

Director, Plastics and Marine Litter Division Environment and Climate Change Canada Gatineau, Quebec K1A 0H3

November 30, 2020

Dear Director, Plastics and Marine Litter Division:

# RE: Discussion on A Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution

The Environmental Law Centre (ELC) is a non-profit society that operates Canada's largest public interest environmental law clinic in partnership with the University of Victoria Faculty of Law. The ELC has been advocating for a federal zero-plastic waste strategy for several years.

The ELC applauds the Government of Canada's commitment to ban or restrict the use of harmful single-use plastics as part of its broader target of zero plastic waste by 2030. Plastic waste presents a serious, widespread threat to wildlife, ecosystems, and human health, and moving toward a circular economy with zero net plastic waste is an urgent priority.

We are supportive of many aspects of the *Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution* (the "*Proposed Management Approach*"). In particular, we agree that banning and/or restricting harmful single-use plastics is a priority, and support the proposal to establish minimum recycled content standards for plastics producers. We also support the Government of Canada's commitment to work with provinces and territories to promote extended producer responsibility.

We have released several detailed reports containing recommendations for legal and policy reform at the federal level. As you develop the federal plastics strategy, we ask that you carefully consider:

- <u>Enhancing Plastic Recycling in Canada (2020)</u>, which reviewed international academic literature to identify key legal and policy instruments that can support a circular economy for plastics.
- <u>The Case for Reform: British Columbia Must Regulate Single-Use Plastics (2019)</u>, which made recommendations to reform British Columbia's approach to plastics regulation and called for bans on a number of single-use plastics.
- <u>A National Strategy to Combat Marine Plastic Pollution (2018)</u>, which called upon the federal government to develop a coordinated, inter-jurisdictional plan to address marine plastic pollution.
- <u>Seven Reforms to Address Marine Plastic Pollution (2017)</u>, which made recommendations to support a broad Canadian action agenda to prevent and remediate marine plastic pollution.

# www.elc.uvic.ca : elc@uvic.ca

**On the issue of banning and restricting single-use plastics**, please carefully consider our detailed comments at pp. 10-20 of <u>Seven Reforms to Address Marine Plastic Pollution</u> and pp. 10-49 of <u>The Case for Reform: British</u> <u>Columbia Must Regulate Single-Use Plastics</u></u>. For a detailed discussion of how federal jurisdiction can be invoked to ban and restrict such products, see p. 4 of <u>A National Strategy to Combat Marine Plastic Pollution</u>.

**On the issue of establishing minimum recycled content standards for plastic producers**, see pp. 40-46 of *Enhancing Plastic Recycling in Canada*. For a discussion of the related issues of eco-design requirements and green government procurement policies, see pp. 29-37 and pp. 66-51 of the same ELC report.

On the issue of promoting extended producer responsibility, see pp. 32-36 of <u>Seven Reforms to Address Marine</u> <u>Plastic Pollution</u>; and see pp. 12-18 of <u>Enhancing Plastic Recycling in Canada</u>.

Note that the ELC report Enhancing Plastic Recycling in Canada (2020) recaps expert-endorsed strategies to reduce plastic waste and move toward a circular plastics economy, including:

- Plastic disposal bans, which prohibit the disposal of recyclable materials into the waste stream;
- **Waste levies**, which apply a fee to waste being sent to a solid waste site or facility, to encourage reduction, re-use and recycling;
- Use or product bans on the usage, production or import; on specific material composition types (such as polystyrene or "Styrofoam"); and/or on specific product types;
- **Financial instruments**, such as (i) a tax or fee on virgin resins, which can make recycled plastics more economically attractive to manufacturers; (ii) adjusting taxes on non-recycled versus recyclable plastic products to make recycled products more economically attractive to consumers; and (iii) deposit-refund schemes, which can enhance extended producer responsibility schemes;
- **Eco-design and eco-labelling requirements**, such as requirements or incentives for manufacturers to switch to more eco-friendly packaging; and
- Green government procurement policies to encourage the manufacture of greener products, and to support the Government of Canada's commitment to divert at least 75 per cent of plastic waste from federal operations by 2030

This ELC report goes on to identify key management considerations, provide case studies of jurisdictions where these strategies have been successfully implemented, and identify principles to support implementation.

In conclusion, taking action to address the devastating environmental impacts of plastic waste in Canada will require developing a comprehensive, multi-faceted approach that draws upon lessons learned in other jurisdictions. Developing additional policy and legal strategies to complement the proposed strategies will strengthen Canada's approach and further the goal of reducing plastic waste.

We would be pleased to discuss any matters in this submission further and look forward to future consultation on the *Proposed Management Approach*. (Final Note: We have reviewed the Proposed Management Framework to Regulate Single-Use Plastics, further, and our comments can be found in Appendix A, below.)

Sincerely,

Calvin Sandtom

Calvin Sandborn, QC Legal Director

Frances Ankenman Articled Student

## APPENDIX A: Comments on Proposed Management Framework Approach to Regulate Single-Use Plastics

- In considering whether innovative or non-conventional plastics, such as compostable, bio-based or biodegradable plastics, should be exempted from a ban or a restriction on certain harmful single-use plastics, we would refer your attention to our <u>The Case for Reform: British Columbia Must Regulate</u> <u>Single-Use Plastics</u> report, at pages 21 to 24, in which we outline a number of concerns that are raised by exempting "green" plastics from regulation. In short, if the Government of Canada is considering regulatory exemptions for non-conventional plastics, it is essential that standards are developed to ensure that such plastics are fully biodegradable if left in the natural environment, and compostable if discarded in a dedicated compost waste stream.
- The Framework states no viable alternatives to cigarettes exist. However, <u>biodegradable filter</u> <u>technologies have been developed</u>. Cigarettes should therefore meet the Framework criteria and be subject to restrictions.

### Step 2: Setting Management Objectives

• The Framework identifies both bans and restrictions as possible management approaches. While the Framework makes reference to the waste management hierarchy, it is not clear what situations would prefer one approach over the other. We therefore recommend explicitly integrating the waste management hierarchy into the Framework to acknowledge that management approaches that ban or reduce single-use plastic production should be prioritized over approaches that favour end-of-life management, like recycling.

### Step 3: Instrument Choice

• The Framework states that Environment Canada's *Instrument Choice Framework for Risk Management under the Canadian Environmental Protection Act, 1999* will be used to identify risk management instrument choice. However, **the Framework does not define how criteria will be weighted. It is critical that "environmental effectiveness and the achievement of the management objective" is treated as a primary factor**. Conversely, stakeholder acceptability, while desirable, should not be given so much weight that it could prevent approval of otherwise environmentally effective management actions. Indeed, management instruments will require the plastics industry to adjust and likely bear short-term costs, which could lead to industry resistance.