

# PLAN FOR THE BAN: OUR NEW YEAR'S UPDATE OF SINGLE-USE PLASTICS BANS ACROSS CANADA

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## Overview

Across Canada, the discussion around single-use plastics continues to evolve. Over the course of 2021, the federal government, along with a number of provincial, territorial and municipal governments, have introduced bans to certain single-use plastic products with the aim of reducing plastic pollution. These bans raise a number of considerations for businesses currently producing, selling or using single-use plastics in their operations.

This is the fourth bulletin in our “Plan for the Ban” series regarding prohibitions and increased regulation of single-use plastics.<sup>[1]</sup> This bulletin provides an updated summary of the current state of single-use plastics legislation across Canada and the changes and trends businesses can expect to see over the next few years.

## Single-Use Plastics Bans: Cross-Country Review

*Canada (Federal)*

On April 23, 2021, the federal government published an Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 (the “**Order**”).<sup>[2]</sup> The Order added “plastic manufactured items” to the list of toxic substances under Schedule 1 of the Canadian Environmental Protection Act, 1999 (“**CEPA**”).

The Order defines “plastic manufactured items” as “any items made of plastic formed into a specific physical shape or design during manufacture, and have, for their intended use, a function or functions dependent in whole or in part on their shape or design. These items can include final products as well as components of products.”<sup>[3]</sup> At this time, the federal government has identified six single-use plastic items that meet its criteria for being subject to restrictions or a ban: (i) plastic checkout bags; (ii) beverage stir sticks; (iii) six-pack rings; (iv) cutlery; (v) straws; and (vi) food packaging and service ware made from “problematic plastics”.<sup>[4]</sup> The meaning of “problematic plastics” was clarified to refer to either environmentally problematic (i.e. plastics meeting criteria such as high rate of disposal in the environment, or causing suspected or actual environmental harm), value-recovery problematic (i.e. plastics meeting criteria such as low recycling rate, or

inability to recycle due to product specifications or lack of recycling technology), or both.<sup>[5]</sup> The federal government also identified two categories of exemption considerations: products performing an essential function (i.e. accessibility, health and safety, security), or products for which no viable alternatives exist (i.e. no available product exists which is able to serve the same function).<sup>[6]</sup>

Part 5 of *CEPA* grants the Canadian government the authority to manage the toxic substances listed in Schedule 1 by way of introducing regulations. By adding “plastic manufactured items” to Schedule 1, the Order allows the federal government to propose risk management measures to address the potential ecological risks associated with those items becoming plastic pollution. The Discussion Paper published by the federal government also provides a management framework for characterizing which single-use plastics are environmentally problematic and/or value-recovery problematic, thus warranting restrictions or a ban.<sup>[7]</sup> It is through this framework that the initial six categories of single-use plastic items were identified by Environment & Climate Change Canada (“**ECCC**”).

On May 18, 2021, an industry coalition launched a court challenge against the Order, arguing that the toxic designation is not supported by science and would result in far-reaching and unintended consequences, including increased costs for small businesses and confusion for consumers.<sup>[8]</sup> On November 12, 2021, plastics manufacturers and environmental groups were granted intervener status to make arguments before the Federal Court. Despite this ongoing legal challenge, the federal government has moved forward with its regulatory process.

On December 25, 2021, the Government of Canada published the proposed *Single-use Plastics Prohibition Regulations* under *CEPA* for public review and comment.<sup>[9]</sup> The proposed regulations prohibit or restrict the manufacture, import and sale of the above six categories of single-use plastic items.

Of note, the proposed regulations incorporate and expand on the concept of characterization as environmentally problematic and/or value-recovery problematic as mentioned above. In order for a ban to be considered warranted under the characterization, the plastic item in question would need to meet both the criteria for environmentally problematic and value-recovery problematic, and not be subject to an exemption.

More specifically, the proposed regulations define foodservice ware containing or made from “problematic” plastics as including clamshell containers, lidded containers, cartons, cups, plates and bowls used for serving or transporting prepared food or drinks (i.e. not requiring further cooking or preparation). However, these single-use plastic items are only considered “problematic” if “made from extruded or expanded polystyrene foam, polyvinyl chloride, oxo-degradable plastics, or if they contain the additive “carbon black.”<sup>[10]</sup> Importantly, the two potential exemption considerations are indicated as being “not applicable” for foodservice ware made from problematic plastics.<sup>[11]</sup> Moreover, the federal government recommends aluminum and paper and

moulded fibre foodservice ware as a readily-available single-use substitute to these “problematic” plastic items.

To help businesses and organizations adapt to the proposed requirements, the Government of Canada has also developed a guidance document.<sup>[12]</sup> This guidance outlines important considerations for businesses when considering alternative products to transition to a circular economy. The guidance document contains a management framework for single-use plastics, which outlines the steps that the government follows in assessing environmental impact and value-recovery considerations of a single-use plastic item. This allows businesses to analyze potential alternatives based on a number of metrics, and consider what measures may be appropriate to manage or reduce such environmental impact and improve value recovery.

The public consultation period with respect to the proposed regulations opened on December 25, 2021 and will continue until March 5, 2022. It is the government’s intention to finalize these proposed regulations as early as late 2022 after considering the comments received.<sup>[13]</sup>

The prohibition on single-use plastic manufacturing and import is expected to come into force one year after the proposed regulations are registered. However, the manufacture and import of single-use plastics for the purposes of subsequent export outside of Canada is not subject to the proposed regulations. The prohibition on the sale of single use plastics is expected to come into force two years after the proposed regulations are registered.

In addition to the exemption considerations noted above, the proposed regulations provide additional specific exemptions to accommodate people with disabilities and those recovering from medical procedures. The proposed regulations allow these individuals to purchase single-use plastic flexible straws for personal use and to access them in medical settings.

## Provinces and Territories

It is likely that there will be some overlap or coordination between the federal and provincial/territorial single-use plastics legislation since recycling is generally regulated at the provincial/territorial and municipal levels. Some provinces and territories have already begun the process of changing their recycling regimes as they relate to single-use plastic items.

The following is a summary of the state of legislation in relation to single-use plastics at the provincial/territorial level.

### Ontario

The Blue Box regulation (the “**Blue Box Regulation**”) under the *Resource Recovery and Circular Economy Act, 2016* came into force on June 3, 2021.<sup>[14]</sup> The Blue Box Regulation introduces full producer responsibility by: (i)

holding producers responsible for their products and packaging throughout their use and disposal; and (ii) enforcing requirements for Blue Box collection systems.

Blue Box materials include products and packaging primarily composed of glass, metal, plastic or paper, or a combination of these materials. A “producer” under the Blue Box Regulation is defined as a person that supplies the above-mentioned materials to consumers in Ontario.<sup>[15]</sup>

While Stewardship Ontario currently operates the Blue Box recycling program, the Blue Box Regulation will shift regulatory authority to the Resource Productivity & Recovery Authority (RPRA) and the responsibility for the collection, reuse, refurbishment and recycling of Blue Box materials to producers. Stewardship Ontario will continue to administer the program throughout the transition period in order to avoid disruption in the Blue Box services provided by municipalities.<sup>[16]</sup>

Starting on July 1, 2023, municipalities and First Nation communities will begin transitioning to the new regulatory framework on a rolling basis through to December 31, 2025 according to the Blue Box Transition Schedule. The Ontario Ministry of the Environment, Conservation and Parks will be consulting with First Nation communities to determine their preferred timing for transition and the schedule will be updated to include these communities. Producers are responsible for transitioning communities on or before the dates provided in the schedule.<sup>[17]</sup>

### *Manitoba*

Manitoba’s Legislative Assembly had previously proposed amendments to *The Waste Reduction and Prevention Act* through Bill 244 to address and reduce the use of single-use plastics, including bags, straws, food and beverage service ware and other single-use plastic items.<sup>[18]</sup> However, the Bill did not proceed past first reading and there are no similar bills currently under consideration.

### *Alberta*

On December 2, 2021, the Alberta government passed Bill 83, the *Environmental Protection and Enhancement Amendment Act* (the “**EPEA Amendment**”) in an effort to enable the creation of extended producer responsibility in the province and reduce the province’s landfill waste.<sup>[19]</sup> The *EPEA Amendment* is intended to set the foundation for a provincial framework that holds manufacturers responsible for recycling their products and developing a circular economy.

The *EPEA Amendment* amends the existing provincial recycling programs regulated under the *Environmental Protection and Enhancement Act*<sup>[20]</sup>, which is Alberta’s general environmental legislation. In particular, the *EPEA Amendment* allows for more flexibility in the types of materials included under or exempted from the provincial recycling programs and facilitates the development of producer-run material collection and recovery

programs. Further, the *EPEA Amendment* allows the government to draft regulations that exempt specified recyclable materials from other regulations under the *Environmental Protection and Enhancement Act* if certain conditions exist, such as exemptions based on designated materials, activities or industry classification.

In spring 2021, Alberta's government gathered input from the public and various stakeholders that focused on the design of an extended producer responsibility framework. This framework includes not just single-use plastics, but also packaging and paper products, and hazardous and special products. The feedback from this first phase of the engagement was summarized in the "What We Heard" report, which was published on November 15, 2021.<sup>[21]</sup> Notably, comments received were generally in-favour of Alberta's proposal to harmonize definitions of single-use plastics with other Canadian jurisdictions.<sup>[22]</sup> Stakeholders were invited to review the report and participate in follow-up discussions, closing on January 14, 2022.<sup>[23]</sup>

Although the *EPEA Amendment* is unclear on the details of the implementation and promotion of extended producer responsibility in the province, it is likely that the framework will be more-fully developed and introduced through forthcoming regulations. The government is expected to release new regulations under the *EPEA Amendment* in 2022.

#### *British Columbia*

Bill 24, which amends British Columbia's *Environmental Management Act* ("**EMA**") came into force on November 25, 2021.<sup>[24]</sup> The *EMA* amendments under Bill 24 introduce province-wide bans on the sale, distribution or use of "single-use products". Although Bill 24 does not provide a definition for single-use products, it is reasonably expected that forthcoming regulations will define these items to include plastic bags, drinking straws, utensils and stir sticks. In addition, the amendments to the *EMA* introduce regulation-making powers for both the Lieutenant Governor in Council and the Minister of Environment. The government is expected to release new regulations designed to prohibit or restrict single-use products under the *EMA* sometime in 2023.

The *EMA* amendments further the Province's efforts under the CleanBC Plastics Action Plan, which launched in July 2021 to allow municipal governments to ban single-use plastics without requiring ministerial approval.

#### *Yukon*

On October 1, 2021, Yukon enacted the *Reduction of Single-use Bags Regulation pursuant to the Environment Act*.<sup>[25]</sup> The single-use plastic bag ban came into effect on January 1, 2022, and the ban will expand to single-use paper bags as of January 1, 2023. While paper bags are being used as an alternative to plastic bags in many jurisdictions, the Yukon government has justified the expanded ban by stating that single-use products, including plastic and paper bags, are resource-intensive and their production and overall use cause pollution

and emissions impacting the environment. Exemptions under the regulation include single-use plastic bags used to carry, hold or deliver restaurant take-out food, prescription bags provided by pharmacists, bags used exclusively as the primary packaging for bulk items (e.g. nuts, grains, etc.), bags used to wrap flowers or hold tires, and bags used as part of a gift-wrapping service.

#### *Other Provinces*

Nova Scotia banned all businesses from providing customers with single-use plastic bags as of October 30, 2020, subject to exemptions for certain items.<sup>[26]</sup> Newfoundland and Labrador banned the distribution of retail single-use plastic bags on October 1, 2020, subject to certain exemptions.<sup>[27]</sup> Similarly, Prince Edward Island has also banned businesses from distributing single-use checkout bags, including paper, plastic, biodegradable or compostable plastic, and reusable bags.<sup>[28]</sup> However, a customer may purchase a paper bag for 15 cents or a reusable bag for \$1 if they specifically request a bag, and there are certain exemptions to the ban for designated situations.<sup>[29]</sup>

While the Quebec government released a draft regulation to extend producer recycling responsibility to manufacturers of most agricultural plastics, there is currently no proposed legislation on banning any single-use plastic.<sup>[30]</sup>

Along with Quebec, Saskatchewan, Nunavut and the Northwest Territories have not proposed provincial legislation on banning any single-use plastic. However, the Northwest Territories has in-place a single-use retail bag program, which charges a fee of \$0.25/bag on all non-reusable plastic, paper and biodegradable bags, subject to a number of exemptions. The fee is collected by the retailer and then passed on to the Environmental Fund established under the *Waste Reduction and Recovery Act*.<sup>[31]</sup>

#### **Municipalities**

Local governments across Canada continue to institute bans on the distribution of certain single-use plastics by introducing municipal by-laws, which do not require provincial approval. For example, cities such as Spruce Grove, Alberta, The Pas, Manitoba and Regina, Saskatchewan have implemented comprehensive single-use plastic bans.<sup>[32]</sup> Moreover, in Nunavut and New Brunswick, a number of municipalities are in the process of implementing or developing bans on the retail distribution of single-use bags.<sup>[33]</sup>

#### **Planning Ahead for Businesses**

It is clear that Canada is moving towards the ban of single-use plastics and the shifting of plastic recycling costs to manufacturers and producers. As evidenced by the developments we have been monitoring over the past couple years, existing, pending and future regulations will likely continue to expand over time resulting in more plastic products and packaging being banned or restricted creating an increased need for innovation

and production in the area of reusable, recyclable and biodegradable alternatives for businesses and consumers.

Given the staged implementation of new regulations and the pending federal guidance on plastic management, businesses should consider alternatives to single-use plastics produced, sold, used or otherwise relied on in their operations.

[1] [ps2id id='1' target=''][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 Ralph Cuervo-Lorens, “[Plan for the Ban: Plastics Classified as “Toxic Substance” Under Canadian Environmental Protection Act](#)” (July 2021).

[2] [ps2id id='2' target=''][Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999: SOR/2021-86](#), (23 April 2021) C Gaz II.

[3] [ps2id id='3' target='']*Ibid.*

[4] [ps2id id='4' target='']Environment and Climate Change Canada, Discussion Paper, “[A proposed integrated management approach to plastic products to prevent waste and pollution](#) [Discussion Paper].

[5] [ps2id id='5' target='']*Ibid.*

[6] [ps2id id='6' target='']*Ibid.*

[7] [ps2id id='7' target='']*Ibid* at 6, 8-9, 11.

[8] [ps2id id='8' target='']“[New Canadian industry coalition launches legal challenge to “toxic” listing](#)”, Responsible Plastic Use Coalition, May 19, 2021.

[9] [ps2id id='9' target=''][Single-Use Plastics Prohibition Regulations](#) (December 25, 2021).

[10] [ps2id id='10' target='']*Ibid.*

[11] [ps2id id='11' target='']*Supra* note 3.

[12] [ps2id id='12' target=''][Guidance for selecting alternatives to the single-use plastics in the proposed Single-Use Plastics Prohibition Regulations](#) (December 24, 2021).

[13] [ps2id id='13' target=''][Government of Canada moving forward with banning harmful single-use plastics](#), Environment and Climate Change Canada, December 21, 2021.

[14] [ps2id id='14' target='']*Blue Box*, O Reg. 391/21.

[15] [ps2id id='15' target='']*Ibid*, ss. 9-13.

[16] [ps2id id='16' target='']Resource Productivity & Recovery Authority, [Blue Box](#) (accessed January 14, 2022).

[17] [ps2id id='17' target='']Resource Productivity & Recovery Authority, [Blue Box Transition Schedule: Explanatory Note](#) (June 1, 2021).

[18] [ps2id id='18' target='']See for example, [Bill 244: The Waste Reduction and Prevention Amendment Act](#)

[\(Reducing Single-Use Plastics\)](#)

[19] [ps2id id='19' target=''][Bill 83, Environmental Protection and Enhancement Amendment Act, 2021](#), 2nd Sess, 30th Leg, Alberta, 2021.

[20] [ps2id id='20' target=''][Environmental Protection and Enhancement Act](#), RSA 2000, c E-12.

[21] [ps2id id='21' target='']["What we heard: Extended Producer Responsibility \(EPR\) for single-use plastics, packaging, paper products, and hazardous and special products."](#) Alberta Ministry of Environment and Parks, November 15, 2021.

[22] [ps2id id='22' target=''][Ibid](#) at p. 9,

[23] [ps2id id='23' target=''][Extended Producer Responsibility Engagement](#), Government of Alberta.

[24] [ps2id id='24' target=''][Bill 24, Environmental Management Amendment Act, 2021](#), 2nd Sess, 42nd Parl, British Columbia, 2021.

[25] [ps2id id='25' target=''][Reduction of Single-use Bags Regulation](#), YOIC 2021/131.

[26] [ps2id id='26' target=''][Bill 152, An Act to Reduce the Use of Plastic Bags and Other Single-use Products](#), 2nd Sess, 63rd Leg, Nova Scotia, 2019.

[27] [ps2id id='27' target=''][Plastic Retail Bag Regulations](#), NLR 1/20.

[28] [ps2id id='28' target=''][Plastic Bag Reduction Act](#), c P-9.2.

[29] [ps2id id='29' target=''][Ibid](#).

[30] [ps2id id='30' target=''][Regulation respecting the recovery and reclamation of products by enterprises](#), CQLR c Q-2, r 40.1.

[31] [ps2id id='31' target=''][Single-Use Retail Bag Regulations](#), R-148-2009, as amended by R-100-2010 and R-031-2020.

[32] [ps2id id='32' target='']The City of Spruce Grove, [Bylaw C-1109-20](#); Town of the Pas, [Prohibit Sale of Distribution of Plastics, By-Law No. 4542](#); City of Regina, [The Plastic Checkout Bag Ban Bylaw, 2020, Bylaw No. 2020-49](#).

[33] [ps2id id='33' target='']Rankin Inlet, [Bylaw No. 322](#) ; Baker Lake [Bylaw Passed](#); Iqaluit [Inviting Input for Single Use Plastic Reduction Strategy](#); Saint John [By-Law No. L.G.-12, A By-law respecting the Reduction of Single Use Plastic Bags in The City of Saint John](#); Moncton [By-Law #P-619 By-Law Respecting the Reduction of Single Use Plastic Bags in the City of Moncton](#).

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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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