its stakeholders" (Institute for Energy Economics and Financial Analysis, 5 October 2023) <https://ieefa.org/resources/royal-bank-canadas-climate-policy-has-come-under-close-scrutiny-its-stakeholders>; *supra* note 10.

[47] *Ibid*.

making misleading representations about the environmental qualities of goods or services – also known as "greenwashing". However, and as set out in greater detail later in this report, these amendments were partially rolled back just one year later.[48]

For its part, the respondent/defendant in the complaint, Royal Bank of Canada, has significantly scaled back its public commitments to climate action since the complaint was filed. In 2025, the bank dropped a 2021 commitment to mobilize $500 billion in sustainable financing, and (with other Canadian banks) withdrew from the Net-Zero Banking Alliance.[49]

Investors 4 Paris Compliance v. BMO, Scotiabank, CIBC, TD, and RBC

In January 2024, Investors 4 Paris Compliance, a climate advocacy group composed of shareholders, submitted a complaint to the securities regulators for the Provinces of Ontario and Quebec calling for an investigation into Canada's five largest banks, alleging that the banks had made misleading disclosures regarding their sustainable finance activities.[50]

The complaint was based on the provincial Securities Acts for Ontario and Quebec, which require companies that issue shares to make correct representations about their businesses and operations.[51] The complaint alleged, among other things, that the purported climate benefits of the banks' sustainable finance activities lacked transparency and credible measurement, and that investments in fossil fuel extraction projects had been made under the sustainable finance label.

The applicants requested that the regulators commence an investigation into the accuracy and adequacy of the banks' climate disclosures, and to require the banks to disclose the emissions impacts of their sustainable finance operations. As of June 2026, there has been no reported outcome from this complaint.

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[48] Competition Bureau Canada, "Environmental claims and the *Competition Act*", 5 June 2025, online: https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/environmental-claims-and-competition-act

[49] Mark Segal, "Scotiabank, RBC Drop Financed Emissions Goals", *ESG Today*, 30 April 2026, online: https://www.esgtoday.com/scotiabank-rbc-drop-financed-emissions-goals/.

[50] Investors for Paris, "Securities complaint asks for investigation into sustainable finance disclosures of Canadian banks" (Investors for Paris Compliance, 9 January 2024) <https://www.investorsforparis.com/esg-securities-complaint/>; Complaint: < https://www.investorsforparis.com/wp-content/uploads/2024/01/I4PC-OSC-AMF-EN-1.pdf>

[51] *Securities Act*, R.S.O. 1990, c. S.5, s. 126.2; *Securities Act*, CQLR c V-1.1., s. 197.

***Hirji et al. v. Canada Pension Plan Investment Board*[52]**

In October 2025, four young people filed a claim against the Canada Pension Plan Investment Board (CPPIB),[53] which invests funds for the Canada Pension Plan. As Canada's largest pension investment manager, the CPPIB currently holds $732 billion in assets under management.[54] It is the 6th largest pension fund in the world.[55]

The applicants argue that CPPIB's climate risk modelling drastically underestimates the financial risks of climate change, thereby exposing Canadians planning to retire after 2050 to reduced retirement benefits, higher contribution rates, or both. The applicants are seeking declaratory relief, to recognise the CPPIB's legal duty to act in the best interests of pension contributors and future retirees by credibly addressing climate-related financial risks.[56]

As of June 2026, the applicants are facing a motion to strike the proceeding brought by CPPIB. The grounds relied on by the CPPIB in seeking dismissal of the application include objections to the applicants' standing and to the justiciability of the issues raised.

B. Trends in Climate and Environmental Litigation

In Canada, climate litigation is still developing and is now expanding from an early set of claims against governments and governmental entities to a wider scope of defendants including financial sector defendants and, ultimately, to carbon majors.

Over the last 20 years, individuals and organizations advanced claims primarily against governmental entities for enforcement of constitutional or statutory obligations engaging climate targets or policies. To date, claims challenging state (in)action have

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[52] Notice of Application: <https://cdn.climatepolicyradar.org/navigator/CAN/2025/aliya-hirji-travis-olson-ravneet-singh-et-chloe-tse-v-canada-pension-plan-investment-board_7f80a876dadb76bdad554f15ab7c0215.pdf>

[53] Simon Archer and Jamie Shilton, two of the authors of this report, are members of the counsel team to the applicants in this matter.

[54] Ecojustice, "Canada Pension Plan Investment Board Climate Risk Case, Media Backgrounder" (Ecojustice, 27 October 2025) <https://ecojustice.ca/wp-content/uploads/2025/10/MEDIA-BACKGROUNDER-Canada-Pension-Plan-Investment-Board-Climate-Risk-Case-October-2025.pdf>

[55] *Ibid*.

[56] Shift action for pension wealth and planet health, "Four young Canadians take CPPIB to court to protect their pensions from climate risk" (Shift action for pension wealth and planet health, October 2025) <https://www.shiftaction.ca/cppib-challenge>

had mixed outcomes, with several being dismissed for lack of justiciability.[57] Other proceedings have resulted in significant if preliminary successes in pre-trial motions.[58] In the one such proceeding which has come closest to a favourable resolution for climate advocates, the Province of Ontario passed legislation intended to dissolve the legal basis for the claim.[59] In response, the applicants have asked the Ontario Court of Appeal to reconsider its original decision to refer the matter back to the court of first instance.[60]

To date, most of what can be called Bank Climate Claims in Canada have been complaints to regulators and administrative agencies, whereby private parties seek to press a regulatory agency to act to ensure compliance of private actors with market legislation.[61] The complaints to the Competition Bureau and securities regulators described above are examples of such complaints.

The applicants in regulatory complaints, both as against banks and generally, are typically concerned members of the public supported by environmental non-profit organizations. In the complaint to the Competition Bureau, the applicants are six climate activists, four of whom are also clients of the bank, supported by Ecojustice, Canada's largest environmental non-profit, and Stand.Earth (formerly ForestEthics), an international nonprofit environmental organization. In the securities complaint as against Canada's five largest banks, the applicant is Investors 4 Paris Compliance, a shareholder advocacy group.

The regulatory complaint strategy remains nascent but has yielded some limited success – in one case, an investigation by the Competition Bureau into a producer of single-use coffee pods resulted in a finding that the producer had made misleading representations about the recyclability of the pods, despite the fact that they were not recyclable in most regions. A settlement was subsequently reached with the producer,

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[57] See e.g. *Environnement Jeunesse c. Procureur général du Canada*, 2021 QCCA 1871, and *Turp v. Canada (Justice)*, 2012 FC 893.
[58] See e.g. *La Rose v. Canada*, 2023 FCA 241.
[59] Fraser Thomson – Ecojustice, "What just happened with the Mathur case?", 3 December 2025, online: https://ecojustice.ca/news/what-just-happened-with-the-mathur-case/.
[60] Ecojustice, "#GenClimateAction: Mather et al. v. His Majesty in Right of Ontario", online: https://ecojustice.ca/file/genclimateaction-mathur-et-al-v-her-majesty-in-right-of-ontario/
[61] Janis Sarra, "The Climate Change Conundrum – Private Litigation as a Mechanism to Advance Public Interests?" Ivan C Rand Memorial Lecture (Canada Climate Law Initiative, 27 October 2022) <https://ccli.ubc.ca/wp-content/uploads/2022/11/Rand-lecture_Private-Litigation-as-a-Mechanism-to-Advance-Public-Interests_27Oct2022.pdf>

which agreed to pay a fine, make a donation to an environmental charity, publish corrective notices, and enhance its corporate compliance program.[62]

While a final determination has not been made in either of the complaints against Canadian banks described above, these complaints are part of a growing regulatory, corporate, and consumer emphasis on transparency and accountability in climate action.[63]

One recent claim against an important non-bank financial actor is *Hirji et al. v. Canada Pension Plan Investment Board*. The CPPIB is the investment entity investing assets of the Canada Pension Plan, a mandatory contributory pension plan for Canadian workers. This claim is brought by young contributors to the CPPIB, alleging that the CPPIB has failed to meet its (fiduciary) duties to take relevant climate information into account in its investment decision-making (including its modelling of climate risks to the portfolio and sustainability of the plan) as well as failing to ensure inter-generational equity and protect the interests of young contributors to the plan. These are climate-related claims that engage fiduciary duties of investment funds, which claims could apply across a variety of financial actors subject to similar duties.

Barriers to bringing claims against bank and non-bank financial actors include: a "loser pays" costs system in most Canadian jurisdictions; a relatively slow-to-develop set of regulatory standards around climate disclosure and action for financial market actors compared to, for example, European jurisdictions; a relatively small financial market (globally speaking); a reluctance among producer services to act on behalf of plaintiffs (investment advisors, actuaries, legal advisors, expert witnesses, and related service providers) in similar claims due to business or political conflicts; and the usual procedural barriers in common law jurisdictions including issues of standing, causation, proximity, and justiciability, some of which have been tested in cases against governments, but not yet against private financial actors. Most recently, political action and policy against climate compliance in the U.S. have also exerted influence on Canadian actors, many of whom must comply with both U.S. and Canadian law.

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[62] Competition Bureau Canada, "Keurig Canada to pay $3 million penalty to settle Competition Bureau's concerns over coffee pod recycling claims" (Government of Canada, 6 January 2022) <https://www.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>

[63] Caitlin Ohama-Darcus and Ruby Pyke, "One Year Out: The New Frontier of Greenwashing Litigation in Canada" (Lawson Lundell LLP, 7 August 2025) <https://www.lawsonlundell.com/publication/one-year-out-the-new-frontier-of-greenwashing-litigation-in-canada>

C. Relevant Literature and Doctrine

1. Ahmad, H. M., & Sen, H. E. "Climate Change Litigation in Canada" (2025). *The Palgrave Handbook of Environmental Policy and law. Palgrave Studies in Sustainable Futures.* https://doi.org/10.1007/978-3-031-55387-5
2. Choquette, C., Klaudt, D., & Lynes, L. S. "Climate Change Litigation in Canada" (2021). *Comparative climate change litigation: Beyond the usual suspects. Ius Comparatum - Global Studies in Comparative Law.* https://doi.org/10.1007/978-3-030-46882-8
3. Cameron, C., Weyman, R., Nicholson, C. "Legal Hurdles and Pathways: The Evolution (Progress?) of Climate Change Adjudication in Canada" (2024) *Dalhousie Law Journal,* 47(2). https://digitalcommons.schulichlaw.dal.ca/dlj/vol47/iss2/1/
4. Dobbelstyn, E., Chalifour N., (2026) Mathur v Ontario youth-led constitutional challenge to government climate policy lights the path to future recognition of climate rights in Canada. In Cameron, C., Galvao Ferreira, P., Weyman, R. (Eds.), *Climate change litigation cases in context* (pp. 21-50) Edward Elgar Publishing. https://www.elgaronline.com/view/book/9781035343188/9781035343188.xml
5. Huys, M., Kuzma, K., Olexiuk, P., Gupta, A., & Aitken, L. (2025). The impact of private climate change litigation and recent competition act amendments on the Canadian Energy Sector. *Alberta Law Review.* https://doi.org/10.29173/alr2875
6. Ranna, J. "The Climate Change Conundrum – Private Litigation as a Mechanism to Advance Public Interests?" (2022). Ivan C. Rand Memorial Lecture. https://ccli.ubc.ca/wp-content/uploads/2022/11/Rand-lecture_Private-Litigation-as-a-Mechanism-to-Advance-Public-Interests_27Oct2022.pdf
7. Sarra, J. "Climate Related Legal Risks for Financial Institutions: Executive Brief" (2021). https://globalriskinstitute.org/publication/climate-related-legal-risks-for-financial-institutions-executive-brief/
8. Shift Action for Pension Wealth and Planet Health, "2025 Canadian Pension Climate Report Card" (2026). https://www.shiftaction.ca/s/2025-Canadian-Pension-Climate-Report-Card.pdf
9. Shift Action for Pension Wealth and Planet Health, "Entrenched Interests: Fossil Fuel Ties on Canada's Pension Boards" (2026). https://www.shiftaction.ca/s/Shift-Entrenched-Interests-Report-2025.pdf
10. Wood, S. (2024). Mathur v. Ontario. *McGill Law Journal*, 69(1), 3–47. https://doi.org/10.26443/law.v69i1.1370

III. Causes of Action

A. Most Promising Causes of Action

In our view, the most promising causes of action supporting Bank Climate Claims in Canada are:

(a) shareholder claims for breaches of disclosure requirements under securities law (e.g., misrepresentations);
(b) consumer claims under consumer protection laws for misrepresentation;
(c) claims based on breaches of duties under prudential legislation, special acts applicable to financial actors, and/or at common law, or climate regulatory policy.

Securities Misrepresentation Claims

Securities misrepresentation claims are grounded in provincial Securities Acts, all of which are substantially similar.[64] Securities Acts prohibit certain misrepresentations in both the primary and secondary markets.[65] Failure to adequately disclose the risks faced by investments made by a bank (including climate risks) may expose the bank to enforcement action by a regulator or to a private action for damages by shareholders. Securities misrepresentation claims are also made in tort.

Consumer Protection Claims

Consumer misrepresentation claims are primarily grounded provincial Consumer Protection Acts.[66] However, the federal *Competition Act* also contains consumer protection provisions.[67] These statutes prohibit companies from making false or misleading representations in connection with the sale and marketing of products and services to consumers. Consumer misrepresentation claims may be pursued by private individuals through civil actions, or, for certain claims under the federal *Competition Act*, by the Competition Bureau, an independent regulatory agency.

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[64] See e.g. Ontario's *Securities Act*, R.S.O. 1990, c. S.5 and Quebec's *Securities Act*, C.Q.L.R. c. V-1.1.
[65] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, ss. 130(1) and 138.3(1).
[66] See e.g. Ontario's *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A and British Columbia's *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[67] *Competition Act*, R.S.C. 1985, c. C-34, ss. 74.01-74.08.

Claims Challenging Investment-Related Decision Making and Reporting

Financial institutions in Canada are prudentially regulated under both federal and provincial legislation. A common feature of prudential regulation is the imposition of fiduciary standards of conduct on administrators of managed assets such as pension funds, insurance funds, bank deposits, mutual funds and trust and loan corporations. To the extent that the prudential regulation requires a climate-related disclosure or action, beneficiaries of these duties may bring Bank Climate Claims seeking to enforce those climate related actions and disclosure obligations. Such claims may be brought in various procedural forms, including a derivative action by the shareholders of a corporation, or, more speculatively, in the form of a claim by other "stakeholders" in the corporation. It is also possible that the federal banking regulator may take action to prevent a bank from mismanaging climate risk.

B. Legal Bases and Doctrinal Foundations

Securities Misrepresentation Claims

Provincial Securities Acts in Canada prohibit corporations from making misrepresentations in certain public documents. Claims alleging misrepresentation by a corporation can take the form of (a) a complaint to a securities regulator, or (b) a private action for damages where a misrepresentation has been made and a subsequent disclosure corrects the misrepresentation, resulting in a drop in the share price.

Climate finance specialists have identified two categories of climate-related economic risks: (1) "physical risks", including the risks to physical assets resulting from natural disasters and extreme heat as well as more gradual impacts and secondary consequences for public health, and (2) "transition risks", being the risks associated with failing to keep pace with the global transition to a low-carbon economy.[68] Risk exposures vary by industry and activity, but are generally material risks to be disclosed. Likewise, developments in regulatory requirements with respect to climate disclosures by security issuers will tend to result in more climate disclosure obligations.

[68] Office of the Superintendent of Financial Institutions, "Climate Risks", online: https://www.osfi-bsif.gc.ca/en/risks/climate-risks.

(a) Complaint and Enforcement by Securities Regulator

Each provincial Securities Act in Canada establishes a provincial Securities Commission. For instance, Ontario's *Securities Act* establishes the Ontario Securities Commission. These regulators are charged with the enforcement of securities legislation, including the statutory prohibitions on making misrepresentations.

Securities Commissions have authority to receive complaints by shareholders, bondholders, insiders, and concerned members of the public. While not generally dictated by statute, formal complaint procedures have been developed by Securities Commissions, and Securities Acts will typically include protections for whistleblowers who submit complaints.[69] Based on a complaint, a Securities Commission may investigate a securities-issuing company for its compliance with legislative requirements.

Provincial Securities Acts state that it is a punishable offence for a corporation or an individual to misrepresent material facts in official documents and financial statements.[70] The legislation typically defines "material fact" as "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities."[71] In some contexts, expert evidence as to whether the fact would reasonably be expected to have a significant effect on share price may be required.[72]

Securities Commissions have authority to investigate individuals and companies for conduct that violates securities legislation, including the making of misrepresentations. If the Commission proves that an offence has been committed, the individual or corporation may be required to pay a fine or pay compensation to affected persons.[73]

Unlike private actions for damages, described below, the fact of an actual diminution in the value of a security is not a practical or legal necessity for a regulatory complaint based on securities misrepresentation. However, the definition of "material fact" still requires that the misrepresentation relate to information that could have a significant impact on the market price or value of a security.

[69] See e.g., *Securities Act*, R.S.O. 1990, c. S.5, ss. 121.5-121.6.
[70] See e.g. *Securities Act*, R.S.N.S. 1989, c. 418, s. 129(1).
[71] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 1(1) "material fact".
[72] See e.g. *Dziedziejko v. Canopy Growth*, 2025 ONSC 6766 at paras. 49-86.
[73] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 122.1.

Accordingly, it appears unlikely that a Securities Commission would take regulatory action against a corporation for a climate-related misrepresentation unless there is a possible nexus between the misrepresentation and the value of the corporation's securities.

Complaints to regulators alleging securities misrepresentation are well-founded in securities legislation. However, the doctrinal strength of these claims does not necessarily mean that they are practically viable. The complaint against five Canadian banks by Investors 4 Paris Compliance described above is the only example of this type of claim of which the authors are aware. However, as stated above, as of the time of writing this report, securities regulators have yet to take action based on the complaint. Accordingly, there is not yet an established track record in this area on which climate advocates can rely.

(b) Private Actions for Damages

Provincial Securities Acts also allow a shareholder to commence a private civil claim to recover damages resulting from a securities-issuing company's failure to disclose material information about its operations. These claims are also typically accompanied by the parallel claim in tort.

For instance, Ontario's *Securities Act* allows a shareholder to commence a claim based on misrepresentation in the primary market[74] or in the secondary market.[75]

The statutory regime governing securities misrepresentation claims was enacted to alleviate some of the challenges faced by shareholders seeking to bring claims based on the common law of negligent misrepresentation. Notably, and unlike the historical common law, the new statutory regime does not require an individual shareholder to demonstrate that they relied on the misrepresentation at the time of the share transaction.[76] Further, the Securities Acts do not require a plaintiff to prove that a loss in share value was caused by the misrepresentation; rather the legislation prescribes a formula for calculating damages based on changes in share pricing following the date on which the misrepresentation is corrected.[77]

While the Securities Acts reduce the burden on shareholder plaintiffs in some respects, they also enshrine certain defences available to security-issuing companies. For instance, a company will not be liable in respect of a misrepresentation if it is established that the company conducted a reasonable investigation before the

[74] *Securities Act*, R.S.O. 1990, c. S.5, s. 130(1).
[75] *Securities Act*, R.S.O. 1990, c. S.5, s. 138.3(1).
[76] *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60 at para. 75.
[77] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.5(1).

release of a misrepresentation, and there were no reasonable grounds at the time to believe that the representation was false or misleading.[78]

Climate advocates considering Bank Climate Claims on the basis of securities misrepresentation can anticipate protracted and expensive litigation. The provincial Securities Acts generally require that a plaintiff bring a motion for "leave" (permission) before they may carry on a claim of misrepresentation in the secondary market.[79] Before even reaching the discovery stage, a plaintiff is required to demonstrate "a reasonable possibility that the action will be resolved at trial in favour of the plaintiff".[80]

Leave motions often involve expert evidence on scientific and economic issues, and can require expenditures in the millions of dollars by both parties. In a Bank Climate Claim, a plaintiff may be expected to proffer expert evidence on climate science, securities market behaviour, and trends in consumer preferences.

Due to the significant time and costs that must be expended in a private action for securities misrepresentation, the fact of an actual diminution in the value of a security in connection with the misrepresentation is a practical requirement. It is only if there has been an actual loss in the value of the security in connection with the misrepresentation that damages may be awarded. In turn, it is only if there is a reasonable prospect that damages may be awarded that a private party is likely to consider taking on the risk of commencing a private action for securities misrepresentation.

Given these costs, securities misrepresentation claims are often pursued as class actions, which can make pursing such claims more economically viable. In a securities class action, one shareholder may seek damages on behalf of all shareholders who have suffered losses.

While there have not yet been any successful Bank Climate Claims in this form, in other subject areas, plaintiffs have obtained successes in challenging banks' failures to disclose investment risks. For instance, one of Canada's Big Six banks was the subject of a class action over its alleged failure to adequately disclose its exposure to risks of losses in the U.S. sub-prime mortgage-backed securities market. When those risks materialized in the 2007-8 financial crisis, prices of the bank's shares dropped by 20%.[81] After almost 14 years of litigation, the bank settled the class action for $125 million.[82]

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[78] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.4(6)(a).
[79] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.8(1).
[80] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.8(1)(b).
[81] *Green v. CIBC*, 2022 ONSC 373 at para. 4.
[82] *Green v. CIBC*, 2022 ONSC 373 at para. 14.

As a matter of legal doctrine, securities misrepresentation claims by shareholders are well-established in Canada. However, any climate-related misrepresentations which had no negative effect on the corporation's share value are not good candidates for this type of claim. Without an actual diminution in share value as a result of the misrepresentation, no damages have been suffered, and few (if any) shareholders would have a reason to commence this kind of lengthy and expensive litigation.

The final limitation to securities actions is they are limited to issuers on exchanges, and as such any near-bank financial actor (for example, private credit funds) that is not listed is not subject to the same forms of disclosure or claims.

Consumer Misrepresentation

Canadian consumer protection legislation prohibits corporations from making misrepresentations in connection with the marketing and promotion of goods and services for sale to consumers.[83] For instance, Ontario's *Consumer Protection Act* prohibits the provider of a good or service from making "false, misleading or deceptive representations", such as representations that the good or service has a benefit or quality that it does not actually have.[84]

(a) Claims Under Provincial Consumer Protection Acts

Under the provincial Consumer Protection Acts, an individual consumer can advance a civil claim against the seller or provider of the good or service by commencing a lawsuit in court (including a Small Claims Court). To succeed, the consumer must establish that the misrepresentation was made in connection with the purchase of the good or service.

Typically, to succeed in a consumer misrepresentation claim, the consumer does not need to prove that they "relied" on the misrepresentation; in other words, it is not necessary to prove that the consumer would not have purchased the good or service but for the misrepresentation.[85] Nor is it necessary for a consumer to prove that the seller or provider knew that the representation was false or misleading. All that needs to be proven is that a false or misleading representation was made about the good or service that was purchased.

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[83] Notwithstanding the special regulatory framework applicable to banks, the Supreme Court of Canada has confirmed that banks' consumer-facing businesses may be subject to the restrictions of consumer protection legislation: *Bank of Montreal v. Marcotte*, 2014 SCC 55.
[84] *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, s. 14(2).
[85] *Ramdath v. George Brown College of Applied Arts and Technology*, 2013 ONCA 468 at para. 15. There is some ambiguity on this point in other provinces; see e.g. *Finkel v. Coast Capital Savings Credit Union*, 2017 BCCA 361 at paras. 79-84.

With respect to causation, courts have concluded that the only requirement is that the consumer have suffered a loss as a result of entering into a consumer transaction while an unfair practice (including a misrepresentation) was occurring.[86] There is no separate requirement to prove that the loss was caused by the misrepresentation.

Because the value of an individual consumer claim will tend to be relatively small, consumer claims are often brought in the form of the class action in order to make them more economically viable. In a class action, a single consumer can seek compensation or other remedies on behalf of all consumers who purchased a good or service about which a misrepresentation was made.

Corporations that make representations about the purported climate-friendly qualities of goods or services are vulnerable to consumer misrepresentation claims if those representations are false or misleading. For instance, a distributor of single-use coffee pods was the subject of a consumer misrepresentation claim when it became known that the pods were not accepted for recycling in most parts of Canada, contrary to the distributor's representation that the pods were recyclable.[87]

Provincial Consumer Protection Acts may provide bases for Bank Climate Claims where a specific representation about carbon neutrality or other environmental benefit is made in connection with the marketing of a consumer banking or financial product, such as a bank account or credit card. The legal doctrine underlying these claims is strong, and the mechanism of a class action can make them practically viable.

(b) Claims Under the Federal Competition Act

The ambit of the federal *Competition Act* is somewhat broader, as it prohibits both misrepresentations made in the course of an individual consumer transaction as well as "deceptive marketing practices" more generally.[88]

Similar to claims under provincial Consumer Protection Acts, under the federal *Competition Act*, consumers may commence private actions for damages against sellers of goods or services whom they allege made misrepresentations in the course of an individual consumer transaction. By contrast, the broader category of "deceptive marketing practices" is generally the purview of the Competition Bureau, an independent regulatory agency.

While private claims under the *Competition Act* bear many similarities to claims under provincial Consumer Protection Acts, there are some distinctions which are

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[86] *Ramdath v. George Brown College of Applied Arts and Technology*, 2015 ONCA 921 at para. 90.
[87] *Buis v. Keurig Canada Inc.*, 2025 ONSC 6875 at para. 2.
[88] *Competition Act*, R.S.C. 1985, c. C-34, s. 74.01(1).

less favourable to consumers. For instance, a consumer needs to prove that a misrepresentation was made "knowingly or recklessly", rather than just that the misrepresentation was made.[89] Further, some courts have interpreted the *Competition Act* as requiring the consumer to demonstrate detrimental reliance on a misrepresentation, though more recent decisions have found that reliance may not be a necessary element of a claim.[90]

With respect to causation, a consumer in a private claim for damages only needs to prove that the defendant's misrepresentation resulted in the consumer to spend more than advertised or to acquire a product with less value than advertised.[91]

In addition, beyond private claims under the *Competition Act*, the Competition Bureau receives complaints from individuals, and has the authority to initiate a formal inquiry if it finds a complaint to be substantiated. To proceed, a complaint must be brought by at least six individuals, who may submit their complaint jointly. The *Competition Act* provides that an application for an inquiry must be supported by a statement setting out the grounds for the individuals' belief that the *Act* has been contravened, as well as a statement of the evidence supporting the inquiry.[92]

If the Bureau conducts an inquiry following receipt of a complaint, , the Competition Bureau may then apply to the Competition Tribunal for a determination as to the acceptability of the marketing practice in question, and can obtain orders to prohibit the practice, to require the business in question to pay monetary penalties, or, in appropriate circumstances, to repay amounts received from consumers.[93]

If the Competition Bureau discontinues an inquiry, the individuals who applied for the inquiry may request that the Minister of Industry conduct a review of the Bureau's decision. The Minister has authority to order the Bureau to conduct a further inquiry.[94]

The broader ambit of the federal *Competition Act* may be more promising for Bank Climate Claims, given that banks often make representations about their environmental objectives in public marketing materials. Banks may thus be subject to scrutiny over whether such representations constitute "deceptive marketing practices".

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[89] *Competition Act*, R.S.C. 1985, c. C-34, s. 52(1).
[90] See the discussion in *Bowman v. Kimberly-Clark Corporation*, 2023 BCSC 1495 at paras. 54-57.
[91] See *Valeant Canada LP/Valeant Canada S.E.C. v. British Columbia*, 2022 BCCA 366 at paras. 34-35.
[92] *Competition Act*, R.S.C. 1985, c. C-34, 9(2).
[93] *Competition Act*, R.S.C. 1985, c. C-34, s. 74.1(1).
[94] *Competition Act*, R.S.C. 1985, c. C-34, s. 22(4).

In 2025, the *Competition Act* was amended to enable private parties to challenge deceptive marketing practices before the Competition Tribunal.[95] As compared to the pre-existing mechanism for submitting complaints to the Competition Bureau for investigation, this new procedure allows for direct access to an adjudicative forum, as long as the complainant can show that the proceeding is in the "public interest".[96]

However, this new procedure is not without its limitations. In particular, following amendments to the *Competition Act* enacted in 2026, complaints over the accuracy of environmental representations made by a business about its activities generally can still only be pursued by the Competition Bureau.[97] Nonetheless, private access to the Competition Tribunal may be a viable option for climate advocates considering Bank Climate Claims which relate to representations about the environmental qualities of a specific good or service.

(c) Anti-Greenwashing Provisions in the Federal Competition Act

In recent years, the Competition Bureau has received complaints from a number of individuals and organizations concerning alleged "greenwashing." For instance, in 2022, the Competition Bureau commenced an inquiry into the representations made by one of Canada's Big Six banks about its purported commitment to fighting climate change despite its ongoing financing of major fossil fuel extraction projects.[98]

In 2025, the *Competition Act* was amended to introduce stricter provisions to prohibit greenwashing. Among the amendments were new requirements that certain environmental representations made for the purpose of promoting a business be "based on adequate and proper substantiation in accordance with internationally recognized methodology".[99] To accompany these amendments, the Competition Bureau published a set of guidelines, titled "Environmental claims and the *Competition Act*", which described how the *Competition Act* may be used to address deceptive claims regarding environmental qualities of goods or services.[100]

However, less than a year later, the *Competition Act*'s anti-greenwashing provisions were relaxed in response to industry pressure, and the requirement to ensure that

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[95] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(1).
[96] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(6.1).
[97] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(6.2).
[98] Mark Kalegha – Institute for Energy Economics and Financial Analysis, "The Royal Bank of Canada's climate policy has come under close scrutiny from its stakeholders", 5 October 2023, online: https://ieefa.org/resources/royal-bank-canadas-climate-policy-has-come-under-close-scrutiny-its-stakeholders.
[99] *Competition Act*, R.S.C. 1985, c. C-34, s. 74.01(1)(b.2), as it appeared between 20 June 2025 and 25 March 2026.
[100] Competition Bureau Canada, "Environmental claims and the *Competition Act*", 5 June 2025, online: https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/environmental-claims-and-competition-act

environmental representations could be substantiated based on an internationally recognized methodology was removed.[101] Further, the right of a private party to challenge greenwashing as a "deceptive marketing practice" through a Competition Tribunal proceeding was eliminated (though the Competition Bureau retains the right to bring those challenges). What remains is the requirement that environmental representations be "based on adequate and proper substantiation", a requirement that is significantly more flexible and favourable to industry than the prior requirement.

Individuals may submit an application that the Competition Bureau conduct an inquiry into a suspected violation of the anti-greenwashing provisions in the *Competition Act* through the same process as applies to other "deceptive marketing practices".

Claims Challenging Investment-Related Decision Making and Reporting

In Canadian corporate law, the directors and officers of corporations owe a fiduciary duty to the corporations for which they act. This duty is legislated in each province's Corporations Act, as well as in the federal *Canada Business Corporations Act*. The version of this duty prescribed in the federal statute requires directors and officers to "act honestly and in good faith with a view to the best interests of the corporation".[102] This duty obligates directors and officers to "avoid conflicts of interest" to "avoid abusing their position to gain personal benefit", and to "maintain the confidentiality of information they acquire by virtue of their position".[103] The subjective motivations of the directors and officers are relevant to the question of whether the fiduciary duty has been violated.[104] Further, directors and officers are obligated to "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances".[105] This is an objective standard which imposes stricter obligations than did the historical common law.[106]

The most common type of complainant in claims challenging investment-related decision making and reporting is a shareholder in the corporation. Where the decisions of directors and officers result in damage to the corporation's value,

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[101] Conor Chell – KPMG, "Changes to Canada's anti-greenwashing laws and business risk", April 2026, online: https://kpmg.com/ca/en/insights/2026/04/changes-to-canadas-anti-greenwashing-laws.html

[102] *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 122(1)(b); *Bank Act*, S.C. 1991, c. 46, s. 158(1)(a).

[103] *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at para. 35.

[104] *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at para. 63.

[105] *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 122(1)(a); *Bank Act*, S.C. 1991, c. 46, s. 158(1)(b).

[106] *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at paras. 62-63.

shareholders suffer a diminution in the value of their shares, and may then seek remedies under corporate law statutes.

Canadian corporate law recognizes that other "stakeholders", beyond the shareholders, will often have interests in the management of a corporation.[107] The list of who constitutes a "stakeholder" is not closed, and could conceivably include persons affected by a bank's climate risk management practices. However, while directors and officers are obligated to treat all stakeholders fairly, their overriding duty remains the duty to act in the best interests of the corporation.[108]

Claims based on prudential corporate regulation can take a number of forms. This section addresses derivative actions, oppression remedy claims, and regulatory complaints. It concludes with a comment on the "business judgment rule", which raises significant hurdles for any claimant seeking to challenge corporate decision-making around climate risk.

(a) Derivative Actions

Stakeholders can challenge the conduct of a corporation's directors and officers through a "derivative action," in which the stakeholders step into the shoes of the corporation and, in the name of the corporation, sue the corporation's directors and liable for breaches of duty.[109] If a breach of duty is established, directors or officers may be required to compensate the corporation for the losses caused by the breach.

While Canadian corporate statutes do not generally limit the availability of derivative actions only to shareholders, practically, the corporate stakeholders who most frequently resort to the derivative action are shareholders.

Canadian corporate statutes, including the *Bank Act*, require stakeholders to bring a motion for "leave" (permission) to pursue a derivative action before the proceeding can be actually commenced; this screening mechanism is intended to prevent undue interference with a corporation's activities, including via frivolous or vexatious claims.[110]

There have not been any Canadian examples of Bank Climate Claims in the form of a stakeholder derivative action. However, one could arise in the future if a shareholder believes that directors and officers have mismanaged climate risks, resulting in damage to the assets of the corporation(and hence to the value of the corporation's shares).

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[107] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 64.
[108] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 66.
[109] See *Bank Act*, S.C. 1991, c. 46, s. 334(1).
[110] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 43.

The requirement for leave to commence a derivative action also requires the stakeholders to demonstrate that the claim has been brought in good faith. Due to the similarities between Canadian and U.K. corporate law, climate advocates considering a derivative action against a bank's directors and officers should bear in mind the outcome in *ClientEarth v. Shell Plc*, a proposed derivative claim by a non-governmental organization (and nominal shareholder) over an oil company's climate risk management decisions.[111] The U.K. High Court of Justice dismissed ClientEarth's application for permission to carry on a derivative action, finding, among other things, that ClientEarth had brought the claim "to advanc[e its] own policy agenda", rather than in a good faith effort to advance the interests of the corporation.[112] Thus, a more established shareholder with a clear economic interest in the corporation may be more likely to succeed in clearing the good faith hurdle.

The legal basis for a Bank Climate Claim in the form of a derivative action is still developing. Canadian legislatures and regulators have not yet imposed mandatory requirements for disclosures or investment decision-making which specifically address climate risk. This gives directors and officers wide latitude to determine what they believe to be in the best interests of the corporation. As set out below, the "business judgment rule" protects directors' and officers' exercise of discretion and judgment on those issues.

(b) Oppression Remedy

Canadian corporate law statutes generally include provisions whereby a stakeholder can claim for an oppression remedy. The *Canada Business Corporations Act* provides:

> (2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates
>
> > (a) any act or omission of the corporation or any of its affiliates effects a result,
> >
> > (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
> >
> > (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

[111] *ClientEarth v. Shell Plc*, [2023] EWHC 1897.
[112] *ClientEarth v. Shell Plc*, [2023] EWHC 1897 at para. 92.

> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

To determine whether a corporation has acted "oppressively", the court will first determine whether the stakeholder has a reasonable expectation that the corporation will act in a certain way. Second, the court will determine whether the corporation has contravened that reasonable expectation in a manner that amounts to "oppression", "unfair prejudice" or "unfair disregard".[113] To qualify as "oppression", "unfair prejudice", or "unfair disregard", the claimant must establish that the corporation's conduct resulted in "prejudicial consequences."[114] Accordingly, conduct that appears to have been unfair but which resulted in no provable harm to the claimant is unlikely to support an oppression remedy claim.

A successful oppression remedy claim can result in an order for compensation, as well as a range of other orders respecting the governance of the corporation. For instance, under the *Canada Business Corporations Act*, the court has authority to "restrain[] the conduct complained of", "amend[] the articles or by-laws", replace the directors, or even wind-up the corporation.[115]

Canadian courts have specifically recognized that the oppression remedy is available to stakeholders who are not shareholders. In *BCE Inc. v. 1976 Debentureholders*, the Supreme Court of Canada held that "[t]he corporation and shareholders are entitled to maximize profit and share value, to be sure, but not by treating individual stakeholders unfairly."[116]

There have not been any Canadian examples of Bank Climate Claims in the form of an application for an oppression remedy. However, one could arise in the future if a stakeholder believes that directors and officers have acted in such a manner as to give rise to a reasonable expectation that the corporation will pursue specific climate-related objectives, and those objectives are abandoned.

In the context of Bank Climate Claims, one major limitation is that the *Bank Act*, which regulates the "Big Six" banks, does not include provisions for oppression remedies. Accordingly, these claims cannot be pursued against Canada's largest banks. However, non-bank financial actors regulated under ordinary corporate legislation may face oppression remedy claims in proper circumstances.

As with shareholder derivative actions, the legal basis for Bank Climate Claims seeking oppression remedies is still developing. Gaps in legislative and regulatory

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[113] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 56.
[114] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 89.
[115] *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 241(3).
[116] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 64.

requirements around climate risk give directors and officers broad discretion to set corporate policies around climate issues. Further, no Canadian court has yet concluded that customers have standing to bring oppression remedy claims against non-bank financial actors.

(c) Regulatory Complaints about Federally-Regulated Banks

Federally-regulated banks in Canada, including the "Big Six" banks, are subject to the oversight of the Office of the Superintendent of Financial Institutions ("OFSI"). OSFI is Canada's primary prudential regulator for consumer and commercial banks. Its obligations include ensuring that federally-regulated financial institutions act to protect the interests of bank depositors and creditors. The *Bank Act* requires that banks disclose certain information to OSFI on a regular basis.[117] OSFI also has investigatory powers, and can receive complaints from the public.[118]

Under the *Bank Act*, OSFI has authority to issue compliance directions where it is of the view that a bank "is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business or affairs of the bank, or is pursuing or is about to pursue any course of conduct that is an unsafe or unsound practice in conducting the business or affairs of the bank".[119]

OSFI also issues policies guidelines, including about significant risks which banks will be obligated to manage as a matter of prudence. In March 2025, OSFI issued significant (albeit non-mandatory) guidance around climate risk management.[120]

The authors are not aware of any complaints to the OSFI respecting a bank's investment decision-making around climate. However, a future Bank Climate Claim in the form of an OSFI complaint could allege that a bank's failure to adequately manage climate risks is an "unsafe or unsound practice" which necessitates intervention by the OSFI. As with the other corporate law claims reviewed in this section, the legal basis for such a conclusion remains under development.

(d) Corporate Law Claims and the Business Judgment Rule

Bank Climate Claims drawing upon corporate law will have to contend with the "business judgment rule", which requires courts to give "deference to a business

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[117] *Bank Act*, S.C. 1991, c. 46, ss. 628-635.
[118] Office of the Superintendent of Financial Institutions, "OSFI whistleblower submissions", online: https://www.osfi-bsif.gc.ca/en/contact-us/osfi-whistleblower-submissions.
[119] *Bank Act*, S.C. 1991, c. 46, s. 645(1).
[120] Office of the Superintendent of Financial Institutions, "Guideline B-15 – Climate Risk Management", 7 March 2025, online: https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/climate-risk-management.

decision, so long as it lies within a range of reasonable alternatives".[121] Accordingly, a bank's officers and directors will be given considerable latitude by the courts on all issues, including with respect to decisions made on climate issues.

C. Future Developments

Unfortunately, the trajectory of recent legislative initiatives in Canada has been to restrict climate-related claims. This includes the relaxation of the anti-greenwashing provisions in the federal *Competition Act*, discussed above, and the cancellation of planned amendments to securities and corporate legislation which would have enshrined obligations to make more fulsome climate-related disclosures.[122]

In 2022, proposed legislation was introduced in the Senate of Canada that would require a number of public financial institutions to make specific commitments to reduce carbon emissions through their financing activities.[123] However, the *Climate-Aligned Finance Act* has not proceeded through the various stages of the legislative process, and at the time of writing, appears to have little prospect of being enacted into law.

At common law, the question of whether lenders such as banks could be liable for the climate damage caused by the businesses and projects in which they have invested is an emerging question. While it may presently be unlikely that a court would hold a bank liable for investing in a high-carbon project, the urgency of the climate crisis may one day compel courts to take a broader view.

D. Summary Assessment

In the section above, we reviewed the viability of Bank Climate Claims based on securities misrepresentation, consumer misrepresentation, and breach of fiduciary duty.

In our view, each of these causes of action is potentially viable, given the right facts. A Canadian bank could face a claim for securities misrepresentation if it fails to adequately disclose climate risks. However, there is not yet an established track record of Securities Commissions undertaking regulatory enforcement actions to prohibit climate-related misrepresentations by securities-issuing corporations. Further, in the context of private actions, the practical requirement that damages be

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[121] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 40.
[122] David Forrester et al. – Torys LLP, "CSA's climate disclosure rule on hold: an update on climate disclosure in Canada and the U.S.", 30 April 2025, online: https://www.torys.com/en/our-latest-thinking/publications/2025/04/csa-climate-disclosure-rule-on-hold.
[123] *An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts*, online: https://www.parl.ca/legisinfo/en/bill/44-1/s-243.

available means that it is unlikely that any private litigants will challenge climate-related misrepresentations which do not negatively impact share value.

Similarly, the directors and officers of a Canadian bank could be liable for breaching their duties if they fail to adequately manage climate risks. However, the deference owed by Canadian courts to directors and officers via the business judgment rule can make these claims challenging to maintain. Further, there remains little precedent for corporate law claims on behalf of broader categories of corporate stakeholders, such as customers.

In the short term, in our view, a Bank Climate Claim based on consumer misrepresentation appears to be the most viable cause of action. Thanks to the 2025 amendments to the *Competition Act*, the Competition Bureau has been newly empowered to confront misrepresentations made by banks respecting their climate commitments, including based on complaints initiated by climate advocacy organizations. If banks see value in making representations about their climate commitments, Bank Climate Claims of this nature may push banks to better align their actual practices with these aspirational commitments.

Further, the new right of private parties to access the Competition Tribunal has created a new mechanism for public interest groups to challenge the environmental claims made by banks respecting particular products and services.

While none of these causes of action could found a direct challenge to bank financing of carbon-intensive projects, each of them is worth considering for climate advocates seeking to use the tools provided by the Canadian legal system to secure at least some accountability for banks' contributions to climate change.

IV. Procedures and Evidence

A. Standing and Jurisdiction

1. Standing

Securities misrepresentation claims can only be pursued by securityholders in a corporation, including a bank. Likewise, in a derivative action, it is typically shareholders who may step into the shoes of the corporation to pursue directors or officers for alleged breach of fiduciary duty.

In a consumer misrepresentation claim under provincial Consumer Protection Acts, the person with standing to bring the claim is the individual consumer who purchased the impugned good or service for personal (not business) purposes.[124]

The deceptive business practices provisions in the federal *Competition Act* can be enforced by a broader range of persons and entities. Complaints to the Competition Bureau respecting alleged greenwashing have commonly been advanced by individuals supported by environmental advocacy organizations.[125] In the new provisions which allow for private challenges to deceptive business practices, the Competition Tribunal may grant leave (permission) to "any person" to carry on the proceeding, if it is in the public interest.[126] It is not necessary for a private party to bring the issue to the Competition Bureau first before advancing a claim at the Competition Tribunal. However, if the issue is already the subject of a Tribunal proceeding brought by the Bureau, or if the issue is or was the subject of an inquiry by the Bureau, the private party's application will not be permitted to proceed.[127]

In other contexts, where a party can assert no private interest in a proceeding, the court may still grant it "public interest standing". The criteria for assessing a claim to public interest standing are:

(a) Whether the claimant has advanced a serious and justiciable issue;

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[124] See *Consumer Protection Act, 2002*, S.O. 2002, c. C30, Sch. A, s. 1, "consumer".
[125] Mark Kalegha – Institute for Energy Economics and Financial Analysis, "The Royal Bank of Canada's climate policy has come under close scrutiny from its stakeholders", 5 October 2023, online: https://ieefa.org/resources/royal-bank-canadas-climate-policy-has-come-under-close-scrutiny-its-stakeholders.
[126] *Competition Act*, R.S.C. 1985, c. C-34, ss. 103.1(1), 103.1(6.1).
[127] *Competition Act*, R.S.C. 1985, c. C-34, ss. 103.1(4).

(b) Whether the claimant has a genuine interest in the issue; and
(c) Whether, in light of all the circumstances, the proposed suit is a reasonable and effective means of bringing the issue before the courts.[128]

While public interest standing is most commonly invoked in claims against governmental actors, courts have recently begun to acknowledge the possibility of invoking it in claims against private actors in appropriate circumstances.[129]

Environmental advocates commonly rely on public interest standing to bring their concerns before the courts.[130] To determine the "genuine interest in the issue" requirement of this test, the court may consider "the plaintiff's reputation and to whether the plaintiff has a continuing interest in and link to the claim".[131]

2. Jurisdiction, Potential Defendants and Extraterritorial Reach

The specific defendants against which Bank Climate Claims can be brought depend on the cause of action to be asserted.

Securities misrepresentation claims must be brought against the corporate entity defined as the "issuer" for the purposes of the provincial Securities Acts, as well as certain defined key individuals associated with the issuer. An issuer and its key individuals may only be liable in respect of a misrepresentation made in a regulatory filing on behalf of the issuer or in another document communicated on behalf of the issuer "which would reasonably be expected to affect the market price or value of a security of the responsible issuer."[132] Accordingly, it may be difficult to maintain securities misrepresentation claims in respect of representations not made by the issuer itself or its key persons.

Likewise, shareholders asserting claims for breach of fiduciary duty by way of derivative actions must bring those claims against the corporate entities in which they own shares.

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[128] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 37.
[129] See e.g. *Schnurr et al. v. Canadian Tire Corporation Limited et al.*, 2019 ONSC 5781.
[130] See e.g. *Ecology Action Centre v. Nova Scotia (Environment and Climate Change)*, 2023 NSCA 12; *Ontario Place Protectors v. Ontario*, 2025 ONCA 183.
[131] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at para. 51.
[132] *Securities Act*, R.S.O. 1990, c. S.5, ss. 138.1, "document"; 138.3(1).

In both securities misrepresentation claims and derivative actions based on breach of fiduciary duty claims, the impugned representations or business decisions may relate to operations or projects in other jurisdictions. For instance, one long-running securities misrepresentation class action against a Canadian mining company relates to representations it made to shareholders concerning operations in Chile and Argentina.[133] Accordingly, there is no necessary barrier to the commencement of a Bank Climate Claim based on securities misrepresentation or breach of fiduciary duty concerning a Canadian bank's activities in another country.

Consumer misrepresentation claims under provincial Consumer Protection Acts typically need to be brought against the "supplier" of the good or service.[134] In the context of a financial institution, the "supplier" is the customer-facing entity which provides consumer banking or financial services.

Some difficulty arises in the consumer misrepresentation context where a representation has been made by an entity which is not the supplier, even if the entity and the supplier are members of the same corporate group. For instance, a proposed consumer misrepresentation class action in British Columbia failed on the basis that the impugned representations had been made by the U.S. parent company of the Canadian entity, only the latter of which was engaged in the provision of consumer goods in Canada.[135] Accordingly, climate advocates considering Bank Climate Claims on the basis of consumer misrepresentation should be careful to ensure that the representations about which they are concerned were made by the same entity which provides the consumer good or service at issue.

In Canadian private law generally, whether a Canadian court can assert jurisdiction over a party depends on whether there is a "real and substantial connection" between the dispute and the Canadian jurisdiction.[136] Courts will assess a series of factors to determine whether there is a presumptive connection, including whether the defendant carries on business in the jurisdiction, whether the claim relates to a contract executed in the jurisdiction, and whether the alleged wrong was committed in the jurisdiction.[137] Once a presumption is established, the party resisting

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[133] *DALI Local 675 Pension Fund (Trustees) v. Barrick Gold Corporation*, 2026 ONSC 991.
[134] See e.g. Ontario's *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, s. 1, "supplier", and British Columbia's *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, s. 1(1), "supplier".
[135] *The Hershey Company v. Leaf*, 2023 BCCA 264.
[136] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17.
[137] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 90.

jurisdiction may rebut the presumption by showing that there is in fact no real and substantial connection.[138] Even where jurisdiction has been established, Canadian courts retain discretion to decline to hear a proceeding on the basis that there is another forum which is more appropriate.[139]

B. Litigation Costs and Timeline

1. Costs and Cost Allocation

Outside of certain limited contexts, the general costs rule in Canadian civil litigation is the "loser pays" regime, in which the unsuccessful party is required to indemnify the successful party for at least part of the costs incurred by the latter.[140]

How the quantum of costs is determined will depend on the jurisdiction. In some provinces, the court has discretion to fix the quantum of costs.[141] In these provinces, courts will generally award costs at a "partial indemnity" scale; in Ontario, this is typically construed as being about 60% of the total amount charged by counsel for the successful party.[142] In certain circumstances, including where a party is determined to have engaged in some kind of litigation misconduct, costs on the "substantial indemnity" scale, or about 80% of the opposing party's costs, may be awarded.[143] Costs awards at the full indemnity scale are rare, but may be prescribed by legislation in respect of particular types of proceedings.[144]

In other provinces, the quantum of costs is prescribed via "tariffs" set out in the rules of court or other legislation.[145] The application of tariffs typically results in lower costs than may be awarded in provinces where costs are discretionary.

Class actions are often subject to special rules relating to costs. To support the access to justice basis for class actions, in some jurisdictions, legislation provides that no

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[138] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 95.
[139] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103.
[140] *Brown v. Rigsby*, 2016 ONCA 521 at para. 6.
[141] See e.g. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1).
[142] *Shannon v. Hrabovsky*, 2024 ONCA 188 at para. 6. Other provinces have adopted different ratios for the "partial indemnity" scale; see e.g. the Province of Alberta, where partial indemnity costs are typically fixed at 40-50% of the successful party's costs: *McAllister v Calgary (City)*, 2021 ABCA 25 at para. 51.
[143] *Shannon v. Hrabovsky*, 2024 ONCA 188 at para. 7.
[144] See e.g. the Province of Ontario's legislation pertaining to strategic lawsuit against public participation (i.e., anti-SLAPP), which entitles a party which successfully obtains an order to dismiss a SLAPP to costs at the full indemnity scale: *Courts of Justice Act*, R.S.O. 1990, c. C.43, 137.1(7).
[145] See e.g. *Nova Scotia Civil Procedure Rules*, Royal Gaz. Nov. 19, 2008, rr. 77.05-06.

costs are payable at all, absent special circumstances such as litigation misconduct.[146] In Ontario, legislation empowers the court to consider whether the proceeding was a test case, raised a novel point of law or involved a matter of public interest when fixing costs.[147]

Finally, outside of the civil litigation context, regulatory complaint mechanisms typically operate on a "no costs" basis. An individual or organization who submits a complaint to a regulator faces no risk of costs if the complaint is not sustained.

In light of the relative novelty of climate claims in Canada, the "loser pays" may operate against parties considering commencement of Bank Climate Claims in circumstances where a regulatory complaint would not be appropriate or sufficient. For this reason, claims seeking damages, including class actions, should be considered where possible and appropriate.

2. Funding Mechanisms

There are a few funding mechanisms which may be available to litigants in climate claims.

First, in proceedings seeking damages, contingency fee arrangements may enable a lawyer to act on behalf of a client without taking any payments until or unless a successful resolution is obtained.[148] This includes class actions, in which legislation specifically authorizes contingency fee arrangements.[149]

Second, litigation financing may be available from a public or private funder. In Ontario, legislation establishes the Class Proceedings Fund, a public body which, on application by a plaintiff in a class action or proposed class action, can approve funding for disbursements (such as experts) as well as provide protection against adverse costs.[150]

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[146] See e.g. Manitoba's *Class Proceedings Act*, C.C.S.M. c. C130, s. 37(1). See also British Columbia's *Class Proceedings Act*, R.S.B.C. 1996, c. 50, s. 37(1).
[147] *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 31(1).
[148] *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257.
[149] See e.g. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 32(1).
[150] *Law Society Act*, R.S.O. 1990, c. L.8, 59.1(2). In exchange, the Class Proceedings Fund is statutorile entitled to a 10% levy on monetary awards to which members of the class are entitled: *Class Proceedings*, O. Reg. 771/92, s. 10(2).

Private entities may also provide disbursement funding, adverse costs protection, and even funding for lawyers' fees pending a successful resolution.[151] In class actions, private litigation funding agreements must be approved by the Court;[152] in non-class proceedings, court approval for private funding arrangements is typically not required.

3. Overall Duration of Proceedings

In recent years, there has been considerable attention devoted to the problem of delays in the civil justice system.[153] For a number of reasons, including vacant judicial positions,[154] it is commonly understood that even relatively simple civil proceedings can take years to resolve through the litigation system.

In Bank Climate Claims, plaintiffs can expect to face resolute opposition by well-resourced opponents. Motions to strike the proceeding, challenges to standing, and other preliminary motions can be expected. Depending on the factual complexity of the proceeding, the discovery process, during which relevant documents must be produced and relevant questions must be answered in oral examinations, may take multiple years in itself. These pervasive delay issues compound the delays inherent in the securities misrepresentation, consumer misrepresentation, and breach of fiduciary duty claims outlined above, each of which may involve a preliminary leave motion before the proceeding can be formally commenced.

To mitigate against delay, we encourage parties considering commencement of Bank Climate Claims to assess whether their claims may be amenable to resolution through a summary process. For instance, several jurisdictions distinguish between an "action", which is often required for more complex proceedings and for which it is presumed that a full trial will occur, and an "application", which is typically resolved at a hearing on a paper record. Where the claim may be resolvable through an application, this option should be considered.

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[151] See e.g. *Houle v. St. Jude Medical Inc.*, 2017 ONSC 5129, aff'd 2018 ONSC 6352 (Div. Ct.); *Difederico v. Amazon.Com Inc.*, 2021 FC 311.
[152] In Ontario, there is a statutory requirement for court approval: *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 33.1(2). In other provinces, court approval is required as a matter of common law practice: see e.g.
[153] *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 1-2.
[154] *Canada (Prime Minister) v. Hameed*, 2025 FCA 118 at para. 1.

C. Evidence

1. Evidence processes

Canadian jurisdictions generally require a party to litigation to produce all relevant documents to the opposing party, and to answer all relevant questions in an oral examination for discovery.[155] Parties may agree on modifications to this general rule to limit productions only to certain issues or have oral examinations for discovery instead take place by way of written interrogatories.[156]

Different rules relating to discovery may apply depending on the type of proceeding brought. For instance, in a class action, the plaintiff's right to discovery only crystallizes after a certification order is granted.

Canadian rules of court typically require a party seeking to rely on a litigation expert to file a written report of the expert's opinion before trial.[157] Depending on the jurisdiction, technical requirements, such as an obligation on the expert to certify that the expert understands their obligation to present impartial opinion for the benefit of the court,[158] may apply. A litigation expert may subsequently be cross-examined at the trial by counsel for the opposing party, who is also entitled to serve responding expert evidence.

2. Burden and Standard of Proof

In civil litigation in Canada, the plaintiff seeking a remedy is required to prove their case on a balance of probabilities.[159] To meet this standard of proof, the plaintiff must adduce evidence which is "sufficiently clear, convincing, and cogent".[160] Plaintiffs in climate claims, including Bank Climate Claims, can generally expect to face this burden of proof.

In criminal and quasi-criminal regulatory prosecutions, in which the state bears the onus, courts will apply the "proof beyond a reasonable doubt" standard.[161]

In certain contexts, the court will apply a shifting burden of proof. For instance,

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[155] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 30.02(1)-(2), 31.06(1).
[156] See e.g. the rules relating to the "discovery plan", *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 29.1.03.
[157] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 53.03(1).
[158] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 53.03(2.1)7.
[159] *F.H. v. McDougall*, 2008 SCC 53 at para. 40.
[160] *F.H. v. McDougall*, 2008 SCC 53 at para. 46.
[161] *F.H. v. McDougall*, 2008 SCC 53 at para. 41.

where there is a dispute about whether a proceeding was commenced in the proper jurisdiction and the plaintiff establishes one of the "presumptive connecting factors", the burden shifts to the defendant to rebut the presumption of jurisdiction.[162]

In securities misrepresentation, consumer misrepresentation, and corporate law claims, the balance of probabilities standard applies.

The Supreme Court of Canada has adopted helpful rules to assist lower courts in drawing conclusions based on complex scientific evidence. In particular, the Supreme Court has affirmed that scientific certainty as to a fact is not required in order to draw a conclusion with respect to legal liability. Rather, courts are instructed to adopt a "robust and pragmatic approach" to the facts, and to apply the legal standard of proof rather than the different and more exacting scientific standards of certainty.[163] This rule is significant for climate claims, including Bank Climate Claims, which may involve challenging scientific questions with expert evidence from both sides.

D. Court Processes and Early Case Termination

Canadian jurisdictions generally provide multiple mechanisms for disposing of a proceeding before trial. Where a defendant's position is that a claim cannot possibly succeed as a matter of law, even assuming that all of the plaintiff's factual allegations are true, the defendant may bring a motion to strike the proceeding.[164] Parties who have commenced novel claims and are forced to respond to strike motions may rely on authorities which recommend that courts "err on the side of permitting a novel but arguable claim to proceed to trial."[165] However, the Supreme Court of Canada has more recently expressed the position that even novel claims should be struck "[i]f a court would not recognize a novel claim when the facts as pleaded are taken to be true" and the claim is hence "doomed to fail".[166]

Plaintiffs in climate-related claims frequently face motions to strike. It is common for defendants to contend that such claims are inherently political in character, and hence are non-justiciable. Motions of this nature have resulted in some climate claims

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[162] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 95.
[163] *Snell v. Farrell*, [1990] 2 S.C.R. 311 at 330-332.
[164] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 21.01.
[165] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 21.
[166] *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para. 19.

being struck at early stages,[167] though others have survived to proceed to determinations on the merits.[168]

Canadian jurisdictions generally also allow parties to seek judgment on or dismissal of a claim through summary procedures, including motions for summary judgment.[169] These are motions decided on the basis of limited, usually paper-based evidentiary records, and in which parties are required to "put their best foot forward" in proffering evidence.[170] Typically, the test for summary judgment is expressed as whether there is a "genuine issue requiring a trial";[171] if the nature of the issues to be determined is such that a full trial would not be necessary (for instance, where live witness testimony is not needed), the court may proceed to decide the disputed questions of fact and law on the basis of the record before it.

Aside from these generally available mechanisms for early dismissal, Bank Climate Claims based on the causes of action outlined above will often involve preliminary motions for "leave" (permission) before the proceeding can be formally commenced. Leave is required to pursue a claim of securities misrepresentation for holders of securities purchased on the secondary market (i.e., from any source other than directly from the issuer);[172] to commence a derivative action;[173] and, for a private party, to challenge a deceptive marketing practice before the Competition Tribunal under the federal *Competition Act*.[174] These requirements generally involve a preliminary test of the merits, as well as whether the proceeding has been brought in good faith, and failure typically results in the end of the proceeding altogether.

As set out above, outside of certain limited contexts – for instance, in some jurisdictions, class actions – the general rule is that the losing party most indemnify the successful party for at least part of the costs it incurred. This includes steps taken to dispose of a proceeding before trial. Where the motion was successful in disposing of the proceeding as a whole, the successful party is entitled to at least part of the costs incurred over the course of the proceeding.

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[167] See e.g. *Dykstra v Saskatchewan Power Corporation*, 2025 SKKB 175.
[168] See e.g. *Mathur v. Ontario*, 2020 ONSC 6918, motion for leave to appeal dismissed 2021 ONSC 1624 (Div. Ct.); *La Rose v. Canada*, 2023 FCA 241.
[169] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 20.01.
[170] *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438 at para. 7.
[171] See e.g. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 20.04(2)(a).
[172] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.3(1).
[173] *Bank Act*, S.C. 1991, c. 46, s. 334(1).
[174] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(1).

E. Section Summary

For all of the causes of action outlined above, the costs and duration of the proceedings are likely to be the most significant considerations for climate advocates considering Bank Climate Claims. In a civil claim, advocates should make serious efforts to seek litigation funding to cover costs of experts and to protect against adverse costs, and should consider whether contingency fee arrangements, including in class action proceedings, may allow a plaintiff to carry on litigation for a protracted period without having to fund the day-to-day costs of instructing lawyers.

V. Remedies

A. Availability of Monetary and Injunctive Remedies

The remedies available will depend on the cause of action being advanced. In securities misrepresentation claims brought by shareholders, the typical remedy is an award of damages which generally reflects the losses in share values suffered by shareholders as a result of the impugned misrepresentation.[175] In regulatory actions brought by Securities Commissions, broader remedial orders may be issued, including orders requiring correction of misrepresentations.[176]

In a derivative action against a bank based on a breach of fiduciary duty claim, the remedy is generally limited to damages. Even though a derivative action is brought in the name of a corporation, legislation empowers the court to direct that any damages awarded be paid to shareholders in the corporation in appropriate circumstances.[177] Oppression remedy claims give the court broader remedial jurisdiction, and the court may make a range of orders to restrain the conduct of a corporation and rectify the unfairness done to the claimant.[178]

Consumer misrepresentation claims brought under provincial Consumer Protection Acts typically seek damages in respect of the misrepresentation, though an order for rescission of a consumer contract may also be available.[179]

In consumer misrepresentation claims under the *Competition Act*, the range of remedies is broader. In relation to deceptive marketing practices, the Competition Tribunal has jurisdiction to issue prohibitory orders, levy administrative monetary penalties, or award damages.[180]

In addition to such remedies, in respect of any of the causes of action outlined in this report, a plaintiff in a civil proceeding can seek declarations as to the legality of the impugned conduct.

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[175] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.5(1).
[176] See e.g. *Securities Act*, R.S.O. 1990, c. S.5, s. 127(1).
[177] *Bank Act*, S.C. 1991, c. 46, s. 335(1)(c).
[178] *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 241(3).
[179] *Consumer Protection Act, 2002*, S.O. 2002, c. C30, Sch. A, s. 18.
[180] *Competition Act*, R.S.C. 1985, c. C-34, s. 74.1(1)

B. Punitive or Exemplary Damages

In Canada, punitive damages are available where the plaintiff establishes that the defendant has engaged in "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency".[181]

In principle, punitive damages are available in connection with most of the causes of action discussed in this report.[182] However, due to the high threshold for establishing entitlement to punitive damages, they are not commonly awarded in Canada. Even where entitlement is established, punitive damages awards tend to be modest in scale, especially in comparison to the very large awards of punitive damages which have been made in U.S. litigation.[183] Accordingly, we do not anticipate that punitive damages are likely to play a significant role in Bank Climate Claims.

C. Innovative or Non-Traditional Remedies

The civil causes of action outlined this report are generally associated with conventional remedies stipulated in the applicable statutes – in particular, damages remedies and declarations.

The securities, corporate, and consumer protection legislation discussed above do not generally authorize significant mandatory relief in relation to the causes of action which may underlie Bank Climate Claims. An exception to this is the oppression remedy, which allows the court to make broader mandatory orders, though this procedure is not available in relation to federally-regulated banks due to the limitations of the *Bank Act*.

Somewhat broader remedies may be available from the Competition Tribunal in a challenge to deceptive marketing practices under the federal *Competition Act*. This includes prohibitory orders respecting deceptive marketing practices, and orders requiring the defendant to publish a notice regarding the Tribunal's findings.[184]

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[181] *Whiten v. Pilot Insurance* Co., 2002 SCC 18 at para. 36, citing *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 196.

[182] Some exceptions exist; for instance, punitive damages are not available in claims for misrepresentations to consumers brought under the federal *Competition Act*, R.S.C. 1985, c. C-34: *Lilleyman v. Bumblebee Foods LLC*, 2023 ONSC 4408 at para. 92.

[183] The high-water mark for punitive damages in Canada appears to be a $1.5 million award issued by a civil jury in a claim against an insurer: *Baker v. Blue Cross Life Insurance Company of Canada*, 2023 ONCA 842 at para. 34.

[184] *Competition Act*, R.S.C. 1985, c. C-34, ss. 74.1(1)(a), 74.1(1)(b).

Generally, the regulators referred to in this report have significantly broader powers to seek or issue orders that are in the public interest, including mandatory orders.

D. Strategic Assessment of Remedies

There are good, practical reasons to consider seeking monetary remedies in a Bank Climate Claim, including the availability of contingency fee arrangements, class action procedure, and public and private funding sources.

There are circumstances where damages are difficult to articulate, or where the plaintiff's interests lie may more in demonstrating the wrongfulness of a bank's conduct than in obtaining a monetary remedy. In such cases a claim for a declaration alone may suffice, and would avoid the evidentiary difficulties associated with proving individual losses. However, in our experience, a well-resourced corporate defendant is just as likely to mount a full-scale defence against a claim for a meaningful declaration as it is to resolutely defend a claim for monetary damages.

E. Section Summary

The causes of action outlined in this report typically result in monetary remedies, where successful. In the Canadian legal system, given the costs and duration of carrying on large-scale civil claims, the availability of monetary remedies has some benefits from an access to justice perspective, including, as outlined above, the ability to use contingency fee arrangements and class action procedures.

For civil claimants seeking to directly challenge the actions of banks and other non-bank financial actors in respect of their climate practices, there are few remedial options other than damages and declarations. The development of the law in the area of oppression remedy claims has some potential to result in structural injunctions or other broad mandatory orders respecting a corporation's climate policies. However, due to the limitations of the *Bank Act*, such remedies may only be potentially available in respect of non-bank financial actors that fall within other regulatory frameworks.

Accordingly, outside of the context of regulatory enforcement actions, claims for damages and declarations will likely be predominant in any Bank Climate Claims in Canada.

Annex: Table of Causes of Action

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
1. Securities misrepresentation – complaint and regulatory enforcement by a provincial Securities Commission	Any person may complain to a provincial Securities Commission (shareholders, bondholders, insiders, or concerned members of the public). No requirement to show an actual loss in share value.	Provincial Securities Acts (e.g., Ontario's Securities Act), which prohibit misrepresentation of material facts by a corporation in public documents and financial statements; enforced by the relevant provincial Securities Commission.	No need to prove an actual diminution in share value. The misrepresentation must relate to a "material fact" – one reasonably expected to have a significant effect on the market price or value of the securities; may require expert evidence.	Regulatory sanctions, including fines and orders that the issuer pay compensation to affected persons.	Doctrinally well-founded, but no established track record: the only known example (a complaint against five Canadian banks by Investors 4 Paris Compliance) has not yet resulted in regulatory action.

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
2. Securities misrepresentation – private action for damages (primary or secondary market)	Shareholders/securityholders of the bank. For secondary-market claims, the plaintiff must first obtain leave of the court by showing "a reasonable possibility that the action will be resolved at trial in favour of the plaintiff".	Provincial Securities Acts (e.g., Ontario's Securities Act) creating a statutory civil right of action for misrepresentation in the primary or secondary market; often pleaded together with a parallel claim in tort.	As a practical matter, requires an actual diminution in share value connected to the misrepresentation, since damages are only available where a loss has occurred; the leave motion itself often turns on expert evidence on scientific and economic issues.	Damages reflecting the shareholders' loss in share value; frequently pursued as a class action given the scale of costs involved.	Legally well-established but likely to involve protracted, expensive litigation (leave motions can cost millions). Only viable where the misrepresentation caused a demonstrable drop in share value; a comparable (non-climate) class action against a major bank took nearly 14 years and settled for $125 million.

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
3. Consumer misrepresentation under provincial Consumer Protection Acts	The individual consumer who purchased the impugned good or service for personal (not business) purposes. No need to prove reliance on the misrepresentation.	Provincial Consumer Protection Acts (e.g., Ontario's Consumer Protection Act), prohibiting false, misleading or deceptive representations in connection with the marketing and sale of goods and services.	The consumer need only show that a false or misleading representation was made about the good or service purchased; it is not necessary to prove that the consumer relied on it or would not have purchased "but for" the representation.	Damages; potentially rescission of the consumer contract. Individual claims are typically brought as class actions given their relatively small value.	Legal doctrine is strong and the class-action mechanism makes claims practically viable, particularly where a bank has made a specific representation about the carbon neutrality or environmental benefit of a consumer banking or financial product.

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
4. Deceptive marketing practices / anti-greenwashing under the federal Competition Act	Complaints to the Competition Bureau may be made by individuals or organisations (commonly environmental advocacy groups). Following 2025 amendments, "any person" may also seek leave to bring a claim directly before the Competition Tribunal if the proceeding is shown to be in the "public interest",	Federal Competition Act, prohibiting deceptive marketing practices; 2025 amendments introduced a requirement that certain environmental representations be based on adequate and proper substantiation according to an internationally-recognized methodology, though this	Must show the representation is false, misleading, or constitutes a "deceptive marketing practice"; for direct access to the Tribunal, the claimant must additionally establish that the proceeding is in the public interest.	Prohibitory orders, administrative monetary penalties, orders requiring publication of a corrective notice, and (via the Tribunal) damages.	Considered the most promising route in the short term: the Competition Bureau has already investigated a Big Six bank's climate representations, and the 2025 amendments created a new avenue of private access to the Tribunal. However, the relaxation of the substantiation requirement has since weakened the

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
	however subsequent amendments eliminated this procedure in respect of new greenwashing-specific provisions.	substantiation requirement was subsequently relaxed.			anti-greenwashing provisions.
5. Breach of fiduciary duty by directors/officers – derivative action or oppression remedy	Typically shareholders, via a derivative action (requiring leave of the court and a good-faith showing) or, for the oppression remedy, a broader range of corporate "stakeholders" – though the	Federal Canada Business Corporations Act / provincial corporate statutes, imposing a duty on directors and officers to act honestly and in good faith in the corporation's best interests and with	Must show a breach of duty (e.g., failure to manage climate risk) causing loss to the corporation (derivative action), or conduct that defeats a stakeholder's reasonable expectations (oppression remedy). Claims are constrained by the business judgment rule, under which courts	Derivative action: damages payable to the corporation (which a court may direct be paid to shareholders). Oppression remedy: broader	Still a developing area, with no Canadian precedent for a Bank Climate Claim of this kind. The business judgment rule and the good-faith/leave requirement for derivative actions (cf. the UK's

Cause Of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
	oppression remedy is unavailable against the "Big Six" banks, which are governed by the Bank Act.	the care of a reasonably prudent person; oppression remedy provisions (e.g., CBCA s. 241) for conduct that is oppressive, unfairly prejudicial to, or unfairly disregards a stakeholder's interests.	defer to any business decision within a range of reasonable alternatives.	orders, including restraining the conduct complained of, amending the articles or by-laws, replacing directors, or winding up the corporation.	ClientEarth v Shell) present major hurdles, and the oppression remedy is unavailable against the Big Six banks under the Bank Act.

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