Closing the gaps: Single-use plastic regulations, recycling and labelling rules in Canada

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Faced with the consequences of plastic pollution on the environment and human health, governments across Canada are confronting the challenge by developing strategies to achieve zero plastic waste. The result is a proliferation of regulations by all orders of government with sometimes overlapping measures, as in the case of federal and municipal bans on single-use plastics.

This article provides an update on the status of single-use plastic regulations and other regulatory measures – including recycling – taken to reduce the impact of plastics in the environment across Canada, and provides an overview of upcoming federal regulations on recycled content and labelling rules for products.

Here's what you need to know regarding the regulatory landscape of plastics in Canada today:

- On Dec. 20, 2022, the federal *Single-use Plastics Prohibition Regulations* (the SUPR) came into force. The regulations will gradually ban a number of single-use plastic (SUP) items starting with a ban on the manufacturing and importing of these items as of Dec. 20, 2022.
- Provinces regulate the recycling of residential packaging and paper waste through what are known as blue box programs, which are run by municipalities. Most provinces have passed, or are in the process of passing, legislation that makes the producers of plastic packaging fully responsible for both the operation and the financing of these recycling programs.
- Certain provinces, including Québec, Ontario and B.C., also regulate SUPs through their blue box programs. Producers of SUP items pay fees for SUP items that they introduce into the market. More provinces, including Alberta, are starting to take a similar approach.
- B.C. is currently consulting on the expansion of its residential blue box program to include industrial, commercial and institutional (IC&I) packaging and paper products.
- Municipalities, including Vancouver, Montréal, Laval and Calgary, have passed or are in the process of passing local bans on certain SUP items.

- Future action at the federal level includes recycled content for new plastic items as well as regulations on the use of environmental labels to minimize the practice of greenwashing.

Federal ban on single-use plastics

On Dec. 20, 2022, the federal SUPR under the *Canadian Environmental Protection Act* (CEPA) came into force banning checkout bags, cutlery, foodservice ware, ring carriers, stir sticks and straws (excluding flexible straws).

The ban comes into effect gradually, starting with a ban on the manufacturing and importing for sale into Canada on Dec. 20, 2022, followed with a ban on sales starting on Dec. 20, 2023, and concluding with a ban on exports by Dec. 20, 2025. By Dec. 20, 2025, all measures under the SUPR are expected to be in effect. For more information on the SUPR, please read our previous article.

Notably, whether an item is single-use under the SUPR is not defined by material type but by whether it meets certain performance criteria. For example, plastic bags are not considered single-use if they meet the definition of "fabric" under the *Textile Labelling Act* and can be used to carry 10 kg over a distance of 53 m 100 times.

Regulated parties must perform certain laboratory tests to prove that their items are not captured by these regulations. The federal government has indicated that it is currently developing testing methods for some of the SUP items to assist regulated parties understand how their products will be assessed for compliance with the regulations. These methods, however, will not be mandatory. Regulated parties are ultimately responsible for ensuring that laboratory procedures and equipment are suitable for the specified testing requirements.

Legal challenges

The plastics industry and certain provinces have already challenged the ban thus leaving not only the SUPR but any of Canada's actions to regulate plastics under CEPA in limbo. In May 2021, an application was filed in the Federal Court by industry groups challenging the government's decision to add "plastic manufactured items" to the List of Toxic Substances at Schedule 1 of CEPA.[1] This listing provided the authority for the enactment of the SUPR. The provinces of Alberta and Saskatchewan have intervened in the case and the application is scheduled to be heard in March 2023. On July 15, 2022, shortly following the enactment of the SUPR under CEPA, plastic industry groups filed another application in the Federal Court to contest that enactment.

Municipal bans on single-use plastics

Faced with the challenge of SUPs being discarded at high rates on city streets and in municipal recycling systems, an increasing number of municipalities have introduced local bans on SUPs. Most municipal bans focus on plastic bags. However, some bans are more ambitious, targeting items such as utensils and food containers.

Victoria, Vancouver, Jasper, Prince Albert, Laval and Montréal have introduced by-laws banning or imposing fees on certain SUPs such as plastic bags, plastic cutlery and

expanded polystyrene (*i.e.*, “Styrofoam”) food service items. On Jan. 17, 2023, Calgary also approved a by-law set to come into effect in 2024 to ban certain SUP items and impose fees on eco-friendly alternatives. Other cities, such as Toronto, are developing mandatory measures to restrict single-use and takeaway items.

These measures are adopted by each municipality individually, resulting in varying standards across the country and within provinces. The lack of consistency among municipal approaches to regulating plastic poses a challenge to businesses’ compliance. For example, a grocery chain in Alberta was permitted to provide customers with plastic checkout bags in most of the province, but not in the municipalities of Fort McMurray, Devon, or Wetaskawin.

Note that municipal bans may go further in banning SUPs than the federal ban. In addition to municipalities, a few provinces have also adopted province-wide bans, starting with Prince Edward Island in 2019, followed by Newfoundland and Labrador, and Nova Scotia. Businesses should not assume that compliance with the federal ban will be sufficient in ensuring compliance with local or provincial bans on SUPs, which may go further than the federal ban.

Provincial recycling regimes

Bans on SUP items, whether at the federal, provincial or municipal level, typically target harmful and unrecyclable plastic items. Plastic packaging, however, continues to be necessary for most products distributed in Canada and is often recyclable. As such, provinces frequently regulate the recycling of plastic packaging using different policy approaches.

While some Canadian provinces have historically chosen stewardship approaches to recycling, most are moving in the direction of extended producer responsibility (EPR). Both approaches make industry responsible for the waste generated from their products. However, in the case of stewardship programs, producers are usually responsible for making financial contributions to, but not fully covering, the cost of municipal recycling programs. Under EPR, producers generally bear full financial as well as operational responsibility for the waste generated from their products. This means that in addition to fully funding recycling programs, producers also will pick up the recyclable materials at residential curbsides and arrange for their recycling.

Most provinces across Canada have had decades of experience with stewardship programs. However, most, including British Columbia, Ontario, Québec, Alberta, Saskatchewan, Manitoba, and New Brunswick have taken steps to implement full EPR regimes for paper and plastic packaging, as well as for beverage containers.

Most provinces with full EPR regimes are also taking measures to strengthen or expand those regimes. In July 2022, Québec introduced measures to include online sales from out-of-province producers and to include SUPs in the products obligated under its EPR regulations. Following criticism from stakeholders, Ontario adopted the long-awaited regulation to impose administrative monetary penalties on producers and producer responsibility organizations that fail to meet their EPR obligations. B.C. is now also considering expanding its blue box program to include waste from the IC&I sector – a first in the country.

However, current provincial approaches to EPR continue to differ in a number of ways including in the materials targeted, recycling targets and obligated entities. Such a lack of harmonization was addressed in the recent Canadian Council of Ministers of the Environment "Guidance to Facilitate Consistent Extended Producer Responsibility Policies and Programs for Plastic". The federal government has announced an intention to support provincial and territorial governments as they work to harmonize their EPR programs. For the time being, businesses should familiarize themselves with the recycling regimes of each province where they supply obligated materials while harmonization efforts remain ongoing.

Upcoming federal regulations on plastics

While bans and recycling measures are frequently in the news, other regulatory measures may be necessary to help current regulatory approaches to reduce plastic waste achieve their ambitions. The federal government has announced that it will introduce regulations imposing recycled content standards for certain plastic products and rules concerning the labelling of plastic products.

Recycled content regulation

The federal government has announced plans to make plastic packaging in Canada contain at least 50 per cent recycled content by 2030. The proposed recycled content regulations have not yet been published and are expected in Fall 2023. Their main goal is to strengthen market demand for recycled plastics, which would support provincial recycling regimes by creating market pressures for increased collection, sorting and recycling of plastic waste.

Based on the technical document published by the government, the regulations will prescribe that certain plastic manufactured items should have minimum amounts of recycled content. Furthermore:

- The regulations are likely to take a product-based approach to imposing recycled content requirements with bottles (not used for food), waste bins, garbage bags, being among the items being considered.
- Packaging will be targeted in the initial version of the proposed regulations.
- Food safety will be a key consideration and exemptions will be provided for packaging that is in direct contact with food.
- Acceptable recycled content has yet to be defined and may include both pre-consumer and post-consumer content.

The regulation if introduced will affect the manufacturing, importing and selling of the regulated items and may impact businesses across the supply chain.

Regulating environmental labelling

Increased consumer interest in buying environmentally friendly products is prompting governments to introduce rules to prevent false environmental claims, a practice also known as "greenwashing". In the United States, the Green Guides for the Use of

Environmental Claims drafted by the US Federal Trade Commission were recently revised to address the heightened risk of consumer exposure to greenwashing claims.

Canada also intends to introduce laws regulating environmental claims in products that are likely to mislead consumers into making purchasing decisions. This includes the use of the Möbius Loop (also known as “chasing arrows” symbol), which is widely mistaken to signal that a product is recyclable. In actuality, the symbol only indicates the type of plastic that makes up the packaging or product (indicated by the number inside the symbol).

Although the outline of the regulations has not yet been determined, it is expected that any claims of recyclability or compostability and the like will have to be assessed against objective compliance mechanisms such as a calculator, guideline or third-party labelling program. Recyclability claims are expected to be limited to items that are reliably recyclable in Canadian facilities and on the market. Mechanisms will need to be in place to ensure that compliance can be verified on request by government. In addition, a producer would need to explain, in writing, how an item is recyclable or not to anyone who asks (although they may be able to do so through their company’s website, the use of QR codes or other digital labels).

Canada does not currently have specific legislative requirements on the use of environmental claims in packaging and on Nov. 4, 2021, it also archived a guide on environmental claims. Despite this, the *Competition Act* prohibits businesses from making false or misleading claims to promote a service, product or business interest. This includes false environmental claims. To determine whether a claim regarding a product is false or misleading, courts consider not only the literal meaning of the claim but also its "general impression". Therefore, while the proposed labelling regulations are outstanding, businesses may be still subject to fines and penalties for making false environmental claims.

Conclusion

Government regulations on plastics throughout Canada are intended to deliver a total policy framework providing not only for the reduction in the consumption of plastics materials such as through the implementation of plastic bans or recycled content standards but also to ensure the recycling of plastics at end-of-life. These measures are increasing throughout Canada as lessons are learned from current regulatory approaches not only in this country but also abroad. In the interim, businesses will need to stay alert to developments as measures are not yet harmonized with overlapping or different approaches being taken by governments at all levels.

For practical advice on how the current regulatory regimes on plastics impact your business, please reach out to one of the key contacts listed below.

[1] T-824-21, RESPONSIBLE PLASTIC USE COALITION ET AL v. THE MINISTER OF THE ENVIRONMENT

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