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An Opportunity not to be Wasted: Reforming Ontario's Recycling Program

by
Aaron Jacobs

- Ontario's efforts to update its recycling policy have been marked by bumps and false starts. From the poorly orchestrated 2010 roll-out of eco-fees, to recent failures of legislative changes, the province has been repeatedly forced back to the drawing board amid intense public debate.
- In 2015, Ontario is preparing new legislation for recycling and waste management that will outline who is responsible for recycling in the province and who pays for it. These issues are very much alive in other provinces as well. What lessons can they provide?
- Until now, Ontario has relied on government-mandated industry collectives to manage recycling. Instead, Ontario should follow the lead of other provinces, notably programs in Manitoba and B.C., and make individual producers responsible for recycled products while permitting them to achieve recycling goals as they see fit.

Recycling and waste management are fraught issues in many Canadian jurisdictions. Who should be responsible for recycling programs? And who should pay? What is the most effective program design based on provincial experience so far?

I examine these issues from the perspective of extended producer responsibility (EPR), a waste management strategy under which the party or company that produces a good holds responsibility for the waste it creates. EPR is a recent concept, and departs from traditional models where household waste is collected and managed by government and funded by taxpayers.

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There is an increasing global consensus that EPR is superior to a traditional taxpayer-funded system. However, there is significant debate about how governments should implement EPR programs. The challenge lies in allocating the physical and financial responsibility for end-of-life management. Should responsibility for these separate aspects rest with individual companies or a government-mandated industry organization?

In Canada, most provinces have experimented with different varieties of EPR, with varying degrees of success. In particular, Ontario will likely be introducing new and more comprehensive EPR legislation in the coming months, hoping to resolve the problems its EPR programs have encountered in their brief history to date.

In this E-Brief, I recommend that provinces implement EPR in a manner that makes individual producers responsible for end-of-life management while permitting collective arrangements to achieve that goal. This arrangement is termed "individual producer responsibility." I use examples from successful provincial systems, including British Columbia's packaging and printed paper program and Manitoba's beverage container program to illustrate how this has been accomplished.

Ontario and other provinces should design EPR programs that allow firms maximum freedom of contract to engage third-party waste managers. If producers choose to meet their targets collectively, such collective bodies should be self-funded, non-profit and focused on cost reduction. In contrast to the program put forward in Ontario's recently abandoned EPR legislation, Bill 91,[1] I also recommend that EPR programs lessen municipal bargaining power, remain agnostic on visible fees for consumers, take a broader spectrum of interests into account, and emphasize interprovincial harmonization.

Out with the Old: The Traditional Approach

Traditionally, residential, and some commercial, waste collection has been structured as a utility; funded by general taxation and performed by municipalities as a public service to residents. Such systems divorce producers and consumers of goods from the administrative and environmental costs of managing the waste they produce. The result is that the parties responsible for the production of waste have no strong incentive to reduce the environmental harm caused by that waste or decrease the costs associated with its collection, processing and disposal. In addition, such systems may be unfair, in that those who produce significant amounts of waste pay the same costs (through their taxes) as those who produce little.

In the past few decades, EPR has emerged as a potential solution to these problems.[2] EPR systems attempt to assign the costs of waste to those who produce it, prompting producers to innovate and seek efficiencies to reduce expenses. In the short term, EPR seeks to reduce the cost of waste and recycling programs and increase recovery rates. Its long-run goal is to encourage producers to move towards "design for environment" (DfE) principles, opting to produce goods that are more durable, less wasteful, and more environmentally friendly. That being said, most products are manufactured and packaged at a global or supra-national level, making Canada-specific policies unlikely to drive DfE on their own.

1 Ontario's Bill 91, or *Waste Reduction Act*, 2013, stimulated much debate before it died on the legislative table when the provincial election was called for June 2014.

2 For example, EPR is championed by the OECD (see OECD 2006) and the Canadian Council of Ministers of the Environment (see CCME 2014).

Table 1: Individual or Collective Physical and Financial Responsibility

	Individual Financial Responsibility	Collective Financial Responsibility
Individual Physical Responsibility	• Cannot take advantage of economies of scale without freedom to contract. • High sorting costs but no fee apportionment costs. • Does not provide for orphaned or historical goods. • E.g., Jura Elektroapparate AG, a Swiss coffee maker[a]; uncommon model.	• Cannot take advantage of economies of scale. • High sorting and moderate start-up costs. • Some ability to provide for orphaned and historical goods. • Uncommon model due to the number of downsides.
Collective Physical Responsibility	• Capitalizes on economies of scale. • Low sorting costs but high start-up costs. • Provides for orphaned and historical goods. • E.g., Multi-Material British Columbia, Manitoba's Canadian Beverage Container Recycling Association.	• Capitalizes on economies of scale. • Low sorting costs but moderate start-up costs. • Provides for orphaned and historical goods. • E.g., Ontario's Industry Funded Organizations, the Alberta Beverage Container Recycling Corporation.

[a] At one point, Jura Elektroapparate was voluntarily arranging for its appliances to be returned to its factory, where they were refurbished in-house and re-used (Tojo 2004).

Source: Author's interpretation and Green and Trebilcock 2010.

In with the New: EPR Program Design

EPR programs can be designed in a number of different ways, each of which provides varying incentives to producers. Program incentives differ based on how legislation and policy apportion the physical responsibility (ie, collection, disposal, etc.) and financial responsibility for the good. For example, legislators may set targets or fees for all producers of a certain type of product as opposed to assigning targets or fees to individual companies (Table 1).[3]

A common view is that having individual companies responsible for the physical recycling process, without the option for companies to enter into collective arrangements, is not an efficient or realistic option for EPR in today's society (Green and Trebilcock 2010). Such systems are expensive for businesses and do not take

3 Physical responsibility refers to the person or persons that perform end-of-life collection, sorting, handling, transportation, processing and disposal. Financial responsibility refers to the person or persons who provide funding for such programs (OECD 1998).

advantage of the economies of scale inherent in a collective approach. They also have difficulty managing orphaned goods from defunct companies and older goods manufactured prior to the implementation of EPR systems.[4]

Collective arrangements are more common. Under these programs, Producer Responsibility Organizations (PROs) typically bear the burden of arranging for waste collection, processing and disposal to meet waste reduction targets set out by governments. Systems that directly provide targets to, and require financing from, individual producers while allowing for collective physical responsibility – what is termed individual producer responsibility – is emerging as the recommended arrangement (Ontario 2013). On one hand, such systems capitalize on economies of scale, have low sorting costs, and provide some ability to deal with orphaned and historical goods. On the other hand, they have high start-up costs because they require governments to set targets directly for producers and still require fee payments by producers for the collective handling, recycling and disposal of waste.

Those fees can be apportioned in different ways, although any arrangement has the primary goal of recovering the cost of recycling the producers' goods. The simplest is based on each producer's market share; or, equivalently, on a flat fee per item produced, which may or may not be passed on to the consumer. The major shortcomings of this approach are (i) it is more difficult in markets where shares are constantly fluctuating or are otherwise difficult to calculate, and (ii) it does not provide incentives for waste reduction proportionate to the environmental harm caused by the good, since each cell phone, soda bottle, or laundry detergent container is treated the same as every other.

A material-specific fee schedule is a much more effective way to tie true recycling costs to products, and create incentives for producers to unilaterally pursue waste reduction for their own goods. However, this arrangement imposes all of the costs that arise in tailoring a complex fee to each producer. It may also create some anxiety on the part of producers, who are now required to report on a potentially sensitive aspect of their businesses as a part of the program.

Competition and Mobility Issues in Collective Responsibility Systems

EPR systems with a collective responsibility component present potential concerns from a competition perspective. Firstly, such programs run the risk of operating offside the competitor collaboration provisions of Canada's *Competition Act*. Secondly, they may aggravate tendencies towards system level and downstream waste management monopolies. While such concerns are largely mitigated when these programs are efficiency enhancing, producers and waste management service providers alike need to pay close attention to Canada's competition laws.

Additionally, in the absence of inter-jurisdictional harmonization, EPR programs place costs on producers owing to the resources required to conform to the different EPR standards across provinces. In the most extreme case, a lack of harmonization could result in producers choosing to sell in only those Canadian jurisdictions with low EPR costs, or opting not to enter Canada at all, in favour of jurisdictions with more consistent regulatory schemes.

4 Orphaned goods are those produced by companies that have since gone out of business or those that do not have an identifiable brand.

Ontario's Experience with Extended Producer Responsibility

Ontario's current foray in EPR began in the early 2000s with the establishment of the *Waste Diversion Act*, 2002 (the *Act*) which was implemented to promote the reduction, reuse and recycling of waste and provide for the development, implementation and operation of waste diversion programs. Under that *Act*, the Minister of the Environment required Waste Diversion Ontario (WDO) to develop waste diversion programs for designated waste in conjunction with industry funded organizations (IFOs).[5] Possessing both physical and financial responsibility for goods, IFOs were made accountable for the implementation and operation of the programs, which are overseen by WDO.

Under the *Act*, the WDO commissioned Stewardship Ontario, a PRO, to develop the Blue Box Program plan, which required that its members pay 50 percent of the cost of the Blue Box Program that had previously been fully funded by municipalities. Under the Blue Box Program, municipalities retained responsibility for collection and contracting for end-of-life processing (Stewardship Ontario 2015). The program, which is still in place, suffers from ongoing inefficiencies.

Furthermore, the separation of physical and financial responsibility under the Blue Box Program (i.e., requiring fees to be paid by industry but giving municipalities with few cost-saving incentives sole discretion over waste management services) has led to additional inefficiencies, as demonstrated by the lengthy arbitration between the Association of Municipalities of Ontario and Stewardship Ontario in 2014. The dispute arose over whether the payment obligation of stewards under the *Act* was equal to 50 percent of the net costs incurred by the municipalities, or whether it was only in reference to costs reasonably incurred. The arbitrator determined that the statutory requirement was "limited by the requirement that such cost be reasonable" (Arbitration Award 2013). This ruling has sparked criticism that inability to determine and predict what constitutes a "reasonable cost" may result in further disputes and reduced incentives for producers to internalize costs (Valiante 2014).

Other programs under the *Act* have generated controversy as well. The Municipal Hazardous or Special Waste program ("Orange Drop") encountered unexpected public backlash when, following a poorly orchestrated roll-out, additional "eco-fees" for a number of new household products started appearing on shoppers' receipts in the summer of 2010, seemingly without warning (Green and Trebilcock 2010). Most of the program was subsequently abandoned, leaving responsibility for the majority of household hazardous wastes with municipalities (Association of Municipalities of Ontario 2012). Separately, Ontario's used tires program has been criticized for the high producer fees it incurs relative to its counterparts in other jurisdictions (Ferguson and Brennan 2013).

Ontario's *Waste Diversion Act* has had mixed results to date. Recycling programs cover only 14 percent of Ontario's total waste and Ontario's overall recycling rate has stagnated at 25 percent over the past decade (Ontario 2013), largely due to the lack of recycling programs for the industrial and construction sectors. This recycling rate falls significantly short of the government's target of 60 percent by 2008. In response, the Government of Ontario introduced new environmental legislation in 2013 (Bill 91). Although Bill 91 was

5 WDO is a not-for-profit organization with representatives from the industrial, municipal and commercial sectors, as well as the environmental community. IFOs are corporations without share capital that are run by stewards, brand owners and first importers of the designated products captured under that IFO.

subsequently abandoned after lengthy debate, it provides some insight into the direction that Ontario's new legislation might take.

Bill 91 sought to address many of the shortcomings of the 2002 *Act*, through the following:

- *Oversight and Enforcement*. Bill 91 would have introduced a Waste Reduction Authority, funded by steward fees and administrative monetary penalties, a type of civil penalty akin to a criminal fine, to replace the Waste Diversion Ontario. It would have also created additional enforcement rights for Waste Reduction Authority inspectors, a significant improvement over the sparse enforcement mechanisms under the existing *Act*.
- *Individual Producer Responsibility*. Bill 91 proposed a shift from the *Act*'s collective financial and physical responsibility model to an individual producer responsibility system, where individual producers have both physical and financial responsibility for the products they make, but have the freedom to handle those responsibilities collectively if they so choose.
- *Embedded Costs*. Under Bill 91, producers and retailers would not have been allowed to display environmental costs separately from the overall price of the good; a response to the "eco fee" fiasco under the *Act* (see Green and Trebilcock 2010 for further details).

Bill 91 was not without pitfalls. The main concern expressed by many stakeholders was the power that the new bill proposed to provide municipalities. Under Bill 91, as with the Blue Box Program, municipalities would have had the ability to design and control end-of-life collection and processing. The concerns with this approach were that (i) it would provide the municipality with too much bargaining power, and (ii) by splitting financial responsibility from physical responsibility, it would provide too few incentives for municipalities to encourage innovation or otherwise reduce costs at the collection, processing or disposal stages.

The embedded costs provision also raised some eyebrows. However, visible fees could, in some cases, better inform consumers' decisions and the interventions in supply chains necessary to embed the fees would create additional costs.

The justification for embedding costs largely rests on the potential for public backlash that might, in the extreme, lead the new programs to be cancelled. Yet most EPR programs in Canada permit visible fees, and in this larger context Ontario's 2010 eco-fee fiasco looks more like an outlier than the norm. Despite the fear of another failure, it is not clear that the success of new legislation would be so dramatically threatened by visible fees so as to justify the costs of integrated pricing. Insofar as visible fees could be purposefully misrepresented to consumers as a government tax, consumer protection legislation is a more relevant policy tool.

Other concerns with respect to Bill 91 included its lack of explicit reference to harmonization. Indeed, despite the potential gains from a harmonized plan among municipalities and across provinces (as discussed above), as well as the provinces' stated 2009 commitment to harmonization, there are currently many examples of inconsistencies between provincial EPR programs (CSSA 2014). As the country's largest waste-producing province, Ontario missed an opportunity to lead the way on harmonizing EPR regimes across the country and provide producers with a clear and standardized set of rules for end-of-life management in Canada.

Extended Producer Responsibility Elsewhere in Canada

In 2009, the Canadian Council of Ministers of the Environment introduced a *Canada-Wide Action Plan for Extended Producer Responsibility* under which Canadian jurisdictions would commit to work toward

implementing EPR programs within six years for certain designated materials.[6] I examine the relative successes of these programs below.[7]

Individual producer responsibility programs exist in some format in every province across Canada. Electronic waste, tires, batteries, used oil, and many household hazardous wastes now have reasonably comprehensive coverage under individual producer responsibility systems. In contrast, there has not been widespread change for packaging and printed paper and beverage containers (CCME 2014). Since these two programs deal with a substantial portion of current recycling volume (see Figure 1), they are likely to be the most impacted by any future program. In what follows, I discuss the available Canadian evidence for these sectors.

Packaging and Printed Paper Recycling

In May 2014, British Columbia introduced a sweeping new program for packaging and printed paper recycling. Unlike other EPR programs, which are often instituted to cover products not previously recyclable (such as batteries, paint, or electronics), Multi-Material B.C. (MMBC) was the first program in Canada to supplant a traditional curbside recycling program. In contrast to other programs, British Columbia's program has also been highly responsive to stakeholder concerns, and in response to early controversy, now includes exemptions for small businesses that meet certain requirements.

Under the new regulations in B.C., large producers must join a PRO plan that has governmental approval to handle the end-of-life management of their products. Currently, the non-profit industry organization MMBC is the only approved option. MMBC provides a material-specific fee schedule for it members, and contracts with a variety of public, private, and non-profit organizations for collection, processing, and resale of printed paper and packaging materials.[8] Brewers Distributor Limited has also submitted a plan to handle packaging related to beer products, but it had not been approved at the time of writing. The current lack of PRO alternatives in B.C. is a good illustration of the inclination that EPR governance displays toward monopoly, even where individual producers are nominally provided with a choice of contracts.

Beverage Container Recycling

Although most provinces have some measure of producer involvement in beverage recycling (usually through collective-responsibility PROs) only B.C. and Manitoba have individual producer responsibility arrangements in place.

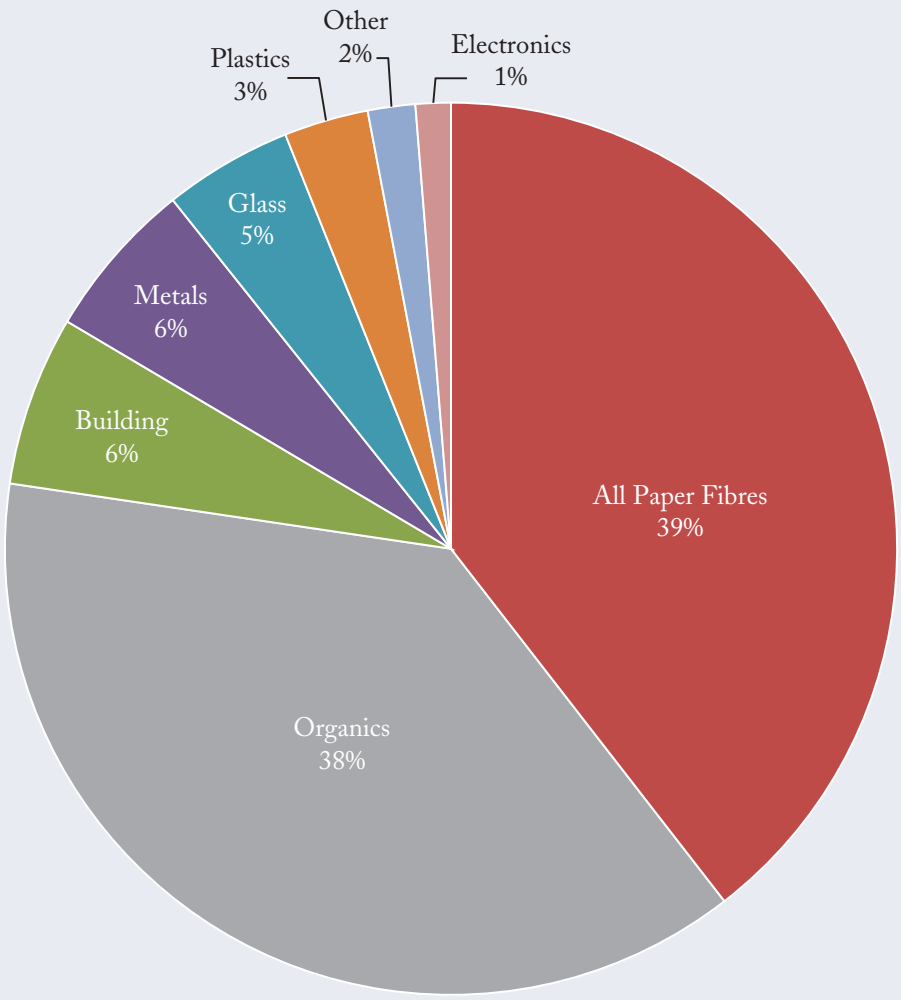
The B.C. and Manitoba beverage container programs integrate funding mechanisms used in traditional government-funded waste management systems. B.C.'s long-standing program, administered by the PRO Encorp

6 Designated materials include packaging, printed materials, electronics, automotive products and household hazardous and special wastes. In addition, the plan committed to adopt EPR programs for a variety of additional materials, including construction materials, demolition materials, furniture, textiles, carpets and appliances within eight years (Canadian Council of Ministers of the Environment 2009).

7 For a complete table of current and planned EPR programs in Canada, see CCME (2014).

8 Although originally MMBC's proposal gave it complete control over its choice of collection and processing contracts, revisions granted local governments a "right of first refusal" to minimize disruptions to existing municipal services.

Figure 1: Breakdown of Current Recycling in Ontario, by Weight of Product, 2012



Note: The product categories have been adapted somewhat from the original. "Metals" contains ferrous metals, copper and aluminum, and mixed metals. "Other" has been expanded to include tires and white goods.

Sources: Statistics Canada. *Table 153-0043 – Materials diverted, by type, Canada, provinces and territories, every 2 years (tonnes)*; and author's calculations.

Pacific, parallels its more recent approach to paper and packaging, but incorporates deposits to incentivize self-sorting and collection on the part of consumers (Encorp Pacific 2014). Since 2010, Manitoba's PRO organization, the Canadian Beverage Container Recycling Association, has collected fees from producers (which are generally passed on to consumers) to cover the costs of beverage container recycling, and fund other recycling programs including industrial, commercial and institutional sector recycling. However, despite initially

planning to introduce differentiated fees by material within a few years,[9] CBCRA is still using flat two-cent fees per beverage container (CBCRA 2015), which may diminish the benefits of DfE in its program. Although Manitoba's collection rates compared quite poorly to other provinces when the program began in 2010, in a few short years these rates have seen dramatic improvements that have brought them up to about the levels of the deposit programs in other provinces (CBCRA 2015).

In the case of beverage containers, a deposit system is often touted as the main way to improve recycling rates (see for example CM Consulting 2014). Many Canadian provinces do have deposits for beverage containers (see Table 2 for a description of non-alcoholic beverage deposit rates in each province), and can generally boast higher rates than those that do not. For example, Alberta has achieved high recovery rates with a collective producer responsibility beverage container recycling program, using deposits to encourage recycling and instituting a product-specific container recycling fee to cover the remaining program costs.

Yet deposit systems have their limitations and are not without hidden costs. For example, deposit systems often impose transportation costs for consumers to return containers and redeem deposits whereas curbside collections do not. It is not clear that it is necessary for Ontario to move in this direction in order to see improvements in recycling rates. The recovery rates in provinces with deposit systems tend to peak in the 70-80 percent range. This may represent an undue reliance on deposits, which create fewer incentives for industrial, commercial, and institutional sector actors and for away-from-home recycling (CBCRA 2011; CBCRA 2013). It also illustrates the importance of multi-instrument approaches to recycling policy. The governance and financial responsibility philosophies inherent in producer responsibility programs do not preclude the use of public campaigns (often run by the PROs themselves), waste diversion targets, bans or levies on certain recyclable products entering landfills, deposits or other drives to improve recycling systems.

Indeed, EPR programs alone are unlikely to capture the true social and environmental costs without them. Differentiated landfill fees, in particular, share much of the same logic and incentive structure as a material-specific recycling fee system. Table 3 provides an overview of these complementary policy approaches as they are employed in Canada.

Recommendations

The best way of capitalizing on the benefits of EPR is to make producers individually responsible for meeting targets and ensuring end-of-life care for their products, but allowing them the freedom to enter into whatever contractual arrangements they deem most efficient. Freedom of contract would allow each producer to decide whether the cost savings inherent in a collective approach outweigh the benefits each could achieve by performing disposal themselves or contracting with third parties individually.

Similar to British Columbia's MMBC, such systems should allow for waste management services to be contracted through municipalities should producers so choose, but should also allow for direct contracting between producers (or PROs) and waste management service providers. This would lessen the municipalities'

9 For example, see the stewardship plan submitted to Manitoba (CBCRA 2011), which was approved, as well as the plan submitted to run Ontario's beverage container recycling program (CBCRA 2013).

Table 2: Non-Alcoholic Beverage Container Deposit Rates, by Province

British Columbia	Alberta	Saskatchewan	Manitoba	Ontario
Containers smaller than 1L have a deposit of 5 cents, while those over 1L have a deposit of 20 cents.	Containers smaller than 1L have a deposit of 10 cents, while those over 1L have a deposit of 25 cents.	Deposits vary by material and size, from 5 cents for juice boxes to 40 cents for glass bottles larger than 1L.	No deposits on non-alcoholic beverage containers.	No deposits on non-alcoholic beverage containers.
Quebec	**New Brunswick**	**Nova Scotia**	**Prince Edward Island**	**Newfoundland and Labrador**
Soft drink containers carry a deposit of 5 cents.	Refillable containers can be redeemed for the full 10 cents (or 20 cents for containers larger than 1.5L), while non-refillable containers can be redeemed for 5 cents of their 10-cent deposits.	Refillable containers can be redeemed for the full 10-cent deposit, while non-refillable containers can be redeemed for 5 cents of their 10-cent deposits.	Refillable containers can be redeemed for the full 10-cent deposit, while non-refillable containers can be redeemed for 5 cents of their 10-cent deposits.	Containers can be redeemed for 5 cents of their 8-cent deposits.

Note: The per-container deposits say very little about how these systems are funded, or how they interact with other recycling or waste programs in their respective provinces. Many programs also levy non-refundable recycling fee in addition to (or, in Manitoba's case, instead of) the deposit.

Sources: Boissons Gazeuses Environment (2014); SARCAN Recycling (2015); CM Consulting (2014); and the Government of New Brunswick (2015).

bargaining power and better align the incentives for cost reduction and innovation at the downstream level. As with Manitoba's beverage container recycling program, freedom of contract would also allow for PROs to choose how to charge fees (whether based on market share or cost recovery – visible to consumers or not), based on the specific attributes of the products and industries they manage.

Lastly, from a governance perspective, harmonization should be one of the ultimate goals of Canadian EPR programs, with the most successful programs used as standards for the rest of the country. In the short term, this may mean that EPR systems across the country fluctuate as such standards are developed, but in the long term, the benefits of harmonization are likely to greatly outweigh its costs.

Policymakers designing EPR programs should follow the following guidelines:

- complement EPR with other policy tools, such as targets for waste diversion or collection rates, educational programs about waste reduction, landfill bans, or other mechanisms;
- determine any industrial, commercial, and institutional sector or other sector-specific recycling needs and tailor programs appropriately;

Table 3: Canadian Examples of Complementary Policy Options for Recycling Programs

Waste Diversion Target(s)	Public Campaigns	Landfill Fees/Bans	Deposit Return Programs
• Many provincial recycling programs for a variety of product categories include a waste diversion target or goal. • For beverage containers in particular, B.C., Manitoba, and Quebec have 75% targets, while New Brunswick has an 80% target and Alberta an 85% one. • Ontario reached its 60% target for Blue Box Program waste before the 2009 deadline. However, only 2% of the 30% goal for reusable containers has been met.	• Many provinces and municipalities run periodic public education campaigns in some form or another to encourage or inform consumers about recycling programs. • Manitoba's CBCRA implemented the first permanent, province-wide campaign ("Recycle Everywhere") to improve away-from-home beverage container recycling. • Similar campaigns have emerged in Quebec and parts of B.C.	• Nova Scotia and PEI are the only two provinces with outright landfill bans on all recyclable materials. • Ontario bans used automobile oil from landfills. • Manitoba and Quebec charge per-tonne levies on all waste disposal at landfills (in addition to the tipping fees). • Many municipalities in Canada have enacted landfill bans on various recyclable products, as well as a number of hazardous or construction-related materials. • Many municipalities also have differentiated tipping fees by product category to encourage separation.	• Beverage containers are the only notable product category that employ deposit return systems. • Ontario and Manitoba are the only provinces without deposit return programs for non-alcoholic beverage containers. Quebec's deposit return system is only for soft drinks. • Beer, wine, and spirits containers are usually under deposit and collected by the private sector (sometimes under contract with the public retailer, as in Ontario).

Sources: Kelleher (2013); Giroux (2014); CM Consulting (2014); CBCRA (2013); and the Federation of Canadian Municipalities (2009).

- permit freedom of contract so that producers can decide to comply with targets individually or on a collective basis;
- ensure that PROs are non-profit so the focus remains on cost reduction;
- ensure that PRO accreditation criteria are wholly transparent and standardized;
- refrain from dictating whether fees should be visible or not, leaving this decision to producers;
- strengthen municipalities' cost saving incentives to better align their interests with those of producers;
- emphasize auditing and enforcement efforts in conjunction with IPR programs to discourage free riding;
- impose public reporting obligations to enhance transparency and accountability for all stakeholders; and
- align EPR programs across provinces to enhance harmonization.

Conclusions

Ontario's Bill 91 had many faults, including the power it gave to municipalities, its prescriptive terms on visible fees and the lack of reference to harmonization. However, the bill took several steps in the right direction, including enhanced enforcement provisions as well as its movement away from purely collective programs and towards allowing manufacturers of all products to contract to meet recycling targets. If and when new legislation is introduced, it should build on the strengths of Ontario's last attempt, and look to examples set by other provinces to address its flaws. Otherwise, if the legacy of the *Waste Diversion Act*, 2002 is any judge, the gains for Ontarians – consumers and producers alike – will be much smaller than advertised.

References

Association of Municipalities of Ontario. 2012. *Consolidated Municipal Hazardous or Special Waste (CMHSW) Program*. June 26. Available online at: http://www.middlesex.ca/council/2012/june/26/C%205%20-%20CW%20Info%20-%20June%2026%20-%20AMO%20%20Consolidated%20Municipal%20Hazardous%20or%20Special%20Waste%20(CMHSW)%20program.pdf.

Canadian Beverage Container Recycling Association (CBCRA). 2015. *CBCRA Rules for Obligated Stewards, 2015*. Appendix C. Available online at: http://cbcra-acrcb.org/sites/default/files/pdf/2015%20CBCRA%20Rules%20for%20Stewards%20%28Final%29.pdf

————. 2013. *Beverage Container Recycling in Ontario: Achieving Greater Performance and Sustainability*. Draft CBCRA Industry Stewardship Plan for Submission to Waste Diversion Ontario. September 5. Available online at: http://www.wdo.ca/files/9713/7935/8851/CBCRA_Beverage_Container_Draft_ISP.pdf.

————. 2011. *Canadian Beverage Container Recycling Association Manitoba Program Plan*. Available online at: http://cbcra-acrcb.org/sites/default/files/pdf/cbcra-acrcb-program-plan-2011.pdf.

Canadian Council of Ministers of the Environment. 2009. *Canada-wide Action Plan for Extended Producer Responsibility*. October. Available online at: http://www.ccme.ca/files/Resources/waste/extended/pn_1499_epr_cap_e.pdf.

CM Consulting. 2014. *Who Pays What: An Analysis of Beverage Container Collection and Costs in Canada*. 6th Edition.

Canadian Stewardship Services Alliance (CSSA). 2014. "Submission to the Canadian Council of Ministers of the Environment on the Canada-wide Action Plan for Extender Producer Responsibility."

Encorp Pacific. 2014. *Stewardship Plan 2014-2018*. Revised May 30.

Environment Canada. 2013. *Electronic Waste Recycling Program*. July 12. Available online at: http://www.ec.gc.ca/gdd-mw/default.asp?lang=En&n=DB5C8F07-1.

Federation of Canadian Municipalities. 2009. "Waste Diversion Success Stories from Canadian Municipalities." Available online at: http://www.fcm.ca/Documents/tools/GMF/Getting_to_50_percent_en.pdf

Ferguson, Rob, and Richard J. Brennan. 2013. "Ontario consumers will get protection from eco fees in new legislation: Liberals." *Toronto Star*. April 4. Available online at: http://www.thestar.com/news/queenspark/2013/04/04/ontario_consumers_face_higher_eco_fees_for_big_televisions_new_phones.html.

Giroux, Laurie. 2014. *Solid Waste Management in Canada*. Report prepared for the Canadian Council of Ministers of the Environment. Available online at: http://www.ccme.ca/files/Resources/waste/State_Waste_Mgmt_in_Canada.pdf.

Government of New Brunswick. 2015. "Beverage Container Program." Available online at: http://www2.gnb.ca/content/gnb/en/services/services_renderer.3975.Beverage_Container_Program.html

Green, Andrew, and Michael Trebilcock. 2010. *The Eco-Fee Imbroglio: Lessons from Ontario's Troubled Experiment in Charging for Waste Management*. Commentary 316. Toronto: C.D. Howe Institute. December. Available online at: http://www.cdhowe.org/pdf/Commentary_316.pdf.

Kelleher, Maria. 2013. "Landfill Levies." *Solid Waste & Recycling Magazine*. Available online at: http://www.solidwastemag.com/features/landfill-levies/.

Multi-Material Stewardship Western. 2013. "MMSW Requests Government Extend Stewardship Program Commencement Date." December 23. Available online at: http://www.mmsk.ca/news/mmsw-requests-government-extend-stewardship-program-commencement-date/.

Ontario. 2013. "Waste Reduction Strategy." June. Available online at: http://www.downloads.ene.gov.on.ca/envision/env_reg/er/documents/2013/011-9262.pdf.

———. 2010. Environmental Commissioner of Ontario. "Getting It Right: Paying for the Management of Household Hazardous Wastes." Toronto. July 27. Available online at: http://www.eco.on.ca/uploads/Reports-special/2010-Eco-Fees/2010-Eco-Fees.pdf.

Ontario Tire Stewardship. 2009. "Used Tires Program Plan." February 27. Available online at: http://www.wdo.ca/files/8313/5880/1032/Final_Used_Tires_Program_Plan_-_February_27_2009.pdf.

Organisation for Economic Co-operation and Development. 1998. "Extended and Shared Producer Responsibility, Phase 2, Framework Report." May 13. Available online at: http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=env/epoc/ppc(97)20/rev2.

Stewardship Ontario. 2015. "The Blue Box Program Plan." Available online at: http://www.stewardshipontario.ca/service-providers-municipalities-bluebox/the-blue-box-program-plan/.

Tojo, Naoko. 2004. "Extended Producer Responsibility as a Driver for Design Change – Utopia or Reality?" IIIEE Dissertations 2004:2. Lund, Sweden: International Institute for Industrial Environmental Economics. Available online at: http://212.113.88.1/att/literature/2004_Extended%20producer%20responsibility_Tojo.pdf.

Valiante, Usman. 2014. "Did anyone win Ontario's Blue Box Arbitration?" *Solid Waste & Recycling Magazine*. December 17. Available online at: http://www.solidwastemag.com/columns/anyone-win-ontarios-blue-box-arbitration/.

Arbitration Award, In the Matter of an Arbitration to Determine the 2014 Steward Obligation for the Blue Box Program, (November 25, 2014) at para. 203. Available online at: http://envirolaw.com/wp-content/uploads/Blue-Box-Arbitration-Award-25-November-2014.pdf.

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Aaron Jacobs is a Researcher at the C.D. Howe Institute.

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www. cdhowe.org
67 Yonge Street, Suite 300 Toronto, Ontario M5E 1J8
Tel: 416-865-1904