

PLAN FOR THE BAN: CANADA'S SINGLE-USE PLASTICS PROHIBITION REGULATIONS REMAIN IN EFFECT PENDING THE FEDERAL COURT OF APPEAL DECISION

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On November 16, 2023, the Federal Court made a big statement through its ruling in [Responsible Plastic Use Coalition v. Canada \(Environment and Climate Change\)](#) (the “**Decision**”) where it struck down the Canadian federal government’s decision to add “plastic manufactured items” to the List of Toxic Substances in Schedule 1 of the [Canadian Environmental Protection Act](#), 1999 (“**CEPA**”) for being unreasonable and unconstitutional. The Decision and what it actually means for businesses who manufacture, distribute, sell, supply or use plastic products in Canada is discussed in our latest Plan for the Ban [bulletin](#).

The federal government has since appealed the Decision and asked the Federal Court of Appeal (“**FCA**”) to stay the judgment of the lower court pending the outcome of the appeal. The FCA granted the stay in a [decision](#) on January 25, 2024, meaning that the regulation of single-use plastics under CEPA remains in effect.

In its decision, the FCA held that if the stay was not granted “irreparable harm would be done to the orderly roll-out of the *Single-use Plastics Prohibition Regulations* and considerable confusion would arise for the many businesses that have moved to comply with their provisions”.^[1] In making this finding, the court considered evidence that many businesses had already switched to alternatives to the single-use plastics that are prohibited by these regulations and others are in the process of doing so.

The FCA also directed that the appeal be expedited and that the parties collaborate so that it may be heard no later than June 7, 2024.

This bulletin is part of our Plan for the Ban series regarding prohibitions and increased regulation of single-use plastics in Canada.^[2] If you have questions on how these decisions or other Canadian plastics regulations may impact your business, please contact the authors of this bulletin.

[1] *Canada (Attorney General) v. Responsible Plastic Use Coalition*, 2024 FCA 18, par 28.

[2] Talia Gordner and Cody Foggin, “[Plan for the Ban: Single-Use Plastic Bans are Rolling Out Across Canada – Are You Ready?](#)” (September 2020); Talia Gordner and Cody Foggin, “[Plan for the Ban: Canada Announces Plan](#)”

[to Tackle Single-Use Plastics](#)” (October 2020); Talia Gordner, Julia Loney and Tess Dimroci, [“Plan for the Ban: Our New Year’s Update of Single-Use Plastics Bans Across Canada”](#) (January 2021); Talia Gordner, Julia Loney and Ralph Cuervo-Lorens, [“Plan for the Ban: Plastics Classified as “Toxic Substance” Under Canadian Environmental Protection Act”](#) (July 2021); Talia Gordner and Julia Loney, [“Plan for the Ban: Canada Announces Timeline for Single-Use Plastics Prohibition”](#) (June 2022); Talia Gordner, Julia Loney and Ralph Cuervo-Lorens, [“Plan for the Ban: Canada Proposes Plastic Labelling Rules and Federal Plastics Registry”](#) (September 2022); Talia Gordner and Julia Loney [“Plan for the Ban: New Consultation Launched for Plastics Labelling Framework and Federal Plastics Registry”](#) (April, 2023); Talia Gordner and Julia Loney [“Plan for the Ban: UNEP Issues Report Offering Insight and Guidance for World’s First Global Plastics Pollution Treaty”](#) (July 2023); Talia Gordner, Julia Loney and Martin Thiboutot [“Plan for the Ban: What the Federal Court’s Decision ACTUALLY Means for Your Business – Your Questions Answered”](#) (November 2023).

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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.

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