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chamber of
commerce



RENEWING RECYCLING IN ONTARIO

ONTARIO CHAMBER OF COMMERCE SUBMISSION TO
THE MINISTRY OF THE ENVIRONMENT AND CLIMATE
CHANGE ON THE WASTE-FREE ONTARIO ACT

April 2016

About the Ontario Chamber of Commerce

For more than a century, the Ontario Chamber of Commerce (OCC) has been the independent, non-partisan voice of Ontario business. Our mission is to support economic growth in Ontario by defending business priorities at Queen's Park on behalf of our network's diverse 60,000 members.

From innovative SMEs to established multi-national corporations and industry associations, the OCC is committed to working with our members to improve business competitiveness across all sectors. We represent local chambers of commerce and boards of trade in over 135 communities across Ontario, steering public policy conversations provincially and within local communities. Through our focused programs and services, we enable companies to grow at home and in export markets.

The OCC provides exclusive support, networking opportunities, and access to innovative insight and analysis for our members. Through our export programs, we have approved over 1,300 applications, and companies have reported results of over \$250 million in export sales.

The OCC is Ontario's business advocate.

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Last fall, the Ontario Chamber of Commerce (OCC) outlined our vision for a renewal of the Blue Box recycling program in Ontario. The legislation and strategy subsequently released by the Government in November shows promise for the kind of producer responsibility system that gives industry the freedom they need to create an innovative, efficient, and cost-effective consumer recycling system.

However, the text of the Waste-Free Ontario Act (the Act) also raises some concerns for the Chamber, our members, and our partners on the waste diversion portfolio. We believe the language requires considerable clarification so that the goal of reform is not lost in the future, and that “mission creep” does not damage the productive relationship with producers that this policy requires. The Act must be a foundation to set up the new system for success and ensure it avoids pitfalls of the past.

On the following pages, the OCC lays out our primary concerns with the Act and draft policy strategy, as well as questions we would like to see the Government answer before moving forward with this legislation. We also propose a series of recommendations to mitigate our concerns, and to strengthen the Act.

The Act should focus on realistic outcomes and build towards greater partnership with industry. We can all agree that increasing uptake of the three ‘R’s is good for the environment, good for business, and good for Ontario.

Sincerely,

A handwritten signature in black ink that reads "Allan O'Dette". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Allan O'Dette
President and CEO
Ontario Chamber of Commerce

THE WASTE-FREE ONTARIO ACT RAISES CONCERNS AND REQUIRES CLARIFICATION

Below are a series of issues identified by the OCC, its members, and partners; questions that should be answered before moving forward with the legislation; and recommendations for rectifying our concerns.

Overall, the OCC finds that the Waste-Free Ontario Act to be broadly and imprecisely written, which has a dually problematic effect: causing confusion for those firms that will be subject to the Act and allowing for administrative decisions by government that may step outside of the understood intention of the legislation.

Concerns: The role of the new waste diversion authority is lightly defined as a data collection and compliance body, but this definition does not make explicit what the Authority does not have the power to do. The OCC is concerned with the role of the Authority being expanded to include other areas, such as policy-making. While verbal assurances have been made that the Authority will be limited to base compliance and data collection, this is not explicit within the text of the Act, and without a strict definition the Authority could grow to a potentially limitless role. This is especially concerning as it recalls the challenges with the current authority, Waste Diversion Ontario (WDO). If a new Authority is to be created, it should be structured in such a way that explicitly improves on the drawbacks of its predecessor.

The Authority also appears able to set its own budget and revenue targets, without oversight or authorization by the Ministry or elected officials. Similarly, there is no mechanism that requires the Authority to demonstrate the value they are providing for the fees they have set, or that there is efficiency within their operations. There are no cost estimates, no cost containment strategy, and no cost caps. Furthermore, there has been only a mention of the development of a business case made for the creation of an Authority without detail or guidelines. The financial impact of the Authority is therefore unknown and, in the context of the Act, uncontrollable.

Finally, there are no guarantees that industry experts will serve on the Board or in any other leadership capacity within the Authority. Appointees will come largely, if not exclusively, from government and there is no mechanism that guarantees industry and waste diversion experts will be represented. This is not an appropriate arrangement – industry is paying for the Authority through fees and fines, and yet the Authority will take its direction almost exclusively from government.

Questions to be answered:

- How will the new Authority differ from Waste Diversion Ontario?
- What is the value of a waste diversion Authority to Ontario's recycling program?
- Where is there to be industry representation and expertise within the Authority?

Recommendations:

- The Authority's scope of responsibilities should be explicitly defined, and include a provision that it is not to be a policy-making entity.
- The government should develop a business case for the Authority, as well as define the costs associated with its operation. A funding formula should be developed independent of the Authority, i.e. by the Ministry or Treasury Board.
- Modify the language of the Act to indicate that the Authority Board must include industry members, as not only do they have the required waste diversion and packaging expertise

but they are also responsible for funding this entity. This may include third-party oversight of appointments to the Authority, including formal and detailed job descriptions

Concerns: The OCC is concerned that Policy Statements will be used to skirt requirements like the Regulatory Impact Assessment and the Open for Business initiative. In the future, they may also be used to change the direction of the Act in a manner that is unforeseen and unwelcome. Policy Statements are unpredictable, lack a clear accountability path, and are able to avoid the scrutiny of regulation.

Furthermore, the Act contains no mention of cost accounting and the draft policy strategy makes no mention of any economic impact analysis. Nothing in the documentation provided indicates that the government has examined the cost of the proposed changes to waste diversion, either to the public or to industry. This leaves considerable room for regulations and Policy Statements that could negatively impact both business and the Ontario economy more broadly.

There is also the issue of unsubstantiated cost savings discussed in the media. On February 16, 2016, Minister of the Environment and Climate Change Glen Murray stated that the reforms found in the Act will result in \$115 million in municipal savings. However, he gave no indication of the source of these savings, or their impact on the taxpayer/consumer. In reality, these “savings” are costs passed from municipalities to producers.

Questions to be answered:

- What will be the economic impact of the Act, its draft policy strategy, and any regulations or Policy Statements?
- How will Policy Statements be used in the future?
- How will the Authority interpret and implement Policy Statements?
- How is the \$115 million in municipal savings to be accounted for in the new system? How will the average Ontarian be affected by this cost shift – will their municipal taxes decrease?

Recommendations:

- Conduct an economic impact analysis for all legislation, regulation, and policy related to the Act. This analysis should take into consideration factors such as the cost of proposed programs, the availability of infrastructure, the volume of waste generated, the impact of adding new materials to the Blue Box, and a risk assessment.
 - Any discussion of the Act’s economic impact should also recognize that economies of scale in recycling are critically important, and that enough barriers already exist for small- and medium-sized enterprises (SMEs) and remote or sparsely-populated regions.
 - Regulation stemming from the Act must be considered under the Open for Business initiative, which holds government accountable by ensuring any new regulation is justified by a solid business case and does not create obstacles to trade. Policy Statements should not be used in place of regulation.
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Concerns: Both the Act and draft strategy make explicit reference to the “circular economy”. This gives government the power to create policies and regulations that would require a company to design their product in a particular manner (i.e. to theoretically increase its recyclability or increase the amount of recovered resources used in production). The design of packaging, however, is affected by more than just its recyclability in Ontario. Global supply chains, food safety (driven in

large part by federal regulations), or appropriate packaging for shipping are all factors producers must consider when creating products. Neither the Government of Ontario nor the Authority has the requisite expertise or scope to dictate these kinds of regulations.

By including circular economy goals in the text of the Act, the government fails to recognize that, while Ontario has a large influence in the Canadian economy, it does not in the wider economy. Producers of recyclable packaging or goods are operating on North American or even global scales, and it is therefore unrealistic for the government to expect major international companies to provide special packaging just for Ontario.

Questions to be answered:

- How does the government plan to create or enforce workable circular economy principles?
- If the government is committed to the idea of a circular economy, where in legislation or strategy will they reflect on how the Ontario circular economy is to fit into the wider global economy, or on other industry needs in package and product design?

Recommendation:

- Remove Section 67(3). Many manufacturers are already making strides to create “greener” goods and packaging, both for environmental reasons but also because it benefits their bottom line. Any attempt at promoting a circular economy must be done with industry as free and equal partners, and with consideration for the globalized nature of the economy. Regulation is not an appropriate venue for this conversation.
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Concerns: There is no firm definition of what a violation under the Act will constitute. A regulated body (i.e. a company) can be adjudicated for any reason, and lacks any real right of appeal other than the court system.

Questions to be answered:

- How are violations to be defined and adjudicated?
- Will there be industry input into what is a fair definition of violation, proof of violation, fines, or other enforcement measures?

Recommendations:

- Strictly but fairly define violations and outline how a violation is to be assessed (i.e. based on what data or methodology).
 - Allow for the creation of an appeals tribunal.
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Concerns: In Section 2, the discussion of provincial interests has no mention of economic interest, only environmental interest.

Questions to be answered:

- Are there provincial interests to this Act beyond the environmental or technical?

Recommendations:

- Consider the economic as well as environmental consequences of this legislation.
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- Make the province's economic interests explicit in this section. Provincial economic interests should also reflect the benefits of legislation and regulation vis-à-vis enabling waste diversion harmonization across Canada and with our trading partners.
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Concerns: The Authority requires considerable data in order to gauge whether a producer or industry collective is meeting their targets, or to identify free-riders and other violators. However, there is a considerable lack of detail about what data will be collected in the text of the Act. There is also little indication of what provisions will be put in place to ensure the confidentiality of the data, or how it will be stored and protected.

Questions to be answered:

- How will the data be collected and analyzed (i.e. using what methodology)?
- What are the cooperation requirements of producers, and how onerous will new data collection regulations be?
- What are the guarantees of data confidentiality?

Recommendations:

- The government needs to provide detailed explanations of their plans for data collection, analysis, and storage.
 - Data that is to be made public must be anonymized and amalgamated to protect proprietary business information.
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Concerns: There is confusion surrounding the definition of “brand owner” in the text of the Act, including the connection between brand owners and manufacturers, service providers, and even arms-length participants like shareholders.

Questions to be answered:

- What types of firms do the government consider to be rightfully subject to the Act?
- Which types of firms are explicitly not considered “brand owners”, and therefore have no responsibility under the Act?

Recommendations:

- Tighten the definition of brand owner, away from one that appears to include anyone with a commercial relationship to a product.
 - Make explicit those firms that will be expected to participate in the extended producer responsibility program, to ensure that companies are not in accidental violation of the law due to a lack of clarity.
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CONSIDERATIONS MISSING FROM THE ACT AND DRAFT POLICY STRATEGY

IC&I:

The government has pushed the question of waste diversion reform in the institutional, commercial and industrial (IC&I) sectors to 2019, but has indicated that reform remains on their agenda. The OCC would warn them against attempting a massive, one-size-fits-all re-organization. Each sector has its own arrangements and challenges, and in such a diverse marketplace an expansion of waste diversion responsibility would be difficult for individual businesses to tackle. Reform would also require intervention into existing business-to-business (b2b) relationships, with extensive collateral damage.

IC&I recycling is very different from residential recycling – there is no homogeneity in process, structure, or materials. Furthermore, while EPR has benefits for the Blue Box, it is not the appropriate tool for this. The right tools – those that can respond to the cost and complexity of IC&I – already exist in legislation: landfill bans, disposal bans, regulated measures, and so forth. As has been observed in British Columbia, collectors can still be held to a performance bar while maintaining existing b2b arrangements.

Consumers:

Something the Act fails to address entirely is the role of consumers in this portfolio. In order to increase diversion rates, consumers must have some measure of responsibility. Under the terms of the Act, how can industry be penalized if consumers do not properly separate their materials, or fail to recycle entirely? The government must allow industry the leeway to educate or incentivize consumers so that Ontarians can take an active role in contributing to recycling outcomes. Unfortunately, as it stands today, neither the legislation nor the draft policy strategy mention consumers in any meaningful way.

CONCLUSION

The Act is passed, making it difficult for industry to support or collaborate with this legislation. A first step towards rectifying this would be to answer the questions outlined in this document, and give consideration to the recommendations laid out in response to our considered and legitimate concerns.

The provincial government should also recognize that there are existing industry best practices across the waste diversion sector, both among producers and waste management firms. These should be maintained and learned from. Manufacturers are already working towards goals like zero waste and the circular economy, as it is not only environmentally beneficial but good for their bottom lines.

The objectives of this legislation and its associated regulation, strategy, and policy statements should be clear, evidence-based, measurable, and attainable. High-level, aspirational goals like an Ontario-only circular economy cannot be attained as laid out in this Act, and will only lead to confusion and failure before they begin. The government and its industry partners require milestones with agreed-upon definitions and outcomes, in order to create the most effective recycling system possible.

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