

PLAN FOR THE BAN: CANADA ANNOUNCES PLAN TO TACKLE SINGLE-USE PLASTICS

Posted on October 9, 2020

Categories: [Insights](#), [Publications](#)

On October 7, 2020, the Minister of Environment and Climate Change, the Honourable Jonathon Wilkinson, announced Canada's next steps towards achieving a plastic waste-free Canada including which single-use plastics will be banned by the end of 2021.^[1] In the summer of 2019, the Prime Minister announced Canada's plan to ban harmful single use plastics.^[2] Likely due in large part to the crucial demands of the COVID-19 pandemic, there was little word from the federal government as to when and how its plan would come to fruition. However, the Minister's recent announcement and accompanying Discussion Paper^[3] and Science Assessment^[4] demonstrate that Canada is making single-use plastic waste reduction a priority. By improving prevention, collection and innovation when it comes to single-use plastics, Canada is aiming to become a global leader in plastic waste reduction by achieving zero plastic waste by 2030.^[5] Regulations to this effect are expected to be finalized by the end of 2021.^[6]

This bulletin provides a summary of Canada's planned actions to achieve this goal and is the latest update in our "Plan for the Ban" series.

Science Assessment of Plastic Pollution

The Science Assessment of Plastic Pollution commissioned by Environment and Climate Change Canada (ECCC) and Health Canada evaluates the scientific evidence concerning plastic pollution and its impact on the environment and human health.^[7] The Science Assessment estimates that 1% of all plastic waste in Canada enters the environment.^[8] This means that in 2016 alone, 29,000 tonnes of plastic pollution entered the environment in Canada.^[9] Plastics entering the environment have been shown to cause physical harm to both ecosystems and the animals in them.^[10] The Science Assessment also found that plastic waste can be harmful to humans.^[11] Considering these ill-effects, the authors of the Science Assessment recommended that Canada take steps to reduce plastic waste.^[12]

Managing Single-Use Plastics

In response to the findings in the Science Assessment, the federal government will be regulating single-use plastics through amendments to and regulations under the *Canadian Environmental Protection Act* (CEPA),

SC 1999, c 33.^[13]

The Discussion Paper outlines the government's planned management framework for single-use plastics, which establishes the following three-step process for identifying which single-use plastics should be banned or restricted:

- a. characterizing the single-use plastic as being environmentally problematic, value-recovery problematic, or both;
- b. setting management objectives; and
- c. based on the management objectives, choosing the appropriate instrument to achieve the goal.^[14]

In order for a ban to be warranted under this process, a single-use plastic must be considered both environmentally problematic and value-recovery problematic.^[15] In contrast, a problematic single-use plastic that is not value-recovery problematic may be exempt from a ban if it performs an essential function.^[16]

To date, ECCC has identified six single-use plastics that meet the requirements for a ban: plastic checkout bags, stir sticks, six-pack rings, straws, cutlery and food service ware made from problematic plastics such as expanded polystyrene.^[17] The ban of these items is set to come into effect before the end of 2021. However, under this framework, the list of banned single-use plastics will likely grow over time.^[18]

Establishing Performance Standards

Although the ban on single-use plastics took centre stage during the Minister of Environment and Climate Change's announcement, Canada's plan includes more than just a ban. Canada is also taking measures to improve the way it manages plastic waste through prevention, collection and innovation.^[19] The federal government believes that by investing in innovative waste management solutions, it can cut back on greenhouse gas emissions by 1.8 million tonnes per year, while at the same time creating 42,000 jobs for Canadians.^[20]

According to the Discussion Paper, recycling technology cannot keep up with the proliferation of new types of plastics.^[21] To address this challenge, the federal government is considering how product standards for single-use plastics can help engender a consistent and growing market for producers of recycled plastics.^[22] The government proposes to include regulations under CEPA to require minimum levels of recycled content in plastic products and packaging.^[23] Additionally, these regulations will establish technical guidelines and other tools to help companies meet requirements and minimum standards.^[24]

Ensuring End-of-Life Responsibility

To increase recycling and reduce the amount of single-use plastics sent to landfills, the federal government

plans to work alongside the provinces and territories to develop consistent standards that will hold companies that manufacture plastic products or sell goods with plastic packaging responsible for collection and recycling efforts.^[25] According to the Discussion Paper, increasing producer accountability is “one of the most effective and efficient ways of increasing collection and recycling rates and is a cornerstone to achieving [the] Canada-wide objective of zero plastic waste”.^[26]

While some of the provinces (Ontario, British Columbia, Nova Scotia, Prince Edward Island and Newfoundland and Labrador) have taken steps towards implementing their own single-use plastic bans or changing their recycling regimes to reduce plastic waste, others have chosen not to move in this direction. How the provincial and territorial governments will respond to these overtures by the federal government is not yet known. For more information on regulation of single-use plastics at the provincial and municipal level, please click [here](#).

Use of Single-Use Plastics in COVID-19 Prevention

The Discussion Paper also identifies one unique category of single-use plastics that have been key to protecting Canadians during the COVID-19 pandemic: personal protective equipment (PPE).^[27] While ECCC did note the increase in plastic waste and pollution caused by masks, gloves and other PPE, it also recognized the importance of these products in keeping Canadians safe from the transmission of COVID-19. Instead of banning or restricting these items, Canada will focus on managing PPE waste through end-of-life management such as litter prevention and cleanup.^[28]

Conclusion

Although the regulations implementing Canada’s plan to reduce plastic waste may not be finalized for over a year, the Minister of Environment and Climate Change’s announcement on October 7, 2020 provides some insight into Canada’s plan to ensure that single-use plastics “stay in our economy and out of the environment” and achieve its goal of zero plastic waste by 2030.^[29]

While the federal government’s goals seem promising from an environmental and climate change perspective, we can expect that some provinces, municipalities, industries and individuals will consider them unrealistic and harmful to local economies and business. For example, the Government of Alberta believes the ban will hinder its ability to become a recycling hub and global leader in the production of petrochemicals.^[30] What has not yet been discussed is the short and long-term costs to and investments required by all impacted parties arising from the implementation of this plan. We expect these issues will be the focus of Canada’s discussions with stakeholders as it prepares to roll out its regulations over the coming year.

by Talia Gordner and Cody Foggin (Student-at-Law)

[1] Environment and Climate Change Canada, News Release, “[Canada one-step closer to zero plastic waste by](#)

- [2030](#)" (7 October 2020) [News Release].[ps2id id='1' target='']
- [2] Justin Trudeau, Prime Minister of Canada, News Release, "[Canada to ban harmful single-use plastics and hold companies responsible for plastic waste](#)" (June 10, 2019).[ps2id id='2' target='']
- [3] Environment and Climate Change Canada, Discussion Paper, "[A proposed integrated management approach to plastic products to prevent waste and pollution](#)" [Discussion Paper].[ps2id id='3' target='']
- [4] Environment and Climate Change Canada & Health Canada, "[Science assessment of plastic pollution](#)" (October, 2020) [Science Assessment].[ps2id id='4' target='']
- [5] News Release, *supra* note 1; Canadian Council of Ministers of the Environment, "[Canada-wide plan on zero plastic waste: phase 2](#)" (23 July 2020).[ps2id id='5' target='']
- [6] Jonathon Wilkinson, ([Announcement and Media Availability](#) delivered at Gatineau, Quebec 7, October 2020) [Announcement and Media Availability].[ps2id id='6' target='']
- [7] Science Assessment, *supra* note 4.[ps2id id='7' target='']
- [8] *Ibid* at 12.[ps2id id='8' target='']
- [9] *Ibid* at 8.[ps2id id='9' target='']
- [10] *Ibid* at 82.[ps2id id='10' target='']
- [11] *Ibid* at 10.[ps2id id='11' target='']
- [12] *Ibid* at 11.[ps2id id='12' target='']
- [13] Discussion Paper, *supra* note 3 at 3.[ps2id id='13' target='']
- [14] *Ibid* at 6, 8-9.[ps2id id='14' target='']
- [15] *Ibid* at 11.[ps2id id='15' target='']
- [16] *Ibid* at 11.[ps2id id='16' target='']
- [17] Announcement and Media Availability, *supra* note 6.[ps2id id='17' target='']
- [18] *Ibid* at 11.[ps2id id='18' target='']
- [19] News Release, *supra* note 1.[ps2id id='19' target='']
- [20] News Release, *supra* note 1.[ps2id id='20' target='']
- [21] Discussion Paper, *supra* note 3 at 12.[ps2id id='21' target='']
- [22] *Ibid* .[ps2id id='22' target='']
- [23] *Ibid*.[ps2id id='23' target='']
- [24] *Ibid* at 13.[ps2id id='24' target='']
- [25] *Ibid* at 14.[ps2id id='25' target='']
- [26] *Ibid* .[ps2id id='26' target='']
- [27] *Ibid* at 7.[ps2id id='27' target='']
- [28] *Ibid* .[ps2id id='28' target='']
- [29] News Release, *supra* note 1.[ps2id id='29' target='']

[30] Interview of Dale Nally, Alberta Associate Minister of Natural Gas in Omair Quadri, "[Ottawa set to declare plastics as toxic in blow to Alberta](#)" The Globe and Mail (7 October 2020).[ps2id id='30' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2020