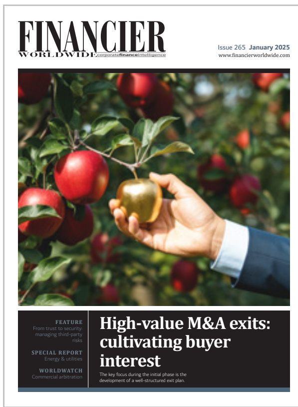

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The contemporary minefield of ESG reporting

BY MARDI MCNAUGHTON AND ALICIA QUESNEL

In 2004, the United Nations published a report titled 'Who Cares Wins', which discussed the importance of corporations actively managing environmental, social and governance (ESG) factors in order to effectively mitigate risks, maintain reputations and remain competitive. The report is often cited as the first modern day reference to ESG and it signalled the beginning of the mainstream emergence of ESG reporting. Over the following two decades, it became the industry norm in Canada for companies to publish ESG reports. This was particularly the case for large and public companies, as well as those operating as certain industries, including the energy industry, to release some form of ESG reporting, despite it being entirely voluntary.

Today, ESG monitoring and reporting is expected by stakeholders. Governments and regulators, as well as other national and international standard-setting organisations, are making efforts to increase comparability and transparency in ESG reporting. However, environmental and climate change advocacy groups have expressed concern that all this reporting is simply 'greenwashing'. Numerous lawsuits and regulatory proceedings for misrepresentation have been initiated in many jurisdictions, including Canada. This has caused many Canadian companies to wonder whether voluntary ESG reporting is worth the cost and effort.

Although most ESG reporting is still voluntary, mandatory reporting of certain information is on the

horizon. Accordingly, Canadian companies need to understand the risks of voluntary reporting.

ESG reporting framework in the European Union, US and Canada

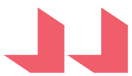
In early 2023, the European Union (EU) initiated the Corporate Sustainability Reporting Directive (CSRD). The new legislation requires large and listed EU companies, and eligible non-EU companies – those generating a particular amount of revenue in the EU – to file annual ESG reports. The CSRD is based on double materiality, meaning reporting companies must disclose both how their operations impact the world and how their ESG commitments, for example to lower greenhouse gas emissions, will impact the financial health of their business.

In early 2024, the US Securities and Exchange Commission adopted new climate reporting rules. Such rules, however, were quickly challenged on the bases of being both too relaxed and too strict. They are currently stayed, pending judicial review. However, while the federal rules are on hold, certain states are pursuing their own state-specific climate initiatives. California, for example, recently amended its climate disclosure rules to increase climate-related public disclosure requirements; those new rules are also currently being challenged in court.

In Canada, while there is certain climate-related data required to be reported (for example, large emitters are required to report certain emissions to the federal government and climate-related information determined to be material may be required to be publicly disclosed according to provincial securities legislation), general ESG reporting is not required. As such, unlike other required corporate reporting, such as financial disclosure, ESG reporting is not based on a framework of rules and regulations. The Canadian Sustainability Standards Board (CSSB) is working on finalising new Canadian standards for reporting environmental metrics. Once the CSSB standards are finalised, the Canadian Securities Administrators (CSA) will introduce new reporting requirements. However, until then, companies have the freedom to choose what and how they report on such factors, or if they do so at all.

The current lack of an ESG reporting framework in Canada is both a blessing and a curse. On one hand, companies have flexibility in ESG reporting – they can track and report on metrics that make the most sense for their specific industry, sector, size, location, workforce, and so on, while omitting metrics that may be less relevant to their business. Using only relevant metrics arguably makes ESG reporting more transparent, concise and factual, as there is little incentive to include filler and fluff. On the other hand, there is concern that the lack of standardisation in reporting means there is also a lack of comparability among ESG reports.

The following provides an overview of the factors Canadian companies ought to consider in deciding whether to publish ESG reporting at this time.



In this era of uncertainty, it is important for companies to reflect on their own circumstances and decide whether the potential benefits of ESG reporting outweigh the risks.

Benefits of ESG reporting

There are many benefits to ESG reporting. The Sustainability

Accounting Standards Board (SASB) is an international not-for-profit organisation that was created in 2011 to help businesses develop "material, decision-useful information to investors". Many companies follow the SASB standard to generate their ESG disclosure procedures. According to SASB standards, companies should disclose information that is "fair, useful, applicable, comparable, complete, verifiable, aligned, neutral, and distributive". Becoming familiar with the SASB standards, and generating ESG disclosures accordingly, gets companies thinking about their overall financial health and value over the long term.

From an external point of view, investors and other stakeholders want to see ESG reporting. Such reporting shows stakeholders that a company is committed to the long-term health and viability of the business in the context of changing societal norms and expectations, environmental stewardship and climate change.

An ESG report gives companies across all sectors a platform to acknowledge the negative effects that their operations have on the environment and how to take meaningful steps to mitigate this impact. It is also a platform to highlight how they promote safety in the workplace, diversity in the workforce, and responsible procurement, among other social considerations.

With respect to governance, providing transparency into issues like executive compensation, board diversity, supply chain management and enterprise risk management can be extremely valuable for promoting stakeholder confidence in the governance practices of an organisation. Lastly, there are discussions in the market around how to incorporate Indigenous reconciliation into an ESG report: does it belong as a standalone consideration, or should it be woven into a company's analysis of its ESG considerations?

The way in which a company chooses to consider (or not consider) the wide array of factors it may include in ESG reporting contributes to the company's overall public persona.

Risks of ESG reporting

Every action a company undertakes involves risk, and ESG reporting is not unique in that respect. Notwithstanding the number of resources that go into ESG monitoring and reporting (and companies presumably having good intentions), such reports often attract criticism. Some see ESG reporting as irrelevant or purely promotional and put little weight on the content of such reports. More concerning than having ESG reports undervalued is that once they are in the public domain, they are subject to public scrutiny, and the public can be ruthless.

In June 2024, the Canadian government enacted new anti-greenwashing provisions under the Competition Act. Although this legislation is principally focused on protecting consumers and competition, the new provisions significantly expand the focus to include representations made by businesses related to the environment and climate change, which includes representations made in ESG reports. As of June 2025, the recent changes to the Competition Act will provide private parties with rights of action against companies for greenwashing; ESG reports can serve as such activists' ammunition.

While the government's goal of preventing greenwashing is unquestionably valid, the way that the new rules are framed has introduced significant uncertainty around what companies can and cannot say with respect to the environment. The new rules had an immediate chilling effect on the market and many companies removed their ESG reports from the public domain. After the new rules came into effect the Competition Bureau consulted the public on what it should include in its guidance regarding the applicability of the new rules, and it received hundreds of comment letters. The letters ranged from being strongly supportive of the changes to the Act as stated with no recommended guidance, to strongly opposed, with some recommending the repeal of the new provisions. Either way, while the updated guidance will hopefully provide clarity regarding how the new rules will be applied, the guidance will not be legally binding.

In addition, the issue of how to report on diversity has also been hotly debated. Last year, the CSA issued a notice and request for comment regarding proposed changes to diversity and board nominations, as well as renewal disclosure rules for certain issuers. The CSA presented two potential options for new diversity reporting requirements, with one being more prescriptive and the other having more flexibility. Like the public's response to the Competition Bureau, the CSA received a wide range of feedback including strong support for and opposition to the CSA's proposed options. It is still unclear how the new rules will look, but at this time, there is still no 'right way' of disclosing diversity metrics and such disclosure is often met with criticism.

Conclusions

Until there is more certainty with respect to what constitutes greenwashing, or until ESG reporting becomes mandatory, it is expected that certain ESG disclosures, environmental-related metrics in particular, will remain limited. In this era of uncertainty, it is important for companies to reflect on their own circumstances and decide whether the potential benefits of ESG reporting outweigh the risks. Regardless of whether companies report, they should continue to think about and plan for their overall financial health and value over the long term; that includes taking meaningful action to mitigate their impact on the environment as well as the communities in which they operate, and to understand how to respond to and mitigate the effects of climate change. ■

Mardi McNaughton is a knowledge management lawyer and Alicia Quesnel is a managing partner at Burnet, Duckworth & Palmer LLP. Ms McNaughton can be contacted on +1 (403) 260 0275 or by email: mmcnaughton@bdplaw.com. Ms Quesnel can be contacted on +1 (403) 260 0233 or by email: akq@bdplaw.com.

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