



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
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Bill C-15 — Budget 2025 Implementation Act, No. 1

**CANADIAN BAR ASSOCIATION
ADMINISTRATIVE, COMPETITION AND PRIVACY AND ACCESS LAW SECTIONS**

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PREFACE

The Canadian Bar Association is a national association representing 40,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Administrative Law, Competition Law and Foreign Investment Review and Privacy and Access Law Sections, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Policy Committee and approved as a public statement of the CBA Administrative Law Section.

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Bill C-15 — Budget 2025 Implementation Act, No. 1

I. INTRODUCTION

The Canadian Bar Association Sections (CBA Sections) welcome the opportunity to comment on Bill C-15, *The Budget 2025 Implementation Act, No. 1*, particularly proposed amendments contained in Part 5 Division 5 related to the *Red Tape Reduction Act*¹, proposed amendments to the *Competition Act* relating to paragraph 74.01(1)(b.2) and the portion of Bill C-15 that would add a new Division 1.2 to the *Personal Information Protection and Electronic Documents Act* (PIPEDA)³.

The CBA Sections submit that the powers conferred by Part 5 Division 5 are overly broad and risk undermining constitutional principles by permitting Ministers to exempt entities from Acts of Parliament by order. We recommend that these provisions be removed or subject to additional statutory safeguards. In contrast, we support amendments to the *Competition Act's* *greenwashing provisions* and *PIPEDA* that enhance flexibility, promote innovation, and strengthen consumer protection within appropriate oversight frameworks.

II. PART 5 DIVISION 5: AMENDMENTS TO THE *RED TAPE REDUCTION ACT*

A. Summary

The CBA Sections are concerned with the scope of the power delegated to Ministers by Part 5 Division 5 of Bill C-15. The provisions as drafted risk undermining the rule of law, are inconsistent with the separation of powers and create a risk of abuse of authority. We recommend that the amendments in Part 5 Division 5 be removed from Bill C-15; or alternatively, that additional guardrails be put in place to ensure the exercise of these extraordinary powers is subject to robust oversight and review.

¹ S.C. 2015, c. 12

² R.S.C., 1985, c. C-34

³ S.C. 2000, c. 5)

B. Part 5 Division 5 & Henry VIII clauses

If enacted, Part 5 Division 5 amendments to the *Red Tape Reduction Act* will add the following:

12(1) Subject to subsections (3) and (7), a minister may, by order, for a specified validity period of not more than three years and on any terms that the minister considers appropriate, exempt an entity from the application of

- (a) a provision of an Act of Parliament, except the *Criminal Code*, if the Minister is responsible for the Act;
- (b) a provision of an instrument made under an Act of Parliament, except an instrument made under the *Criminal Code*, if
 - (i) the minister is responsible for the Act, or
 - (ii) the body that made the instrument is accountable, through the minister, to Parliament for the conduct of its affairs; or
- (c) a provision of an Act of Parliament, except the *Criminal Code*, or a provision of an instrument made under an Act of Parliament, except an instrument made under the *Criminal Code*, if the minister administers or enforces the provision.

The power afforded to each Minister by the provision above is extraordinary, both in breadth and in scope. Laws that permit the executive to change or repeal laws using secondary legislation, such as orders, without going through the full Parliamentary process are known as “Henry VIII clauses”.

The CBA Sections and other legal commentators have observed politicians across the country increasingly looking to Henry VIII clauses to set aside legal requirements that they view as impeding economic development.⁴ While the use of Henry VIII clauses is rightly subject to legal critique, they are not inherently unlawful or unconstitutional. Parliament may delegate to the executive all manner of powers to implement policy objectives.⁵ However, there are limits on the extent of the delegation permissible at law; and even a lawful delegation, though lawful, may nonetheless be inappropriate.

Upon our preliminary review, we have reservations about the scope of the Bill C-15 Henry VIII clause. Henry VIII clauses can be effective tools for providing urgent, and narrowly targeted relief from specific regulatory requirements.⁶ However, Part 5 Division 5 is neither narrowly

⁴ See Prof. Paul Daly, “Economic Development and Henry VIII Clauses: Some Thoughts on Recent Canadian Legislation”, June 16, 2025, *Administrative Law Matters*.

⁵ See for example, *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.

⁶ See again, *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11: [online](#)

targeted, nor specific. Part 5 Division 5 would empower every Minister with the authority to exempt the operation of any act of Parliament. This is a remarkably broad power, and raises three concerns, set out below.

We are aware that proposed ss. 12(3) does provide some guardrails on the exercise of the exemption power. Subsection 12(3) provides that the exemption power be exercised only if the respective Minister is of the belief that, *inter alia*, the exemption is in the “public interest”; the benefits associated outweigh the risks; and appropriate measures will be taken to maintain oversight. These limits provide some relief, but in our view do not provide sufficient protection given the breadth of the authority being delegated.

C. Impact on the rule of law

At its core, the Rule of Law requires that the law is applied consistently to all people. Bill C-15 gives any Minister the power to have the law apply differently, or not apply at all, to one person or group of people. The Supreme Court of Canada (SCC) in the *Reference re Secession of Quebec* case wrote that “the rule of law, ...at a minimum guarantees Canadian citizens and residents ‘a stable, predictable and ordered society in which to conduct their affairs’”.⁷ A system where any government Minister can exempt the effect of any law for one particular group of citizens is the antithesis of a predictable and ordered society.⁸

D. Impact on the separation of powers

The separation of powers “demands that the core function of enacting, amending and repealing statutes be protected from the executive and remain exclusive to the legislature”.⁹ For example, under Part 5 Division 5, a Minister could exempt all citizens from the operation of a particular statute. While such an action may be justified as being, in the Minister’s view, in the public interest, by issuing such a broad exemption, the Minister would effectively be usurping the role of Parliament. Legal critics have argued, “Legislatures have a responsibility to draft enabling provisions that have content, and not simply pass on difficult conflicts in undigested form to executive decision-makers.”¹⁰ The broader the scope of the Henry VIII clause, greater the critique.

⁷ *Reference re Secession of Quebec*, [1998] 2 SCR 217, at para 70: [online](#).

⁸ See Chief Electoral Officer of Alberta v Sylvestre, 2025 ABKB 712 at para 252: [online](#).

⁹ *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 282, Cote J. dissenting.: [online](#).

¹⁰ Alyn James Johnson, “The Case for a Canadian Nondelegation Doctrine”, (2019) 52 UBCLR 817, at p. 888.

E. Potential for harm

The risk of abuse of authority is amplified any time legal authority is concentrated in a single individual. One need not look far to see the harm that unchecked executive authority can bring, in a very short amount of time. Where executive authority is exercised improperly, the harm is often already done before any meaningful oversight or review can occur. It is not that we believe any Minister would set out to do wrong; rather stability of the governing legal regime enhances its legitimacy, and public confidence in the institution of government. Changes to law without the benefit of Parliamentary scrutiny does the opposite.

Additional guardrails

For the reasons set out above, the CBA Sections ask that Parliament consider whether Part 5 Division 5 is necessary to give effect to the statutory objectives of Bill C-15.

If Parliament decides to proceed with a Henry VIII clause in some form, we recommend that the powers afforded each Minister be specifically tailored to the types of projects or entities that are the target of Bill C-15.

Alternatively, additional language in Part 5 Division specifying how the “public interest” is to be determined, or a provision requiring each Minister to have “reasonable grounds” to justify the exercise of the exemption power, would be useful additional safeguards to facilitate judicial oversight over the exercise of the power.

In the further alternative, vesting the exemption power in the Governor in Council rather than individual Ministers would alleviate some of the concern around lack of public accountability. It would require the entire government to stand behind the use of the exemption power and provide a further venue for the criteria set out in s.s 12(3) to be discussed prior to execution of an exemption.

Recommendation

The CBA Sections recommend that ss.12(3) be drafted as follows:

"(3) A minister may make an order under subsection (1) only if the minister has reasonable grounds to believe that:

- (a) the exemption is in the public interest;
- (b) the exemption would enable the testing of, among other things, a product, service, process, procedure or regulatory measure with the aim of facilitating the design,

- modification or administration of a regulatory regime to encourage innovation, competitiveness or economic growth;
- (c) the benefits associated with the exemption outweigh the risks;
 - (d) sufficient resources exist, and appropriate measures will be taken, to maintain oversight of the testing, manage any risks associated with the exemption and protect public health and safety and the environment;
 - (e) a feasible implementation plan has been developed; and
 - (f) the exemption is reasonable and proportionate in relation to the benefits and risks of the exemption.

(3.1) Before making an order under subsection (1), the minister must consider, when assessing whether an order is in the public interest and reasonable and proportionate in relation to the benefits and risks of the exemption:

- (a) the likely impact of the exemption on the environment;
- (b) the likely impact of the exemption on public safety;
- (c) the likely impact of the exemption on Indigenous rights and interests; and,
- (d) the likely impact of the exemption on competition.

III. PROPOSED AMENDMENTS TO *THE COMPETITION ACT* (GREENWASHING)

The CBA Sections provide input on the proposed amendments set out in Bill C-15 relating to paragraph 74.01(1)(b.2) of the *Competition Act*. Paragraph 74.01(1) (b.2) of the Act currently requires that environmental claims about a business or business activity be based on “adequate and proper substantiation in accordance with internationally recognized methodology”. The amendments would (i) repeal the “internationally recognized methodology” (IRM) requirement, and (ii) remove private access to the Competition Tribunal (Tribunal) for allegations regarding paragraph . 74.01(1)(b.2).

The CBA Sections support these changes and believe that allowing for greater flexibility on the standard for substantiation is appropriate at a time when standards are evolving. The amendments will encourage Canadian companies to communicate their progress on environmental issues, while still protecting consumers from misrepresentations related to the activity of a business.

Further, given the rapidly evolving substantiation methodologies for many environmental claims and the availability of private access to litigated dispute resolution regarding misleading claims through other provision of the Act, the CBA Sections support removing the right of

private access to the Tribunal for the types of representations that fall under paragraph 74.01(1)(b.2).

A. Repeal of “internationally recognized methodology” requirement from PARAS. 74.01(1)(b.2)

The CBA Sections identified in prior submissions that adoption of the IRM standard raised concerns about the ability of Canadian businesses to appropriately manage compliance with the Act while still communicating regarding their environmental initiatives to Canadians. As stated in the CBA Competition Law and Foreign Investment Review Section’s June, 2024 letter to the Standing Senate Committee on National Finance, the CBA Section understands that no single IRM exists for ESG-related disclosure or claims as guidance and/or regulatory approaches differ between countries.¹¹ Moreover, the IRM standard creates uncertainty regarding when domestic Canadian methodologies, which may be the most appropriate for claims about business activities occurring in Canada, would qualify as IRMs if not also widely used elsewhere.

Uncertainty in the legal standards Canadian businesses must adhere to have important consequences, including the significant costs and reputational risks associated with defending greenwashing claims, even successfully, as well as the potential for large administrative monetary penalties and restitution. Risks are exacerbated by private access litigation (whether meritorious or not) under the current legislation.

The goal of the Act’s greenwashing provisions is to increase transparency and consumer access to verified information regarding businesses’ environmental initiatives. In the face of uncertain standards for compliance, Canadian businesses may legitimately choose to limit or cease communications to consumers about their environmental initiatives, with a potential resulting negative effect on the degree to which such initiatives are pursued. The CBA Sections are aware of several instances where Canadian businesses discontinued their environmental disclosures due to regulatory uncertainty. Some of these instances were reported in the media.

The CBA Sections welcome an “adequate and proper” substantiation standard without the added uncertainty of the IRM requirement. Case law with respect to product performance claims in paragraphs 74.01(1)(b) sets out useful general principles regarding what “adequate

¹¹ See [online](#), at p. 5.

and proper” means. Further, the added flexibility from removing the IRM requirement will permit businesses’ practices to evolve alongside environmental science, which is developing rapidly. New environmental practices and technologies often emerge while the methodologies for assessing them are still under development. Given the complex validations that form the basis for many types of environmental claims, it is appropriate to allow businesses to identify suitable methodologies for substantiation, especially considering that the burden of proving that such methodologies are “adequate and proper” rests with them. Businesses should feel confident in communicating regarding their environmental initiatives where disclosure is made in good faith and based on the scientific knowledge available at the time.

The CBA Sections are aware of suggestions that the IRM standard be replaced with a list of methodologies that businesses can use, or that other general qualifying language be adopted. As stated in the CBA Competition Law and Foreign Investment Review Section’s letter of November, 2024 to the Competition Bureau (Bureau) in response to its consultation on greenwashing guidance, a list of acceptable methodologies would be unnecessarily restrictive and inflexible.¹² In an area characterized by rapidly developing technology, it is not practical to compile an exhaustive list of accepted methodologies and rely on the government to keep it updated. Similar approaches by the Bureau were discontinued.¹³ There is also no benefit to inserting additional qualifying language; “adequate and proper substantiation” is sufficient to preclude businesses from selecting inappropriate methodologies or misapplying the methodologies to their claims.

B. Removing private access for PARAS 74.01(1)(b.2)

The CBA Sections support the proposed amendment to remove private access to the Tribunal regarding claims under paragraph 74.01(1)(b.2). That section is very broadly worded to capture claims about a business or business activity, as opposed to products or other identifiable consumer facing activity, which are covered by other provisions of the Act and for which private access would remain available. In these circumstances, it is appropriate for enforcement to be within the discretion of the Bureau.

¹² See [online](#), at p. 3.

¹³ Bureau’s 2008 guidelines developed in partnership with the Canadian Standards Association “Environmental claims: A guide for industry and advertisers”, which were archived in 2021 and no longer available online.

The CBA Sections appreciate the government's response to concerns raised by Canadian businesses and support the proposed amendments to the Act in Bill C-15.

IV. PRIVACY

Bill C-15 impacts privacy by amending *the Personal Information Protection and Electronic Documents Act* (PIPEDA)¹⁴ with the introduction of a data mobility framework, giving Canadians rights to transfer their personal data between designated organizations. It also includes financial-sector reforms such as the creation of a Consumer-Driven Banking (Open Banking) framework requiring organizations to disclose data, including provisions for consumer-driven banking data sharing. We address concerns regarding data mobility and data sharing matters.

A. Data mobility framework

Bill C-15 introduces a data-mobility right, aligning with Quebec's right to data portability under Law 25¹⁵ and similar rights available in other jurisdictions, such as Australia's Consumer Data Right and the EU GDPR's right to data portability. Division 23 of Part 5 of Bill C-15 amends PIPEDA requiring that a designated organization discloses to another designated organization an individual's personal information, at the individual's request, provided that both organizations are subject to a data mobility framework. This would empower Canadian consumers to transfer their personal data from one organization to another and to switch service providers easily and support economic growth across Canada. However, Bill C-15 does not define "data mobility frameworks" nor does it consider what harm such frameworks could expose individuals requesting the disclosure of their data. The CBA Sections are concerned about the potential privacy repercussions of C-15 if a proper framework is not established from the outset, as has been seen in other jurisdictions that have hastily adopted such data portability laws.

Bill C-15 empowers the Governor in Council to establish safeguards and technical parameters of the data mobility frameworks through regulations. The CBA Sections commend the federal government's initiative to facilitate data mobility, however, only a mere reference to future regulations detailing safeguards and technical parameters is not enough. We recommend that

¹⁴ S.C.2000, c. 5

¹⁵ Act respecting the protection of personal information in the private sector, CQLR 2021, c. P-39.1, [online](#).

such safeguards and parameters be further described in Bill C-15, or, in the alternative, mandate the Governor in Council to publish regulations at the coming into force of Division 23 of Part 5 of PIPEDA.

Additionally, the CBA Sections ask that, amongst other key stakeholders, we be consulted about such critical elements as the technical standards, security safeguards and interoperability requirements which frames how data may be transferred between organizations, prior to the publication of these regulations.

B. Open banking framework

Bill C-15 supports implementing Canada's Consumer-Driven *Banking Act*, which legislates how financial data is shared securely between banks and approved third-party service providers. The CBA Sections believe that this initiative directly interacts with personal financial information and therefore has privacy consequences.

The open banking provisions represent a laudable step toward data-enabled financial innovation. However, they also intersect directly with sensitive financial information, meaning that privacy assurance mechanisms must be as stringent as those under PIPEDA.

C. Omnibus legislation

The CBA Sections also highlight that at the 2025 Annual General Meeting; the CBA membership urged the federal government to limit the introduction of multipart legislation that combines substantially different and unrelated subject areas. The resolution says bundling laws limits opportunities for meaningful scrutiny, debate, and public consultation of each part, and it risks delaying needed reform by requiring the simultaneous consideration of unrelated matters¹⁶. This resolution reiterates a previous one that was made in 2013 calling for limiting omnibus legislation¹⁷.

Privacy reform, especially one that redefines control over personal data requires public and Parliamentary scrutiny commensurate with its constitutional significance. Fragmenting this debate across a budget bill risks superficial engagement and undermines legislative coherence.

¹⁶ CBA Resolution 25-03-A Debate and Consultation in Multipart Legislation, [online](#).

¹⁷ CBA Resolution 13-04-M Omnibus Bills, [online](#).

V. CONCLUSION

The CBA Sections value the opportunity to offer feedback on legislation that impacts the rule of law in Canada along with reforms about competition provisions related to environmental claims and privacy issues. We are pleased to make ourselves available to discuss these concerns, and to assist in identifying options to achieve the legislative objectives, while maintaining Canadian's trust in the legal system.