

Application for Inquiry into false and misleading representations made by the Pathways Alliance about their climate action and the climate impact of their business

Overview of Complaint

This application requests that the Competition Bureau of Canada investigate representations made by the Pathways Alliance in their widespread “Let’s clear the air” advertising campaign.

The Pathways Alliance (Pathways) formed in 2021 as a coalition of the six largest oil sands producers: Canadian Natural Resources Limited (CNRL), Cenovus Energy, ConocoPhillips Canada, Imperial, MEG Energy, and Suncor Energy. Collectively, these companies operate about 95% of Canada’s oil sands production and are responsible for approximately 2.7 million barrels per day of oil production,¹ roughly 63 percent of Canada’s total.² According to the Pathways website, their vision is for “Canada to meet its climate goals and to become the preferred supplier of responsibly-produced oil to the world” with the goal to “reduce annual oil sands emissions to net zero by 2050.”³

In a sweeping advertising campaign that includes large ads in major newspapers, television spots, social media, at least one billboard, podcasts, and their website, the Pathways Alliance represents that they, meaning their six-member companies, are “making clear strides toward net zero” and that they will “help our country achieve a sustainable future.”⁴

¹ Figure calculated from data at: Canadian Association of Petroleum Producers website. “Canada oil and natural gas production.” www.capp.ca/economy/canadas-oil-and-natural-gas-production. CAPP shows Alberta oil sands production as 2.84 million bpd in 2021. 95% of 2.84 million = 2.69 million.

² Figure calculated from data at: Statistics Canada. Table 25-10-0063-01 Supply and disposition of crude oil and equivalent. Accessed at: <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=2510006301>. The Stats. Can. monthly crude production figures for 2021 (Jan-Dec) total 1,567,801,950 barrels. Therefore Canada’s barrels per day figure is: 4,295,347.81 (from 1,567,801,950 / 365). Finally then, Pathways roughly 2,690,000 bpd = about 63% of Canada’s bpd.

³ Pathways Alliance website, “Our Goal” <https://pathwaysalliance.ca/who-we-are/>

⁴ Pathways Alliance website – Clear the air. Accessed Mar 4, 2023. <https://pathwaysalliance.ca/cleartheair/>

This application asserts that claims made by the Pathways Alliance that they are actively reducing emissions and helping Canada achieve its climate targets are false and misleading for the following reasons:

1. They fail to incorporate the lifecycle of the product
2. They represent that they have and are following a transparent and concrete plan for reducing emissions and/or achieving net zero while they are continuing to expand production
3. They are based on untenable and not established assumptions about future technologies, and
4. They give the impression that the Pathways Alliance is a climate leader and that their actions will clear pollution when they are not taking actions that do so.

Specifically:

- **The Pathways Alliance net zero plan fails to incorporate the lifecycle of their product. Their plan doesn't account for more than 80% of their emissions. Even without a full emissions accounting, their own calculations do not result in them achieving net zero.**

Scope 1, 2, and 3 emissions are categories delineated by the Greenhouse Gas Protocol to identify the source of greenhouse gas (GHG) emissions.⁵ Pathways is only counting scopes 1 and 2,⁶ whereas the Competition Bureau's guide⁷ states that environmental claims must be subject to a consideration of the life cycle of a product. As well, the net-zero criteria of the United Nations High Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (the "UN Net-Zero Expert Group"), criteria they developed to establish what it means for a corporation to have a genuine net-zero claim, states that scopes 1, 2, and 3 need to be counted.⁸ In this context, scope 3 are the emissions from burning oils sands products, which account for more than 80% of the emissions associated with the products that Pathways members produce and profit from.⁹

Even excluding scope 3, in Canada's 2022 National Inventory Report to the United

⁵ Greenhouse Gas Protocol website. <https://ghgprotocol.org/>

⁶ Advisory statements on their website and news releases state this directly. See for example their website advisory where they state, "All net-zero references on this website apply to emissions from oil sands operations (defined as scope 1 and scope 2 emissions). Accessed Feb 13, 2023: <https://pathwaysalliance.ca/>; and Pathways Alliance press release. "Oil Sands Pathways alliance outlines three-phase plan to achieve goal of net zero emissions." Oct 21, 2021. Accessed Feb 13, 2023: https://pathwaysalliance.ca/pressrelease_oct21/; See also: Pathways Alliance Vision Deck, October 17, 2022. Page 3. Accessed Feb 13, 2023 at: https://pathwaysalliance.ca/wp-content/uploads/pa_vision_deck_web_3.0.pdf

⁷ Archived Competition Bureau Environmental Claims Guide

⁸ The United Nations' High-Level Expert Group on The Net Zero Emissions Commitments of Non-State Entities. "Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions." 2022. Page 7. www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf ("UN Net Zero Expert Group Report").

⁹ Based on calculations from reporting by Cenovus, Conoco, Imperial, CNRL, and Suncor. See Appendix 5.1 for the full tally. See also: Suncor. Climate Report 2021: An energy company for the future. Page 31. Accessed Feb 27, 2023 at https://sustainability-prd-cdn.suncor.com/-/media/project/ros/shared/documents/climate-reports/2021-climate-report-en.pdf?modified=20220421140133&_ga=2.225865875.887037544.1653922069-1852545475.1653922069#page=31

Nations, the Canadian government estimates that the oil sands are responsible for 81 Mt CO₂ equivalent per year (scopes 1 and 2).¹⁰ Given that the six member companies together account for 95% of oil sands production,¹¹ it would require roughly 77 Mt¹² reduction to achieve net zero from scopes 1 and 2 alone.

- **Pathways companies claim to be “making clear strides toward net zero” while they continue to expand their production.**

The Pathways Alliance ads and accompanying website materials give the impression they are a climate leader, are moving toward net zero, and by specifically mentioning the significant emissions from the oil sands, they give the impression that the steps they are taking are proportionate with what is required to mitigate climate change. At the same time, however, they are expanding their fossil fuel production.¹³ The UN Net-Zero Expert Group states that “[n]on-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply.”¹⁴

- **The representations are misleading because they are based on future speculative technologies.**

Pathways has indicated that the only issues facing their carbon capture and sequestration (CCS) project are related to financing and regulatory approval.¹⁵ However, there are many questions about the technology, in particular if it can be ready on time and if it would meet the efficacy needs of this proposal.¹⁶

- **The representations give the impression Pathways is a climate leader, when individually and through industry affiliations, Pathways members have advocated, advertised, and/or spoken against climate action in Canada.**

At least four of the Pathways companies (Suncor, CNRL, Cenovus, and Imperial) as well

¹⁰ Canada. GHG Inventory. National Inventory Report. 2022 Edition. Part 1. Table 2-12. Page 67.

¹¹ Pathways Alliance website. Accessed Feb 13, 2023 at <https://pathwaysalliance.ca/>

¹² 95% of 81 Mt, rounded.

¹³ Argus Media. Canada’s oil sands hit their stride. Feb 6, 2023. Accessed Feb 19, 2023 at: www.argusmedia.com/en/news/2416852-canadas-oil-sands-hit-their-stride ; See also: Imperial Oil. – News Release. “Imperial provides 2023 corporate guidance outlook.” Dec 19, 2022. Accessed Feb 26, 2023: <https://news.imperialoil.ca/news-releases/news-releases/2022/Imperial-provides-2023-corporate-guidance-outlook/default.aspx> and Cenovus. News Release. “Cenovus announces 2023 budget.” Dec 6, 2022. Accessed Feb 27, 2023: <https://www.cenovus.com/News-and-Stories/News-releases/2022/2568065>

¹⁴ UN Net Zero Expert Group Report Page 7. www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

¹⁵ Canadian Press via CBC News online. “Oilsands group pledges to spend \$16.5B on carbon capture project by 2030.” Oct 14, 2022/ Accessed Feb 23, 2023: <https://www.cbc.ca/news/canada/calgary/oilsands-group-pledges-to-spend-16-5b-on-carbon-capture-project-by-2030-1.6616689>; and Potkins, M. “MEG Energy CEO says carbon-capture project moving ahead as fast as possible. Financial Post. Nov 10, 2022. Accessed Feb 23, 2023: <https://financialpost.com/commodities/energy/oil-gas/meg-energy-debt-target-oil-price-discount>

¹⁶ Carter. Angela and Cameron, Laura. “Why Carbon Capture and Storage Is Not a Net-Zero Solution for Canada’s Oil and Gas Sector.” IISD. Feb 9, 2023. Accessed Feb 27, 2023: <https://www.iisd.org/articles/deep-dive/carbon-capture-not-net-zero-solution>

as their lobbying group, Canadian Association of Petroleum Producers, have been opposing emissions regulations and advocating for fossil fuel expansion and subsidies.¹⁷

The Pathways Alliance's representations seek to unfairly advance the business interests of its members by convincing the Canadian public and politicians that the oil sands industry has a viable plan to address its emissions. This is necessary to generate public support for the oil sands in the face of calls to phase out fossil fuel production in order to address climate change. It is also necessary for politicians to create a regulatory and subsidy landscape that helps pay for the Alliance's plan, without which its members' operations would not be financially viable. These representations are material because both Canadian politicians and the public are eager to support businesses that are taking meaningful steps to address climate change.

These representations are anti-competitive because the perception that the Alliance members are on a path to net-zero undermines other Canadian oil producers who have similar emissions profiles, and more importantly, clean energy producers who are actually compatible with a healthy climate and who are trying to break into the market and compete with oil sands products.

If the inquiry finds that the Pathways Alliance has made materially false and misleading representations to the Canadian public, the Complainants submit that the Pathways Alliance should be required to, at minimum:

1. Remove all representations about reducing emissions (achieving net zero), cleaning the air and combating climate change.
2. Issue a public retraction of these representations;
3. Pay a fine that is the greater of \$10 million or 3% of worldwide gross revenues, credited to the Environmental Damages Fund and to be paid to organizations, preferably Indigenous-led, for rehabilitation/clean-up of oil sands pollution.

These penalties will allow Canadians to have accurate information about the climate impact of fossil fuels and will deter other fossil fuels companies and consortiums from making false and misleading claims about fossil fuels.

¹⁷ Influence Map "The Canadian Oil and Gas Industry and Climate Policy: A report on climate and energy policy advocacy by the Canadian oil and gas sector" February 2023. Page 10 and elsewhere. Accessed: February 27, 2023 <https://www.influencemap.org/briefing/The-Canadian-Oil-and-Gas-Industry-and-Climate-Policy-14696>; See also: Appendix 5.2; and Shawn McCarthy, "Canadian oil and gas industry is actively lobbying against its net-zero targets: report" February 27, 2023 accessed March 1, 2023 <https://www.corporateknights.com/energy/canadian-oil-and-gas-industry-is-actively-lobbying-against-its-net-zero-targets-report/>

Applicants

Dr. Samantha Green, family physician and Assistant Professor

Dr. Samantha Green is a family physician at St. Michael's Hospital and at Inner City Health Associates in Toronto, and Assistant Professor at the University of Toronto's Department of Family & Community Medicine. She is the President-Elect of CAPE.

Griffin Stewart-Wilson, student, University of Guelph

Griffin is studying microbiology at the University of Guelph and believes the government should take steps towards net-zero emissions now, instead of promising to in the future

Julia Levin, Associate Director, Environmental Defence Canada.

Julia Levin is an Associate Director with the climate team at Environmental Defence Canada, where she works to advance ambitious climate and energy policy. She has worked with multiple organisations in the environmental sector, including Greenpeace Canada and Oceana Canada. She holds a BSc from McGill University and a MEd from the Ontario Institute for Studies in Education.

Priyanka Vittal, Legal Counsel, Greenpeace Canada

Priyanka Vittal is legal counsel at Greenpeace Canada and has been working in the space of environmental law for the past 10 years. She has been an adjunct professor at Osgoode Law co-teaching Administrative Law and is affiliated with Osgoode's Environmental Sustainability and Justice Clinic where she assists in supervising a student placement.

Dr. Joe Vipond, Emergency Physician, Clinical Assistant Professor

Dr. Joe Vipond is a family physician at the Rockyview General Hospital in Calgary, and Clinical Assistant Professor at the University of Calgary's Cumming School of Medicine in the Department of Emergency Medicine. He is the Past-President of CAPE.

Nola Poirier, Senior Researcher and Writer, Greenpeace Canada

Nola Poirier has worked with numerous non-profit organizations to address environmental and social justice issues, including ten years of experience as an environmental researcher. Currently, she is Senior Researcher and Writer at Greenpeace Canada, focused on fossil fuels. Nola has a Master's degree in Environmental Studies.

Keith Stewart, Senior Energy Strategist, Greenpeace Canada

Keith Stewart has 25 years of experience working on climate-related research, education and advocacy with a range of non-profit organizations, including the last 12 years with Greenpeace Canada. He has a Ph.D. from York University and has taught a course on energy and environmental policy at the University of Toronto for the last 12 years.

Contents

Applicants	5
1. Legal Framework	7
2. Background	9
2.1 <i><u>Climate change, net zero and greenwashing</u></i>	9
2.2 <i><u>Competition Bureau guidance on environmental claims</u></i>	10
2.3 <i><u>The oil sands and the Pathways Alliance</u></i>	11
3. The Pathways Alliance’s representations are false and misleading in a material respect	12
3.1 <i><u>Public representations made by Pathways Alliance</u></i>	13
3.2 <i><u>The General Impression conveyed by the Pathways Alliance</u></i>	20
3.3 <i><u>The Pathways Alliance’s representations are false or misleading</u></i>	20
3.4 <i><u>The representations were made for the purpose of promoting business interests</u></i>	31
3.5 <i><u>The representations are material</u></i>	34
4. Request for Inquiry	38
5. Appendices	39
5.1 <i><u>Emissions by scope</u></i>	39
5.2 <i><u>Influence Map: Climate Policy Engagement</u></i>	40
5.3 <i><u>CAPP membership calculation</u></i>	42
5.4 <i><u>CAPP-sponsored ads on Facebook</u></i>	43
5.5 <i><u>Representations in the media</u></i>	44
5.6 <i><u>Representations on social media and in public space</u></i>	45
5.7 <i><u>Statutory Declarations</u></i>	46

1. Legal Framework

This application is made under s. 9 and s. 10 of the *Competition Act* (the “Act”) for an inquiry into whether the Pathways Alliance is making false and/or misleading representations to the public under s 74.01(1)(a) of the *Act*:

- A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,
- (a) makes a representation to the public that is false or misleading in a material respect;
 - (b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or
 - (c) makes a representation to the public in a form that purports to be
 - (i) a warranty or guarantee of a product, or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

Under s.74.1 of the Act, the Commissioner may apply to a court to determine whether a person has engaged in “reviewable conduct.” Following a determination, the court may make orders prohibiting the conduct, requiring the publication of a public notice describing the conduct, and/or imposing a monetary penalty.¹⁸ Reviewable conduct includes making a representation to the public that is false or misleading in a material respect for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever.

There are three elements to a violation of the civil prohibition against false or misleading representations:

1. A person has made a representation to the public by any means whatever;
2. The representation was made for the purpose of promoting, directly or indirectly, any business interest; and

¹⁸ Competition Act, RSC 1985, c. C-34, (“Competition Act”) s.74.1

3. The representation is false or misleading in a material respect or is made in the form of a statement, warranty or guarantee of performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation.¹⁹

The Commissioner must establish each of these elements on a balance of probabilities.

Material has been defined by the Competition Bureau as “the degree to which the purchaser is affected by the representation in deciding whether to purchase the product.”²⁰ A representation is “material” if it is so pertinent, germane, or essential that it could affect the decision to purchase the product.²¹ This understanding focuses on the influence of a representation on consumer transactions, which are just one type of business interest that a person may wish to promote. As we suggest in this Application, it is anti-competitive for a person to use misrepresentations to promote a range of business interests, and materiality should be assessed based on the degree of influence on advancing all of these interests.

It is not necessary to establish that any person was actually misled by the representation. It is sufficient to establish that an advertisement is published for public view and that it is untrue or misleading in a material respect.²²

Section 74.011(4) of the *Competition Act* provides that, in proceedings under s.74.01, the “general impression conveyed by a representation, as well as its literal meaning, shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.”²³ According to the Bureau, a representation is “material” if the general impression it conveys leads someone to take a particular course of action, like buying or using a product or service. A “representation” refers to any marketing material, including online and in-store advertisements, direct mail, social media messages, promotional emails, and endorsements, among other things.

The “general impression test” in the *Competition Act* has been interpreted by the Supreme Court of Canada to mean the general impression that a credulous and inexperienced person has after an initial contact with the entire advertisement. It relates to both the layout of the advertisement and the meaning of the words used. The general impression conveyed by a representation must be analyzed in the abstract – without considering the personal attributes of the consumer who has

¹⁹ Competition Act, RSC 1985, c. C-34, s.74.01(1)(a)

²⁰ Government of Canada – Competition Bureau. Additional information about the Competition Act. Accessed Feb 21, 2023: <https://ised-isde.canada.ca/site/competition-bureau-canada/en/deceptive-marketing-practices/types-deceptive-marketing-practices/additional-information-about-competition-act>

²¹ Commissioner of Competition v Sears Canada (2005 CACT 2) at para 334

²² Commissioner of Competition v Sears Canada (2005 CACT 2)

²³ Competition Act, RSC 1985, c. C-34, s.74.011(4)

instituted the proceedings.²⁴ As the Competition Bureau notes, the general impression test recognizes the power of the “sum of the parts” in advertising, and ensures that the Competition Bureau or reviewing court consider the overall impression that an advertisement as a whole makes on consumers.²⁵

2. Background

2.1 Climate change, net zero and greenwashing

Net zero, as defined by the United Nations, means cutting greenhouse gas (GHG) emissions to as close to zero as possible with any remaining emissions re-absorbed from the atmosphere.²⁶ Net zero is an important goal for emitters to meet because “the science shows clearly that in order to avert the worst impacts of climate change and preserve a livable planet, global temperature increase needs to be limited to 1.5°C above pre-industrial levels (...) To keep global warming to no more than 1.5°C—as is called for in the Paris Agreement—emissions need to be reduced by 45% by 2030 and reach net zero by 2050.”²⁷ Globally, this is the beginning of a low-carbon energy transition, with countries, cities, institutions and businesses pledging to get to net-zero in their purchasing and production.

The overwhelming scientific evidence on climate change²⁸ and the political concerns for environmental issues give corporate claims about the sustainability of their products greater weight in the marketplace.²⁹ Greenwashing is an increasing phenomenon³⁰ whereby a company, intentionally or not, makes false or misleading claims about the environmental attributes of their business or their products.³¹ With fossil fuel companies, greenwashing often takes the form of untrue statements about reducing carbon emission or the impact of emissions on climate and the environment. Misleading the public, government, and investors in this way has become so widespread, the UN expert group on net zero commitments has been calling for government regulation of voluntary net-zero commitments to put an end to greenwashing.³²

²⁴ *Richard v. Time Inc.*, 2012 SCC 8, at para 49

²⁵ Government of Canada – Competition Bureau Canada (2015) False or Misleading Representations and Deceptive Marketing Practices, accessed Feb 27, 2023 online: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>.

²⁶ United Nations. – Climate Action. “For a livable climate: Net-zero commitments must be backed by credible action” Accessed Feb 27, 2023 at <https://www.un.org/en/climatechange/net-zero-coalition>

²⁷ United Nations, “For a livable climate: Net-zero commitments must be backed by credible action” Accessed Feb 27, 2023 at <https://www.un.org/en/climatechange/net-zero-coalition>

²⁸ For example: IPCC press release. “The evidence is clear: the time for action is now. We can halve emissions by 2030.” April 4, 2022. Accessed Feb 23, 2023: <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>

²⁹ Rily, Beth; Gordon, Samantha; Edmondstone, Daniel G. “Squeaky “Clean”: Competition Bureau Combats Greenwashing” *McMillan Competition Bulletin*. Nov 10, 2022. Accessed Feb 27, 2023 at <https://mcmillan.ca/insights/squeaky-clean-competition-bureau-combats-greenwashing/> (“McMillan Competition Bulletin on Greenwashing”)

³⁰ *McMillan Competition Bulletin on Greenwashing*

³¹ *McMillan Competition Bulletin on Greenwashing*

³² UN Net Zero Expert Group Report” Page 7. www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf; See also: Bickis, Ian. “McKenna-led UN group calls for regulation, end to greenwashing in net-zero pledges.” *The Canadian Press*. Nov 8,

Greenwashing ultimately exploits consumers' concerns about climate change, in particular as climate and environmental considerations increasingly affect purchasing decisions.³³ The tactic can be difficult to spot for the average consumer and results in purchases contrary to a customer's intent to weigh environmental considerations.³⁴

Consumers care about climate change, and make purchases and investment decisions based on climate change action taken by companies.³⁵ As such, advertisements promoting the idea of businesses taking action to reduce their environmental and climate impacts could play a determinative role in which products consumers decide to purchase. Consumers are aware that the greatest environmental impact of fossil fuels comes from their greenhouse gas emissions.³⁶ Therefore, a company claiming that they are making great strides to achieve net zero emissions could reasonably convince a consumer that their fossil fuels are environmentally sustainable. Thus, such claims would qualify as "material."

2.2 Competition Bureau guidance on environmental claims

The Competition Bureau's guidance on environmental claims and greenwashing acknowledges that Canadians' growing concern about climate change and the environment has led some businesses to engage in "greenwashing"; that is, making false or misleading environmental claims in order to sell their products or services.³⁷ The Bureau states that claims must not be

2022. Accessed Feb 27, 2023 via the Financial Post at: <https://financialpost.com/pmn/business-pmn/mckenna-led-un-group-calls-for-regulation-end-to-greenwashing-in-net-zero-pledges>

³³ Deloitte. Get Out in Front Global Research Report. Dec. 2020. Page 31. Accessed Feb 19, 2023: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-get-out-infront-final.pdf>; See also: J.P. Morgan Global Research. "Climate Change Plays Leading Role in Consumer Spending." March 4, 2022. Accessed Feb 19, 2023: www.jpmorgan.com/insights/research/climate-change-consumer-spending; and EY Canada. Press release. "69% of Canadian consumers expect companies to solve sustainability issues" Aug 5, 2021. Accessed Feb 23, 2023 at www.ey.com/en_ca/news/2021/08/sixty-nine-percent-of-canadian-consumers-expect-companies-to-solve-sustainability-issues

³⁴ McMillan Competition Bulletin on Greenwashing; Saul Wodak and Ravi Dutta Powell, "Protecting consumers from greenwashing" June 23, 2022. Accessed Feb 27 2023: <https://www.bi.team/blogs/there-is-a-growing-epidemic-of-climate-anxiety/>; <https://www.nytimes.com/2022/08/23/climate/climate-greenwashing.html>; Somini Sengupta "How Greenwashing fools us" New York Times, August 23, 2022. Accessed Feb 27, 2023: <https://www.nytimes.com/2022/08/23/climate/climate-greenwashing.html>; Manuela Andreoni, "Fighting corporate lies" New York Times, February 21, 2023. Accessed Feb 27, 2023: <https://www.nytimes.com/2023/02/21/climate/greenwashing-climate-misinformation.html>

³⁵ McKinsey & Company "Consumers care about sustainability—and back it up with their wallets." Accessed February 22, 2023 <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets>; EY "69% of Canadian consumers expect companies to solve sustainability issues" Accessed Feb 22, 2023: www.ey.com/en_ca/news/2021/08/sixty-nine-percent-of-canadian-consumers-expect-companies-to-solve-sustainability-issues

³⁶ Deloitte. "Consumers Expect Brands to Address Climate Change" Accessed via the Wall Street Journal. - Sustainability – Corporate Social Responsibility. <https://deloitte.wsj.com/articles/consumers-expect-brands-to-address-climate-change-01618945334> ; See also: Deloitte. Get Out in Front Global Research Report. Dec. 2020. Page 31. Accessed Feb 19, 2023: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-get-out-infront-final.pdf>; See also: J.P. Morgan Global Research. "Climate Change Plays Leading Role in Consumer Spending." March 4, 2022. Accessed Feb 19, 2023: www.jpmorgan.com/insights/research/climate-change-consumer-spending

³⁷ Competition Bureau. "Environmental claims and greenwashing." Dec 2, 2021 <https://www.canada.ca/en/competition-bureau/news/2017/01/not-easy-being-greenbusinesses-must-back-up-their-words.html>; Accessed: Feb 22, 2023 <https://ised-isde.canada.ca/site/competition-bureau-canada/en/environmental-claims-and-greenwashing>

misleading, must be specific, substantiated and verifiable, do not result in misrepresentations and do not exaggerate the environmental benefits of the product.³⁸

The Bureau’s guide has been archived, but it recommends that “environmental claims must be subject to a consideration of the life cycle of a product.”³⁹ While the guide does not require a detailed life cycle analysis, it states that there must be a “net environmental benefit,” when the lifecycle of the product is considered. Considerations include the emissions created during production, and the toxicity of those emissions and materials, as well as the environmental impacts that occur during use of the product. This is important information when examining the claims of the Pathways Alliance as their advertising claims do not examine or consider the entire scope/lifecycle of the impact of these companies’ operations and products. For more detail on this omission, see Section 3.3.1.

2.3 The oil sands and the Pathways Alliance

Canada’s oil sands remain among the world’s most GHG-intensive crude operations in the world.⁴⁰ According to Environment and Climate Change Canada, the country’s crude oil production more than doubled between 1990 and 2020, mostly driven by the rapid increase in production from the oil sands.⁴¹ In that same period, “GHG emissions from conventional oil production have increased by 4%, while emissions from oil sands production have increased by 437%.”⁴²

In 2021, the six largest fossil fuel producers in the oil sands—Canadian Natural Resources Ltd. (CNRL), Cenovus Energy, ConocoPhillips Canada, Imperial, MEG Energy, and Suncor Energy—formed a coalition, the Pathways Alliance. These six companies account for more than two-thirds of the oil and gas production in Canada.⁴³ They joined together around the stated goal

³⁸Canadian Standards Association and Competition Bureau (2008) Environmental Claims: A Guide for Industry and Advertisers, PLUS 14021 at v. Accessed February 22, 2023 https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02701.html#s4_6 (“Competition Bureau Environmental Claims Guide”; Competition Bureau “It’s not easy being green. Businesses must back up their words.” Jan 23, 2017. Accessed February 22 2023: <https://www.canada.ca/en/competition-bureau/news/2017/01/not-easy-being-greenbusinesses-must-back-up-their-words.html>; Competition Bureau (December 2, 2021) “Environmental claims and greenwashing.” Accessed: February 22, 2023 <https://ised-isde.canada.ca/site/competition-bureau-canada/en/environmental-claims-and-greenwashing>>

³⁹Competition Bureau Environmental Claims Guide

⁴⁰ Environment and Climate Change Canada (2022) Canadian Environmental Sustainability Indicators: Greenhouse gas emissions. Page 9. Accessed Feb 18, 2023 at: www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html.

⁴¹ Environment and Climate Change Canada (2022) Canadian Environmental Sustainability Indicators: Greenhouse gas emissions. Page 9. Accessed Feb 18, 2023 at: www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html.

⁴² Environment and Climate Change Canada (2022) Canadian Environmental Sustainability Indicators: Greenhouse gas emissions. Page 9. Accessed Feb 18, 2023 at: www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html.

⁴³ Figure calculated from data at: Statistics Canada. Table 25-10-0063-01 Supply and disposition of crude oil and equivalent. Accessed at: <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=2510006301>. The Stats. Can. monthly crude production

of achieving net zero GHG emissions from all oil sands operations by 2050 in response to the global push to combat climate change.⁴⁴ On the Pathways Alliance website they say, “[b]y becoming one organization, Pathways Alliance will further amplify our industry’s collaborative efforts.”⁴⁵

Five of the six Pathways companies are also connected through the Canadian Association of Petroleum Producers (CAPP), a large, powerful lobby group that represents the Canadian oil and natural gas industry.⁴⁶ Together, the five companies account for about 75% of CAPP’s core budget.⁴⁷ As well, representatives from four Pathways companies (Conoco, Suncor, Imperial, and CNRL) are currently serving on CAPP’s Board of Governors, which sets priorities for the Executive Team, staff and committees.⁴⁸

3. The Pathways Alliance’s representations are false and misleading in a material respect

This Application establishes all three elements of the civil prohibition against false or misleading representations:

1. The Pathways Alliance has made representations to the public that it has a comprehensive, feasible, and effective plan to achieve net-zero emissions by 2050;
2. The representations were made for the purpose of promoting the Pathways Alliance’s business interests, namely obtaining support from the Canadian public and politicians for the continuation of the oil sands into the future; and
3. The representations are false or misleading in a material respect because:
 - a) The Pathways’ plan only addresses some of its members’ operational (scope 1 and 2) emissions and ignores the much larger amount of downstream (scope 3) emissions from the use of oil sands products;
 - b) The Pathways members intend to continue oil sands production, which means continued downstream emissions that will exacerbate climate change,

figures for 2021 (Jan-Dec) total 1,567,801,950 barrels. Therefore Canada’s barrels per day figure is: 4,295,347.81 (from 1,567,801,950 / 365). Finally then, Pathways roughly 2,690,000 bpd = about 63% of Canada’s bpd.

⁴⁴ Pathways Alliance website. – Our plan – Our goal. Accessed Mar 5, 2023: <https://pathwaysalliance.ca/our-goal/>

⁴⁵ Pathways Alliance website. “Who we are” Accessed Feb 27, 2023. <https://pathwaysalliance.ca/who-we-are/>

⁴⁶ CAPP website. “Membership - Producer membership, Associate membership. Accessed Mar 5, 2023

<https://www.capp.ca/about-us/membership> . See also. Corporate Mapping Project – Canadian Association of Petroleum Producers. <https://www.corporatemapping.ca/profiles/canadian-association-of-petroleum-producers> ; and Internet Archive. CAPP – About Us. “History of CAPP” Archived July 5, 2012. Accessed Feb 27 2023.

<https://web.archive.org/web/20120705073542/http://www.capp.ca/aboutUs/history/Pages/default.aspx>

⁴⁷ See Appendix 5.3 for details of this calculation.

⁴⁸ CAPP website. About–Board of Governors. <https://www.capp.ca/about/board-of-governors/>

- c) The Pathways plan is not comprehensive, feasible or effective and is based on unproven technology; and
- d) The Pathways Alliance members actively lobby against climate action.

3.1. Public representations made by Pathways Alliance

The Pathways Alliance “clear the air” campaign is not a small advertising endeavour. It is widespread and strategically aimed to reach large public audiences via a range of avenues including major newspapers, television spots, social media, at least one billboard, podcasts, and their website, The Alliance ran television ads during the FIFA World Cup, the Australian Open and the 2023 Super Bowl.⁴⁹ From November 2022 through January 2023, the 30-second Pathways Alliance ad aired 929 times on the TSN Network, totalling more than 7.5 hours of air time.⁵⁰ In addition, they have been one of the biggest advertisers on Facebook and Instagram. In the 90 days from Oct 27, 2022 to January 2023, the Pathways Alliance spent \$325,025 on Facebook and Instagram (Meta) advertisements, which was Meta’s third highest ad buy in Canada during that period.⁵¹

The table below includes some examples of the advertising messages and platforms for the Pathways Alliance campaign.

Table 1: **Print Media**

Source	Description	Date published	Representation
CBC News online	See image Appendix 5.5a.	February 21, 2023	“A clear future for Canadian energy: Oil sands are on a path net-zero emissions”
Saturday Star	Full front page (see image in Appendix 5.5b)	Feb 18, 2023	"We're making clear strides to net zero"
iPolitics newsletter	Ad in top banner of Morning Brief. Links to the website ad about net-zero plan.	Feb 6, 2023	“A clear future for Canadian energy.”

⁴⁹ Note that CRTC data covering February when the Super Bowl aired was not available at the time of writing, but numerous eye witnesses reported seeing the ad.

⁵⁰ Data compiled from CRTC logs for November 2022, December 2022 and January 2023 for TSN, TSN 1, TSN 2, TSN 3, and TSN 5. Logs accessed at: <https://open.canada.ca/data/en/dataset/800106c1-0b08-401e-8be2-ac45d62e662e>

⁵¹ Meta ad library. Spend in last 90-days. Accessed Jan 27, 2023. They were third following YouTube (#1) and the Canadian Association of Petroleum Producers (#2).

Source	Description	Date published	Representation
CBC News online	See image Appendix 5.5a.	February 21, 2023	“A clear future for Canadian energy: Oil sands are on a path net-zero emissions”
iPolitics newsletter	Ad in the top banner. Links to the website ad about net-zero plan.	Jan 19, 2023	“A clear future for Canadian energy.”
Globe and Mail	Advertorial page	Nov 22, 2022	“A heightened focus on reducing emissions has brought Pathways Alliance companies together to pool resources and collaborate even more closely”
The Cold Lake Sun	Advertisement See image in Appendix 5.5c	Aug 1, 2022	“Net Zero by 2050”

Table 2: **Television**

Source	Description	Date observed	Representation
TSN Network	FIFA world cup ⁵²	November, December 2022	"Oil sands contribute significant carbon emissions in Canada, so the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."
TSN Network	Australian Open ⁵³	January 2023	"Oil sands contribute significant carbon emissions in Canada, so the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."

⁵² Accessed via CRTC logs for November and December 2022

⁵³ Accessed via CRTC logs for January 2023

Source	Description	Date observed	Representation
CTV	Ad Super Bowl ⁵⁴	Feb 12, 2023	"Oil sands contribute significant carbon emissions in Canada, so the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."
Channel unknown	TV ad (observed at an airport. It was the 30-second ad as on YouTube)	December 12, 2022 at 11:09am	"Oil sands contribute significant carbon emissions in Canada, so the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."
TSN Network	The 30-second Pathways Alliance ad aired 79 times , totalling 39.5 minutes	November 2022	Coverage included banner programming, such as the CFL Grey Cup, ATP Tennis, and the FIFA World Cup.
TSN Network	The 30-second Pathways Alliance ad aired 389 times , totalling about 3 hours, 12 minutes	December 2022	Coverage included banner programming, such as Toronto Maple Leafs, Montreal Canadiens, and much play during the FIFA World Cup.
TSN Network	The 30-second Pathways Alliance ad aired 461 times , totalling about 3 hours, 50 minutes	January 2023	Coverage included Toronto Maple Leafs, NBA, NFL, 2023 World University Games, and 2023 Australian Open Tennis

⁵⁴ Note that CRTC data covering February when the Super Bowl aired was not available at the time of writing, but numerous eye witnesses reported seeing the ad.

Table 3: **Social Media**

Source	Description	Date published (or observed)	Representation
Facebook	Ad posting (See image Appendix 5.6a)	Feb 15, 2023	“Canadians have told us they want our industry to clear the air and communicate openly and transparently about the path we are on to net zero.”
Twitter	Ad See image Appendix 5.6b		“Alberta’s oil sands are on a path to our goal of net-zero.”
YouTube	Two videos (English)	Jan 10, 2023	<p>1.(0.16s) "When it comes to oil sands and the climate, it’s time to clear the air. Oil sands emit significant CO₂ in Canada, so we’re joining forces on climate action.”</p> <p>2. (0.31s) "Oil sands contribute significant carbon emissions in Canada, so the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."</p>
YouTube	Two videos (French)	Jan 10, 2023	<p>1.(0.16s) “Les sables bitumineux sont une source importante de CO₂ au Canada. Voilà pourquoi on a créé une alliance pour atteindre les objectifs climatiques.”</p> <p>2.(0.31s) “[...] Les six plus grandes entreprises se sont alliées pour réduire les émissions de plusieurs millions de tonnes par an grâce au captage du carbone – une étape importante pour aider le Canada à atteindre son objectif climatique de carboneutralité."</p>

Source	Description	Date published (or observed)	Representation
LinkedIn	Various	Jan 2023	<p>“...through Pathways Alliance, we are working to achieve our goal of net zero emissions from our production by 2050.”</p> <p>“...our industry has an important role to play in helping meet the national goal of net-zero emissions by 2050.”</p>
Facebook	Posting	Jan 9, 2023	<p>“Did you know that up to 2.7 million tonnes of CO2 are safely stored through carbon capture and storage every year at two Alberta CCS facilities? That's the equivalent of taking 600,000 cars off the road.</p> <p>Learn how we will be using #CCS on our path to net zero ...”</p>
Twitter	Ad	Jan 4, 2023	<p>"With this agreement in place, we can continue to progress this ambitious project that will help position Canada as one of the world's most advanced nations in decarbonizing its energy production.</p> <p>http://bit.ly/3vAkOU0</p> <p>#CarbonNeutral</p> <p>#CarbonCapturing"</p>
Facebook	CCUS ad See image Appendix 5.6c.	Jan 9, 2023	<p>"Oil sands are a significant contributor of carbon emissions in Canada. So producers are teaming up to take climate action. See our plan for net-zero emissions."</p>

Source	Description	Date published (or observed)	Representation
LinkedIn	Ad for Energy Disruptors UNITE event	Sept 2022	“We’re working collaboratively to help Canada meet its climate goals and deliver the world’s preferred barrel of responsibly-produced oil.”

Table 4: Website

Source	Description	Date observed	Representation
Pathways Alliance website	Our Vision	Feb 2023	“Canada has the opportunity to be the preferred supplier of responsibly-produced oil to the world.”
Pathways Alliance website	Kendall Dilling, Pathways CEO quote	Feb 2023	“...the oil sands industry has an essential role to play in reducing emissions.”
Pathways Alliance website	Kendall Dilling, Pathways CEO quote	Feb 2023	“Our path to net zero will help our country achieve a sustainable future.”
Pathways Alliance website	Our Plan	Feb 2023	“A major component of our plan, and one we can implement the fastest, is carbon capture and storage (CCS) technology.”
Pathways Alliance website	CCUS factsheet	Feb 2023	“Carbon Capture Utilization and Storage, or CCUS, is a proven, reliable and safe technology that’s been used around the world for more than 45 years to mitigate environmental impacts by reducing greenhouse gas emissions (GHGs) from fuel combustion or industrial processes.”

Source	Description	Date observed	Representation
Pathways Alliance website	Top Image	Feb 2023	“We're making clear strides to net zero Oil sands are on a path to net-zero emissions”
Pathways Alliance website	Our Plan	Feb 2023	“We recognize climate change is a critical challenge of our time, and that our industry has an essential role to play in helping our country meet its climate goals.”
Pathways Alliance website	They refer to their plan as a complete plan	Feb 2023	“To help Canada meet its climate goals, we have a three-phased plan to ensure immediate progress to reduce carbon emissions and achieve a goal of net zero emissions by 2050.”

Table 5: **Other**

Source	Description	Date published (or observed)	Representation
BC Place, Vancouver	Illuminated billboard (See image Appendix 5.6d)	Viewed Nov 2022	“Let’s clear the air”
TheScore.com (website/podcast on World Cup soccer)	Pathways sponsored a podcast in Qatar around the World Cup.	Dec 2022	"Climate change is a critical challenge. So Canada’s six largest oil sands companies have joined forces on a path to net-zero. See how at Pathways Alliance.ca.”

3.2 The General Impression conveyed by the Pathways Alliance

Overall, the representations give the impression that:

- a) the Pathways Alliance has a comprehensive and feasible plan that it is already implementing to significantly reduce its emissions and will achieve net zero by 2050,
- b) this plan is essential for Canada to achieve its climate goals, to address climate change more broadly, and will lead to a sustainable future,
- c) that this plan will allow Canada to continue producing oil (and obtain the associated economic benefits, jobs etc.) into the future regardless of any climate related market shifts, and
- d) as a result of the reduction in emissions fossil fuels from the oil sands are a climate friendly product

The representations convey a sense of certainty that the Pathways Alliance’s plan will achieve net-zero by 2050. Some of the features that give the impression of certainty in a clean future include:

- The double entendre in the slogan “Let’s clear the air” implies that the Pathways Alliance is 1) removing carbon emissions from the air/atmosphere and 2) clearing up the misconception that the oil sands are bad for the climate and cannot exist within a low carbon future;
- The imagery on the website and in many of the print ads (see Saturday Star in Appendix 5.5b for example) is in a clear blue and often depicts blue skies that connote a positive, healthy future and clean air.
- The resonance of “net-zero” with the general public as a popular and recognizable term that denotes ambitious action on climate change, even though the general public does not necessarily know the details of what it means;
- The phrase “clear strides” suggests that the Pathways Alliance is currently taking concrete, straightforward action to reduce emissions.

3.3 The Pathways Alliance’s representations are false or misleading

The Pathways Alliance make representations that the member companies:

- Are making transparent, complete, and tangible strides in their approach to reducing emissions and/or achieving net zero

- Have a transparent and concrete plan for reducing emissions and achieving net zero and intend to achieve it by 2050
- Are communicating openly and transparently about their path to net zero, and
- That CCUS/CCS technology will be constructed in time and will operate effectively enough to serve as the biggest factor in eliminating emissions.

The criteria developed by the UN Net-Zero Expert Group is one standard by which this application determines that the Pathways Alliance representations are false and misleading. These authoritative criteria have been specifically developed to combat net-zero greenwashing and establish what it means for a corporation to have a genuine net-zero claim. In addition, we look to ISO Net Zero Guidelines⁵⁵ and to the environmental claims guide archived by the Bureau.⁵⁶

This application asserts that claims made by the Pathways Alliance in their “Let’s clear the air” advertising campaign are false and misleading for the following reasons:

1. They fail to incorporate the lifecycle of the product
2. They are based on untenable and not established assumptions about future technologies, and
3. They give the impression that the Pathways Alliance is a climate leader and that their actions will clear pollution when they are not taking actions that do so.

3.3.1 The net-zero figures in the Pathways plan do not account for the entirety of their emissions, only scope 1 and 2 emissions, which misses more than 80% of their total GHG contribution.

The general impression made by the Pathways Alliance in its advertising is that it has a plan that will “ensure immediate progress to reduce carbon emissions and achieve a goal of net zero emissions by 2050.”⁵⁷ However, this is false and misleading because the plan only addresses some of the emissions from the operation of the oil sands and ignores the much larger emissions from the combustion of oil sands products.

The Greenhouse Gas Protocol, which is the leading international corporate standard for measuring and managing GHGs categories emissions into scope 1, 2, and 3 emissions based on their source.⁵⁸ For an oil sands company, scope 1 covers direct emissions from sources that the company owns or controls, such as bitumen processing facilities and vehicles at the mine site. Scope 2 covers indirect emissions from the generation of purchased electricity, steam, heating

⁵⁵ ISO Net Zero Guidelines. 2022 Accessed via: <https://www.iso.org/netzero>

⁵⁶ Competition Bureau Environmental Claims Guide

⁵⁷ Pathways Alliance website. <https://pathwaysalliance.ca/our-plan/>

⁵⁸ Greenhouse Gas Protocol website. <https://ghgprotocol.org/>

and cooling consumed by the company. Scope 3 includes all other indirect emissions that occur in a company's value chain. For an oil company, this means all the emissions produced when buyers use their oil products, such as for heat, and fuel for planes and cars. Of course, all GHG emissions—no matter what scope they fall into—contribute to climate change.

The inclusion of Scope 3 emissions in a climate plan is important because they often represent a company's largest source of emissions. The UN Net Zero Expert Group states that, “[n]on-state actors cannot focus on...tackling only a part of their emissions rather than their full value chain (scopes 1, 2 and 3).”⁵⁹ A true net-zero plan for these companies therefore needs to include scope 3 emissions.

Pathways member companies (with the exception of MEG) all report scope 3 emissions in their climate-related financial disclosures to shareholders (Appendix 5.1). These disclosures to shareholders demonstrate that the companies are aware of the relevance of Scope 3 emissions to their operations and acknowledge their responsibility for those emissions, as now required by the International Sustainability Standards Board.⁶⁰

The Pathways Alliance plan only seeks to address 68 Mt of its members' scope 1 and 2 emissions.⁶¹ It will not address their scope 3 emissions. This represents less than one sixth of the combined emissions that the members acknowledge.⁶² For the five reporting members, scope 3 emissions account for 86% of the total emissions.⁶³ When their emissions are tallied in full, the Pathways plan does not even come close to net zero.

It is also important to note that the 68 Mt target does not cover the entirety of the Pathways Alliance members' scope 1 and 2 emissions, so even if they successfully reduced this amount to zero, they would not actually achieve net-zero for scopes 1 and 2. The Canadian government estimates that the oil sands were responsible for 81 Mt CO₂ equivalent per year (scopes 1 and 2) in 2020.⁶⁴ Given the six member companies together account for 95% of oil sands production,⁶⁵ (and assuming 95% of emissions) it would require a roughly 77 Mt⁶⁶ reduction to achieve net zero from scopes 1 and 2 alone. The projected reduction of 68 Mt falls well short of this target.

⁵⁹ UN Net Zero Expert Group Report” Page 7. www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

⁶⁰ IFRS Foundation. News Release. “ISSB unanimously confirms Scope 3 GHG emissions disclosure requirements with strong application support, among key decisions.” October 21, 2022. Accessed Feb 27, 2023: <https://www.ifrs.org/news-and-events/news/2022/10/issb-unanimously-confirms-scope-3-ghg-emissions-disclosure-requirements-with-strong-application-support-among-key-decisions/>

⁶¹ Pathways Alliance News Release. Nov 7, 2021. Feb 7, 2023 at <https://pathwaysalliance.ca/the-pathways-vision/>; See also the Pembina Institute. “Getting on Track: A primer on challenges to reducing carbon emissions from Canada's oilsands.” March 2022. Page 2.

⁶² Calculated from reporting by Cenovus, Conoco, Imperial, CNRL, and Suncor. See Appendix 5.1

⁶³ Calculated from reporting by Cenovus, Conoco, Imperial, CNRL, and Suncor. See Appendix 5.1 for the full tally.

⁶⁴ Canada. GHG Inventory. National Inventory Report. 2022 Edition. Part 1. Table 2-12. Page 67.

⁶⁵ Pathways Alliance website. Accessed Feb 13, 2023 at <https://pathwaysalliance.ca/>

⁶⁶ 95% of 81 Mt, rounded.

In addition, Martha Hall Findlay, former chief sustainability officer for Suncor, told CBC News that there isn't a clear plan for the last phase of achieving net zero, from 2040 to 2050 as it is based on some unknowns, such as developing technologies that do not exist today, or possibly purchasing carbon offsets.⁶⁷

The Pathways Alliance claims that it has a plan to achieve net-zero emissions by 2050 in order to address climate change. This is false and misleading because the plan ignores its scope 3 emissions, which are the largest source of emissions and will have significant impact on climate change. Further, the plan's target of reducing 68 Mt of its Scope 1 and 2 emissions does not capture all of the Alliance's actual scope 1 and 2 emissions. And, finally, the plan acknowledges that it does not even have all of the pieces in place to achieve this target.

3.3.2 The Pathways Alliance's plan is not as certain, feasible or effective as the Alliance has represented.

The Pathways Alliance advertising gives the impression that its plan to achieve net-zero emissions is a complete plan that is certain to proceed. However, this is false and misleading because the plan relies on carbon capture and storage (CCUS), which is not the mature, ready-to-implement technology that the Pathways claims. There are considerable barriers for the implementation of this plan, including cost, and it is unclear whether this plan will deliver the emissions reductions that the Pathways claims.

The Pathways Alliance stated plan to become net zero by 2050 is based not only, but most significantly, on a joint CO₂ pipeline and use of carbon capture, utilization, and storage (CCUS, also called CCS to refer to simply carbon capture and storage), which is projected to cost \$16.5 billion.⁶⁸ In their advertising, the Pathways Alliance speaks definitively about the prospects and capabilities of carbon capture, referring only to financial and regulatory hurdles, and not commenting on limitations to the function of this technology.⁶⁹ According to their stated plan, they would need a high percentage of consistent, reliable carbon capture from this project, which to date has been a challenge for this technology.⁷⁰

⁶⁷ Bakx, Kyle. "Oilsands companies have an emissions problem and a plan to fix it — but who's listening?" CBC Business. In Depth. April 29, 200. Accessed Feb 27, 2023: <https://www.cbc.ca/news/business/bakx-pathways-oilsands-ghg-ccs-ccus-1.6431428>

⁶⁸ Pathways Alliance Vision Deck, October 17, 2022. Page 5. Accessed Feb 13, 2023 at: https://pathwaysalliance.ca/wp-content/uploads/pa_vision_deck_web_3.0.pdf; and Pathways Alliance website. "Our Plan" Accessed Feb 13, 2023 at: <https://pathwaysalliance.ca/our-plan/>

⁶⁹ Canadian Press via CBC News online. "Oilsands group pledges to spend \$16.5B on carbon capture project by 2030." Oct 14, 2022/ Accessed Feb 23, 2023: <https://www.cbc.ca/news/canada/calgary/oilsands-group-pledges-to-spend-16-5b-on-carbon-capture-project-by-2030-1.6616689>; and Potkins, Meghan. "MEG Energy CEO says carbon-capture project moving ahead as fast as possible. Financial Post. Nov 10, 2022. Accessed Feb 23, 2023: <https://financialpost.com/commodities/energy/oil-gas/meg-energy-debt-target-oil-price-discount>

⁷⁰ See for example: Smyth, J. Petra Nova carbon capture project stalls with cheap oil, Energy & Policy Inst. Aug. 6, 2020; Groom, N. "Problems plagued U.S. CO₂ capture project before shutdown": document, Reuters Aug. 6, 2020. Accessed Feb 27, 2023: <https://www.reuters.com/article/us-usa-energy-carbon-capture-idUSKCN2523K8>

There is also an issue of timing. CCUS features in the Pathways emissions reduction plan beginning in Phase 1, 2020-2030.⁷¹ However, the Pembina Institute notes that the net zero plan relies on technologies that likely won't be scalable and affordable until after 2030.⁷² And, in February 2023, a report from the International Institute for Sustainable Development (IISD) stated that “[t]he application of CCS does not align with the time scale or ambition necessary for limiting global warming to 1.5°C.”⁷³

CCUS has been around since the 1970s and has been used mainly as a way to repressurize oil reservoirs in order to extract more fossil fuels (known as “enhanced oil extraction”), which therefore creates further emissions.⁷⁴ The Institute for Energy Economics and Financial Analysis (IEEFA) estimates that to date only a small fraction of carbon capture projects have reduced carbon emissions.⁷⁵

CCUS is costly, which raises the question of who will pay for it. Despite their windfall profits in recent years, the Pathways companies still say they won't be making major investments into this technology yet. Two months before the filing of this complaint, Cenovus CEO Alex Pourbaix said, “We’re not yet at the point where we can invest billions in these projects.”⁷⁶ However, the table below shows the massive profits four of the Pathways companies have made in recent years.

⁷¹ Pathways Alliance website. “Clear the Air” under Phase 1. Accessed Feb. 27, 2023. <https://pathwaysalliance.ca/cleartheair/>

⁷² Al-Aini, Eyab | Severson-Baker, Chris | Gorski, Jan. “Getting on Track A primer on challenges to reducing carbon emissions in Canada’s oilsands.” Pembina Institute. March 2022. Accessed via <https://www.pembina.org/reports/getting-on-track.pdf>

⁷³ Carter, A. and Cameron, L. “Why Carbon Capture and Storage Is Not a Net-Zero Solution for Canada’s Oil and Gas Sector.” IISD. Feb 9, 2023. Accessed Feb 27, 2023: <https://www.iisd.org/articles/deep-dive/carbon-capture-not-net-zero-solution>

⁷⁴ Robertson, B. Mousavian, M. “The carbon capture crux: Lessons learned.” IEEFA website. Sept. 4, 2022. Accessed Feb 27, 2023 at <https://ieefa.org/resources/carbon-capture-crux-lessons-learned> (“The carbon capture crux”)

⁷⁵ The carbon capture crux

⁷⁶ al Malees, Nojoud. “Oil sands execs say they can’t invest in decarbonization any faster, despite profits.” Globe and Mail. Jan 25, 2023. Accessed Feb 27, 2023: <https://www.theglobeandmail.com/business/article-oil-sands-execs-say-they-cant-invest-in-decarbonization-any-faster/>

Table 6: Canadian oil sands company profits

(millions of CAD)			
	2021	2022	Growth
Cenovus ⁷⁷	\$587	\$6,450	+999%
CNRL ⁷⁸	\$7,664	\$10,937	+43%
Imperial ⁷⁹	\$2,479	\$7,340	+196%
Suncor ⁸⁰	\$4,119	\$9,077	+120%
Total	\$14,849	\$33,804	

Instead of using these profits to invest in a timely transition to lower carbon alternatives, many Canadian oil companies, including Cenovus, CNRL, Imperial, and MEG Energy, have been using their increased profits to reward shareholders through corporate buy-backs.⁸¹ In terms of funding their CCUS project, Pathways says they are waiting for the federal government to come forward with more funding, beyond the \$7.1 billion investment tax credit for CCUS projects announced in the 2022 federal budget. Kendall Dilling, President of the Pathways Alliance told the Canadian Press that, “[o]ver the life of the project, probably two-thirds of your costs are operating costs. And so the (tax credit) helps enormously on the construction side, on the capital side, but we’re still working with governments on ways to shore up some support on that operating cost side.”⁸² If the government is required to heavily subsidize this project, it could limit the funding available for development and deployment of renewable energy projects, which the UN and IEA recommend investing in to reduce emissions,⁸³ and put a lot of weight on this project for Canada to achieve its climate goals.

Another concern with CCUS is whether it can meet emissions reduction targets. For example, the Boundary Dam CCS project in Saskatchewan has never achieved its stated carbon capture

⁷⁷ Cenovus website - News release. “Cenovus announces 2022 full-year and fourth-quarter results.” Feb 16, 2023. Accessed Feb 23, 2023: www.cenovus.com/News-and-Stories/News-releases/2023/2609466

⁷⁸ CNRL press release. “Canadian Natural Resources Limited announces 2022 fourth quarter and year end results.” Mar 2, 2023. Accessed Mar 3, 2023: <https://www.cnrl.com/content/uploads/2023/03/0302-Q422-Front-End.pdf>

⁷⁹ Imperial website – News release. “Imperial announces fourth quarter 2022 financial and operating results.” Jan 31, 2023. Accessed Feb 17, 2023: <https://news.imperialoil.ca/news-releases/news-releases/2023/Imperial-announces-fourth-quarter-2022-financial-and-operating-results/default.aspx>

⁸⁰ Suncor website. News Release. “Suncor Energy reports fourth quarter 2022 results.” Feb 14, 2023. Accessed Feb 17, 2023: <https://sustainability-prd-cdn.suncor.com/-/media/project/suncor/files/news-releases/2023/2023-02-14-news-release-earnings-q4-2022-en.pdf?modified=20230214232255>

⁸¹ Potkins, M. “Upstream growth takes a backseat as oilsands majors plow billions into buybacks and dividends.” Financial Post. Aug. 4 2022. Accessed Feb 14: <https://financialpost.com/commodities/energy/oil-gas/upstream-growth-takes-a-backseat-as-oilsands-majors-plow-billions-into-buybacks-and-dividends>; See also: Willis, Andrew. “Oil sands companies have financial muscle to go their own way on emission reductions.” Op-ed. The Globe and Mail. Jan. 1, 2022. Accessed Feb 27, 2023: www.theglobeandmail.com/business/commentary/article-oil-sands-companies-have-financial-muscle-to-go-their-own-way-on/

⁸² Stephenson, A. “Oilsands Alliance Demands Federal Backing for \$24.1B CCS Project.” The Energy Mix. Oct 16, 2022. Accessed Feb. 27, 2023: <https://www.theenergymix.com/2022/10/16/oilsands-alliance-demands-feds-back-for-24-1b-ccs-project/>

⁸³ IEA report. Net Zero by 2050. May 18, 2021. Pages 14, 18, 73 and others. Accessed Mar 4, 2023 via: <https://www.iea.org/reports/net-zero-by-2050>

capacity. In January 2022, S&P Global Market published that the “carbon capture rate in 2021 was less than 37% of the official target of 90%.”⁸⁴ The article went on to say that, “[i]n all, the plant's Unit 3 carbon capture equipment prevented 442,126 tonnes of carbon from being spewed into the atmosphere over the past 12 months. That is less than half of the 1 million tonnes the Boundary Dam Power Station is capable of catching and processing annually.”⁸⁵

The Pathways Alliance is aware of these limitations. They raise many of them in their Advisory statement on their website.⁸⁶ However, the preconditions of such a forward-looking statement are not visible to those seeing the ads, which makes the ads misleading.

In a July 2021 report, the Swiss non-profit Center for International Environmental Law (CIEL) stated that “[e]xisting CCS facilities capture less than 1 percent of global carbon emissions.”⁸⁷ They also stated that “[t]he unproven scalability of CCS technologies and their prohibitive costs mean they cannot play any significant role in the rapid reduction of global emissions necessary to limit warming to 1.5°C.”⁸⁸

On their website, and in open letters to the Canadian and US governments, CIEL also states that CCS projects have been inconsistent with environmental justice, noting that pollution-burdened communities are being targeted for CCS, including in Alberta and Saskatchewan, and that construction in these communities imposes pollution and safety hazards on Black, Brown, and Indigenous communities already suffering the disproportionate impacts from environmental racism.⁸⁹

Finally, it bears mentioning that companies in the US have been proven to be using CCUS as a way to continue business as usual. As reported in *The Narwhal*, “[t]he U.S. House of Representatives’ central investigative committee found that oil companies publicly touted carbon capture technology as key to climate mitigation, but internally viewed the technology as a means to secure a ‘social license’ to continue producing fossil fuels for decades.”⁹⁰

⁸⁴ S&P Global Market Intelligence. “Only still-operating carbon capture project battled technical issues in 2021” Jan 2, 2022. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/only-still-operating-carbon-capture-project-battled-technical-issues-in-2021-68302671> (“S&P: Technical issues for carbon capture project”)

⁸⁵ S&P: Technical issues for carbon capture project

⁸⁶ Pathways Alliance website. Advisory can be accessed via a button on the very bottom left of the home page, near the social media icons. <https://pathwaysalliance.ca/>

⁸⁷ CIEL. “Confronting the Myth of Carbon-Free Fossil Fuels: Why Carbon Capture Is Not a Climate Solution.” July 2021. Page 2. Accessed at <https://www.ciel.org/wp-content/uploads/2021/07/Confronting-the-Myth-of-Carbon-Free-Fossil-Fuels.pdf> (“CIEL: Why carbon capture is not a climate solution”)

⁸⁸ CIEL: Why carbon capture is not a climate solution

⁸⁹ CIEL website – Issue—carbon capture and storage. <https://www.ciel.org/issue/carbon-capture-and-storage/>

⁹⁰ Meyer, Carl. “Are Canadian oil sands companies working to save the planet or to save face?” *The Narwhal*. Feb 14, 2023. Accessed Feb 15, 2023 at <https://thenarwhal.ca/pathways-alliance-carbon-capture/>

In September, 2022, the Democrat Committee on Oversight and Accountability released a memo⁹¹ containing findings of their research, which included:

- “Despite BP previously rebranding itself as ‘Beyond Petroleum,’ internal documents highlighted how carbon capture and storage (CCS), one of the energy technologies touted by the company, could ‘enable the full use of fossil fuels across the energy transition and beyond.’”
- “An internal Shell email discussing carbon capture, utilization, and storage (CCUS) warned an executive, ‘We want to be careful to not talk about CCUS as prolonging the life of oil, gas or fossil fuels writ large.’”

3.3.3 By identifying the problem, the Pathways Alliance gives the appearance that their actions will be commensurate with what is required. However, Pathways Alliance members are producing record levels of fossil fuels and are planning to continue expanding production.

In their advertising, the Pathways Alliance represents that their plan will:⁹²

- Help Canada meet its climate goals
- Ensure immediate progress to reduce carbon emissions, and
- Achieve a goal of net zero emissions by 2050.

In addition, they represent that they recognize the outsized contribution of fossil fuels to climate change. They say “climate change is a critical challenge of our time”⁹³ and that “oil sands are a significant contributor of carbon emissions in Canada.”⁹⁴ This is false and misleading because by acknowledging the scale of the problem, they give the impression that their net-zero plan will be designed appropriately to address climate change. However, their plan only intends to address the Alliance’s operational (scope 1 and 2) emissions and will not address its downstream (scope 3) emissions. Continued oil sands production means continued downstream emissions that will not be addressed by the plan and that will continue to exacerbate (not address) climate change. In fact, the Pathways members have increased their production.⁹⁵

In the first nine months of 2022, five of the six Pathways companies—CNRL, Cenovus, Suncor, Imperial Oil and MEG Energy—“combined for record production of 3.2mn b/d of oil equivalent

⁹¹ The Committee on Oversight and Accountability Democrat website. Press Releases. “Ahead of Hearing, Committee Releases Memo Showing Fossil Fuel Industry is Misleading the Public About Commitment to Reduce Emissions.” Sept 14, 2022. Accessed Feb 15, 2023: <https://oversightdemocrats.house.gov/news/press-releases/ahead-of-hearing-committee-releases-memo-showing-fossil-fuel-industry-is>

⁹² Pathways Alliance website. <https://pathwaysalliance.ca/our-plan/>

⁹³ Pathways Alliance website. <https://pathwaysalliance.ca/our-plan/>

⁹⁴ Pathways Alliance 30-second television ad. Can be viewed at: <https://www.youtube.com/@pathwaysalliance/videos>

⁹⁵ Roach, Rob. “Pumping power” ATB Economics. Feb 7, 2023. <https://www.atb.com/company/insights/the-owl/alberta-oil-production-to-december-2022>.

(boe/d) of crude.”⁹⁶ Experts say production will be even higher in 2023, based on the already released capital budgets and production guidance.⁹⁷ These companies are also planning new construction and expansion. For example, according to their 2023 budget release “Cenovus expects to invest between \$1.2 billion and \$1.7 billion in optimization and growth capital to continue asset enhancement and growing production to maximize shareholder value.”⁹⁸

In addition, Cenovus recently applied to extend the life of their Christina Lake oil sands project until 2079.⁹⁹ Christina Lake is the largest in situ oil sands facility in the world, producing over 230,000 barrels of oil per day in 2021.¹⁰⁰ According to Cenovus’ application, the proposed extension is expected to add 54.0 million m³ of production over its approximately forty-seven year lifespan.¹⁰¹ It is difficult to comprehend how this squares with the Pathways Alliance’s stated net-zero target, especially since Cenovus did not include a detailed discussion as to how this project is—or is not—consistent with Canada’s climate commitments. In the application filed with the Alberta Energy Regulator, Cenovus did not include any data on GHG emissions, GHG management strategies, or climate impacts. The application directs the applicant to “[s]ummarize the project’s greenhouse gas management plan. Include a discussion on CO₂ capture and storage technology and energy efficiency projects, mentioning the predicted effects on greenhouse gas emissions.” Cenovus simply responded “N/A”.¹⁰²

Other Pathways companies are also planning new construction, including CNRL¹⁰³ and Suncor.¹⁰⁴

In March 2023, CAPP announced that it expects “investment in oil and natural gas production in this country to hit \$40 billion this year. The industry group says that’s 11 per cent higher than last year and also surpasses pre-COVID-19 pandemic levels.”¹⁰⁵ The industry continues to argue

⁹⁶ Argus Media. Canada’s oil sands hit their stride. Feb 6, 2023. Accessed Feb 19, 2023 at: www.argusmedia.com/en/news/2416852-canadas-oil-sands-hit-their-stride

⁹⁷ Stephenson, Amanda. Global News. “Canadian oilpatch likely to surpass 2022 production record, but not by much.” Dec 27, 2022. Accessed Feb 6, 2023: <https://globalnews.ca/news/9374225/canadian-oilpatch-likely-surpass-2022-production-record/>

⁹⁸ Cenovus. News Release. “Cenovus announces 2023 budget.” Dec 6, 2022. Accessed Feb 27, 2023: <https://www.cenovus.com/News-and-Stories/News-releases/2022/2568065>

⁹⁹ Alberta Energy Regulator. Project application notices 2023. Oil Sands Conservation Act Application 194183. <https://www.aer.ca/regulating-development/project-application/notices/application-1941839>

¹⁰⁰ Cenovus annual report 2021. Page 12. Accessed at: https://www.cenovus.com/~/_link.aspx?_id=2097DABD3167437CBAB903FC28CAF5CA&_z=z#annual

¹⁰¹ The full proposal may be requested via: Alberta Energy Regulator. Project application notices 2023. Oil Sands Conservation Act Application 194183. <https://www.aer.ca/regulating-development/project-application/notices/application-1941839>

¹⁰² The full proposal may be requested via: Alberta Energy Regulator. Project application notices 2023. Oil Sands Conservation Act Application 194183. <https://www.aer.ca/regulating-development/project-application/notices/application-1941839>

¹⁰³ Investing News “Canadian Natural Resources Limited Announces 2023 Budget and New GHG Emissions Reduction Target.” Nov. 30, 2022. Accessed Feb 27, 2023: <https://investingnews.com/canadian-natural-resources-limited-announces-2023-budget-and-new-ghg-emissions-reduction-target/>

¹⁰⁴ Reuters “Canada’s Suncor mulling options to replace supply from key oil sands mine.” Feb 15, 2023

<https://www.reuters.com/business/energy/canadas-suncor-working-options-replace-supply-key-oil-sands-mine-2023-02-15/>

¹⁰⁵ The Canadian Press, “Oil and gas investment in Canada to hit \$40 billion in 2023, industry groups says” March 2, 2023. Accessed March 1, 2023: www.thestar.com/business/2023/03/01/oil-and-gas-investment-in-canada-to-hit-40-billion-in-2023-industry-group-says.html

for building out fossil fuel infrastructure, capacity and production despite it undermining Canada's efforts to achieve its international climate commitments.¹⁰⁶

The UN Net Zero Expert Group states that “[n]on-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply.” This builds off a 2021 report from the International Energy Agency that concluded that, to reach the 1.5°C goal, the global community could not invest in any new or expanded fossil fuel production as of 2021 and that oil production had to decline 75% by 2050.¹⁰⁷

3.3.4 The representations portray Pathways Alliance as a committed climate leader, working supportively with the Canadian government. However, the Pathways Alliance companies have advertised and advocated against climate action.

A general impression the Pathways Alliance makes through its advertising is that they are a climate leader and are supportive of and advocate for climate action taken by governments.¹⁰⁸ This is false and misleading as at least four of the Pathways companies (Suncor, CNRL, Cenovus, and Imperial) as well as CAPP, have been opposing emissions regulations and advocating for fossil fuel expansion and subsidies.¹⁰⁹

As part of their campaign, in particular on their website, the Pathways Alliance discusses working together with all levels of government, and uses language that describes taking climate action, helping Canada meet its climate goals, and working collectively with the federal and Alberta governments to achieve net zero. This type of language gives the impression that the Pathways Alliance have been agreeable and supportive of climate regulations and legislation.

In addition, the Alliance claims they are “on a path to net zero emissions”¹¹⁰ and use that branding to also promote the ideas of “a healthy, sustainable oil sands industry”¹¹¹ and Canada as

¹⁰⁶ Shawn McCarthy, “Canadian oil and gas industry is actively lobbying against its net-zero targets: report” Corporate Knights website – Energy. February 27, 2023. Accessed March 1, 2023: <https://www.corporateknights.com/energy/canadian-oil-and-gas-industry-is-actively-lobbying-against-its-net-zero-targets-report/>. See also Table 7 in Appendix 5.2; and see the full Influence Map report. Feb 2023. Accessed Feb 20, 2023 at: <https://influencemap.org/>

¹⁰⁷ IEA (Oct 2021) World Energy Outlook 2021. Accessed 22 Oct 2021: <https://iea.blob.core.windows.net/assets/ed3b983ce2c9-401c-8633-749c3fefb375/WorldEnergyOutlook2021>, (“IEA Net-Zero Report”) pp.51, 101-103.

¹⁰⁸ Pathways Alliance website. Various. See for example the Vision Deck. https://pathwaysalliance.ca/wp-content/uploads/pa_vision_deck_web_3.0.pdf

¹⁰⁹ Influence Map “The Canadian Oil and Gas Industry and Climate Policy: A report on climate and energy policy advocacy by the Canadian oil and gas sector” February 2023. Page 10 and elsewhere. Accessed: February 27, 2023 <https://www.influencemap.org/briefing/The-Canadian-Oil-and-Gas-Industry-and-Climate-Policy-14696>; See also: Shawn McCarthy, “Canadian oil and gas industry is actively lobbying against its net-zero targets: report” February 27, 2023. Accessed March 1, 2023 <https://www.corporateknights.com/energy/canadian-oil-and-gas-industry-is-actively-lobbying-against-its-net-zero-targets-report/>

¹¹⁰ Pathways Alliance Clear the Air website. Accessed Feb 27, 2023 <https://pathwaysalliance.ca/cleartheair/>

¹¹¹ Pathways Alliance website. Accessed Feb 28, 2023. <https://pathwaysalliance.ca/our-goal/#net-zero>

“a leading supplier of responsibly produced oil.”¹¹² Yet, at the same time, the companies advocate (individually and through CAPP) against government regulation to drive down the fossil fuel industry’s emissions in the near term.¹¹³

For example, following the release of the federal government’s discussion paper on the emissions cap, many Pathways companies were highly critical and dismissive. Brad Corson, Imperial Oil CEO said the plan was “very aggressive” and amounted to government overreach.¹¹⁴ MEG Energy CEO Derek Evans said it was “almost unrealistic”.¹¹⁵ On a call with analysts, Tim McKay, president of Canadian Natural Resources Ltd. called the cap “unnecessary and overly ambitious.”¹¹⁶ As well, Lisa Baiton, President and CEO of CAPP, said “[a]s presented, both emissions cap options have the potential to limit oil and natural gas production in Canada by adding regulatory burden and eliminating options for economy-wide cooperation on emissions reductions.”¹¹⁷

The Pathways Alliance serves as an active lobbying body for the six-member companies. In 2022, the Pathways Alliance lobbied the federal government 162 times.¹¹⁸ Meaning, they lobbied the federal government on three out of every five working days.¹¹⁹ CAPP lobbied the federal government 301 times in 2022, more than once for every working day.¹²⁰ These lobbies are in addition to hundreds of other lobbies by each of the companies (with the exception of MEG Energy),¹²¹ and any lobbying of provincial governments as well.

Further, the Pathways Alliance members membership dues represent most of the core budget for the Canadian Association of Petroleum Producers (CAPP), which has a long history of lobbying against climate action, and has continued to do so since the Pathways companies announced their

¹¹²Suncor Energy news release. “Canada’s largest oil sands producers announce unprecedented alliance to achieve net zero greenhouse gas emissions.” June 9, 2021. Accessed via GlobeNewswire at <https://www.globenewswire.com/news-release/2021/06/09/2244216/0/en/Canada-s-largest-oil-sands-producers-announce-unprecedented-alliance-to-achieve-net-zero-greenhouse-gas-emissions.html>

¹¹³ For more details, see Section 3.3.4 below and Appendix 5.4

¹¹⁴ Globe and Mail. “Imperial Oil CEO says feds’ approach to emissions getting ‘very aggressive’.” July 29, 2022. Accessed Feb 27, 2023: www.theglobeandmail.com/business/article-imperial-oil-second-quarter-profit-soars-amid-higher-production-and/

¹¹⁵ Bloomberg News. Via the Financial Post. “Almost unrealistic: Imperial Oil, MEG, Cenovus ramp up opposition to Trudeau’s carbon plan.” July 29, 2022. Accessed Feb 27, 2023: <https://financialpost.com/commodities/energy/oil-gas/exxon-unit-meg-push-back-at-canadas-aggressive-carbon-plan>

¹¹⁶ Stephenson, Amanda. “Proposed emissions cap on oil and gas sector overly ambitious?: CNRL” Globe & Mail. Aug. 4, 2022. <https://www.theglobeandmail.com/business/industry-news/energy-and-resources/article-canadian-naturals-profit-more-than-doubles-as-energy-prices-surge/>

¹¹⁷ Stephenson, Amanda. “Proposed emissions cap on oil and gas sector overly ambitious?: CNRL” Globe & Mail. Aug. 4, 2022. <https://www.theglobeandmail.com/business/industry-news/energy-and-resources/article-canadian-naturals-profit-more-than-doubles-as-energy-prices-surge>

¹¹⁸ Data compiled from the Government of Canada. Lobby Registry. <http://lobbycanada.gc.ca/>

¹¹⁹ According to [workingdays.ca](https://www.workingdays.ca/), there were 249 working days in Canada in 2022. https://www.workingdays.ca/workingdays_holidays_2022.htm

¹²⁰ Data compiled from the Government of Canada. Lobby Registry. <http://lobbycanada.gc.ca/>

¹²¹ Data compiled from the Government of Canada. Lobby Registry. <http://lobbycanada.gc.ca/>

commitment to net zero.¹²² For example, CAPP recently sponsored Facebook ads through an associated group, Canada’s Energy Citizens, calling on people to oppose the federal emissions cap. Examples of the ads are included in Appendix 5.4.

The criteria set out by the UN Net Zero Expert Group determine that non-state actors “must align their external policy and engagement efforts, including membership in trade associations, to the goal of reducing global emissions by at least 50% by 2030 and reaching net zero CO₂ emissions by 2050, followed by net zero greenhouse gas emissions soon after. This means lobbying for positive climate action and not lobbying against it.”¹²³

3.4 The representations were made for the purpose of promoting business interests

The Pathways Alliance’s representations seek to promote the business interests of its members, namely obtaining social license and political support to continue producing and supplying oil sands products as Canada and the world transitions to a low carbon economy.

In signing the Paris Agreement in 2015 and at subsequent global climate conferences, the international community has committed to addressing climate change by significantly reducing GHG emissions. The IPCC has determined that to achieve the goal of limiting global warming to 1.5 C, we need to reduce global GHG emissions 45% by 2030 (below 2010 levels) on the way to achieving net-zero emissions by 2050.¹²⁴ To achieve this target, the IEA has determined that there can be no more investment in new or expanded fossil fuel production as of 2021 and global oil production must decline 75% by 2050 in line with decreasing demand.¹²⁵ As oil production declines, different forms of oil will decline at different rates, in part based on cost and emissions intensity. This will give a competitive advantage to the lowest-cost and least carbon-intensive producers.¹²⁶

For its part, Canada has set a national target of reducing emissions 40-45% by 2030 (below 2005 levels) and achieving net-zero emissions by 2050.¹²⁷ To help reduce Canadian emissions, the

¹²² See for example: Influence Map “The Canadian Oil and Gas Industry and Climate Policy: A report on climate and energy policy advocacy by the Canadian oil and gas sector” February 2023. Page 10 and elsewhere. Accessed: February 27, 2023 <https://www.influencemap.org/briefing/The-Canadian-Oil-and-Gas-Industry-and-Climate-Policy-14696>; and Meyer, Carl and Anderson, Drew. “Documents reveal how Alberta oil and gas industry used pandemic to push ‘wish list.’” The Narwhal. Dec 19, 2022. Accessed Mar 1, 2023: <https://thenarwhal.ca/capp-oil-lobbying-alberta-government/>; and Woodside, John and Richer Vis, Xavier. “How Big Oil’s most powerful lobby group works the backrooms on Parliament Hill.” Investigative Journalism Foundation. Jan 10, 2023. Accessed Feb 28, 2023: <https://theijf.org/how-big-oils-most-powerful-lobby-group-works-the-backrooms-on-parliament-hill>

¹²³ UN Net Zero Expert Group Report” Page 25. www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

¹²⁴ IPCC Special Report on 1.5 C.

¹²⁵ IEA Net-Zero Report

¹²⁶ Rystad Energy Commentary 362669. Regional sustainability: finding the best path as energy markets change. Page 4.

¹²⁷ Canadian Net-Zero Emissions Accountability Act, s.X

federal government has, amongst other measures, imposed a carbon price that will rise from \$65/tonne in 2023 to \$170/tonne in 2030 and plans to impose an emissions cap on the oil and gas sector.

In this context, the viability of Canada's oil and gas sector—and the oil sands industry—is at risk. The oil and gas sector is a significant source of Canadian emissions, contributing 27% of Canada's total in 2020.¹²⁸ The oil sands—a costly and carbon intensive form of oil production—contributes 45% of oil and gas sector emissions, or 14% of Canada's emissions.¹²⁹ Further, Canadian oil depends on global markets; in 2021, approximately 80% of Canadian oil production was exported and 80% of these exports were oil sands products.¹³⁰ As such, Canadian oil producers face both domestic pressure to reduce their emissions to help meet our targets and also face a declining global market for oil and falling oil prices.¹³¹

The oil sands industry wants to continue producing oil as long as it can into the future. It is, therefore, in the business interests of the Pathways Alliance to convince the Canadian public that the oil sands can be part of a low-carbon future. If the Canadian public believes that the oil sands industry has a plan that can address its climate impact while continuing to contribute to the Canadian economy, this will look like a win-win for Canada. Public support for the plan is necessary for politicians to also support the plan, which is another objective of the Pathways representations.

It is also in the business interests of the Pathways Alliance to convince Canadian politicians, particularly in Alberta, to provide support for the Pathways plan. Developing and implementing CCUS technology at the scale proposed by the Pathways Alliance is an expensive and uncertain undertaking. CCUS is one of the most expensive emission reduction measures.¹³² Indeed, building the infrastructure for the Pathways plan is estimated to cost \$16.5 billion, and operating costs will be additional to that, up to two-thirds of the total costs over the life of the project.¹³³ Examples of carbon capture in Canada currently range from \$100-200/tonne of carbon reduced.¹³⁴ This additional expense would increase the cost of their oil products and impact their place in the market. As noted above, the federal government has already provided a \$7.1 billion

¹²⁸ National Inventory Report 2022

¹²⁹ National Inventory Report 2022

¹³⁰ Cosbey, Aaron. "The Bottom Line. Why Canada Is Unlikely to Sell the Last Barrel of Oil." IISD. Dec 2022. Accessed via <https://www.iisd.org/system/files/2022-12/bottom-line-why-canada-unlikely-sell-last-barrel-oil.pdf>

¹³¹ Cosbey, Aaron. "The Bottom Line. Why Canada Is Unlikely to Sell the Last Barrel of Oil." IISD. Dec 2022. Accessed via <https://www.iisd.org/system/files/2022-12/bottom-line-why-canada-unlikely-sell-last-barrel-oil.pdf>

¹³² Carter, A. and Cameron, L. "Why Carbon Capture and Storage is Not a Net-Zero Solution for Canada's Oil & Gas Sector." IISD. Feb 2023. Accessed online: <https://www.iisd.org/articles/deep-dive/carbon-capture-not-net-zero-solution> ("CCS is not a Net-Zero Solution for Canada's Oil & Gas Sector")

¹³³ Stephenson, A. "Oilsands Alliance Demands Federal Backing for \$24.1B CCS Project." The Energy Mix. Oct 16, 2022. Accessed Feb. 27, 2023: <https://www.theenergymix.com/2022/10/16/oilsands-alliance-demands-feds-back-for-24-1b-ccs-project/>

¹³⁴ CCS is not a Net-Zero Solution for Canada's Oil & Gas Sector

investment tax credit for CCS projects but the Alliance is actively seeking government support for operating costs.¹³⁵

If the Alliance can convince Canadian politicians to establish a regulatory and subsidy regime that makes it easy to develop CCS and other emission reduction measures, the Alliance will be able to mitigate the added costs of reducing emissions while continuing to produce oil and remain competitive in the market. As noted above, we are already seeing examples of Canadian politicians pushing for support for the oil and gas sector to develop technologies like CCS and thus retain the sector's place in the economy.

The Pathways Alliance provides a way for erstwhile competitors to rally together to reduce the risk that the low carbon transition poses to their oil sands businesses by promoting the oil sands and Canadian oil as sustainable, and part of a low-carbon future. In this regard, promoting their individual brands is less relevant than promoting the oil sands — on the global stage as an environmentally-conscious and low carbon fuel source, and domestically as an essential and sustainable path forward.¹³⁶ Pathways President Kendall Dilling has expressed this by stating a goal of producing “the cleanest barrels of oil in the world.”¹³⁷

This “sustainable oil sands” narrative is evident in both the content of their ads (i.e. “a clear future for Canadian energy”¹³⁸), and the outlets where they placed them. For example, television spots during massive global events such as the World Cup and the Super Bowl provide exposure to a global audience and create an expansive opportunity to rebrand Canadian oil as clean and sustainable. In Canada, their ads have been in keystone news outlets (Globe and Mail, Toronto Star, CBC), and have played extensively on television (CTV, TSN). According to stats from Bell Media, CTV is Canada's #1 television channel, and TSN is one of the most watched specialty

¹³⁵ Stephenson, A. “Oilsands Alliance Demands Federal Backing for \$24.1B CCS Project.” *The Energy Mix*. Oct 16, 2022. Accessed Feb. 27, 2023: <https://www.theenergymix.com/2022/10/16/oilsands-alliance-demands-feds-back-for-24-1b-ccs-project/>

¹³⁶ This is apparent in the content of their ads, as well as in public statements made by spokespeople. For example, Kendall Dilling stated, “Our vision is to produce the cleanest barrels of oil in the world and for Canada to become the global supplier of choice for responsibly produced oil to meet the forecasted ongoing demand for oil for decades to come.” CCS Knowledge website. Newsroom. – Q&A with Kendall Dilling of Pathways Alliance. Jan 30, 2023. Accessed Feb 14, 2023: https://ccsknowledge.com/news/qanda-with-kendall-dilling-of-pathways-alliance?utm_source=external+web&utm_medium=article&utm_campaign=PR; “Canada’s oil and natural gas industry operates in one of the world’s most stringent regulatory environments, with both federal and provincial or territorial regulations.” CAPP website— Regulation and Monitoring. <https://www.capp.ca/environment/regulation-and-monitoring/>; And, domestically, statements from the Province of Alberta’s Canadian Energy Centre website such as, “Canada is a global leader in responsible oil and gas production,” “Modern life depends on oil and gas,” and “(oil and gas are) An essential part of the Canadian economy.” <https://madethecanadianway.ca/>

¹³⁷ CCS Knowledge website. Newsroom. Q&A with Kendall Dilling of Pathways Alliance. Jan 30, 2023. Accessed Feb 14, 2023: https://ccsknowledge.com/news/qanda-with-kendall-dilling-of-pathways-alliance?utm_source=external+web&utm_medium=article&utm_campaign=PR

¹³⁸ See Tables 1- 4 for more context examples

channels.¹³⁹ Bell Media states that advertisements on their channels combined (CTV, Noovo, TSN, RDS, and 35 local channels) reach 88% of Canadians.¹⁴⁰

The environmentally-conscious image for the oil sands is important on, and beyond, the national stage. Industry actors and financial analysts have said that getting to net zero is crucial for oil sands competitiveness.¹⁴¹ Writing about the Canadian oil industry, financial advising firm RSM said, “Recent industry shifts have made clear that companies must adapt to ESG requirements and expectations if they want to survive into the future.”¹⁴² And, about the formation of the Pathways Alliance, Murray Sigler, then interim CEO of the Calgary Chamber of Commerce, said “[t]oday’s announcement of the Oil Sands Pathways to Net Zero initiative is a clear signal that Alberta and our energy industry will remain competitive...”¹⁴³

In summary, the domestic and global pressures are forcing the Canadian oil producers to determine how they can fit into the low-carbon future. Pathways Alliance believes that it can continue producing oil while reducing its operational emissions and it is in its business interests to obtain public and political support for its emissions reduction plan. The Pathways Alliance is using net-zero pledges in an extensive ad campaign as a strategy to promote their business interests and ensure the longevity of their operations.

3.5 The representations are material

In case law related to false and misleading representations under the Competition Act, the materiality of a representation is commonly linked to a certain type of decision: the decision of a consumer to purchase a product. That is, a misrepresentation is considered to be material “if it is so important, pertinent, germane, or essential that it could affect the decision of a consumer to purchase the product.”¹⁴⁴

However, a consumer transaction is only one type of business interest that a company may wish to promote, and we understand that the term “business interest” has been given a wide meaning by the courts.¹⁴⁵ As such, we consider that whether a representation is false and misleading in a

¹³⁹ Bell Media website—Advertising sales-TV. <https://www.bellmedia.ca/advertising-sales/tv/>. Bell cites the source: Numeris, BY18-19, T2+, Mo-Su, 2a-2a, Total Canada, Top commercial TV networks, Ranking based on AMA and weekly reach.

¹⁴⁰ Bell Media website—Advertising sales-TV. <https://www.bellmedia.ca/advertising-sales/tv/>. Bell cites the source: * Numeris (Meter), Broadcast Year 2019-2020, All 2+, Mo-Su, 2a-2a, Canada Total (Full Coverage), Monthly Reach, Bell Media TV networks.

¹⁴¹ For example: RSM. “ESG is now a top priority and Canada oil and gas companies must adapt.” Nov 2, 2020. Accessed Feb 28, 2023: <https://rsmcanada.com/insights/industries/energy/esg-is-now-a-top-priority-and-canada-oil-and-gas-companies-must-.html> and Garyk, Diedra. “How ESG Impacts the Canadian Oil & Gas Industry.” EnergyNow media. July 6, 2021. Accessed Feb 28, 2023: <https://energynow.ca/2021/07/how-esg-impacts-the-canadian-oil-and-gas-industry/>

¹⁴² RSM. “ESG is now a top priority and Canada oil and gas companies must adapt.” Nov 2, 2020. Accessed Feb 28, 2023: <https://rsmcanada.com/insights/industries/energy/esg-is-now-a-top-priority-and-canada-oil-and-gas-companies-must-.html>

¹⁴³ Calgary Chamber of Commerce news release. “Collaboration to achieve net zero targets critical to Alberta’s long-term competitiveness.” June 9, 2021. Accessed Feb 28, 2023: <https://www.calgarychamber.com/release-06092021>

¹⁴⁴ Commissioner of Competition v Sears Canada (2005 CACT 2)

¹⁴⁵ Apotex Inc. v Hoffman La-Roche Ltd 2000 CanLii 16984 (ONCA), para 13

“material respect” relates to the degree of influence that the representation has on more than just consumer transactions, but the promotion of all of a company’s business interests.

This expansion is relevant because representations by the Pathways Alliance are aimed at more than just making consumers purchase their products. While the Alliance members do own retail gas stations that sell fuel directly to consumers, the representations are aimed at business interests that include creating the public and political support necessary to maintain their oil sands production.

As such, while the representations may not focus solely, or even mostly, on influencing consumer transactions, they are seeking to influence decisions by others that are relevant to the Pathways members’ business interests. This is anti-competitive behaviour that the Act and the Bureau should regulate because the Alliance is attempting to unfairly gain an advantage (political support, social licence etc.) over other Canadian oil producers and clean energy producers that are trying to compete with oil in the market. If the Alliance’s misrepresentations are accepted, it will position the Alliance’s oil as more climate-friendly than that of other Canadian oil producers, even though the downstream emissions from all oil is the same and contributes the majority of the overall climate impact. It also risks undermining actual clean energies from being competitive in the market since they will be seen as unnecessary when we already have “climate friendly” oil.

With this in mind, the materiality of the Pathway’s misrepresentations is demonstrated by the following factors:

1. the evidence that the public and politicians are concerned about climate change and climate impacts;
2. the magnitude of the Pathways Alliance’s misrepresentations about its climate action; and
3. the limited ability of the public to assess the accuracy of the Pathways’ representations.

These factors are discussed in turn below.

1. Consumers are concerned about climate change, and climate and environmental considerations affect purchasing decisions. A 2022 Leger poll of North America found that 70% of Canadians were concerned about climate change.¹⁴⁶ As well, a 2021 Deloitte study of 10,000 people in six countries questioned participants’ attitudes to and public engagement with six global themes – climate, environment, growth and consumption, global change, digital issues and social and cultural change. The study found that “42 per cent of people changed consumption habits because of the environment,” and “one in five have switched their buying to a company or brand who share their values on these

¹⁴⁶ Leger Surveys. Climate Change and Extreme Weather Events. Question 1. Oct 14, 2022. Accessed Feb 14, 2023: <https://leger360.com/surveys/legers-north-american-tracker-october-14-2022/>

issues.”¹⁴⁷ And an EY Canada survey found that 61% of Canadian consumers will pay more attention to the environmental impact of what they consume.¹⁴⁸

End-use and retail sales of fossil fuels matter to all producers to maintain business along their supply chains. Pathways Alliance members produce many consumer products, including gasoline, natural gas, and ethanol, as well as products that reach consumers indirectly, such as asphalt, and products made from petrochemicals, such as plastics.¹⁴⁹ In addition, two of the Pathways companies have massive direct retail operations. Suncor operates 1,800 retail and wholesale PetroCanada stations across Canada¹⁵⁰ and Imperial Oil (which is majority-owned 69.6% by ExxonMobil) owns 2,000 Esso and Mobil stations across the country.¹⁵¹ As well, Cenovus has a commercial fuels business, which includes approximately 170 cardlock, bulk plant and travel centre locations.¹⁵²

Politicians need to be aware of public opinion as climate change and the environment remain important issues to voters across the country.¹⁵³ Governments also hold the responsibility of dealing with climate change and currently our federal government recognizes the part it must play in addressing it.¹⁵⁴ There are legislated emissions targets that have been set across the country, and even in Alberta, where fossil fuels play the most significant economic role, the Province is working with the federal government to incentivize emissions reduction technologies.¹⁵⁵ In representing their efforts to assist governments in reducing climate impacts, the Pathways Alliance are aiming to gain the trust that they are doing their part and in turn avoid legislation that would restrict their business interests.

2. The magnitude of the Pathways Alliance misrepresentations about its climate action is evidenced in the lack of full emissions accounting (with full knowledge that the majority

¹⁴⁷ Deloitte. Get Out in Front Global Research Report. Dec. 2020. Page 31. Accessed Feb 19, 2023:

<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-get-out-infront-final.pdf>; See also: J.P. Morgan Global Research. “Climate Change Plays Leading Role in Consumer Spending.” March 4, 2022. Accessed Feb 19, 2023: www.jpmorgan.com/insights/research/climate-change-consumer-spending

¹⁴⁸ EY Canada. Press release. “69% of Canadian consumers expect companies to solve sustainability issues” Aug 5, 2021. Accessed Feb 23, 2023 at www.ey.com/en_ca/news/2021/08/sixty-nine-percent-of-canadian-consumers-expect-companies-to-solve-sustainability-issues

¹⁴⁹ See, for example, the Cenovus website. “Our Operations– Value Chain.” Accessed Feb 19, 2023: www.cenovus.com/Our-operations/Value-chain-and-products

¹⁵⁰ Suncor website. “What we do” <https://www.suncor.com/en-ca/what-we-do/petro-canada>

¹⁵¹ Imperial Oil website. About–Our Locations. <https://www.imperialoil.ca/en-ca/company/about/our-locations>

¹⁵² Canada Convenience Store News. “Cenovus sells Husky gas stations to Parkland, FCL,” Nov 30, 2021.

<https://ccentral.ca/cenovus-sells-husky-gas-stations-parkland-fcl>

¹⁵³ Clean Prosperity, “New poll shows voters still expect a credible climate plan” July 19 2022. Accessed: March 1 2023.

<https://cleanprosperity.ca/new-poll-shows-voters-still-expect-a-credible-climate-plan/>; Nia Williams, “Canada’s ‘infernal summer’ puts climate change at forefront of election.” Reuters September 1, 2021. Accessed March 1, 2023.

<https://www.reuters.com/business/environment/canadas-infernal-summer-puts-climate-change-forefront-election-2021-09-01/>;

¹⁵⁴ “Canada’s Climate Plan” The Government of Canada.

<https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan.html>

¹⁵⁵ Government of Alberta. Carbon capture, utilization and storage – Development and innovation.

<https://www.alberta.ca/carbon-capture-utilization-and-storage-development-and-innovation.aspx>

of their emissions are outside of their accounting), as well as in their definitive statements about the efficacy of CCUS technology, such as, "... the six largest companies have joined forces on carbon capture technology that will reduce emissions by millions of tonnes annually."

3. It is difficult to assess the accuracy of the Pathways Alliance claims. For one, the advisory/disclaimer that notes all of the factors required for this plan to work is only available via some digging on the website and does not appear when viewing the print or televised ads.

Further, net-zero is an attractive term, but difficult to fully understand. Consumers do not fully understand the accounting of net zero or GHG emissions,¹⁵⁶ the efficacy of carbon capture technology, or the climate, environmental, and health impacts likely to result if companies fail to reach the International Governmental Panel on Climate Change (IPCC) recommended targets.¹⁵⁷ This lack of understanding is in part because of the high level of greenwashing that has surrounded net-zero commitments.¹⁵⁸ But the Pathways Alliance is aware that the public wants clear and detailed information. They state on their website that they developed this ad campaign based on "thousands of Canadians across the country who said they want more information about how oil sands producers are working together to reduce CO₂ emissions from operations."¹⁵⁹

Finally, most of the Pathways Alliance representations do not mention that net-zero only applies to a small portion of their emissions, and all of the representations omit to mention the relative magnitude of their downstream emissions.

The "Let's clear the air" campaign evokes a group of companies taking definitive and measured action to achieve net zero emissions — giving the impression that oil sands are a clean, responsible energy product. However, oil sands remain a significant source of emissions and are amongst the most polluting industries.¹⁶⁰ Furthermore, Pathway Alliance members lack a credible plan for achieving their stated net-zero targets, and they are undermining their net-zero

¹⁵⁶ Authority for Consumers and Markets – Publications. "ACM: consumers find claims regarding carbon offset unclear." Oct. 13, 2022 www.acm.nl/en/publications/acm-consumers-find-claims-regarding-carbon-offset-unclear

¹⁵⁷ IPCC press release. "The evidence is clear: the time for action is now. We can halve emissions by 2030." April 4, 2022. Accessed Feb 23, 2023: <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>

¹⁵⁸ See for example: Bickis, Ian. "McKenna-led UN group calls for regulation, end to greenwashing in net-zero pledges." The Canadian Press. Nov 8, 2022. Accessed Feb 27, 2023 via the Financial Post at: <https://financialpost.com/pmn/business-pmn/mckenna-led-un-group-calls-for-regulation-end-to-greenwashing-in-net-zero-pledges>; and Lisa Song, "An Even More Inconvenient Truth: Why Carbon Credits For Forest Preservation May Be Worse Than Nothing" (22 May 2019) at paras 8-17 online: Features <https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/>.

¹⁵⁹ Pathways Alliance website. Oct 20, 2022. <https://pathwaysalliance.ca/clear-the-air-ad-campaign-highlights-critical-role-for-oil-sands-in-helping-canada-achieve-net-zero-emissions-goal/>

¹⁶⁰ Canada. GHG Inventory. National Inventory Report. 2022 Edition. Part 1. Table 2-12. Page 67.

claims through continued fossil fuel expansion, and a demonstrated lack of support for government climate actions.

As recently as April 2022 (10 months after it formed) people didn't know what the Pathways Alliance was, even people in the oil industry.¹⁶¹ But as of late 2022, given the scope and circulation of their ad placements, it's likely that the majority of Canadians—the public and politicians—have seen their ads in newspapers, on social media, on television during the Super Bowl, and even on billboards. And the general impression a credulous and inexperienced person would have is that the Pathways Alliance is “making clear strides toward net zero.”

4. Request for Inquiry

Given the evidence detailed in this complaint, the Applicants request that the Competition Bureau conduct a thorough, rigorous inquiry into the materially false and misleading representations made by the Pathways Alliance to the Canadian public that their activities are reducing emissions thereby assisting with combating climate change. The Applicants submit that these representations constitute reviewable conduct under s. 74.01(1)(a) of the Competition Act. If the inquiry finds that Pathways Alliance and its members have made materially false and misleading representations to the Canadian public, the Applicants submit that the Pathways Alliance should be required to, at a minimum:

1. Remove all representations about reducing emissions (achieving net zero), cleaning the air and combating climate change.
2. Issue a public retraction of these representations;
3. Pay a fine that is the greater of \$10 million or 3% of worldwide gross revenues, credited to the Environmental Damages Fund and to be paid to organizations, preferably Indigenous-led, for rehabilitation/clean-up of oil sands pollution.

¹⁶¹ Bakx, Kyle. “Oilsands companies have an emissions problem and a plan to fix it — but who's listening?” CBC Business. In Depth. April 29, 200. Accessed Feb 27, 2023: <https://www.cbc.ca/news/business/bakx-pathways-oilsands-ghg-ccs-ccus-1.6431428>

5. Appendices

5.1. Emissions by scope

Table 7: Pathways Companies 2021 Emissions by Scope

Company	Scope 1 & 2	Scope 3	Scopes 1-3
Imperial ¹⁶²	21.5	170	191.5
Cenovus ¹⁶³	23.9	132	155.9
Suncor ¹⁶⁴	27.7	123	150.7
CNRL ¹⁶⁵	24.7	132	156.7
<u>MEG</u> ¹⁶⁶	2.3	N/A	unknown
Conoco Phillips (globally) ¹⁶⁷	16.2	155.9	172.1
Total (percentage)	14%	86%	

¹⁶² Imperial Oil. Moving Forward: Advancing Climate Solutions report. May 2022. Accessed Feb 27, 2023: https://www.imperialoil.ca/-/media/Imperial/Files/Publications-and-reports/Advancing-Climate-Solutions-report.pdf?utm_campaign=IOL_Social&utm_content=1652821887&utm_medium=social&utm_source=linkedin

¹⁶³ Cenovus website - Sustainability - Environment - Climate and GHG emissions
<https://www.cenovus.com/Sustainability/Environment/Climate-and-GHG-emissions>

¹⁶⁴ Suncor. Climate Report 2021: An energy company for the future. Page 31. Accessed Feb 27, 2023 at https://sustainability-prd-cdn.suncor.com/-/media/project/ros/shared/documents/climate-reports/2021-climate-report-en.pdf?modified=20220421140133&_ga=2.225865875.887037544.1653922069-1852545475.1653922069#page=31

¹⁶⁵ Canadian Natural Resources Limited. 2021 Stewardship Report to Stakeholders.
<https://www.cnrl.com/content/uploads/2023/01/2021-Stewardship-Report-to-Stakeholders.pdf>

¹⁶⁶ MEG Energy website- ESG. "2021 Environmental, Social, and Governance report." Page 58. Accessed Feb 14, 2023 at <https://www.megenergy.com/wp-content/uploads/2022/04/MEG-Energy-ESG-Report-2021.pdf>

¹⁶⁷ ConocoPhillips website. Resources. 2021 CDP data filing. <https://static.conocophillips.com/files/resources/2021-cdp-climate-change-report.pdf>

5.2. Influence Map: Climate Policy Engagement

The table below is from the global non-profit think tank, Influence Map, in their 2023 report: The Canadian Oil and Gas Industry and Climate Policy.¹⁶⁸ They included four Pathways companies (Suncor, Cenovus, Imperial, and CNRL) as well as CAPP in their summary of climate policy engagement. All the companies and CAPP scored abysmally on the Performance band, which is the full measure of a company's direct and indirect engagement with climate policy. As well, only Suncor made it above 50% (with 55%) on the Organization Score, which measures how supportive or opposed they are towards climate policy aligned with the Paris Agreement.

Influence Map describes all the rankings listed in the table as follows:

The table below ranks the entities in order of their Performance Band (high to low, or most to least positive), which represents the full measure of a company's direct and indirect engagement with climate policy. It also notes Organization Score (0-100%), indicating how supportive or opposed a company is towards climate policy aligned with the Paris Agreement; Engagement Intensity (0-100%), which expresses how actively the organization is engaging, whether positively or negatively; and Relationship Score (0-100%), measuring how supportive or opposed the aggregate of a company's industry associations are toward climate policy.

¹⁶⁸ Report published Feb 2023. Accessed at: <https://influencemap.org/> Page 10.

Table 8: Influence Map 2023. Climate Policy Engagement

Entity	Market cap USD billion (as of 2022)	Performance Band	Organization Score	Engagement Intensity (Global)	Relationship Score
 SUNCOR ENERGY	\$46.48	D+	55%	31%	49%
 ENBRIDGE	\$76.46	D	48%	26%	46%
 cenovus ENERGY	\$37.65	D-	47%	30%	35%
 Canadian Natural	\$65.66	D-	42%	24%	45%
 TC Energy	\$42.73	D-	46%	20%	37%
 Imperial	\$31.69	D-	41%	24%	43%
 CAPP CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS Canada's Oil and Natural Gas Producers	N/A	E	34%	43%	N/A

5.3. CAPP membership calculation

CAPP doesn't publicly disclose their budget, nor do the members of the Pathways Alliance reveal their contributions. But five of the six Pathways companies are members of CAPP (all except MEG Energy), and membership dues are based on production levels. CAPP no longer posts these rates, but according to the internet archive, 2021 dues¹⁶⁹ were \$3.99/barrel of oil equivalent per day, while 2020 dues¹⁷⁰ were \$4.38/boe. CAPP claims to represent ~80% of oil and gas production in Canada. According to CAPP's own statistics,¹⁷¹ Canada produced 4.7M barrels of oil/day in 2021 and 16.9 bcf/day of natural gas, which translates into ~290,000 barrels of oil equivalent / day, for a total ~5M boe/day total production in Canada. So assuming CAPP gets dues from 80% of that (i.e. 4M boe/day) at \$3.99/boe/day, they have a core budget of \$16M in 2021. Based on their posted production guidance, Suncor's dues in 2021 would have been ~\$3M/year; Cenovus \$3.3M; CNRL \$4.9M; Imperial \$1.7M, so the five Pathways Alliance members appear to provide about 3/4 of CAPP's budget.


¹⁶⁹ Internet Archive "Wayback Machine" CAPP 2021 Producer Membership Form. <https://web.archive.org/web/20210215090907/https://www.capp.ca/wp-content/uploads/2020/12/2021-Producer-Membership-Form.pdf>

¹⁷⁰ Internet Archive "Wayback Machine" CAPP 2020 Producer Membership Form. https://www.google.com/url?q=https://web.archive.org/web/20200215113130/https://www.capp.ca/wp-content/uploads/2020/01/2020-Producer-Membership-Form.pdf&sa=D&source=docs&ust=1677746402215116&usg=AOvVaw3e1xhf_p56Exueib7ZAUDb

¹⁷¹ CAPP website. Frequently used statistics. June 2022. Accessed at: <https://www.capp.ca/wp-content/uploads/2022/07/Frequently-Used-Stats-June-2022.pdf>

5.4. CAPP-sponsored ads on Facebook

A.5.4a Facebook Sept 2022




Canada's Energy Citizens
Sponsored • Paid for by **The Canadian Association of Petroleum Producers**

Take action and share!

An emissions cap could lead to less oil and gas being produced in Canada. That will harm workers and ensure that Canada is unable to provide the oil and gas to a world that needs it.

Be heard, follow the link and send the Federal Government an email on the...



ENERGYCITIZENS.CA
Take Action: Federal Oil & Natural Gas Cap
Take Action: Federal Oil & Natural Gas Cap

Learn more

A.5.4b Facebook Sept 2022



Canada's Energy Citizens
Sponsored • Paid for by **The Canadian Association of Petroleum Producers**

Canada has the natural gas and oil the world needs. But a proposal by the Federal Government risks shutting in Canadian production when the world needs it most.

Have your say on capping Canadian natural gas and oil:

<http://www.energycitizens.ca/emissions-cap/>

5.5. Representations in the media

A5.5a CBC News online Feb. 21, 2023



A.5.5b Saturday Star Feb. 18, 2023



A5.5c Cold Lake Sun Aug 1, 2022



5.6. Representations on social media and in public space

A.5.6a Facebook. Feb 15, 2022



A5.6c Facebook. Jan. 9, 2023

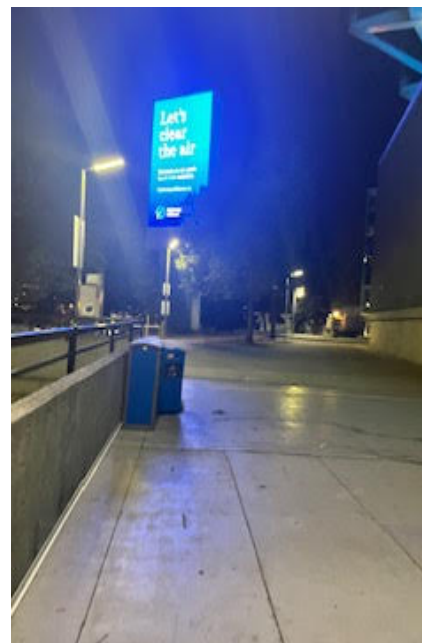


A.5.6d BC Place downtown Vancouver, billboard. Observed Nov. 2022

A.5.6b Twitter. Feb 28, 2022

PathwaysAlliance @PathwaysNetZero · 9h

Alberta's oil sands are on a path to our goal of net zero. Sign-up for our newsletter to learn more about the work underway to reduce emissions from our operations: bit.ly/3YB0miL



5.7. Statutory Declarations

On submission only.