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July 29th, 2020

Re: Review of the Environmental Law Center (Alberta) Society's report *Extended Producer Responsibility: Designing the Regulatory Framework*

Dear Dr. Seidel:

I have reviewed the Environmental Law Center (Alberta) Society's ("Law Center") report *Extended Producer Responsibility: Designing the Regulatory Framework* ("Law Center Report").

The last 5 years has seen a tremendous amount of work by Canadian jurisdictions to understand what EPR is, what it is not and what outcomes we can expect based on how it is regulated.

The Law Center Report could have explored *why* product stewardship/EPR has not delivered on its promise and what regulatory rules in Alberta could be used to institute it in manner that does. Regrettably, it does not make a useful contribution to the discussion of how to regulate EPR in Alberta and by way of this letter I explain why.

Before I do, it may be useful to provide an overview of recent discussions and developments with regard to packaging-related waste policy in Canada.

Overview of recent developments in packaging-related waste policy

There is an ongoing discussion about what public policy tools can be brought to bear to address Canada's 9% national plastics recycling rate.^{1,2} This discussion has been catalyzed by the disruption of municipal recycling associated with the introduction of stringent contamination thresholds by Asian commodity markets. These requirements have effectively closed those markets to Canadian exports of mixed and contaminated plastics. Concurrently, domestic demand for recycled plastics has waned driven primarily by the low price of oil and gas used to make virgin plastics.³ The COVID-19 pandemic has further eroded the economics of plastics recycling as the commodity prices of fossil resources have crashed.

¹ Valiante U.A. 2019. [A Vision for a Circular Economy for Plastics in Canada: The Benefits of Plastics Without the Waste and How We Get it Right](#). Smart Prosperity Institute. Ottawa, Canada

² While this brief refers to plastics, the overall recycling rates for all other packaging materials not subject to deposit-refund are equally stalled across Canada.

³ Boyd, D.R., Dowlatabadi, H., Valiante, U.A. 2018 *Towards a Circular Economy for Plastics in Canada: Gap Analysis and Policy Interventions*. Prepared for the Canadian Council of Ministers of the Environment (CCME)

In some jurisdictions, discussion has become policy action. Ontario is the process of replacing its two-decade old packaging stewardship regulatory system.⁴ Similar regulatory reform is underway in Quebec. Nationally, the provinces and territories are developing a roadmap for harmonizing Extended Producer Responsibility (“EPR”) policies⁵ to facilitate producer delivery of EPR against common regulatory standards and definitions.

The reason for reforms to “product stewardship” policies in Ontario and Quebec is that they have not worked. While making producers wholly or partially financially responsible for municipal recycling, product stewardship has entrenched stagnant recycling performance and economic inefficiency (primarily in the form of a lack of innovation).⁶ Residential recycling in Canada’s two largest provinces is delivered on a municipality by municipality basis, at low scale and efficiency and, “with little or no coordination with other municipal recycling systems and with no connection to the producers whose packaging they [municipalities] manage.”⁷

British Columbia has led Canada in terms of regulating packaging waste. It implemented EPR for beverage containers in 1970 under the *Litter Control Act* (and later re-regulated it under its Recycling Regulation) and in 2011 it designated residential printed paper and packaging (PPP) for EPR.

In response to this designation, Multi-Material BC (MMBC now RecycleBC) was established by several grocery and consumer products companies to develop and implement a stewardship plan to operate a residential PPP recycling system on behalf of producers. On April 15, 2013 the British Columbia Ministry of Environment granted RecycleBC’s stewardship plan approval with the collection and management system commencing operation on May 19th 2014.⁸

The BC Ministry of Environment’s rejection of a second residential PPP stewardship plan in 2016 precipitated a policy review of BC regulatory implementation of EPR. The Ministry sought advice regarding the design of EPR regulation towards greater economic efficiency.

This work for the BC Ministry was undertaken by me and my colleagues in two phases. The first phase focused on characterizing the market dynamics of select jurisdictions with EPR laws.⁹ The second phase focused on identifying legal and institutional best practices for regulating EPR with a view to greater economic efficiency with emphasis on market competition.¹⁰

⁴ In 2016 Ontario passed the *Waste Free Ontario Act* which includes the *Waste Diversion Transition Act* (which provides the means to wind up existing Ontario product stewardship programs) and the *Resource Recovery and Circular Economy Act* (the statute by which EPR is implemented).

⁵ Discussion paper: [Guidance to facilitate consistent extended producer responsibility policies for plastics](#). 2019. CCME

⁶ Valiante U.A. 2015 Policy Brief: [The relative economic efficiency of shared responsibility versus the principled application of extended producer responsibility for printed paper and packaging](#)

⁷ Ibid. Ref. 6

⁸ The program covers residential packaging except for secondary beer packaging (e.g. cartons, trays, hi-cone rings etc.). Beer packaging is managed under a separate approved plan administered by Brewers Recycled Container Collection Council.

⁹ “This study addresses the first phase of the BC Ministry of Environment’s effort to understand the relationship between EPR as a policy measure to hold producers responsible for the end-of-life management of materials and competition as a market property that emerges as producers seek to discharge their responsibilities under EPR laws specific to a given jurisdiction.”

Busuttill, C., Gies, G., Valiante, U.A. 2016. *Competition under Extended Producer Responsibility in British Columbia (Phase 1): Jurisdictional Scan*. CPG LLP. Prepared for the British Columbia Ministry of the Environment.

¹⁰ Busuttill, C., Valiante, U.A. 2017. *Competition under Extended Producer Responsibility in British Columbia*

The Law Center’s conclusions and recommendations about EPR

I begin my review of the Law Center Report by first considering key statements, conclusions and recommendations and then discussing the premises by which they were made. I then briefly offer some thoughts on policy design that may be useful for Alberta to consider as it mulls the potential of EPR for PPP.

Section V “Recommendations” of the Law Center Report begins by noting that, “Alberta is the only province that has not introduced a producer take-back model into any of its recycling programs”. This in fact is untrue.

Alberta’s beverage container deposit system features a depot-based beverage container redemption system that is operated by producers whereby all collected beverage containers are reused or recycled by producer-controlled agencies.¹¹ In this system producers and their consumers – not municipalities – fund the cost of the take-back system and bear the risk of fluctuating commodity values for recovered materials. The system in question delivers an aggregate beverage container collection rate of 85.3% (of 2.34 billion units sold) and a plastic beverage container collection rate of 81.6%.¹²

Moving on from this opening statement, this short review addresses the following key statements, conclusions, and recommendations as found in the Law Center Report:

- **Design for the Environment**
 - “The main reason EPR systems have not resulted in widespread product redesign is that the economic signals created by these systems are not strong enough to incentivize product redesign on their own.”
- **Free-riding:**
 - “One of the big problems facing EPR systems is the existence of free riders.”
- **EPR and competition:**
 - “One of the big problems facing existing EPR systems and, specifically, producer take-back systems, is that they tend to encourage monopolies, which can create competition-related problems for the EPR system.”
- **EPR vs state run recycling:**
 - “Given the limited differences between Alberta’s existing recycling programs and a producer take-back system, it is unlikely there would be a significant advantage to converting Alberta’s existing programs to an EPR model.”
- **Municipal treatment under EPR:**
 - “it can be difficult to negotiate a fair role for municipalities” under EPR.
- **“Moving forward”**

(Phase 2): Regulating for Environmental Effectiveness and Economic Efficiency. CPG LLP. Prepared for the British Columbia Ministry of the Environment.

¹¹ The Alberta Beverage Container Recycling Corporation (ABCRC) manages all non-refillable beverage containers on behalf of beverage producers and the Alberta Beer Container Corporation (ABCC) manages refillable beer containers on behalf of beer producers.

¹² Beverage Container Management Board Annual Report 2019.

- “it is unclear whether an EPR model would significantly improve on Alberta’s existing PPP recycling programs.”

Design for the Environment

The Law Center Report rightly notes that, when producers join producer responsibility organizations (PROs), “PROs take over producers’ obligations to create and run a waste management program for their products”. This is certainly true in British Columbia where producers do not have the *legal liability* for achieving the material specific recovery rate targets set in the approved RecycleBC stewardship plan.

Should RecycleBC fail to achieve its recovery targets there is little (and I would argue effectively no) recourse for the British Columbia Ministry of Environment to hold producers accountable¹³. In the entire 16-year history of the BC Recycling Regulation no producer has ever faced regulatory sanction for the failure of its stewardship agency to achieve approved recovery targets.

The Law Center Report’s contention that EPR systems have not resulted in widespread product redesign because, “the economic signals created by these systems are not strong enough to incentivize product redesign on their own” fails to recognize the significance of its earlier observation about PROs taking over producers’ obligations.

The design for environment failure is not just the result of weak economic signals, as suggested by the Law Center Report, but missing legal ones. That is, producers have no legal liability for environmental outcomes under most product stewardship/EPR laws in Canada.¹⁴

Consider a hard-to-recycle multi-laminate flexible plastic package. Where individual producers are legally liable for meeting aggressive recycling targets for flexible plastic packaging, they pool their efforts to gain scale to warrant deployment of technology. In a collective residential recycling system, they jointly bear the necessary capital and operating costs to collect, sort and process flexible plastic packaging to meet the regulated recycling targets.

If the targets are stringent enough, the efforts necessary to meet them will provide feedback to those individual producers about whether to create additional incentives to collect more materials, or redesign their multi-laminate flexible plastic packaging for better recycling¹⁵, or step up sorting and recycling technological innovation, or some combination thereof.

¹³ That said, there are other incentives in play that ensure RecycleBC continues to perform. Firstly, there is the reputational risk to major producers associated program with failure (reputational liability). There is also the spectre of competition. Where RecycleBC ensures a relatively high performing system, a bar is set as a barrier to new entrant stewardship agencies seeking Ministry approval.

¹⁴ Producers have no skin in the game. “Skin in the game –as a filter –is the central pillar for the organic functioning of systems, whether humans or natural. Unless consequential decisions are taken by people who pay for the consequences, the world would be vulnerable to total systemic collapse.” *What do I mean by Skin in the Game? My Own Version*. Nassim Nicholas Taleb. Mar 5, 2018

¹⁵ In anticipation of such obligations in Canada and recognizing the implications of packaging choices on municipalities in the United States companies party to the [Consumer Goods Forum](#) are undertaking work to identify plastics that are difficult to collect and recycle as well as substitutes that pose fewer problems in recycling systems.

Hence, a producer that is legally accountable for achieving an 80% recycling rate target for its flexible plastic packaging under a residential recycling requirement faces a powerful legal liability and related incentive to meet the target *and* a powerful financial incentive to reduce the cost of collecting and recycling its packaging choices. If producers collectively fail, they remain jointly and severally liable for the failure.

Conversely, a producer subject to a regulatory system that sets low recycling targets and allows the transfer of legal liability for meeting targets to a third-party PRO/agency bears no legal liability and only the marginal price of recycling (effectively, a marginal packaging tax).¹⁶

It is the *legal liability* for hitting *stringent* recycling targets as borne by individual producers (even if operating through a collective system administered by a PRO) that drives design for the environment.

EPR at its essence is nothing more than a policy tool to hold individual producers legally responsible for meeting performance standards (such as recycling targets). Everything else precipitates from that one simple idea and it does not really matter whether this idea is applied to PPP or appliances, a residential collection and recycling system or a deposit-return based collection and recycling system. It also does not matter whether the program is financed by producers or through an advanced disposal fee levied by producers on consumers.

So, the issue is not that EPR is not effective in driving design for the environment. Rather, it is that EPR has not been implemented in a manner consistent with how it was originally conceived. Any regulation where the individual producer does not bear responsibility for environmental outcomes is not EPR. By extension, a lot of what has been passing for EPR in Canada really is not EPR at all.¹⁷

Recommendation: EPR policy for PPP in Alberta should ensure that individual producers are liable for meeting stringent recycling targets even though their efforts will likely be through a collective recycling system.

Where producers do collectivize (which is both highly likely and desirable for purposes of collecting PPP), individual legal liability also helps mitigate competition-related issues which are discussed further on.

Free riders

The Law Center Report identifies free-riding as a problem in British Columbia and essentially positions the issue as an insurmountable problem for Alberta. This is just not so.

With the various efforts related to product stewardship in Canada, it has become evident that if a jurisdiction is to account for various transboundary movements of goods into it, it is going to need a

¹⁶ Six years after the introduction of EPR for PPP in British Columbia there is still no effective recycling solution for multi-laminate plastics yet producers using multi-laminate plastics continue to pay fees into RecycleBC.

¹⁷ “Producers accept their responsibility when they design their products to minimise life-cycle environmental impacts, and when they accept legal, physical or socio-economic responsibility for environmental impacts that cannot be eliminated by design.” Lindqvist, Thomas, & Lidgren, Karl. (1990). *Models for Extended Producer Responsibility*. In Ministry of the Environment, From the Cradle to the Grave – six studies of the environmental impact of products] (7-44). Stockholm: Ministry of the Environment. (Ds 1991:9).

reporting registry for producers to register and report their supply of designated material. That registry will need enforcement powers to ensure compliance with all reporting requirements for the supply of designated PPP as well as those necessary to verify that producers have achieved regulated recycling targets.

The registry and the attendant enforcement of registration requirements are regulatory functions that are key to effective EPR and therefore cannot be delegated to producers or a producer agency such as a PRO.

Recognizing this reality, Alberta established the Beverage Container Management Board (BCMB)¹⁸ in 1997 to administer and regulate the Beverage Container Recycling Regulation. Every beverage producer (and there are almost 450) must register with the BCMB. The BCMB has jurisdiction to enforce compliance with registration and reporting requirements and to ensure accurate reporting (including auditing)¹⁹. The BCMB also registers PROs that manage refillable and nonrefillable containers²⁰ and requires them to report reuse and recycling performance.

Alberta Recycling (Alberta Recycling Management Authority) has similar protocols to address freeriding.²¹

Were Alberta to institute registration and reporting requirements for PPP as already exists for beverage containers, virtually all of the freeriding issues identified by the Law Center Report would be effectively addressed.

Of note, where the government of Alberta might exempt small producers from collection and recycling obligations under EPR (i.e. de minimis), a reporting registry that requires all small and large producers to register and report will allow for the calculation of more accurate recycling rates by accounting for supply both under and over the de minimis.

Recommendation: Anyone supplying PPP into Alberta (i.e. a producer) must register and report into an authority that is empowered to enforce registration and reporting requirements and enforce compliance with recycling targets.

EPR and competition

This is an expansive topic and the analytical and evidentiary basis for what may seem like offhand statements below are provided in the attached *Competition under Extended Producer Responsibility in British Columbia (Phase 2): Regulating for Environmental Effectiveness and Economic Efficiency* and the

¹⁸ As of this writing I continue to be a director on the board of directors of the BCMB.

¹⁹ Registered producers report their sales to the Alberta Beverage Container Recycling Corporation (ABCRC) and the Alberta Beer Container Corporation (ABCC) which then report unit sales in aggregate to the BCMB. This still not ideal. A more effective approach to mitigate free riding (via under-reporting) would be to have producers report unit sales directly into the BCMB.

²⁰ Ibid. Ref.11.

²¹ Interestingly the Law Center Report makes no reference to how the Alberta Recycling Management Authority (ARMA) addresses freeriding given that "Anyone who sells, distributes, manufactures, supplies or imports designated electronics in, or into Alberta, is required to register with Alberta Recycling." <https://www.albertarecycling.ca/suppliers/electronic-suppliers/>

proceedings from the November 8th 2016 *Economic Freedom and the Circular Economy Workshop: Defining the Role of Competition in Extended Producer Responsibility*.

The Law Center Report states that, “More often than not, where an EPR system allows producers to form PROs, only a single PRO will form even if legislation allows for more than one to exist” and that EPR policies, “...tend to encourage monopolies, which can create competition-related problems for the EPR system.”

The Law Center Report provides a tired list of bureaucratic non-remedies to potential monopoly abuse such as “governance reform” and associated “advisory committees” and more transparency regarding “financial accounting”.

Most existing Canadian jurisdictions provide stewardship agencies and PROs with a shelter from Canadian competition laws – a *regulated conduct defence*²² (RCD) – by virtue of approving their stewardship plans.

Where monopolies do form to collectivize action towards efficiency, the simplest regulatory prophylactic to potential market abuses is to ensure that individual producers and their PROs remain subject to the *Competition Act* Canada.

Eliminating the RCD prevents PRO from abusing smaller producers through discriminatory pricing as well preventing monopolistic abuses of recycling service providers and markets.

Ontario has specifically deprived persons from availing themselves of a RCD by stating in the governing *Resource Recovery and Circular Economy Act 2016* (RRCEA) that, “Nothing in this Act shall be construed as requiring or authorizing any person or entity to engage in an activity that would constitute a contravention of the *Competition Act* (Canada).”²³ In addition to this explicit statement in the RRCEA, the government of Ontario does not receive, review or approve operational plans developed by producers or their PROs.

Recommendation: EPR policy for PPP in Alberta should ensure that producers and their PRO are not afforded shelter from the *Competition Act* Canada through plan approval or any other means.

EPR vs state run recycling

The Law Center Report notes that given, “the limited differences between Alberta’s existing recycling programs and a producer take-back system, it is unlikely there would be a significant advantage to converting Alberta’s existing programs to an EPR model.”

²² Regulated Conduct Defence (RCD) is common law doctrine by which immunity is afforded under the *Competition Act*: “Summarized briefly, the courts have held that the RCD will apply to immunize “regulated” conduct from scrutiny under the Act when four main criteria are satisfied: (1) there is validly enacted legislation regulating the conduct at issue; (2) the conduct is directed or authorized by that legislation (although it is still unsettled as to the degree of authorization that must exist); (3) the authority to regulate has been exercised; and the regulatory scheme has not been hindered or frustrated by the conduct.” Mark Katz, Charles Tingley, *The Regulated Conduct Defence in Canada*, Competition Law, Federated Press, Volume XI, No. 2 (2006).

²³ S. 8 *Resource Recovery and Circular Economy Act, 2016*, S.O. 2016

This statement is only true if Alberta implements EPR without learning from the experience of other Canadian jurisdictions or if its objective is to simply tax consumers at the point-of-sale to pay for state-run recycling programs.

The assertion that, “benchmarking studies show that Alberta’s existing recycling programs perform at similar levels to the EPR programs found in other Canadian jurisdictions in terms of both recycling rates and costs” is really to say that Alberta should accept and adopt second best policy because the rest of Canada is currently doing so.²⁴

If Alberta were to adopt an approach whereby individual producers and first importers bore individual legal liability for meeting stringent recycling targets, they and not Alberta Recycling would bear the responsibility for building and incentivizing collection and recycling supply-chains. Were individual producers to bear regulatory risk for meeting recycling targets for WEEE, used oil materials or tires, the result would be increased economic efficiency.

To be clear, economy efficiency is not simply a lower unit cost of recycling:

“Under EPR, the economic efficiency objective is to reuse and recycle the resources in products and packaging at least cost (static efficiency), meet regulated environmental targets (allocative efficiency) and drive innovation both in the production of products and packaging and in the methods by which products and packaging are reused and recycled.”²⁵

There is no arguing that levying an advanced disposal fee on consumers to generate revenue for a state authority to pay for collection and recycling is expedient. However, it forgoes the feedback of information to producers that they would receive when they are made responsible for hitting stringent recycling targets by their own means.

Municipal treatment under EPR

Based on its characterization of how RecycleBC remunerates British Columbia municipalities for collection of PPP, the Law Center Report suggests that producers and municipalities in Alberta and Ontario face an intractable problem in establishing a commercial relationship. The Law Center Report states,

“According to its approved program plan, Recycle BC gives municipalities three options: they can continue to run their own recycling program without any help from Recycle BC; they can

²⁴ As an example of poor policy in other parts of Canada, in British Columbia, several stewardship plans are approved without any collection or recycling performance standard whatsoever. Notwithstanding that many jurisdictions have developed methodologies to set recycling targets for waste electronics and electrical equipment (WEEE), the BC Ministry of Environment approved the Electronic Products Recycling Association’s (EPRA) 2018 Product Stewardship Plan for British Columbia without any collection or recycling targets. EPRA states in its plan that it, “EPRA does not use a recovery rate to track performance. This is an impractical measure because sales data is reported in units and collection is tracked by weight. In addition, some products are in a broken state when returned which renders them impossible to identify. Finally, our products are durable goods with lifespans measured in years or decades. All of this combines to make the conversion between units and weight inaccurate and impossible to do with a reasonable degree of accuracy.”

²⁵ Ibid. Ref. 10

completely hand PPP recycling over to Recycle BC; or they can hand PPP recycling over to Recycle BC while continuing to provide collection services. If municipalities choose the third option, Recycle BC pays them a per household incentive for collection services provided.”

For some “municipalities, the incentives paid by Recycle BC do not cover their actual costs of collection, leaving them to cover the remainder of their expenses.”

The Law Center Report did not examine the factors that were given consideration at the time RecycleBC developed its approach to remunerate British Columbia municipalities for the collection of PPP.

Having had a hand in designing the incentive approach in British Columbia I can say that it was designed to offer all parties flexibility in the face of a wholesale change in responsibility across hundreds of municipalities in an extraordinarily short time frame. Namely:

1. Municipalities could initially opt out of EPR and watch to see how producers fared (a few did just that); or
2. Municipalities could accept a financial incentive for collection which would avoid them having to terminate their existing bundled contracts for waste, recycling and organic waste collection and then tender separately for blue box collection. Many chose this option because it did not disrupt existing collection arrangements while producers picked up all or the bulk of collection costs, the full cost of processing as well as all commodity risk;²⁶ or
3. Municipalities could have producers deliver the entire system with no municipal participation – an option that the City of Vancouver chose after it gained confidence in RecycleBC’s ability to deliver residential recycling services²⁷ and by which it transferred all system costs to producers.

The approach RecycleBC chose to engage municipalities is efficient because it allowed municipalities to choose between retaining their existing collection arrangements (potentially at some cost) or relinquishing all control at no cost. It also allowed for reasonable payments to municipalities in the absence of competitive tendering and avoided time consuming and complicated municipality by municipality forensic cost assessments (which can only yield useful information where recycling collection is delivered by municipal staff or under a stand-alone contract rather than as part of a bundled single-price waste, recycling and organics collection services contract).

In Ontario, the proposed regulatory transition timeline to EPR is significantly longer than it was in British Columbia. Ontario municipalities are already beginning contract management planning in anticipation of an EPR regulation in 2022 and an operational transition commencing 2023 and occurring over three years.

Ontario’s longer timeline should provide producers and municipalities with the opportunity to jointly develop and administer competitive tenders for collection services. Under this approach the resulting contracts could be administered by municipalities on behalf of producers (for a fee) thereby allowing municipalities to continue to deliver integrated collection services while identifying recycling collection costs separately for payment by producers.

²⁶ The real value of producers absorbing commodity risk became apparent with the closure of Asian commodity markets to Canadian mixed paper and plastics as of January 1, 2018.

²⁷ [Vancouver turns curbside recycling over to Multi-Materials B.C.](#): CBC September 01, 2016.

Recommendation: When regulating EPR for residential recycling services, Alberta should provide enough time for producers and municipalities to work together to establish tendering arrangements for residential recycling collection services as a mechanism to establish the rate of reimbursement for collection services.

Moving forward

The Law Center Report states that, “it is unclear whether an EPR model would significantly improve on Alberta’s existing PPP recycling programs.” It goes on to state that to decide whether to implement an EPR system for PPP recycling in Alberta, it would be necessary to take a, “closer look at British Columbia’s program to assess its economic and environmental performance.” The Law Center Report also advises that, “it may be prudent to wait and see what happens in British Columbia and Ontario before launching an EPR system for PPP in Alberta.” It provides this advice notwithstanding that British Columbia has been implementing EPR for residential PPP for more than 7²⁸ years.

There is much that Alberta can learn from British Columbia’s 7 year experience with EPR for residential PPP. Specifically:

- **Producers’ approach to engaging British Columbia municipalities has resulted in a generally uncontentious relationship.** An important lesson here is that an EPR law that allows for open negotiations amongst parties driven by producers seeking to meet their regulatory obligations results in less contentious outcomes than where governments regulate process or mediate relationships between parties.
- **Producers have built a provincial recycling supply-chain:** The introduction of EPR for PPP in BC has introduced a province-wide standard material list for collection and has consolidated the flow of materials collected from millions of households for processing at scale. The effect has been to justify capital investment in larger scale processing. Further to this,
- **Producers have driven significant investment in modern, domestic processing capacity.** From 2014 to 2019, there were over \$30 million in producer driven capital investments in material sorting and processing. These investments are a critical factor contributing to higher recycling rates for collected materials.
- **EPR has delivered lower contamination rates:** RecycleBC’s agreements with municipalities that stipulate contamination thresholds and its ongoing collaboration with municipalities and private service providers has reduced contamination such that the overall recycling efficiency for the materials collected was 90.3% in 2019.
- **EPR has connected producers to the realities of their packaging choices:** Producers receive information regarding the recycling implications of their packaging choices from recycling service providers via RecycleBC. This information is reflected in the explanation they receive regarding how their recycling fees are set.²⁹

²⁸ Producers began procuring service over a year before the program began operation.

²⁹ RecycleBC employs the [Material Cost Differentiation](#) (MCD) protocol as developed by the Canadian Stewardship Services Alliance. Utilization of this protocol by RecycleBC is an example of a PRO linking “the design of a producer’s product and the amount the producer pays for the waste management of that product”, contrary to the assertion in s. IV of the Law Centre Report that PROs break this connection.

EPR has transferred commodity risk from municipalities to producers. With producers assuming all the commodity risk, BC municipalities were shielded from the effects of the closure of Chinese commodity markets in 2018. In turn, producer driven investments in domestic plastics processing capacity starting in 2013 paid dividends by largely shielding producers from the effects of the closure of those same markets. The plastics exported from BC were shipped not as mixed wastes but as finished commodities and feedstock for manufacturing.³⁰ By comparison, Alberta municipalities have shouldered the effects of the closure of Asian commodity markets for paper and plastics – a key reason they have become strong advocates for EPR.³¹

- **EPR has provided a basis for measurement and improvement.** In British Columbia, 56% of rigid non-beverage plastic packaging and 22% of flexible plastic packaging supplied by producers is collected through the residential PPP system. While there is certainly some uncertainty regarding these numbers as associated with de minimis and free-riding, what is critically important is that there is now a basis for measurement and future improvement. Conversely, other than for beverage containers the recycling rate for plastic packaging in Alberta is essentially unknown.

The Law Center Report raises the issue of economic performance. Where EPR is regulated in a manner that provides producers with full operational determinacy and economic freedom, public costs are converted to a private cost as another input cost to production.

While driving down net system cost³² on a per tonne basis (i.e. static efficiency) is critically important to producers, regulators should be focused on driving innovation (dynamic efficiency) – the deployment of new technologies and recycling practices to reduce greenhouse gases and waste towards a circular economy.

While there is much that can be done to strengthen and improve British Columbia's regulatory regime for EPR, even as currently regulated it is driving innovation.

Concluding remarks and recommendations

The Environmental Law Center (Alberta) Society's report on Extended Producer Responsibility is a disappointment and a missed opportunity.

After more than *fifty* years of Canadian packaging waste regulation it is simply not enough to identify regulatory design issues without proposing carefully considered remedies. With a little more research, some discussion with EPR practitioners and some creativity, the authors could have offered policy design recommendations for implementing EPR in Alberta that would put Alberta at the forefront of EPR regulation in Canada.

³⁰ British Columbia had a head start on plastics recycling afforded by its early adoption of EPR for beverage containers. The provincial deposit-refund system facilitated the growth of Merlin Plastics – one of Canada's largest plastics recyclers. Merlin operates a plastics recycling facility in Calgary, Alberta which processes the majority portion of plastics from Alberta's deposit-refund system.

³¹ [Reduce, reuse, recycle, rejected: Why Canada's recycling industry is in crisis mode](#). For decades, Canadians tossed their recyclables into blue bins and never looked back. But with China cutting its imports of scrap plastic by 96 per cent, Canada's recycling industry is struggling. The Globe and Mail May 14th 2019.

³² The cost of collection, processing, administration and promotion and education net of the value of materials recycled.

Such a regulation would address the Law Center Report's key contentions by adopting the following:

1. Incent design for environment by making individual producers liable for meeting stringent recycling targets even though their efforts will likely be through a collective recycling system operated by a PRO.
2. Mitigate free riding by requiring producer registration and reporting into an authority that is empowered to enforce registration and reporting requirements and enforce compliance with recycling targets.
3. Support competition by providing no refuge for producers and their PROs from the *Competition Act Canada*.
4. Create an opportunity for effective producer-municipal commercial arrangements by providing enough time for producers and municipalities to work together to establish tendering arrangements for residential recycling collection services as a mechanism to establish the rate of reimbursement for collection services.

I hope these comments regarding the Environmental Law Center (Alberta) Society's report on Extended Producer Responsibility prove to be useful.

If you have any questions or comments please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Usman Valiante', with a large, stylized initial 'U' and a horizontal line extending to the right.

Usman Valiante
Senior Policy Analyst
Cardwell Grove Inc.