

Plastics in the Spotlight Part 2

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Since we wrote about "[Plastics in the Spotlight](#)", there have been further developments in Canada. The Philippines shipment has been returned to Canada, additional countries have rejected waste shipments, and Federal, provincial and municipal governments across Canada are entertaining legislative responses and plastic bag bans.

Canadian Waste in Foreign Places

China's 2017 ban on the import of foreign garbage, including plastic has contributed to an increase of waste being shipped to various overseas locations.¹ From 1992 to 2016, China imported 45% of the world's total plastic waste. Following the ban, illegal recycling factories began operating in developing countries to take advantage of the demand, by burning or burying plastic scraps.²

On June 29th, 2019, a ship carrying 69 storage containers of Canadian garbage and e-waste arrived in Vancouver from the Philippines.³ The containers were the subject of tensions between the Canadian and Philippines government, resulting from the mischaracterization of waste sent to the Philippines as recyclable plastic. When the Philippines government ultimately discovered that the containers contained regular garbage, they demanded the waste be sent back to Canada. Canada eventually agreed to pay for the return of the majority of the containers. The waste is being taken from Vancouver to an energy-from-waste facility, where it is being incinerated. Shipping the containers back to Canada cost the government \$1.14 million, plus an additional \$375,000 for the incineration.

¹ Aria Bendix, "Staggering photos show one small town covered in 19,000 tons of plastic waste", *Business Insider*, (28 May 2019). Retrieved from: <<https://www.businessinsider.com/malaysia-town-plastic-waste-china-photos-2019-2>>

² *Ibid.*

³ Sean Boynton, "Ship carrying 69 containers of garbage arrives in Vancouver after journey from Philippines", *Global News*, (29 June 2019). Retrieved from: <<https://globalnews.ca/news/5445953/canadian-trash-arrives-philippines/>>

In a move similar to the Philippines, Malaysia has vowed to start sending back any mischaracterized waste to its country of origin⁴. The Minister of Energy, Technology, Science, Environment and Climate Change stated that waste is being brought into the country in violation of environmental law. So far, Malaysia has identified 14 alleged offenders, including the United States and Canada.⁵

Additionally, Environment and Climate Change Canada is looking into claims from the Cambodian government that 13 Canadian shipping containers were discovered in the country's main port in Sihanoukville.⁶ The Cambodian government has stated that they oppose any import of plastic waste and lubricants for recycling. Similar to the scenario in Malaysia, the origin of the Canadian-identified waste in Cambodia is unknown. Since federal recyclable laws were amended three years ago, Ottawa has not issued any permits for Canadian companies to ship waste overseas.⁷

Federal and Provincial Reports, Bans and Legislative Responses

Canadian jurisdictions are scrambling to develop a plastics strategy that does not rely on export.

Prince Edward Island's *Plastic Bag Reduction Act* recently came into force on July 1, 2019, making it the first province to ban plastic bags.⁸ The *Act* prohibits businesses from providing plastic bags to customers.

The Ontario government is contemplating a ban on single use plastics in its discussion paper, released this spring⁹ and announced the appointment of a special advisor on recycling and plastic waste. The special advisor's report is expected this summer on how to resolve plastic waste and litter.¹⁰ The solution is expected to include measures to: improve recycling, increase the amount of products that can go to the blue box and ensure producer responsibility.

⁴ Rozanna Latiff, "Malaysia to send 3,000 tonnes of plastic waste back to countries of origin", *Reuters*, (28 May 2019). Retrieved from: <<https://www.reuters.com/article/us-malaysia-waste-idUSKCN1SY0M7>>

⁵ *Ibid.*

⁶ Catharine Tunney, "As Cambodia complains about trash exports, environmentalist urge Canada to ban practice", *CBC News*, (21 July 2019). Retrieved from: <<https://www.cbc.ca/news/politics/garbage-pan-plastics-basel-1.5218031>>

⁷ Mia Rabson, "Canada hasn't issued any permits for companies to ship waste, government says", *CBC News*, (29 May 2019). Retrieved from: <<https://www.cbc.ca/news/politics/garbage-recycle-permits-mckenna-1.5154278>>

⁸ Nancy Russell, "P.E.I. prepares for new rules on plastic checkout bags", *CBC News*, (26 June 2019). Retrieved from: <<https://www.cbc.ca/news/canada/prince-edward-island/pei-plastic-checkout-bag-ban-preparations-1.5189684>>

⁹ Reducing Litter and Waste in our Communities Discussion Paper https://prod-environmental-registry.s3.amazonaws.com/2019-03/Reducing%20Litter%20and%20Waste%20in%20Our%20Communities%20Discussion%20Paper_0.pdf

¹⁰ Ministry of the Environment, Conservation and Parks, "Ontario To Tackle Plastic Litter and Waste & Revamp Recycling", News Release, (7 June 2019). Retrieved from: <https://news.ontario.ca/ene/en/2019/06/ontario-to-tackle-plastic-litter-and-waste-revamp-recycling.html?utm_source=ondemand&utm_medium=email&utm_campaign=p>

In the meantime, the federal government has announced a plan to ban single-use plastic by 2021 and to introduce standards for manufacturers of plastic products and companies that sell items with plastic packaging to become responsible for their waste. Both commitments support the previously developed Strategy on Zero Plastic Waste action plan.¹¹

The federal ban of single-use plastics would be achieved through the *Canadian Environmental Protection Act (CEPA)*. It is unclear what the provision under the *CEPA* will look like. However, twelve ocean conservancy and environmental groups have requested that Canada add “any plastic generated as a waste, or discharged from the use or disposal of products or packaging”, to the Schedule 1 List of Toxic Substances under *CEPA*.¹² The specific products and measures to be included in the *Act* will follow a State of the Science assessment which is currently underway.¹³ The federal government has indicated they may take additional regulatory action to regulate the percentage of recycled content in a product, in addition to the product’s capability to be recycled or repaired.¹⁴

These measures will complement a complete ban on the manufacturing and importing of plastic microbeads that came into force under the *Microbeads in Toiletries Regulations* on July 1, 2019.

Municipal Plastic Bag Bans

On the local level, municipalities across the country have introduced single-use plastic bag bans. However in a recent decision by the British Columbia Court of Appeal¹⁵, the Court ruled that the City of Victoria’s plastic bag ban required approval by the Minister of Environment under the *Community Charter*.¹⁶ Under the *Charter*, environmental legislation requires provincial approval to take effect. While the City of Victoria argued that the ban was business legislation, the Court looked to the city’s public communication about the bylaw described as a measure to promote the health of oceans and beaches around the world.¹⁷ It is unknown at this point how this decision will affect other B.C. municipalities with plastic bag bans in effect.

¹¹ Unknown Author, “Government of Canada taking action to reduce plastic pollution”, *Government of Canada website*, (10 June 2019). Retrieved from:

<<https://pm.gc.ca/eng/news/2019/06/10/government-canada-taking-action-reduce-plastic-pollution>>

¹² Unknown Author, “Twelve environmental organizations call on the Canadian government to take immediate regulatory action on plastic waste and pollution”, *Environmental Communication Options’ Media Releases*, (6 June 2019). Retrieved from:

<<http://www.huffstrategy.com/MediaManager/release/Ocean-Legacy-Foundation--Surfrider-Foundation-Canada/6-6-19/Twelve-environmental-organizations-call-on-the-Canadian-governmen/3603.html>>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Canadian Plastic Bag Assn. v Victoria (City)*, 2019 BCCA 254.

¹⁶ SBC 2003, c 26, s 9(3).

¹⁷ *Supra* note 14 at para 53.

A plastic bag ban was considered for Toronto in 2012.¹⁸ While city councillors had initially voted in favour of a full ban on single-use plastic bags, they ultimately decided not to proceed following the threat of legal action.

Currently, municipalities in Alberta, Manitoba, New Brunswick and Quebec have plastic bag bans in effect.¹⁹ But does this signal that plastic bag bans would be upheld in a constitutional challenge? For municipalities that don't yet have bans in effect, what does plastic bag recycling infrastructure look like? Will infrastructure need to change to adjust to losing the export option? To what extent could a robust producer responsibility framework contribute?

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¹⁸ Unknown Author, "Toronto plastic bag ban decision reversed", *CBC News*, (28 November 2012). Retrieved from: <<https://www.cbc.ca/news/canada/toronto/toronto-plastic-bag-ban-decision-reversed-1.1177902>>

¹⁹ Retail Council of Canada, "Shopping bag regulations across Canada". Retrieved from: <<https://www.retailcouncil.org/resources/quick-facts/regulations-and-bylaws-on-shopping-bags-in-canada/>>