PATHS TO A WASTE-FREE SOCIETY?

EXTENDED PRODUCER RESPONSIBILITY POLICIES IN BRITISH COLUMBIA AND ONTARIO

by

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ABSTRACT

Extended Producer Responsibility (EPR) has emerged as a policy instrument for dealing with product waste by forcing manufacturers to take responsibility for these materials. It is, in effect, a market mechanism for reducing waste and encouraging more environmentally-adapted design while also shifting the burden of paying for waste off of governments and taxpayers and onto producers and consumers. This paper asks why EPR has become so broadly implemented in British Columbia, while in Ontario, the role of industry in waste management has thus far been limited to funding 50% of municipal curbside recycling (blue box) costs. The research finds that we can only make sense of current policy in light of historical decisions and debates. By conceiving waste management policies as an institution, the thesis employs a path dependent analysis to reveal how each province has followed on its particular path because the costs, both political and financial, of switching to another alternative have increased dramatically over time. The analysis traces current EPR policies back to early decisions in each jurisdiction regarding beverage container waste. BC's decision in 1970 to establish a return-to-retail system, and Ontario's decision in 1987 to mandate municipal curbside recycling were key moments that set the jurisdictions on divergent paths. Although the initial decisions were a product of interest-based politics, the subsequent course of product stewardship in each province has been held in place by a variety of mechanisms. These mechanisms include different constructions of stewardship, technological and infrastructural reliance, new supporting interests from policy beneficiaries, and the use of multistakeholder consultations in Ontario. All of these mechanisms have contributed to a strong status-quo bias. As a result, British Columbia has been able to build and expand upon past successful stewardship policies, while Ontario has focussed

predominantly on the shared-cost blue box as a catch-all solution for waste diversion, thus precluding stronger stewardship regulations. The thesis concludes that British Columbia is better positioned to stimulate the behavioural changes needed to minimize and potentially eliminate waste. Ontario faces numerous institutional barriers, but exogenous forces may help shift the path's direction.

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LIST OF ABBREVIATIONS

CSR	Corporations Supporting Recycling (ON)
DfE	Design for Environment
ENGO	Environmental Non-Governmental Organization
EPR	Extended Producer Responsibility
HHW	Household Hazardous Waste
IFO	Industry Funding Organization
IPS	Industry Product Stewardship
LCBO	Liquor Control Board of Ontario
MLWAP	Ministry of Land Water and Air Protection (BC)
MOE	Ontario Ministry of the Environment
MSW	Municipal Solid Waste
OMMRI	Ontario Multi-Material Recycling Inc,
RCO	Recycling Council of Ontario
WDA	Waste Diversion Act (ON)
WDO	Waste Diversion Ontario
WEEE	Waste Electrical and Electronic Equipment
WRAC	Waste Reduction Advisory Committee (ON)

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CHAPTER 1 – INTRODUCTION AND OVERVIEW

What is EPR?

Extended Producer Responsibility or EPR is a policy principle that deals with the intersection between waste management, corporate responsibility, sustainable consumption, and green product design. EPR has existed for decades in various forms under the rubric of Industry Product Stewardship, or simply product stewardship. More recently it has been formulated into a set of policy principles subsequently adopted by the Organization for Economic Co-operation and Development (OECD) and many of its members, including Canada. The concept is summarized as:

> a policy principle to promote total life cycle environmental improvements of product systems by extending the responsibilities of the manufacturer of the product to various parts of the entire life cycle of the product, and especially to the take-back, recycling and final disposal of the product (Lindhqvist 2000, v).

EPR is thus a market-based mechanism that encourages manufacturers to internalize the costs of the wastes their products create and thus potentially compel them to design more environmentally adapted products, known as Design for Environment. Lifset notes:

> the imposition of EPR represents perhaps the most literal version of internalization: producers retail legal or even physical responsibility for their products from cradle to grave under the broadest form of EPR (Lifset 1993, 166).

Some advocates have taken Design for Environment to the next level, calling for a 'cradle to cradle' conceptualization where a discarded product becomes raw material for a new product (see McDonough and Braungart 2002).

EPR programs are proven to have a high rate of environmental and economic success, shifting the financial and physical burden of waste disposal away from taxpayers

and governments, and placing responsibility on industry and consumers. EPR policies use a variety of tools to achieve their ends, including deposit-refund, fees/levies, mandatory take-back, eco-labelling, quotas for recycled content or recycling rates, and education. In addition to encouraging behaviour change in industry, these tools are also aimed at consumers. Despite these formal goals, many jurisdictions have adopted different variations of EPR according to local circumstances (see Lifset 1993).

EPR policies have become increasingly popular since the 1990s, particularly in Europe, but the development and implementation of EPR in Canada has been far slower and more disaggregated, partly because provinces have ultimate jurisdiction over waste management issues

EPR Policies in BC

British Columbia has been frequently highlighted as the Canadian, if not North American, leader in EPR (Driedger 2002; Durning 2004; Sheehan and Spiegelman 2006), with disposal for broad array of materials now funded exclusively by industry and consumers. These materials include used oil, scrap tires, Household Hazardous Waste; pharmaceuticals; solvents, flammable liquids, gasoline, and pesticides; and beverage containers. In 2004 the province passed the Recycling Regulation, an explicit and comprehensive EPR framework policy that aligned the existing programs with common principles and developed a strategic direction and a protocol for making future decisions. Since 2004, the government has expanded the program, designating materials related to Waste Electrical and Electronic Equipment for stewardship. Most of BC's policies originated in the early 1990s, although I will argue that they in fact must be understood in light of the 1970 *Litter Act*, which mandated the first North American deposit-return

legislation for beverage containers. In addition to industry stewardship programs, BC's municipalities operate profitable curbside recycling systems, which are funded predominantly through materials sales.

EPR Policies in Ontario

Ontario, on the other hand, is arguably an EPR laggard. Currently, stewardship exists in the form of industry funding 50% of municipal curbside recycling ("blue box") fees, known as the shared-cost model. This was established under the 2002 Waste Diversion Act, which also acts as enabling legislation for future EPR programs. Recently, however, the Environment Minister announced that EPR programs which had been under development for scrap tires and used oil would be shelved indefinitely before implementation, for reasons which will be discussed in chapter 4. Stewardship programs for Household Hazardous Waste and electronic waste are now under development, and signs point to these programs also following the shared-cost model, should they be implemented. Ontario's municipalities bear the primary burden of properly collecting and disposing materials such as household hazardous waste and used oil.[1]

EPR in Ontario is limited relative to BC for several reasons. First, industry pays, at most, 50% of the program fees. Second, fewer waste streams are covered (currently limited to materials recycled in the blue box). Third, municipalities are left with the burden of funding and administering most waste diversion programs, which puts a massive strain on municipal budgets and results in a patchwork approach to waste management. Additionally, municipalities lack the constitutional jurisdiction to impose significant product stewardship measures. Fourth, BC has set explicit quotas, and has

[1] In the absence of provincial policy, some municipalities such as Ottawa have developed successful voluntary agreements with local businesses to take back various materials (see Ottawa 2006).

enhanced transparency and accountability through performance measurement and fines for non-compliance. Ultimately, the policy in Ontario has been very favourable to industry and consumers.

Research Questions

In comparing the stewardship regimes in BC and Ontario, the central question is why has BC implemented a broad range of EPR policies while in Ontario, stewardship is thus far limited to 50% industry funding for the blue box? The politics of Extended Producer Responsibility has gone largely unstudied in political science. Some literature exists on the uptake of EPR in the US and Canada, although the studies are from an industrial ecology or advocacy perspectives (see Lifset 1993, 1994; Lindhqvist and Lifset 1997; Sheehan and Spiegelman 2006). No thorough analysis exists to understand why BC and Ontario, with identical institutions and comparable party ideologies over time, have adopted and implemented such different policies.

EPR and the road to zero-waste

Before embarking on this analysis, it is useful to ask why the question is at all relevant. Why does it make a difference whether industry pays the full cost or shares the cost with municipalities? Key bureaucrats in both provinces noted during interviews that they believed there was no right or wrong answer regarding funding arrangements. However, I argue that the differences between the two systems are significant according to several criteria. First, BC has higher diversion and recycling rates for materials under stewardship programs than Ontario, and a higher overall municipal waste diversion rate.[2]

[2] In 2005, Ontario's municipal residential diversion rate (via the blue box recycling program) was at about 38% province-wide (Lindgren 2006). In 2000 in BC, 42% of municipal solid waste was diverted through recycling, 8.9% (by weight) of which was recycled through industry stewardship initiatives (British Columbia 2002c, 39).

The difference is stark in the case of beverage containers, with Ontario recycling around 50%,[3] while BC recycles about 73%.[4] The Environmental Commissioner of Ontario notes: "Ontario fares worse than almost every other province in Canada" on beverage container recycling (ECO 1998, 107). As well, because the financial burden for waste diversion in BC is offset by industry funding, municipalities rely less on the general tax base and are also less dependent on a fluctuating market for recyclables to fund waste diversion. Canadian cities have been engaged in a longstanding battle with provinces about the limits of the property tax as a flexible tool for raising revenues. Removing a significant proportion of waste diversion from municipal responsibility allows cities to direct funds in other priority areas. Most significant, however, is that the underlying principle in BC has shifted responsibility for managing and reducing waste away from government and citizens and transferred it onto industry and consumers. This not only forces producers and consumers to take into account the waste these products create but has already contributed to a variety of behaviour and design changes. Oil, for example is now being manufactured to have a longer lifespan, and the BC Used Oil Manufacturing Association is considering options for enacting different handling charges in order to minimise excess packaging, or create uniform packaging (Driedger 2006, telephone interview). The paint industry has also begun to move away from oil-based paints due in part to high stewardship costs (Matkin 2006, personal interview).

Ontario, on the other hand, has relied heavily on curbside collection of these materials, and costs are shared by municipalities, taxpayers and industry. Despite industry contributions, most of the funding dollars for curbside recycling continue to be drawn

[3] Data from 2003, calculated from Stewardship Ontario 2005.
[4] Not including alcohol containers (Encorp Pacific Canada 2005).

from the municipal property tax base. Under such a system, "producers have not taken on responsibilities commensurate to their role in generating waste" (Durning 2004). Additionally, the blue box does little to encourage behaviour change among consumers, and in fact allows consumption patterns to continue unchallenged and allows consumers to feel they are being environmentally responsible citizens by recycling at the end of the day. Although the BC system is not perfect, and has been criticized for not fully aligning with EPR principles (see Valiante 2004, 2006), the province is far ahead of Ontario in mandating and implementing programs for producer responsibility and producing economically and environmentally favourable policy outcomes. Note that my intention in this thesis is not to conduct a detailed policy analysis of policy outcomes but rather to understand the origins of what I believe to be core differences between two policy frameworks. As well, this paper will not attempt to provide a detailed and comprehensive overview of the history of waste diversion in each province, but will rather highlight and analyze key moments and events along each province's path to show certain reinforcing mechanisms at work. With a broad EPR policy in place, and an entrenched notion of 'producer responsibility,' BC is better positioned than Ontario to fulfil the overarching goals of EPR of reducing wasteful production and consumption.

Variables and Hypothesis

The central thesis of this paper is that the differences between BC and Ontario's adoption of EPR are related to the highly path-dependent nature of waste management policy in each jurisdiction. The current policies can only be understood in light of historical processes. That is, a "snapshot" view of the current political situation does little to reveal why the difference is so stark (Pierson 2004, 2). Drawing from Paul Pierson's

work on the path dependent nature of political institutions, this analysis reveals the shortcomings of a rational choice approach to understanding public policy and the benefits of understanding social processes in light of their historical development.

The limits of Rational Choice

Rational choice theory is useful for understanding political decisions, and as we shall see throughout this paper, actors and their interests have indeed played a significant role in shaping the divergent policy directions of the two cases. However, as Pierson argues, rational choice is "a highly restricted field of vision" that misses "macrostructure, the role of temporal ordering or sequence, and a whole host of social processes that play out only over extended periods of time and cannot be reduced to the strategic 'moves' of 'actors'" (Pierson 2004, 9). Pierson is critical of conventional variable-oriented research, which implies that "we only need to know the values of variables at the moment of interest, not the sequence through which these factors developed" (*ibid,* 44-45). We shall see that attempts to understand the current state of EPR policy in terms of contemporary political battles is fruitless.

In trying to understand the differences between the two cases, two main questions emerge. First, how do we explain why either jurisdiction chose to implement any EPR policy at all? And second, why would the BC government choose to impose more costs on business than Ontario, by not only legislating full stewardship, but including so many categories of materials, and implementing strong performance measurement criteria?

With respect to the first question, the decision to do something rather than nothing is not explained by a resurgence of public concern for the environment. In the early 2000s, the environment was not at the forefront of the public agenda in either province. If

we apply Mancur Olson's logic of collective action, we assume that "large groups...will *not* act in their group interest" if both the costs and benefits are diffuse, as they are with most environmental issues (Olson 1982, 18). Waste issues are particularly prone to low public attention. Social research on public attitudes towards waste have found that "waste is not something we confront in our everyday lives," despite a general acknowledgement that "waste is detrimental to society" (de Coverley et. al. 2003, 7, 17). Researchers argue that the hidden nature of waste "helps support the consuming performance of daily life" (*ibid*). With these conditions in place it is difficult to make an argument that either government acted because waste issues were high on the public agenda.

In both provinces, businesses were highly organized and had ready access to government. Olsonian logic shows that in situations where costs are concentrated and benefits are diffuse, and "if the group that would benefit from collective action is sufficiently small and the cost-benefit ratio of collective action for the group sufficiently favourable, there may well be calculated action in the collective interest even without selective incentives" (Olson 1982, 29) A rational choice perspective would therefore expect business to be very dominant in this area.

It is interesting to note that both the 2002 Ontario Waste Diversion Act and the 2004 BC Recycling Regulation were enacted under neoliberal leadership. In Ontario, Mike Harris' Progressive Conservatives had been in government since 1995 and Gordon Campbell's liberals had come into power in BC in 2001. Both governments can be characterized as pro-business and pro-growth, and not prone to making strong environmental policies. Mike Harris' Progressive Conservatives in Ontario made

significant cuts[5] to the Ministry of Environment budget during their years in power (1995-2002), notably cutting all provincial funding for the blue box program, thus placing the full financial burden on already overloaded municipalities. Ontario demonstrated its pro-business attitude on a number of waste-related issues. It 'streamlined' the approvals process for the controversial and profitable Adams Mine plan, a now-defunct proposal to build a landfill in a disused mine in Northern Ontario as a solution to Toronto's waste problem (CIELAP 2000, 52-53). Another example relates to the government's decision to remove a ban on the establishment of new municipal waste incineration facilities in 1995, which provoked debate about health risks, and the benefits of waste diversion. The Canadian Institute for Environmental Law and Policy characterized the Harris' government's waste management policies the following way:

> The perspective of the Common Sense Revolution is that waste is big business, and, as with all the other businesses supported by the provincial government, the Revolution's tendency has been to assist the industry with streamlined approvals, a lightened regulatory burden and the benefit of the doubt when concerns have been raised about a facility (CIELAP 2000, 47).

With these conditions in place, it is difficult to understand why the government chose to make industry pay for 50% of municipal curbside recycling fees, without understanding the historical context.

Many of the same neoliberal tendencies were evident in British Columbia, where Gordon Campbell's Liberal government took office in 2001. Although slightly less conservative than Harris's government, Campbell's Liberals also espoused similar values, and made significant cuts to social, health and environmental programs. The

[5] The Canadian Institute for Environmental Law and Policy calculated in 2000 that MOE budgets had been cut by approximately 60 percent since the Harris government had come into power (CIELAP 2000, 7).

government also enacted a number of pro-business concessions on environmental issues. In their first year in office, for example, the Liberals weakened regulations relating to pulp mill effluents, wilderness land use and fish farms; they cut funding to the public service including staff that monitor and enforce compliance to environmental regulations, and eliminated the environmental commissioner's position, all under the mandate of cutting red tape and improving economic efficiency (Marshall, 2002a). The government's reasoning for these changes relate to its focus on "client service", "sustainable economic development" and "industry competitiveness" (Marshall, 2002b). The government also removed permit requirements for low- or medium-risk landfill sites (*ibid*).

A number of conditions relate to the second key question of why BC would impose more costs on business than Ontario. In a similar discussion, Durning (2004) proposes – but does not investigate – the theory that B.C. has better EPR policies than the United States because of the strength of industry in the U.S., where industry has been successful in obstructing government attempts at holding producers responsible. More solid evidence for this can be found in Sheehan and Spiegelman's (2006) comparative case study. We may hypothesize that a similar dynamic is currently at work in BC and Ontario, as the manufacturing sector (with the exception of forest products) is characteristically much stronger in Ontario than in BC. However, we find that although industry groups were active on these issues, no comparable battle over interests occurred regarding contemporary policies.

With these conditions in place, it seems implausible that either government would initiate a process that would result in regulations that not only mandated industry funding for recycling, an environmental cause, but also provided financial relief to municipalities.

The BC government's enactment of the 2004 Recycling Regulation brought diverse stewardship regulations under one common framework that set high diversion targets for regulated products (75% or higher); forced producers to pay costs related to collecting and managing products, providing public education and measuring performance and environmental impact; stipulated a six-tier hierarchy of post-recovery management that focused on reducing environmental impacts throughout a product's lifecycle[6] and threatened a $200,000 fine for offences (BC 2004). It is worth noting however, that the Recycling Regulation itself did not impose any major new costs on industries, apart from those related to performance measurement. It did, however, create a framework for including new product categories which would force new costs on industry. Indeed, the government soon designated electronic waste and is developing a new program which will have a significant economic impact on relevant industries.

The decision in both provinces to do anything at all can hardly be explained in light of each government's track record and relationships with business. Nor can we simply explain why producers became 100% responsible for funding programs in BC but only 50% in Ontario, particularly when both governments had similar pro-business attitudes. The analysis below finds that industry did not mount a significant opposing campaign in either jurisdiction. The debate in both cases centred on the *form* of regulation, rather than the existence of the regulation itself.

Both cases provide clear indications that we must at the very least look to previous decisions in order to understand the current state of policy. The 2004 Recycling Regulation in BC brought together six prior stewardship regulations under a common set

[6] The hierarchy is as follows: "reduce toxic components and increase efficiency; redesign; minimize waste; reuse product; recycle product; recover material and/or energy; dispose of waste in compliance to act" (BC 2004)

of principles [see Appendix A for details of BC's stewardship policies pre-2004]. Similarly, the 2002 Waste Diversion Act in Ontario was the result of a decades-long debate about funding for the blue box, linking it directly to an early beverage container policy decision that shaped subsequent developments in significant ways. The contemporary policies can only be understood in light of prior debates and decisions, and a historical view reveals that waste management regimes in each province have been significantly path dependent.

Prior decisions, successes and failures, rather than interest-based politics, created the conditions for the current regulatory regime. The analysis further confirms that rational choice arguments and ideological treatments are insufficient for understanding these policy regimes

Party ideology

Another hypothesis that could be tested to explain the current state of affairs is party ideology. Because many of the modern regulations in BC were enacted by the New Democratic Party (NDP), it might be logical to assume that product stewardship in the province is simply a result of a socialist bent towards regulating industry to protect the environment. This explanation does not suffice because, as we shall see, the origins of EPR in the province trace back to the conservative Social Credit government. In addition, the current Liberal government, which has exhibited strong neoliberal values, has been expanding and further institutionalizing EPR legislation. In Ontario, successive governments, notably the NDP, completely failed to enact or enforce stewardship regulations, but it was the notoriously neoliberal Mike Harris conservatives who passed the WDA, and ordered industry funding towards the blue box. Ideology fails as a causal

variable for two reasons which will be elaborated upon. First, the path dependence in each case, but particularly in Ontario, has been strong enough to supersede ideology. Second, EPR is inherently acceptable to a broad range of ideologies, appealing not only to environmental values typically stronger on the left, but also to the commitment to reduced taxation and market-based approaches to governance of the right. Lindhqvist argues that EPR remains acceptable when "the possibilities of raising taxes to meet new demands in the management of waste are politically limited," which may explain the interest in EPR in non-OECD jurisdictions such as China and Poland (Lindhqvist 2000, 104). Sheehan and Spiegelman (2006) also make note of this (219).

Path Dependence

Path dependence can occur in both institutions and in public policies. I argue that waste management regimes, which are enabled by public policies, are themselves institutions. Pierson (2004) notes the parallels: "both formal institutions... and public policies place extensive, legally binding constraints on behaviour" (34-35). A broad conception of institutions also includes the standard operating procedures of bureaucracies, which we will see has had significant effects in each case. Institutions are prone to path dependence due to high start-up costs, learning effects, coordination effects, adaptive expectations, and the development of complementary organizations and institutions (*ibid*, 27). These relate to the mechanisms that keep a path in place, which will be discussed further on.

A path dependent analysis is made up of two parts. We must study the "factors that set development along a particular path" and "the mechanisms of reproduction of the current path" (*ibid*, 46). The conditions that led to these early decisions can indeed be

explained in terms of strategic self-interested behaviour and power dynamics. Chapter 2 of this thesis finds that a battle of interests between various industry groups and environmental organizations occurred in Ontario and BC in the 1970s-1980s regarding proposed refillable beverage container regulations and deposit-return regulations. In both cases, the relative strength of the industry lobby strongly impacted instrument choice. In Ontario, industry was highly mobilized, with powerful resources, and was able to block the proposed strong policy instruments. Government eventually adopted a compromise in 1987 between the interests of industry and environmental groups, establishing the blue box, which was the first curbside recycling system in North America.

In BC, industry was neither as strong, nor as fierce as in Ontario. This allowed the government to act decisively early on. In alliance with environmental groups, the government passed the 1970 *Litter Act*, the first North American return-to-retail beverage container legislation, despite ongoing industry opposition. The act set a precedent for successful product stewardship programs in the province.

These initial decisions set provincial waste management policy on divergent and rigid paths. Pierson (2004) makes several key claims about path dependence (18-19). He notes that similar initial circumstances can lead to a range of outcomes. This is indeed the case in BC and Ontario. Despite the differences in strength between various actor groups, both provinces were faced with nearly identical waste management challenges at the outset, and in fact have continued to deal with comparable challenges over time. Pierson also points to small events having large consequences. Throughout this thesis, we see how the decisions made by policymakers may have seemed small at the time, but had enormous consequences. For example, BC's 1970 decision to enact return-to-retail

legislation for beverage containers, and the 1994 decision to force paint manufacturers to be stewards of their waste materials, both set precedents for subsequent decisions in BC, which became an unexpected pioneer in North America.

Pierson also notes the importance of timing and sequence, which will emerge throughout this analysis, as well as the irreversibility of certain courses of action. This relates to positive feedback – how the "relative benefits of the current activity compared with once-possible options increases over time" (Pierson 2004, 21). That is, the cost of switching to another alternative becomes impossibly high as the path continues. This is indeed the case in both provinces, particularly in Ontario where the approach to stewardship has become entrenched, despite it being economically and environmentally inefficient.

The Mechanisms

Although the early policies were a direct result of interest-based politics, the ensuing paths were held in place by entirely different mechanisms. These mechanisms emerge in chapters 3 and 4, and the analysis helps clarify how the current state of policy in each case is a product of prior decisions. In the decades following the initial beverage container decisions, a number of mechanisms emerged that served to reinforce each path and made the costs of switching to another alternative increase over time. Pierson (1996) notes that

> organizations and individuals adapt to particular arrangements, making commitments that may render the costs of change (even to some potentially more efficient alternative) far higher than the costs of continuity. Existing commitments lock-in policymakers" (175).

Pierson (2004) argues that political institutions are prone to path dependence because political reality limits self correction, unlike market-based systems (40-41). He points to features such as the weakness of competitive mechanisms and learning processes, short time horizons, and also what he calls the status-quo bias of political institutions as restricting change. Political institutions are structured in often inherently irreversible ways, and political actors are often "compelled to bind themselves" and "remove certain alternatives from their future menu of options" in order "to reduce uncertainty and enhance stability" (*ibid*, 43). We shall see several examples of this particular trend in the Ontario case, specifically relating to removal of certain policy options from consideration and the establishment of Waste Diversion Ontario (WDO) in 2002, discussed at length in chapter 4.

In each case, key mechanisms emerged that have helped sustain the paths – constructions of stewardship, technology and infrastructure, and new supporting interests. As well, I discuss how Ontario's reliance on multistakeholder consultations for decisionmaking has contributed to a status-quo bias.

Constructing Stewardship: Who is Responsible?

The contested meaning of stewardship, the often conflicting ways in which societies and actors have defined the concept, has been a central theme in the EPR debate. To understand each province's adherence to its particular path, at least as it relates to the extent of industry involvement, we must analyze the construction of stewardship that underpins policy. Nearly every jurisdiction that has adopted EPR has adapted the meaning of stewardship to suit local conditions. A relevant example of this is the adoption in the U.S. during the mid-1990s of an extended *product* responsibility

construct. Responding to industry pressure, the US President's Council on Sustainable Development altered its definition of EPR in 1996 to focus on products rather than on the producers of those products; hence, responsibility is shared between manufacturers, suppliers, users and disposers of products throughout the products lifecycle (Lindhqvist and Lifset 1997, 7). Critics argue that this redefinition is intentionally ambiguous, and the move "holds out the distinct possibility that no one will be responsible" (*ibid*). This construct also undermines the potential for EPR to act as a market mechanism for reducing waste. This example demonstrates the influence of interests on the construction of EPR. In the 1990s, BC and Ontario adopted very different constructions of stewardship that link back to earlier political decisions, and have had persistent consequences for policy. In the ensuing discussion, I will discuss in detail Ontario's 'shared responsibility' model and BC's 'producer responsibility' model and show that interests only partly explain each province's construction of stewardship.

Technology and Infrastructure

In addition to constructions of stewardship, technology and infrastructure have played vital roles in sustaining each path. This is not surprising, as much has been written about increasing returns as they relate to technology, before the concept was taken up by political scientists (see Arthur 1994). It is often easier to build upon existing technological solutions and infrastructure than to create a new approach from scratch, despite the fact that the chosen solution may not necessarily be the most effective or efficient. In Ontario's case, existing infrastructure is related to the curbside collection model for recycling, which involves investments in trucks, labour, transfer stations, and market development for recyclables by municipal and provincial governments. The

materials collected in the blue box also create a form of technological reliance, as the inclusion of high value aluminum in the mix effectively subsidizes the collection of low-value mixed broken glass and other materials. In BC's case, the establishment of province-wide recycling depots became an effective and easily-expanded model for collecting recyclables. Industry is responsible for administrative and operating costs, such as those relating to labour and market development.

New supporting interests

It is also worth exploring the role of interests, but from a different angle. Rather than assume that the interests that set each path on course are the same ones that sustain it, we must look at how new interests generate positive feedback. In his work on welfare state retrenchment, Pierson (1996) discusses how the mechanisms that generated positive feedback flowed directly from the initial policy decisions. In his example, the welfare programs themselves created new supportive interest groups, different from the interest groups that initially influenced the programs' establishment (151). Thus, the providers and beneficiaries of particular policies developed vested interests in maintaining and building upon these policies. In the ensuing discussion, we shall see how both the blue box program in Ontario and the beverage container refund system in BC created new sets of interests across all actor-groups that helped to sustain and propel the programs on their corresponding paths. Additionally, there is significant evidence that past policies shaped various actors' perceptions of their interests.

These mechanisms are best explained via the processes within which they are embedded. I will therefore discuss the events as they occurred chronologically. This chapter deals with the events that occurred from the late 1980s through to the late 1990s

and early 2000s. Throughout the analysis, various mechanisms are highlighted; we shall see an interesting phenomenon where not all the factors contributing to each path are a direct result of prior decisions. Some were a result of separate decisions but served to reinforce the existing policy framework and subsequent path. These nonetheless play a vital role in explaining the current state of policy.

The Status-Quo Bias of Multistakeholder Consultations

It is also worth highlighting Ontario's ongoing use of multistakeholder consultations for making decisions on stewardship issues, which stands in contrast to BC's approach, which often involved a commissioner conducting widespread consultations and then drawing his or her own conclusions. Hoberg (1993) looks at how multistakeholder consultations emerged as a policy approach in Canada around the same time as the concept of Sustainable Development became widespread. He points to both as being "based on the idea that corporate interests in development can somehow be reconciled with interests in environmental protection" (318). In an attempt to avoid unproductive "political conflict over unavoidable trade-offs," multistakeholder consultations are consensus-based (*ibid*). Hoberg notes that "using consensus as a decision-rule contains hidden biases" because "it is much easier to block action than to change the status quo" (*ibid*, 322). Thus, "the consensus decision-rule favours those who benefit from the status quo" (323). Here we find a link to Pierson's theory about the status-quo bias of political institutions – multistakeholder consultations as a political institution often present a barrier to broad regulatory change, reinforcing the status quo, which tends to reflect the preferences of powerful interests. Ontario has relied predominantly on multistakeholder consultations to inform policy decisions on

stewardship, and the implications of this for 'good policy' will be highlighted in this paper.

Methodology

Because of a significant lack of scholarship on this issue, this research has predominantly relied on primary sources, including policy and research papers from provincial and municipal governments, and policy statements by industry associations and nongovernmental organizations. National, provincial and municipal newspapers, as well as trade publications, were useful sources of information, particularly for constructing a chronology of events and providing a snapshot of the debate on various issues. By far the most valuable resources for information were the expert interviews conducted by the author in June and July of 2006 with representatives from bureaucracies, industry consultants, and ENGOs. 2-3 interviews were conducted in each jurisdiction. For more details about the interviews, see Appendix B.

CHAPTER 2 – THE EARLY YEARS: BC AND ON IN THE 1970s AND 1980s

The role of manufacturers in managing their product waste has been long debated. The issue first made its way onto the political agenda in the late 1960s, when the soft drink industry began to move away from refillable bottles to cheaper, disposable materials. In the decades following, a number of surprisingly aggressive political battles were fought between provinces, municipalities, environmentalists and industry over how to deal with the problems of increased waste, funding for recycling, and littering.

The impacts of interests on instrument choice

Rational choice theory is valuable for understanding the origins of the divergent policy paths in BC and Ontario. The beverage container debate in each province was a battle of powerful interests that led to the selection of different policy instruments for regulating industry behaviour. In comparing the two cases, I argue that the relative strength of business interests was the primary factor shaping instrument choice. The strong influence of the soft drink industry in Ontario produced a patchwork of non-coercive laws throughout the 1970s and 1980s, resulting in an inefficient, unenforced and unsustainable system that was eventually hijacked by business interests to establish the blue box. Conversely, the relatively weak position of the soft drink industry in BC allowed the province to pursue 'good policy motives'. The government took strong action early on, creating a framework for effective regulation of consumer waste, and cooperation with business. The resulting system could be characterized by industry compliance, strong public participation, and excellent environmental effectiveness.

In this chapter, I will highlight key moments that helped set the particular paths in place. These moments are informed by actors, their interests and their activities; the behaviour

of politicians and bureaucrats in response to various pressures; and actors' ultimate influence on instrument choice.

Policymaking is inherently political. Politics influences policy as much as policy has an impact on politics. There has been a significant shift away from economic theories that governments rationally choose the most efficient policy instruments available (see Becker 1958, 105). Recent scholarship has studied the complex political incentives and constraints that challenge policymakers. Trebilcock and Hartle (1982) argue that political rationality governs instrument choice insofar as politicians will attempt to concentrate benefits on uncommitted or 'marginal' electorates, and impose costs on infra-marginal voters who do not influence electoral outcomes (35-36). Moreover, they argue, concentrated interests are able to exact, in some circumstances, favourable policies from political parties not because they themselves are marginal voters whose support is important to the party but rather because they are able to offer resources to a political party that it can deploy in attracting the support of marginal voters (39).

This is a vital point that helps explain the establishment of curbside recycling as an alternative to deposit-refund legislation in Ontario. While Trebilcock and Hartle's analysis does not deeply address political behaviour towards industries or unions, nor deal with non-electoral motives such as threats of litigation or relocation, it provides a basic framework for understanding how politics, particularly interests, shapes policy.

B. Guy Peters (2002) builds on this theme, noting how interests and ideas are key variables that shape instrument choice. Different political constructions of policy instruments ('framing') "engender different forms of political debate and also make different forms of political coalitions possible" (553). However, he observes that framing

often intentionally disguises interests. As we shall see in both cases, the issue and instruments presented to the public have been framed in environmental terms, thus obscuring the underlying battle over business interests. Although framing is not a causal variable, it clarifies how industry and government were able to capture public support, as well as support from the environmental lobby in Ontario.

Comparability

The cases are well-suited for comparison for a number of reasons. During the 1970s and 1980s, both jurisdictions faced the same kinds of technological and market changes, coupled with rising environmental awareness. Both jurisdictions were heavily lobbied by environmental groups, municipalities, and citizens to regulate beverage containers via deposit-return systems. Both BC and Ontario also faced industry opposition to proposed deposit-return regulations. Finally, both provinces have the same institutional makeup, giving them full authority over regulating their industries, enacting environmental legislation and shaping municipal solid waste management practices. The key differences lie in the relative strengths of particular interests. In making decisions about environmental protection, politicians must take into account the interests of various stakeholders such as industry, the voting public and municipalities. These interests are balanced quite differently in Ontario and British Columbia.

The structure of the industrial economy in Ontario is distinctive. In the 1970s, Ontario produced a much larger share of national volume of soft drink sales than BC, producing 38% compared to BC's 6% (Keddy, 1976). Ontario also faced much stronger union representation, especially from its steel industry prior to 1986. The steel industry and steel unions have played an historically strong role in Ontario politics and comprise

an important constituency for politicians (McRobert, telephone interview). Conversely, BC has never counted steel production as part of its economy. The steel industry is an important stakeholder because all soft drink cans were made of steel until 1986, when aluminum containers were legally introduced in the market, ultimately weakening the influence of the steel unions (McLaren, 1985). The steel industry opposed deposit-refund and refillable regulations because both were intended encourage a switch away from steel cans towards glass bottles. The industry preferred a model that would allow them to increase production of disposable cans. Lastly, overall employment in the soft drink industry in Ontario represented about 31% of the national total in 1986, while BC had about 9%.[7] Although this is proportional to each province's share of the national population, industry in Ontario had greater resources and incentives to lobby, due to its overall scale in the province and its scale relative to the national total. These figure point to the soft drink industry being much stronger in Ontario than in BC, and I thus hypothesize that the industry had more incentive and capacity to defend its interests and thus influence instrument choice.

1970s-1980s – The origins of each path

Until the end of World War II, most beverage companies operated their own deposit-return systems to recuperate refillable bottles and save on expensive production costs. Technological innovation allowed the industry to replace bottles with cheaper, lighter and, importantly, disposable steel cans and thin-walled glass bottles. It soon became much more profitable to run a one-way operation, and so the onus of disposal was shifted onto individuals and thus municipalities. In the late 1960s, as the North American environmental movement was born, public awareness grew of the various

[7] Figures calculated from Statistics Canada, 1986.

forms of pollution affecting the natural environment and human health. The influx of disposable beverage containers coincided with this trend and became a new issue on the political and public agenda. Both BC and Ontario faced the same initial problem, and both provinces announced their intentions to take action.

British Columbia in the 1970s

In 1968, the issue was brought to the attention of BC's Minister of Recreation and Conservation W. Kenneth Kiernan by a group of environmentalists concerned with the rising litter problem. The group, Outdoors Unlittered (which later became Pitch-In Canada), helped to convince the minister that strong action should be taken to prevent the problem from escalating. Although the government was Social Credit, there appear to be few links between political ideology and willingness to make environmental regulations on this issue. At the time, Kiernan was an honorary director of the organization, which gave Outdoors Unlittered the opportunity to participate in writing and facilitating the passage of Bill 33, which became the 1970 Litter Act. The act established the first deposit-return system in North America, "making it mandatory that certain types of beverage containers shall be refundable if returned to the place of sale" (British Columbia 1970, 670). These containers included glass beer and soft drink bottles, and steel cans. The Act would be enforced via education combined with fines. According to Kiernan, the Act was driven by two basic principles: to "protect and preserve a high quality environment" and to "[come] to grips with specific factors affecting environment quality" (*ibid*). The policy was framed in terms of keeping parks, wilderness areas and crown land litter-free by way of individual citizen responsibility. By appealing to individuals and invoking BC's wilderness, the policy was not framed as an open attack to business. At

the time, there was no market for recyclable materials, and the province was not yet facing any landfill crises. This was in line with the broad trends of environmentalism at the time, which focussed more on wilderness preservation rather than corporate responsibility, resource conservation, or waste reduction. This allowed the Bill to effectively garner support in the legislature and from the public.

Industry response was less than positive, and newspaper reports describe the act as causing friction, particularly when the government imposed strict fines on businesses that tried to avoid the program (Anonymous, 1972). Allard Van Veen, a co-founder of Pitch-In Canada who was closely involved with the 1970 legislation, recalls the beverage container industry putting great pressure on the government to prevent the act from passing, including an extensive public relations campaign. Outdoors Unlittered was also subjected to industry pressure due to its involvement in the process; at one point, the Glass Consumer Council offered the organization money for an anti-litter campaign in exchange for dropping their support for the Act (Van Veen 2006, telephone interview).

Despite industry's well-organized opposition, the government was able to employ fairly strong regulatory instruments due to a combination of political leadership[8] and political opportunity – characterized by strong political and public support and a highly salient issue that allowed electoral incentives to outweigh industry resistance. As well, the potential for job loss was considerably less than in Ontario (*ibid*). Politicians saw the benefit in responding to voter interest and concern about the environment, and despite their discontent, industry complied.

High public participation secured the program's effectiveness. The act set a North American precedent and a more important precedent in BC. As we shall see, this initial

[8] Pitch-In Canada described Kiernan as "gutsy" for taking leadership on this issue (Pitch-In Canada, n.d.).

strong move not only founded a highly effective system for governing beverage container waste, but also created a framework within which government could further negotiate with industry on similar policies. The 1970 Litter Act was a key moment that has clearly shaped BC's current regulatory regime by setting it on a path of increasing returns.

Ontario in the 1970s

In 1970, the Ontario Ministry of Environment announced its intention to take actions against 'throwaway' beverage containers. It was not until 1975, however, that Environment Minister William Newman gave industry 12 months to comply with a provincial demand that soft drink retailers offer all sizes and brands of soft drinks in reusable bottles as well as throwaways. Newman said "the government prefers to reach its objective through co-operation with industry, but I must warn you that if you do not effect your own solution, a solution will be found for you" (Whelan, 1975). One year later, the final report by the Waste Management Advisory Board called the level of industry compliance "discouraging" (Keddy, 1976). Throughout the 1970s, the government continued to encourage soft, voluntary compliance, setting deadlines but no penalties, or simply not enforcing the law. Various regulations were passed to encourage use of refillables, but each regulation had numerous exemptions and last minute modifications in an attempt to appease industry interests, while remaining accessible to consumers.[9] The ministry took out a series of advertisements to inform consumers of their plan, exhorting them to be 'thoughtful buyers' and choose refillables [Fig. 1,

[9] The government went from threatening a ban on all throwaway containers, to imposing a ban on disposable glass containers only. They also required all soft drink manufacturers to provide the same drinks in both refillable and disposable containers, first calling for matching brands, flavours and sizes, and then eventually scrapping the brand requirement. Each of these changes was a concession to a particular industry group that felt it was being unfairly targeted. Ultimately, the regulations were only minimally enforced. See figures in Appendix C for policy details.

Appendix C]. Another advertisement outlined a confusing series of measures, describing them as 'real improvements' that gave buyers 'a real choice' [Fig. 2, Appendix C]. One year earlier, a newspaper editorial wrote of the government's actions:

> the Environment Ministry has pussyfooted through four years of a Waste-Less campaign, rarely offending anybody, balancing every neither with a nor, afraid to display any instinct for the jugular (Beddoes, 1976).

As we shall see, this type of 'pussyfooting' became characteristic of Ontario's environment ministry over the next three decades. The regulations were disappointing to certain industry groups – which openly preferred universal, standard regulations if truly necessary[10] – and consumers who preferred a straightforward and comprehensive system.

The government tried again in 1977, by negotiating a Memorandum of Understanding with the soft drink industry, which set a refillables quota of 75%. But industry did not comply, and refillable soft drink sales dropped from 40-percent market share in 1986 to 3-percent in 1993 (Ferguson, 1993). This was unacceptable to many groups, including the environmental organization Pollution Probe, which unsuccessfully tried to sue the government in 1978 to try to compel enforcement (Pollution Probe 1997, 3). The 1977 agreement was a key moment that set the regulatory regime on its particular path. As David McRobert notes, "it would later turn out that this decision to agree to a regime based on voluntary compliance would undermine future efforts by the ministry to regulate brand owners" (McRobert 1994, footnote 80). This will be further explored in chapter 3.

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[10] In 1977 The Glass Container Council of Canada put an advertisement in the Globe and Mail protesting the government's patchwork policies that discriminated against glass bottles but not steel cans. They stated "if bans or penalties are to be imposed, isn't the government obligated to apply them without discrimination – *fairly* and *equally* against non-returnable soft drink bottles *and* cans" (Glass Container Council of Canada, 1977, emphasis in original).

Why did the government choose such weak policy instruments? Faced with problems of increased littering and diminishing landfill space, as well as rising environmental awareness, the government could not altogether ignore the issue of disposable beverage containers. However, the sheer strength of the industry lobby compelled the government to enact soft instruments such as unenforced or voluntary quotas, and other measures that were modified with exceptions and loopholes to please different industry groups.

As for enforcement, the ministry of environment argued that it did not have the resources or manpower to enforce the quota (Macdonald 1991, 208). However, enforcement problems are inbuilt into this type of legislation, given that inspectors would have to check hundreds of retail outlets throughout the province on a matter that was hardly a budgetary priority. McRobert (1994) argues "indeed the [ministry] knew that they could not be fully enforced without a massive increase in the number of inspectors available to investigate compliance" (10). I argue that the government intentionally enacted weak legislation due to fears about industry and union opposition. Industry had repeatedly threatened that jobs would be lost, particularly in steel and glass.[11] Interestingly, the government framed the regulations as enabling 'consumer choice' and 'industry flexibility' in an attempt to disguise how the regulations deferred to business interests.

[11] In 1976 the Metal Container Manufacturers' Advisory Council (MCMAC) estimated that regulations would lead to the loss of 1,200 jobs in steel can making as well as the abandonment of capital facilities worth more than $50 million (Metal Can Manufacturers' Advisory Council 1976, quoted in McRobert 1994)

Ontario in the 1980s – The blue box is born

The 1980s was a period of significant change, particularly in Ontario. 1985 marked the end of a long era of Conservative rule in the province, with David Peterson's Liberals now in office. Meanwhile in BC, Social Credit maintained a near-unbroken regime that lasted until 1991. However, it was not ideological change that influenced the next phase of the deposit-return debate in each province but rather a continuation of the now-established relationships between government and the beverage industry.

In Ontario, as the number of refillables on the market gradually decreased, and the waste crisis grew, Pollution Probe successfully partnered with a private waste management company to pilot the very first Blue Box program in Kitchener in 1981. As they shopped their idea around, the provincial government was faced with the question of how to plan for the future of Ontario's waste. Between 1983 and 1987, the ministry of environment had received fourteen separate proposals from industry for changes to beverage container regulations (Macdonald 1991, 210). One of these proposals came from the aluminum manufacturer Alcan, which desperately wanted access to the growing market for soft drink containers. Until this point, steel cans and glass bottles were the only legal materials for beverage containers in Ontario. Alcan saw an opportunity and offered to fund a multi-material recycling system in exchange for new container regulations, and a more relaxed refill quota. A coalition soon formed in support of this proposal which included glass manufacturers, paper companies and plastic bottle manufacturers, who together offered to contribute $1 million to a provincially-sponsored blue box program (*ibid*). This plan was also supported by the Recycling Council of Ontario (whose membership at the time was mostly industry-based) and Pollution Probe,

although the rest of the environmental community was strongly opposed and continued to push for a deposit-return system.

During this time, in 1985, the government established a multistakeholder committee to resolve the conflicts between various actor groups from industry, environmental organizations and the public, although it soon became clear that the process had been "designed [by the government] to legitimate the implementation of the industry-favoured recycling model" (McRobert 1994, 14). The process resulted in a proposal from the Ontario Soft Drink Association based on the original Alcan model.

The Liberals took power in 1985 and almost immediately amended the regulations to allow for aluminum cans and plastic Polyethylene Terephthalate (PET) bottles. They also lowered the refillable quota to 30%.[12] They accepted the coalition's offer and Ontario Multi-Material Recycling Inc (OMMRI) was established in 1986 by soft drink manufacturers, distributors and their packaging and material suppliers to operate as the industry funding body for the blue box , which began to be implemented in 1987 (CSR, n.d). OMMRI promised $10M over 5 years, although in retrospect, there were many questions about how that money was paid out and how much it amounted to (McRobert 2006, telephone interview).

David McRobert, a former policy analyst at the ministry's Waste Reduction Office, describes the government's decision to accept voluntary industry funding as "foundational":

> once you've decided you're going to take a voluntary approach, work with industry, and not tell them in strict terms what it is they have to do, your

[12] The government continued to relax the quota under the guise of "interpretive compliance" – industry simply had to *maintain capacity* to produce 30% refillable containers (McRobert 1994, 16).

> opportunities from then on are limited (McRobert 2006, telephone interview).

We shall see in chapter 3 that the voluntary approach not only backfired – industry funding dried up after five years, leaving the blue box in a financial crisis – but it had significant impacts on subsequent policy, undermining options for stronger regulations with respect to product stewardship. The path put in place by the blue box closed off a number of options for product stewardship in the province.

As well, the establishment of OMMRI was to become a vital element of the subsequent path. The group's interests would eventually become institutionalized in the decision-making framework of the ministry of environment with regards to industry funding and the establishment of Waste Diversion Ontario in 2002. This too will be discussed in chapter 3.

The government made a 5-year funding commitment to help offset capital costs, with the expectation that, after this period, municipalities would be able to sustain the blue box via materials sales. In 1993, the government passed Regulation 101 under the Environmental Protection Act, requiring every municipality with more than 5,000 people to have a blue box program that accepted materials from five mandatory categories: aluminium containers, glass containers, newsprint, Polyethylene terephthalate (PET) plastic bottles and steel containers. Municipalities were immediately put in a dependent position, obliged to run the program with contributions from industry and the province. The initial role of municipalities in the blue box financing model has had significant impacts on the 'shared responsibility' construction of stewardship subsequently adopted in Ontario. This will be discussed at length in chapter 3.

The reasons for the industry's preference were straightforward: the blue box was estimated to cost $20 million for the first three years, only half of which would be paid by industry, while a switch to a deposit-return system would cost $60-80 million, all of which would be borne by industry (Gilbert, 1989). The Blue Box plan was a clear example of business interests shaping policy, under the guise of environmentalism. The environmental groups that supported the plan also had important interests at stake. Colin Isaacs of Pollution Probe said in 1985 that they supported the industry proposal

> because it is an opportunity to take advantage of the incentive by industry to pay for the waste it creates. If we get a curbside recycling system in all of urban Southern Ontario out of this debate, then we will have achieved something very major (McLaren, 1985).

We recall that Pollution Probe had been seeking political uptake of the Blue Box. This is therefore a classic example of interests and opportunities aligning. John Kingdon's (1995) Garbage Can Model of agenda-setting proposes that actors with solutions will seek out problems that fit their particular policy. A match between a problem and a solution occurs due to a policy window, when there is recognition of a problem, when a solution is available, when the political climate is favourable and there no political constraints (Kingdon 1995, 88). Thus the blue box as a policy solution to the garbage crisis was made viable by the industry's preference to fund curbside recycling rather than participate in a deposit-return system. The government had been struggling with the beverage container and other waste issues for nearly a decade and this seemed like a suitable and publicly popular compromise. The deal was closed when environmentalists came onboard with a tried and tested solution.

The birth of the Blue Box in Ontario also corroborates Trebilcock and Hartle's theory that concentrated interests exact favourable policies by offering resources to government that it can deploy in attracting marginal voters. The Kitchener pilot project showed that the blue box was very popular and thus both industry and the government gained points with all voters by expanding the system provincewide. As well, the Blue Box possesses symbolic importance, as Ontario was the first North American jurisdiction to legislate curbside recycling. This was further solidified when the United Nations jointly awarded OMMRI, the Recycling Council of Ontario and the Ministry of Environment the "Cooperation in Action" award for environmental leadership in 1989, securing the program's reputation worldwide (RCO 1998a). The 1987 blue box deal was thus a critical moment for Ontario, and we shall see how this model locked the province on its particular path.

Ontario in the early 1990s

In the early 1990s, after the blue box had been implemented provincewide, Ontario faced a number of challenges that led to a brief re-opening of the beverage container debate. The economic recession that lasted from 1986 to 1993 crippled municipal economies. Southern Ontario was rapidly running out of landfill space and the amount of consumer waste was on the rise. Faced with these challenges, Bob Rae's New Democratic Party (NDP) took office in 1991, declaring their commitment to properly resolve the waste management and deposit-return debates. Upon assuming office Environment Minister Ruth Grier stated:

> I am appalled by the failure of soft drink companies to fulfil the reporting requirement under the container regulation. I am giving them six months to get their house in order and then, after April 1, 1991, we will start

> enforcing the refillable ratio and charging those who fail to meet it. (Ferguson, 1993).

The NDP were immediately attacked by the steel union and other industry actors, who threatened legal action if the government pursued this course of action, in the name of 'packaging freedom' (McRobert 1994, 17). Senior policy advisors and government lawyers ultimately advised the MOE to drop its election promise and halt prosecutions, and the government chose instead to make the soft drink industry fund informational TV advertisements exhorting consumers to buy refillables (*ibid*). The ads were a failure; the refill volume dropped from 10% in 1991 to 3% in 1993 (*ibid*). At this point, the debate on refillables was effectively closed in Ontario, as the government faced the reality of the industry lobby's strength.[13] Industry had regularly succeeded in manipulating the policy agenda and shaping instrument choice. But as the blue box became the norm, a number of new factors emerged that held the industry's preferred path in place, ones that extended beyond self-interested behaviour by rational actors.

Timing and sequence: linking BC and Ontario

It is worth noting here the possible causal links between the BC and Ontario cases. As previously mentioned, BC's regulations were unprecedented. BC's soft drink industry was not well-equipped to mount a protest, in part because it did not anticipate the regulations or their outcomes. BC also acted quickly, partly because the littering issue was highly salient in public opinion. This allowed the government to avoid the various negotiations, compromises and concessions that became the norm in Ontario. The conflict in Ontario began several years after the Litter Act came into force, and also coincided with a series of conflicts in the United States over proposed deposit-return

[13] The regulations continue to exist unenforced, but most pro deposit-refund activists no longer see them as an avenue for change.

regulations. It can be argued that partly due to the BC regulation, industry was able to organize its resources and prevent similar regulations from passing in Ontario, where the economic impact would have been much higher. Here, Pierson's arguments about timing and sequence are useful. By understanding the conflict in Ontario in light of earlier battles waged elsewhere, we gain a more comprehensive and nuanced picture than a 'snapshot' rational choice approach might reveal.

Summary

The initial decisions over beverage containers in each province were indeed a result of interest-based politics. The Ontario soft drink industry had significant economic incentives in preventing a deposit-return legislation, and had the political resources to achieve this end. British Columbia was also faced with significant opposition from industry, but policymakers chose to cater to environmental organizations and the public interest. This was possible due to the relatively weak position of industry compared to other actors in the province, and particularly because of public attention to littering issues at the time. The government's electoral interests thus compelled them to address this issue with strong actions. The 1970 Litter Act which mandated return-to-retail for beverage containers in BC set a precedent for subsequent product stewardship policies in the province and set the province on its particular policy path. Similarly, Ontario's blue box decision in 1987 set the tone for future debates and decisions. Although the early cases were shaped by interest-based politics, we must examine the paths they set and the effects these paths have had on the current state of policy. In the next chapter, we shall see the how particular mechanisms, different from the interest-based politics that shaped the initial decisions, have helped to sustain and reinforce these two divergent paths.

CHAPTER 3 – ENDURING SOURCES OF SUPPORT: THE PATHS PROGRESS THROUGH THE DECADES

After the original beverage container decisions in the 1970s and 1980s, which led to the establishment of the blue box in Ontario and return-to-retail in British Columbia, a number of mechanisms emerged that helped sustain each path. The mechanisms link back to the original decisions, and influenced subsequent political decisions about product stewardship. Evidence of these mechanisms emerges in an analysis of the product stewardship debate in the 1990s and onward.

Ontario to the WDO – 1990 - 1998

The 1990s were important years for waste management in Ontario. The decade marked a number of significant events that served to reinforce the province's path, including the NDP's failed attempts at stewardship policies, the effective end to the soft drink container debate, Progressive Conservative Premier Mike Harris' Common Sense Revolution and its attendant effects on municipalities and the blue box, and the establishment of the Waste Diversion Organization, predecessor to Waste Diversion Ontario. In the ensuing discussion, we shall see how the path set forth by the blue box decision in 1987 became entrenched, and thus the cost of switching became more expensive – politically and financially – over time.

The NDP's 'conserver society' – visions and failures

During the early 1990s, a number of challenges relating to waste diversion topped the environmental agenda in Ontario. Southern Ontario was running out of landfill space.

Industry funding for the blue box began to wane. Recession loomed. As a result, the newly-elected NDP under environment minister Ruth Grier launched an aggressive platform to deal with these issues.

The Ministry of Environment's efforts were based on the principle of the conserver society (McRobert 1992, 1). The ministry worked on mandating recycling targets, encouraging local sources for waste disposal, and considered proposals for product charges or bans. The province confirmed its commitment to recycling and put into effect the goals of 25 percent diversion of all provincial waste by the year 1992 and 50 percent by the year 2000. The Ontario government wished to encourage local disposal of municipal solid waste to provide municipalities with incentive to educate residents on recycling and to stimulate market and technological development. Consequently, the ministry launched the ill-fated Interim Waste Authority (IWA) to find new sites for the province's garbage. The controversy generated by the IWA's inability to locate a politically acceptable site is often cited as the reason for Grier's removal as environment minister. The IWA was only one of many politically difficult environmental initiatives led by Grier, but it proved that in Ontario, "political careers are wrecked on waste issues" (McRobert 2006, telephone interview). This fact is important to remember when understanding the government's decision in 2002 to establish Waste Diversion Ontario.

Another MOE initiative that is of great interest was the product charges and bans that were considered as options when during the development of Bill 143 (which became the 1992 Waste Management Act). Policy analysts were considering proposing a ban on certain disposable products like tetra packs and disposable razors, or possible taxes on

those products to discourage their use. David McRobert, who worked in the ministry's Waste Reduction Office at the time, described how senior bureaucrats effectively nixed these policy instruments from the list of options, not so much due to industry pressure but to the collective memory of what had happened on beverage containers:

> The senior people in the ministry of environment were very leery about doing anything that would make the industry very angry at them. They had been through the experience in negotiating with the soft drink industry (McRobert 2006, telephone interview).

This happened despite the minister and her office's desire for progressive activity on waste stewardship issues. The senior bureaucrats' refusal to consider alternatives inconsistent with the past approach links into the previous discussion of the status-quo bias of political institutions. The decision to remove the option of product charges or bans from the menu of options was indeed a strategic move for reducing uncertainty and enhancing stability. Here we see how path dependence effectively overrode any ideological considerations.

As we shall see in the BC case, product charges were predecessors to EPR. Had Ontario implemented product charges at this point, the product stewardship regime in that province might look very different today.

Bureaucratic and political interests had begun to shift over time. As the top priority became developing workable policy, the blue box became the centre of attention. Senior bureaucrats saw the blue box as "the future, they saw curbside recycling as a model that would become more viable for dealing with packaging waste, they saw refillable and reuse as archaic and expensive" (McRobert 2006, telephone interview). The focus on the blue box as the centerpiece of waste diversion in the province had significant

implications for the current state of EPR in Ontario, and points to how past policies shaped bureaucrats' perceptions of their interests.

'Shared Responsibility' in Ontario

As mentioned previously, the blue box system in Ontario is a provincially mandated program implemented at the municipal level. As such, the municipal role is innate. The blue box decision, including the initial funding role of the province and of industry, led to a particular construction of stewardship known as 'shared responsibility'. In 1992, the Waste Reduction Advisory Committee (WRAC) released a significant report entitled "Resource Stewardship in Ontario: A Shared Responsibility". The committee, made up of two representatives from environmental organizations, eight industry representatives, two municipal government representatives and three recycling industry representatives, recommended a shared model, where the cost of waste diversion is split between producers and generators (Ontario 1992). According to the WRAC, waste generators (i.e. individuals and households) fell under municipal control and thus municipalities would assume the generator's responsibilities (ibid, 11). The provincial role was outlined as providing leadership and oversight, with no financial component. The committee's recommended model had municipalities funding and operating collection for residential wastes, with industry partly funding processing and marketing. At this time, all of these actors were paying to sustain the blue box under the original OMMRI agreement. The shared approach proposed to formalize industry's role beyond the initial 5-year commitment. However, the committee recommended a voluntary negotiated approach ('negotiated compliance') combined with economic incentives such as user fees (*ibid*, 15). This follows easily from the province's historical relationship with

industry on waste diversion issues, and highlights how past experiences had effectively removed other, stronger, regulatory instruments from the menu of options.

Although the WRAC considered other options where producers would be made predominantly responsible for product waste, the committee and its consultants developed the shared model because the members knew that industry would refuse full responsibility (McRobert 2006, telephone interview). This was based on past experiences rather than due to direct confrontation within the committee (*ibid*). They also knew that government favoured more corporate support for recycling. This construction was thus "based on a political compromise [the government] thought was necessary" in order to sustain waste diversion in the province (*ibid*). Recalling our earlier discussion that multistakeholder consultations contribute to the status-quo bias of political institutions, it seems logical that the committee would ultimately recommend a shared-cost model, seeing as this was an extension of the existing funding arrangement. As well, because the memory of industry protest against refillable regulations was very fresh in the minds of policymakers, shared responsibility was seen as a way of avoiding further conflict. In this sense, Ontario's construction of stewardship is somewhat analogous to that adopted in the U.S., although it stems from an earlier battler rather than direct confrontation. As such, 'shared responsibility' is not only a mechanism that sustains the path, but is also part of the path's natural progression. Although the committee's report was influential, the shared model would not be effectively implemented until 2003. This will be discussed at length in chapter 4.

Since 1992, EPR and waste diversion more generally in Ontario have been underpinned by this construction of stewardship. In fact, it has been so deeply

institutionalized that McRobert, the former MOE bureaucrat, describes shared responsibility as "entrenched... it's like religion. If you attack the shared model it's like you're attacking Christianity" (*ibid*). In the discussion below, we shall see recurring evidence of this. The adoption of the shared responsibility model emerges directly from the blue box decision, and is a key variable that explains the current state of EPR in the province. This will be explored in-depth in chapter 4.

In his discussion of EPR in North America, Lifset (1994) argues that 'shared responsibility' "fits well within the definition of EPR" (42). I argue that is not the case. Recalling chapter 1, shared responsibility does not fulfil a principle goal of EPR, namely internalization by industry of costs relating to waste. Shared responsibility is a barrier to full realization of EPR as a market mechanism, and places undue burdens on municipalities. BC's system is in no way perfect, and has often been highly criticized for imposing the lion's share of costs onto consumers, rather than on industry, and creating an anticompetitive system.[14] Nonetheless, BC's construction of stewardship more closely approaches that which is necessary to effect change.

The Blue Box in Peril

As the blue box became prevalent, industry's voluntary funding commitment waned. In 1993, the province was paying for 20% and industry voluntarily contributed 4% (French, 1993). The rest of the costs were now borne by municipalities. There were also ongoing disputes between Corporations Supporting Recycling (CSR, formerly OMMRI) and municipalities about funding shortfalls and outstanding transfers.

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[14] Usman Valiante, a lawyer who consults for different industry groups on EPR issues, is critical of BC's system which uses fixed product charges ('eco-fees' paid by consumers at point-of-sale), which do not send price signals to producers or consumers, therefore resulting in reduced economic efficiency, reduced competition, and generally weak incentives for Design for Environment (DfE) (Valiante 2006b, telephone interview; see also Valiante 2004).

The province began to question its role in funding the blue box as well. The MOE had promised the Ministry of Finance that they would only fund the program for 5 years, but as it became more widespread, it became clear that municipalities were now completely dependent on the ministry for financial support (McRobert, telephone interview). In this period, municipalities began to desperately look for alternative funding sources. Interestingly, some municipalities attempted to pass user fees on beverages and newspapers, but the province stepped in and blocked these attempts (Simon and Williams 1998, 1). This move had primarily to do with a perceived transgression of municipalities' constitutional jurisdictional authority.

In 1995, the picture changed, as Mike Harris' Progressive Conservatives took office and immediately launched their 'Common Sense Revolution'. As part of a broad regulatory review, the Harris government cut what they perceived to be red tape and unnecessary funding, including all funding for the blue box. They unsuccessfully attempted to repeal the unenforced refillable regulations.[15] They also forced many municipalities to amalgamate, downloaded responsibilities to cities without a corresponding shift in finances, and made serious cuts to the Ministry of Environment budget. The Canadian Institute for Environmental Law and Policy calculated in 2000 that the ministry's budgets had been cut by approximately 60 percent since the Harris government had come into power (CIELAP 2000, 7). The Progressive Conservatives' well-documented antagonism towards municipalities and the environment, and their pro-business attitude are important variables to keep in mind in when discussing the 2002

[15] The regulations continue to exist due to significant protest by environmental groups, but they remain unenforced.

Waste Diversion Act. In the mid-1990s, the future of the blue box program in Ontario did not look promising.

Recycling Roles and Responsibilities – Who should pay for waste?

Public outcry against the government's regulatory review was intense, particularly from environmental organizations, who protested the absence of public hearings on environmental and waste-related issues. Environmental groups put pressure on the MOE by organizing their own public hearings. This led the ministry to ask the Recycling Council of Ontario to convene a multistakeholder consultation process in 1996 to get input from municipalities, ENGOs and industry on the future direction of recycling in Ontario. The process led to the 1998 "Recycling Roles and Responsibilities" final report.

The consultation process was motivated by the urgent need for a funding solution for the blue box system, which at this point had been implemented in 300 municipalities. As such, the report explicitly states that the process was

> focused on product stewardship as it relates to recycling of residential non-durable products and packaging... the focus is on those items that are, or may be, recovered through curbside recycling programs (RCO 1998b, 4.1).

The report also listed as a guiding principle the notion of shared responsibility.

Deposit-refund and full producer responsibility were brought up as options by various municipal and ENGO actors, as were long-term goals such as the establishment of a range of

> product and packaging stewardship programs that create an economic and environmental relationship between those who make packaging material selection and design decisions and those responsible for the product and package throughout its lifecycle (RCO 1998b, 4.4).

Despite this idealism, the task at hand was clear. With the blue box as the baseline, and the explicit preclusion of broader stewardship options, the narrow debate highlights the deep-rootedness of the blue box system in Ontario.

Again recall the status-quo bias inherent in multistakeholder consultations. The Recycling Roles and Responsibilities process indeed favoured those who benefited from the status quo (i.e. the blue box), who also happened to be the most powerful interests at the table (the soft drink and packaging industries).

The final report makes note of the impact that a switch to deposit-refund would have on the existing blue box system

> the removal of certain containers from curbside recycling systems, through return-to-retail or return-to-depot systems, may significantly reduce total tonnage, lower the density of container materials remaining in the curbside system and increase the average per tonne costs for collection and processing (*ibid*, 7.3.2)

Although it does note some potential benefits of deposit-return, such as the removal of low-value mixed broken glass from the blue box, the report's assessment is that the costs of switching to a different stewardship system are simply too high. The removal of high-value aluminum, which subsidizes the diversion of other blue-box materials, represents too much of a barrier to switching courses. The reliance on aluminum is a form of technological path dependence.

The blue box, like most other institutions, had very high start-up costs. It required "large capital investments" despite being "a particular approach to recycling that may not be environmentally optimal" (McRobert 1991, 22). The 1998 report notes private and public-sector investments in recycling infrastructure:

> much of the government's efforts over the past decade have been on the development of recycling infrastructure and diversion of waste through recycling, rather than reduction and reuse (RCO 1998b, 9.3.1)

and

> industry has also invested hundreds of millions of dollars in Ontario in recycling technology and capital improvements to increase the use of recovered non-durable goods and packaging, and to redesign packaging systems for reduced material usage and reuse (7.3).

The report points out these investments in infrastructure as grounds for maintaining and building upon the existing system. It does not, however, note that this infrastructure might easily be adapted to a different stewardship model, such as an industry-funded depot system. The means of collection would change but the outcome – recycling – would stay the same. But these options were precluded at the outset. The process and its goals were underpinned by a notion of recycling that was and continues to be viewed in Ontario as entirely synonymous with 'curbside recycling'.

The establishment of the blue box had also created a number of actor groups with an interest in sustaining it. Not only the soft drink industry, but now other product manufacturers that realized the threat proposed stewardship policies posed to their profitability, and who saw the blue box as an easy way to avoid full responsibility while appearing to address environmental issues.

At the end of the day, the scope of industry stewardship remained linked to the existing system. Stewardship would simply build upon the prevailing 'shared responsibility' construction, and on existing infrastructure. The process compelled industry to recognize their role in financially sustaining recycling programs in the province. With the blue box on the brink of collapse, government had begun to seek

$11M in 'voluntary seed dollars' from various industry groups to keep curbside recycling alive (Mittelstaedt, 1999). Industry feared that the government might implement this and other more severe and costly measures in the absence of a voluntary agreement. The process' main outcome was thus the establishment through a Memorandum of Understanding in 1999 of the Waste Diversion Organization, a multistakeholder board with a mandate to provide funding for municipal recycling programs with a goal of 50% waste reduction (Canada, 2002). The government abandoned its pursuit of the $11M and decided to let industry groups negotiate amongst themselves.

At the same time, municipalities continued to lobby the province for a deposit-return regulation. In 1998, the City of Toronto passed a bylaw banning glass wine bottles from the blue box in an attempt to force the province to take their demands seriously. The province, which owns the Liquor Control Board of Ontario (LCBO), overruled the by-law, again citing the city's lack of constitutional authority. As an alternative, they announced the LCBO would give municipalities an initial $1M towards recycling, and promised to look into new funding sources (Mittelstaedt, 1998).

This became the catalyst for the government to establish Waste Diversion Ontario (WDO) in 2002. Based on the original voluntary board, the WDO is an arms-length agency created by the government to develop solutions for stewardship in Ontario. The WDO has had a significant impact on the current state of EPR in the province, for reasons that extend beyond self-interested behaviour by industry. The reasons for the establishment of the WDO and its implications for EPR will be discussed in chapter 4.

British Columbia 1989 to 2001 – the Rise of Industry Product Stewardship

In British Columbia, the initial decision to manage beverage containers via a return-to-retail system has been an important factor in subsequent decisions for managing other consumer waste. Although the various product stewardship programs developed throughout the 1990s may not have been directly linked to the 1970 *Litter Act*, these regulations were subsumed under a broad EPR framework legislation in 2004, to be discussed further in chapter 4. The enactment of these policies is evidence that EPR has become the prevailing policy path in British Columbia.

Strategies for MSW – the Rabbitt Report

In 1989, in response to concerns about landfill space and the perceived potential for recycling, the province established the Municipal Solid Waste Management Task Force. Chaired by Jim Rabbitt, MLA for Yale-Lillooet, the Task Force conducted broad public consultations with citizens, industry and local governments to determine the future direction of waste management, including a review of existing programs such as the beverage container refund system. The Task Force produced its final report, *A Solid Waste Management Strategy for British Columbia* (1989), which offered 76 recommendations to deal with the municipal solid waste (MSW) issue. The government adopted a number of these that had significant implications for subsequent EPR. The Rabbitt report included an evaluation of the Litter Act (summarized from a previous report), an assessment of the continued management of beverage containers via a return-to-retail system against other options, and recommendations for province-wide MSW diversion targets. In analyzing these, we shall see some of the mechanisms that reinforced the path set by the *Litter Act*, as well as new recommendations which inspired modern

EPR in the province. This report is worth comparing to the *Shared Responsibility* report in Ontario (1992) that attempted to deal with similar problems. While BC relied on a commissioner to make consult and make his own recommendations, Ontario employed the multistakeholder committee model. This contributed to a status-quo bias that built on existing methods such as the blue box and shared responsibility between industry and municipalities. Similar to the BC report, the Ontario report also had significant implications for the future of EPR in the province, ultimately informing the Blue Box program plan implemented in 2003.

The costs of switching off the path

In 1980, the province conducted a 10-year review of the *Litter Act*, which concluded that the container return system was "waste management effective" (BC 1989, 94). The 1989 report built on this review, and found in stakeholder consultations extremely high levels of support for the system, "with the exception of a number of interest groups, representative primarily of the soft drink beverage industry, container manufacturers and major food retailers" (101). The public was not only supportive of maintaining the system but in fact expanding it. During the process, the task force received a submission from the industry group Coalition for Recycling and Litter Control. The group proposed an alternative strategy for managing beverage containers which mirrored the OMMRI system in Ontario. They proposed a multi-material curbside recycling program plus collection by drop-off depots, with a promise to fund $5 million over 5 years. The proposal was contingent on the abandonment of refunds on soft-drink containers (*ibid*).

The task force considered the proposal and evaluated it against the existing system. It found that about 84% of total cans and bottles in BC were being returned, as opposed to about 30% recovery for cans alone in Ontario (*ibid*, 94, 99). It also calculated the costs to the province and to local governments of accepting the Coalition's proposal. It found that taxpayers would have to pay two thirds of the capital costs of household blue boxes, collection trucks and basic processing equipment, and 100% of the costs relating to operating the programs (*ibid,* 107-108). The report also noted that after five years, municipal and provincial governments would be entirely responsible for funding the blue box system, which is exactly what happened in Ontario. The report concluded that "no alternative collection system has been shown to be more effective at collecting and recycling beverage containers than has the deposit system" (104). As well, it was clear that the costs to the province and to municipalities of accepting the Coalition's proposal were too high. The option of switching off the established path was rejected based on the success of the refund system. This highlights how entrenched Ontario's approach had become – despite being more expensive and less effective, the province remained on this particular path.

Product Charges

One of the main recommendations of the 1989 report was product charges, which were to become the forerunner to EPR in the province. Recommended in connection with special wastes (i.e. Household Hazardous Waste), product charges were defined in the report as

> an excise tax on the material content of consumer products entering the waste stream. The concept is that the end users of a product should have

> included in its price the cost of collecting and disposing of the discarded product and its associated packaging materials (BC 1989, 130).

This was supported by other recommendations such as promotion to industry of 'designing for recyclability' (#55) and provincial adoption of the polluter-pays-principle as a long-term strategy for waste management (#68).

In the early 1990s, the Social Credit government developed product charges on Scrap Tires and on Lead-Acid Batteries; the policies were implemented by the NDP in 1991. The programs were government operated but funded by consumers, through government levies assessed at point-of-sale. The programs are "considered an example of... first-generation industry-stewardship program[s]" (BC 2005). Industry involvement was limited to retailers, who collected the levy on behalf of the government and took back residuals from consumers. Although these programs did not satisfy the requirements of product stewardship or 'producer responsibility', they set the stage for further developments and are thus an important stepping stone in the evolution of EPR in BC. As previously mentioned, product charges were discarded as an option by the Ontario government. Although product charges did not link back explicitly to the earlier beverage container regulation, they served to reinforce the EPR path set by the *Litter Act*.

MSW Diversion Targets

Another set of recommendations that the report make may not have direct links to EPR but helps us understand the very different origins of the blue box in BC and Ontario. Rather than take industry up on its proposal and funding, the BC government took a more flexible approach to mandating MSW diversion. The report recommended the government set a 5-year goal to reduce MSW by 25% through recycling, and another 10% through composting yard waste and organics (BC 1989, ix).

The recommendations led the province to amend the Waste Management Act to require Regional Districts to prepare solid waste management plans that would provide a blueprint for 50% reduction in municipal solid waste stream by 2000. The province also developed a five year $150 million strategy on municipal solid waste to give financial assistance grants to local governments to help with plans and blue box implementation programs. The province did not enact the same kinds of rigid laws and guidelines as Ontario did for its blue box. As such, municipalities and regional districts were able to develop locally appropriate diversion plans. The dual system in BC allowed more flexibility for municipalities, which did not have to bear the burden of finding markets for as diverse a variety of materials. Most BC municipalities continue to run profitable blue box systems under very different funding arrangements than Ontario, with no need for private subsidies.[16] This is partly because BC municipalities are free to determine the types of materials they collect, which allows them to adapt somewhat to market forces, as well as collecting materials appropriate for local recycling facilities. In contrast, in Ontario, municipalities must by law collect at minimum materials from five categories, whether it or not a market for them exists. Often materials need to be shipped great distances to be recycled, with only minimal cost-recovery. This results in a number of economic inefficiencies that has forced the provincial, municipal and industrial actors to attempt to create new markets. As well, BC municipalities deal to a far lesser extent with materials such as mixed broken glass, which has an extremely low market value, simply because glass beverage containers have a deposit.

[16] The City of Vancouver, for example, funds its Blue Box exclusively through user fees and sale of recyclable materials, generating a $531,900 surplus in 2003. (City of Vancouver 2003, 20). Throwing low-value materials into the blue box mix would result in a net loss for municipalities.

Constructing 'Producer Responsibility' in BC

Another of the report's outcomes related to its recommendations on special wastes. The report led the NDP government in 1993 to release a discussion paper on the issue of Household Hazardous Waste (HHW). The paper sought public input for solutions to the "inadequate" levels of service for HHW disposal in the province (British Columbia 1993, 2). Framing the discussion in terms of risks to the environment and to public health, the report noted

> growing recognition across the province and throughout Canada that the manufacturers and importers of products that ultimately become HHW must assume a major responsibility... (2-3).

The paper put forth several options for product stewardship, which became the focus of the public consultations led by a newly-established Waste Reduction Commission that ensued throughout 1993.

In 1994, the Commission published its report and recommendations based on the public consultation. Dorothy Caddell, the waste reduction commissioner remarked:

> the provincial consultations led me to believe the public – both industry and consumer – is prepared to accept responsibility for the waste it generates. This represents a tremendous change in attitudes during the past decade (British Columbia 1994, introduction).

The report was groundbreaking, as it set the stage for the 1994 Paint Stewardship regulation, which is broadly recognized as the first modern piece of EPR legislation in North America (Bury 2004; Driedger 2002, 91-92). The successful Paint regulation, which will be discussed in more detail below, had strong public support throughout its evolution. I argue that the success of this early EPR program, combined with strong public support, led to the espousal of a "producer responsibility" construct of stewardship

which continues to prevail and thus inform policy in the province. We shall see evidence of this in the ensuing discussion.

It is interesting to note the relationship between BC's construction of stewardship has and the early beverage container decision. Although the Litter Act also enjoyed public and political support, the debate was framed in vastly different terms. In 1970, container refunds were not seen as a solution for recycling, waste diversion or industry responsibility but rather a solution to littering. However, as time passed and public and political awareness of waste issues grew, beverage containers and other forms of solid waste came to be conceptualized under the rubric of producer responsibility. This was made absolutely clear in the late 1990s through to 2004, when beverage containers, along with HHW, and other forms of waste were subsumed under the Recycling Regulation, which set out a clear framework for EPR. This will be discussed in more detail below.

Implementing Producer Responsibility

As mentioned, the Waste Reduction Commissioner's report came out strongly in favour of industry stewardship for HHW materials. The government's response was to develop the 1994 Post-Consumer Paint Stewardship Regulation, the first North American example of EPR (Bury 2004, Driedger 2002, 91-92). The policy entrepreneurs and industry leaders had no idea that the paint regulation would not only set a precedent for subsequent decisions in BC, but would make them EPR pioneers in North America. James Matkin, a former Deputy Minister of Labour and Intergovernmental Relations (1973-1983) who became the first chair of Paint Care, BC's Paint Stewardship organization, was one of these leaders. He remarks:

> I had no idea we had set such a precedent. We were quite celebrated... we didn't know that we were so out of the ordinary. We knew we were out of

> the ordinary for paint [in North America]. We were taking responsibility for something that nobody else in North America had done. (Matkin 2006, personal interview).

The paint regulation was a small event with large consequences, and thus a key moment that helped solidify BC's EPR path.

Throughout the 1990s there was a significant shift towards industry stewardship as a solution to a number waste-related problems including hazardous waste, littering and waste diversion. This shift was not always smooth as government and industry disagreed on a number of issues. The various battles behind each policy often mirrored the initial beverage container debate in BC, with industry eventually falling into place behind government legislation, although not without significant leadership by bureaucrats and forward-thinking industry actors. There were also numerous compromises on both sides. Industry had come to redefine its own interests and accept that producer responsibility was becoming the norm. Past policies had begun to shape business' perceptions of their interests. The policies all received public and local government support, partly due to extensive consultation, partly due to the benefits of an increased industry role in waste management issues. The province's ability to pursue 'good policy motives' on these issues must be credited in part to the particular underlying stewardship principles that had become so broadly accepted in the province. Although the stewardship policies in the 1990s did not flow only from the 1970 Litter Act, partly due to the early conception of litter and waste diversion as distinct policy areas, there is some evidence that the Act's early success set the stage for subsequent policies.

Ron Driedger, who was the director responsible for municipal solid waste programs at the Ministry of Environment from 1989-2002 believes there is a link between the success and acceptance of the Litter Act and the policies in the 1990s:

> I think [the Litter Act] probably had an influence. All of these things helped sow the seeds and bring this [EPR] policy further down the road. Ultimately it would have not been expanded if the earlier programs had not been working well (Driedger, telephone interview).

In addition to setting the regulatory regime on a particular path, the success of the 1970 Litter Act helped set a framework for cooperation between government and industry on waste issues. The political and administrative experience gained from the beverage container regulation contributed to the development of stewardship programs for other materials. It also compelled industry to redefine its interests and increasingly accept product stewardship as the way forward. Industries repeatedly attempted and often succeeded to influence policy to their advantage, as we shall see below, but producer responsibility remained the underlying principle. Once successfully implemented, these early stewardship programs converged to strengthen BC's path.

As well, the establishment of a depot system for beverage containers provided a base for expansion. There has been significant infrastructural path dependence in British Columbia, where all regulated materials are collected at the same depot, rather than establishing a separate collection system for each one. This has provided financial and administrative benefits for the province and for industry, and provided some incentive to expand to new materials, in the form of lower capital and administrative costs.

Ideology

A noteworthy point is the lack of ideological links throughout the process. The first product charges were developed by the Social Credit government and implemented by the NDP, who also developed many new stewardship programs for materials such as solvents/flammable liquids, gasoline, and pesticides, as well as enacting an expansion of the beverage container program to include almost all ready-to-drink beverage containers (BC 2005). When the Liberal government came into power in 2001, it continued to expand the product categories, as well as streamlining all stewardship programs under the 2004 Recycling Regulation. As we will see below, there is no pattern between party ideology and attitudes towards EPR in the case of British Columbia, nor is there in Ontario.

Summary

In the 1980s and 1990s, British Columbia and Ontario continued to diverge in how they regulated industry's role in waste management. In Ontario, the overwhelming focus on the blue box as the solution to all waste diversion problems precluded a number of more effective stewardship options. This links directly back to the original decision against deposit-refund and the preference for curbside recycling. This was reinforced by a number of mechanisms, including a 'shared responsibility' construction of stewardship, reliance on existing technology and infrastructure, and actors interested in maintaining the existing system. In British Columbia, the initial conditions set by the 1970 Litter Act combined with and contributed to a 'producer responsibility' construction of stewardship. A number of seemingly separate recommendations on waste diversion, including industry paying for waste disposal, increased municipal waste diversion and product charges all

contributed to the path. These can arguably be linked back to the Litter Act, which created a framework for relations between industry, government and consumers on waste issues. All of these conditions set the stage for contemporary EPR policies in each province.

CHAPTER 4 – THE CURRENT STATE OF AFFAIRS: EPR REGIMES IN BC AND ONTARIO

The processes discussed in chapter 3 were instrumental in determining the current state of EPR in each province. By the end of the 1990s in Ontario, a voluntary board was established, composed of industry, municipal and nongovernmental representatives to advise the province on waste-related issues. As well, the province granted a significant contribution from the Liquor Control Board of Ontario to offset municipal blue box fees. In BC, separate regulations had been enacted to mandate forms of industry responsibility in diversion programs for beverage containers, lead-acid batteries, used oil, scrap tires, paint, and other hazardous residuals. The stage was set for the enactment of policies in each province that would shape the current regulatory regime for product stewardship. This chapter deals with the events immediately preceding and resulting from the establishment of the modern stewardship policies in each province, the 2002 Waste Diversion Act in Ontario and its attendant agency, Waste Diversion Ontario (WDO), and the 2004 Recycling Regulation in BC.

Ontario after the WDA – the WDO in 2002-2006

After the Recycling Council of Ontario's final 'Recycling Roles and Responsibilities' report in 1998, the province considered its options and created the Waste Diversion Act in 2002, which also established Waste Diversion Ontario (the WDO) as a permanent body. The industry-dominated multistakeholder board[17] is charged with developing waste diversion programs in consultation with an Industry Funding Organization (IFO), according to ministry guidelines. The ministry has final approval

[17] Comprised of 4 municipal representatives, 8 industry representatives, one member from the Ontario public service and two members from the public, plus optional representatives who represent industries related to a specific designated waste, and four industry observers (Ontario 2002).

over all plans. Before briefly discussing the WDO's performance, it is worth asking why it was established in the first place. Why would the government effectively hand over program development functions to a board dominated by industry representatives? The answer to this can only be understood in light of Ontario's waste management path.

The Ontario government during the 1980s and 1990s became characterized as highly risk-averse. Recall the senior bureaucrats' refusal to consider product charges or bans for fear of re-awakening industry ire. Also recall that political careers were destroyed over waste-related issues in the province. In the late 1990s it became clear that the blue box system would be completely unsustainable without provincial or industry assistance. The pioneering, award-winning and highly salient symbol of citizen-based environmentalism was at risk, posing a grave threat to the Harris government's reputation and to environmental health throughout the province. When it became evident that industry would accept a renewed role in funding the blue box, the government saw an opportunity to not only save the blue box but a strategic opportunity to avoid future confrontation.

The establishment of the WDO allowed the government to separate itself from waste diversion issues, and allow industry to more or less determine the form of its involvement. The Environmental Commissioner's Office, the non-partisan watchdog of the MOE, was critical of this move from the outset:

> the government has distanced itself from the often-contentious issue of waste diversion by moving accountability for these programs to Waste Diversion Ontario. The [Waste Diversion Act] also protects the government from lawsuits from the public for actions taken by the WDO. The ECO is concerned the public's right to hold government accountable for waste diversion decisions is thus limited. (ECO 2003, 79).

David McRobert, the former policy analyst at the Waste Reduction Office, believes the WDO was established to "insulate" the MOE,

> because these civil servants had had such negative experience to do with the soft drink industry, and the idea that the soft drink industry had so much power over cabinet and environment ministers, which they hated. They hated the idea that the stakeholders could cause paralysis in the ministry over these waste issues. You couldn't make any kind of progress... The whole vision was to move this offshore, outside of the Ministry of Environment into another sphere, and let the stakeholders go at each other there. We're going to insulate the ministry from the intense lobbying and conflict. (McRobert 2006, telephone interview).

This function of the WDO was not made explicit by the government, but is integral to its existence. The agency can be described as a blame avoidance mechanism, following R. Kent Weaver's theory (1986). Weaver proposes that politicians are motivated partly by an interest in "*avoiding blame* for (perceived or real) losses that they either imposed or acquiesced in" (Weaver 1986, 372). Blame avoidance here links both to the future, and to past experiences – the path – where politicians initially proposed real losses to industry and were forced to back off or pay the price. By shifting responsibility to industry, and avoiding any potential conflict, the government and bureaucrats believed they could surmount the barriers to progressive waste management policy in the province. With the WDO, business interests became institutionalized into the decision-making process, due to the legacy of past battles.

The WDO has been beneficial to the government in other ways, as it saves them the cost of understanding the intricacies of various industries, as well as the resources required to develop acceptable diversion programs. Despite the various theoretical

benefits, however, the WDO has proved itself to be an entirely ineffective body for developing stewardship programs, which will be discussed below.

Industry was supportive of the WDO's establishment, not only because it institutionalized their interests, but because it set a favourable model for dealing with future waste materials, in contrast to the scenario evident in BC. The designation of blue box materials also ensured that deposit-refund systems for these materials would become an even more remote possibility. The WDO as a political institution exhibits many characteristics of status-quo bias, as pointed out by Pierson. Indeed, the establishment of the WDO reduced uncertainty and enhances stability, while also removing a number of stewardship options from the menu.

The Blue Box Program Plan, 2003

The WDO's first task, indeed its raison d'être, was to deal with the blue box funding issue. In 2002, the Ministry of Environment asked the WDO to establish an Industry Funding Organization (IFO) of all industries whose materials are recycled in the blue box and to develop a funding formula to pay for 50% of municipal fees. This IFO became Stewardship Ontario, the successor to OMMRI, the early coalition of soft drink manufacturers, distributors and their packaging and material suppliers who lobbied for the blue box in the 1980s. The WDO and Stewardship Ontario came out with their plan in 2003. The plan received both praise and criticism. On one hand, it provided the funding needed to maintain the program and ensure its future existence. On the other hand, the plan exempted waste materials that could not be recycled in the blue box, thus creating a financial incentive to shift to non-recyclable packaging (Crittenden 2001). The Recycling Council of Ontario also commented on the "perverse incentives" in the plan, "that the

funding formula will discourage the use of recyclable packaging, resulting in more waste, contrary to the goal of the [Waste Diversion] Act" (RCO, 2003). Although the government tried to address this problem by classifying blue box waste in broad material categories (i.e. "plastic" rather than different forms of plastic), evidence points to industry interests having guided the development of the plan. In fact, the ministry is currently embroiled in a debate over the LCBO's introduction of wines in Tetra-Packs (polycoat containers), which they claim are more environmentally friendly than glass, despite the fact that there are no Tetra-Pak recycling facilities in Ontario (Gulamhusein 2006). Tetra-Paks are also difficult to recycle because they are "made in three layers, which don't easily part, only some of the middle layer (paper fiber) is recycled. The outer layer of plastic and the inner layer of aluminum are wasted completely" (Perks 2006). Beyond these details, however, lies the more relevant observation that the regulation designating blue box waste under the Waste Diversion Act has further reinforced the blue box as the primary mode of waste diversion in Ontario, thus limiting alternative options for diverting waste such as depot or return-to-retail systems. It has also reinforced the 'shared responsibility' funding model, which was remarkably not effectively implemented until 2003, despite being formalized in 1992. By creating a permanent and stable source of funding, the plan mostly pacified municipalities, citizens and the provincial government, while also remaining acceptable to industry, and ensuring their avoidance of full responsibility.

Since 2003, the call for deposit return has not been quieted, however. Municipalities continue to complain that the mixed, broken glass that they collect in the blue box is costly to collect and nearly worthless on the market. Mixed broken glass is

currently used in Ontario as sand replacement, while the glass industry in Ontario currently imports hundreds of thousands of tonnes of glass from Quebec and Michigan for its raw materials. Usman Valiante calls this "environmentally counter-productive" (Valiante, telephone interview). There have been numerous demands for deposit-return on LCBO containers from the Association of Municipalities of Ontario, individual municipal councils, NGOs and even in the provincial legislature.[18] Stewardship Ontario recently announced a $1.9 million dollar commitment to establish a new glass recycling facility in the province, which will secure a market for this previously low-value, controversial material. This new facility is essentially a strategic move by industry to end calls for deposit-return, while ensuring further infrastructural reliance on curbside collection of these materials. Although it makes more economic and environmental sense to keep waste streams separate, as is achieved by a deposit-refund and depot system in BC, it does not make economic sense for industry in Ontario which greatly prefers the status quo. The costs to industry of establishing new infrastructure plus covering full operating costs far outweighs any cost savings from eliminating the blue box contribution and money gained from recycling cleaner streams.

The WDO's failed stewardship programs

When the WDA was passed in 2002, the government stated its intention to designate a broad array of materials for stewardship in the next two years, including used oil, used tires, organics, electrical components, batteries, fluorescent lighting tubes, pharmaceuticals, and household hazardous wastes (ECO 2003, 77). In 2003, the

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[18] In 2004, an unsuccessful Private Member's Bill was tabled to amend the Liquor Control Act to require the LCBO to establish a deposit-return system (Ontario 2004).

Progressive Conservatives designated used oil and used tires. Dalton McGuinty's Liberals took office in 2003 and were instantly limited in their options by the existing stewardship framework. They followed on the path and designated Waste Electronic and Electrical Equipment in 2004, and announced that Household Hazardous Waste (HHW) would be designated in 2006. Despite this ostensible progress, no new stewardship programs have been implemented apart from the blue box. Each particular waste material generated significant debate, the WDO developed stewardship plans for scrap tires and used oil, but after years of inaction, the Environment Minister announced in April 2006 that both programs would be cancelled. Although the reasons for this go beyond the scope of this paper, it is interesting to note that a successful private sector used oil recovery program had been in place for decades, thanks to strict ministry rules on monitoring hazardous wastes. The cancellation of the used oil program was an acknowledgement of the rare free market recovery program (Crittenden 2006a),[19] and also raised significant questions about the capacity of the WDO to develop good programs, to which we will return shortly.

In April 2006, Environment minister Laurel Broten was open about the fact that the upcoming HHW designation is meant to build on existing municipal infrastructure for the diversion of these wastes (Crittenden 2006a). Most municipalities currently operate a small number of depots and sometimes pick-up services for HHW, although these services are often under-funded and somewhat inaccessible. With infrastructure already in place, the assumption is that a stewardship program might be more straightforward to implement, by expanding current facilities and programs. If it is ever implemented,

[19] The existing free market system in Ontario has a recovery rate of approximately 78%; the model proposed by industry predicted a 75% recovery rate (Valiante 2006a, 10-11).

funding for this program would follow the 'shared responsibility' model, thus clearly building on the path set forth by the blue box. Usman Valiante is critical of the proposed HHW program (Valiante 2006b, telephone interview). He argues the program is not intended to improve HHW collection, but rather to raise funds for municipal HHW collection already taking place. And while on the surface it will appear to obtain funding from industry to cover municipal costs, in reality the program is likely to be completely funded by consumers via point-of-sale eco-fees on HHW products. The main problem arises when industry colludes to impose a flat-eco fee, which eliminates incentives to the consumer to switch to greener products. This is often what happens with an Industry Funding Organization model. Ultimately, Valiante says, the designation will "get some money from the consumer to fund what's already going on, and then [the MOE will] announce that we have an HHW [stewardship] program in the province" (*ibid*). He argues that the MOE feels compelled to make an announcement on stewardship, particularly after shelving the used oil and scrap tire programs.

Usman Valiante argues that the 2003 designation of used oil and scrap tires were primarily motivated by political rather than practical reasons, rooted in the Ministry of Environment's desire to show that the WDO could produce some form of product stewardship, regardless of tangible outcomes (Valiante 2006b, telephone interview). The cancellation of the used oil and tire programs in some ways represents tacit acknowledgement that these materials had been designated above all for political reasons, especially when the successful existing free-market system for used oil came to light (Crittenden 2006b).

The WDO as institutional barrier to EPR in Ontario

Valiante remarks that "the WDO experiment has been a resounding failure... It has caused a tremendous amount of paralysis" (telephone interview). Although the failure of the used oil and scrap tire programs can be explained by various interests at micro level (beyond the scope of this paper), more macro-level forces are at work. Valiante describes the WDO as "completely conflicted," arguing that "the same commercial interests that are tasked to develop the programs in turn preside over the WDO and vote on their own programs" (telephone interview). The WDO's inability to develop good policy has as much to do with its own internal conflicts as it has to do with its very design as a blame-avoidance mechanism. There are also significant status-quo biases at work here, in part due to the committee's design as a multistakeholder body.

In light of the difficult path of waste management in the province, the risk-averse government abandoned its functions as policy maker. By institutionalizing industry interests into the policy development process, the government closed off a number of regulatory options. We must always recall that the WDO is rooted in the funding history of the blue box and thus stems back to the blue box policy decision in 1987. The current state of affairs is best explained in its historical context, rather than by contemporary battles. As a political institution, the WDO has explicitly limited the MOE's regulatory options. The status-quo bias here is manifest, and has had resounding negative impacts for stewardship policies in Ontario. The reliance on this multistakeholder body in Ontario has in fact ground the path to a halt.

Moving Beyond the WDO for good EPR?

Despite the designation of electronic waste, and the impending designation of HHW materials for product stewardship, the government has recently begun to consider new options for EPR in the province. In July 2006, the government proposed regulatory changes to facilitate Extended Producer Responsibility Systems (EPRS) in Ontario. The most notable element in this proposal is that industries would be able to circumvent the WDO and establish their own stewardship programs, without an additional layer of bureaucracy. The proposal states that "by providing a simpler regulatory mechanism for such systems, the ministry hopes to support the development of these programs" (Ontario, 2006). Also notable is the explicit use of EPR as a guiding policy principle, which is as of yet absent in formal legislation in the province. This is a case of the exception proving the rule. The McGuinty government has finally recognized the WDO as an institutional barrier to functional EPR in the province. The WDO was successful in developing and implementing the blue box program plan because the logistical model for the blue box had been in place for so many years, and it was simply a question of calculating funding between stewards and municipalities. Usman Valiante predicts "if implemented the EPRS model is a harbinger of [the WDO's] death with producers having to face some sort of responsibility for managing their products turning to an alternative that is expedient, less costly and which circumvents the machinations of the WDO" (Valiante, telephone interview). He predicts that most industries, apart from those whose products end up in the blue box, will prefer the EPRS model, which allows them far greater flexibility without the requirement to adhere to the often-limiting rules and procedures of an IFO. Dominated by industry interests, the WDO is limited in its capacity

to enact the kind of strong, yet flexible programs necessary to stimulate market change for environmental benefits.

Ontario – Conclusion

The WDO was designed to address the funding needs of the blue box, and in this it has been mostly successful. For other materials, it has been a failure, due to a number of reasons. First, the proposed programs have in some cases not aligned with the government's strategic direction or even its laws. Second, the government designated various materials not due to imminent need, or belief that the WDO could develop a good solution but rather due to political rent-seeking. Third, the programs that were proposed, such as used oil, were in fact less environmentally and economically efficient than the current (albeit rare) free-market system that exists in Ontario for this material, which further confirms that political, rather than practical reasons motivated their designation.

However, the most important reason why the WDO has been an ineffective body is built into its very core – the government wanted to avoid making politically risky decisions and thus offloaded the onus of making these decisions onto this arms-length agency which has no interest in developing strong stewardship regulations. This flows directly from the policy path initiated by the blue box decision in 1987. Does the existence of the WDO completely explain lack of EPR in the province? In the immediate sense, yes, because of its failure to develop acceptable programs for the various product categories. In the broad sense, the lack of stewardship programs is better explained by the government's fear of taking risks; and the overwhelming focus on the blue box as the catch-all solution to waste diversion problems in the province, which removed other options for product stewardship. The new proposed regulatory changes that bypass the

WDO demonstrate growing governmental recognition that EPR can be effective given the right balance of public and private-sector support. The proposed regulation demonstrates the government's preference for a system that bypasses an unnecessary layer of bureaucracy in favour of a flexible regime where each particular industry determines its own course within common guidelines, and with the help of experienced public sector policy analysts. Certain industrial sectors and particularly individual companies that do not want to participate in a monopolistic system, have expressed support for a more direct model (Valiante 2006b, telephone interview).

BC from 2001-2006: the Recycling Regulation and beyond

When Gordon Campbell's Liberals came into power in 2001, they launched the 'New Era' platform, an ideological strategy informed by neoliberal principles such as deregulation, cuts to social spending, and other pro-business mechanisms meant to stimulate market activity. As mentioned in chapter 1, the Liberals made significant cuts to the environment ministry, also renaming it the Ministry of Water, Land and Air Protection. The government began looking at options for changing the stewardship regulations and aligning them to match the New Era strategic direction. After a multi-year regulatory review process, the government enacted the Recycling Regulation in 2004.

EPR and neoliberalism in BC

Activity on these issues between 2001 and 2006 reveals a number of interesting factors that highlight the path dependence of stewardship in the province. In 2002, the government commissioned a report on different service delivery models for product stewardship (British Columbia 2002a). The report attempted to better articulate the

ministry's approach to designing and managing EPR in the province. It proposed approaches for aligning EPR with the New Era commitments to "adopt a scientifically-based, principled approach to environmental management that ensures sustainability, accountability and responsibility" (*ibid*, 28). As well, it sought to align with newly stated Ministry principles where "economic development maintains highest environmental standards; respects the strong environmental concerns of British Columbians; and assures exemplary environmental stewardship" (*ibid,* 29). Note here that economic development precedes environmental issues. The report's main recommendation was "a shift from prescriptive, process-oriented approaches to outcomes-based approaches delivered by the private sector" (*ibid*, ii).

The government considered these recommendations in reference to a number of program areas. We recall that two programs, the scrap tire and lead-acid battery programs, were at that point funded by government levies, with industry involvement limited to retailers that accepted these materials for recycling. Programs where government plays a central role in program delivery have been called *first generation*, while stewardship models that shift most responsibility onto consumers and industry are called *second generation* (*ibid*, 4). The report noted that first generation programs did not meet the polluter/user pay principle advocated by the government (*ibid*). It also called for performance measurement to support the outcomes-based approach.

Overall, the report called on the government to "develop a plan to further move existing programs to full industry product stewardship and consider a phased expansion of this model to other product categories and waste streams" (iii). The government acted on the report's recommendations and began to shift many stewardship towards a second

generation model. It released an Industry Product Stewardship business plan in 2002 that highlighted the advantages and benefits of a stewardship approach where "end-of-life management of a broad range of products is financed and operated by the private sector and consumers under results-based regulations" (British Columbia 2002b, 1). The proposed model stood on four pillars, which are producer/user responsibility, level playing-field, results-based, and transparency and accountability (*ibid,* 3). These aligned directly with New Era principles, but also are completely in line with EPR principles as articulated by the OECD and other sources.

The government also looked at Ontario's proposed WDO model but ruled it out as an option, critiquing it for having less government control over stewardship program decisions and funding decisions, as well as decreased accountability (British Columbia 2002a, 22).

During the review process, the used oil industry in fact lobbied for regulatory changes, calling for a shift from a mandatory return-to-retail program where compliance was difficult and many retailers were forced to take back more than they sold, to a program where brand owners pay proportionate to their share of the market rather than what they collect (Driedger 2006, telephone interview). They proposed a system that ensured a more level playing field among different industry actors. The oil industry saw significant benefits in the new system, although the regulatory changes have been criticized on a number of counts. Usman Valiante, the industry consultant who has been highly critical of such schemes, argues the new system is monopolistic and allows for controlled burning of used oil material as an end-use, decreasing market incentives for re-refining (Valiante 2006a). He describes the transfer of used oil stewardship from a

government run program to the BC Used Oil Management Association model as in effect a "move from a public 'regulatory' monopoly to a private monopoly with tremendous market power" (Valiante, telephone interview).

Political motivations aside, it is interesting that the oil industry and Campbell's government found that EPR aligned well with their goals and interests. There was no serious opposition from any industry group, partly because the Recycling Regulation imposed only minimal new costs (for a mandatory 5-year review), while also providing more flexibility to the industry groups to manage programs (Driedger 2006, telephone interview). The regulation built upon a series of policies developed and implemented by the Social Credit and NDP governments in previous decades, adapting them to meet contemporary economic circumstances, albeit ones that benefited industry. Certainly, the regulation had less to do with environmental altruism than a desire to address what key actors saw as inefficiencies in the existing system. Although the form of the regulation reflects some of the Campbell government's neoliberal values, the regulation owes its existence to the success of prior stewardship policies. The government built on and expanded past policies and has taken product stewardship in BC further down its particular path.

In February 2006 the Ministry of Environment passed regulations that expand stewardship programs to include a category for electronic waste. The program now under development works within the existing regulatory framework and is clearly an extension of the existing path. Although we may still argue that the 2004 Recycling Regulation did not achieve much in practice, no rational choice explanation can account for the government's decision to regulate these new materials. The program that is now under

development will impose new costs on business. And in contrast to other 'monopolistic' EPR programs, the proposed electronic waste program has been praised for allowing for significant competition between players, while ensuring strong diversion targets (Valiante 2006b, telephone interview).

British Columbia – Conclusion

The 2004 Recycling Regulation highlights the path-dependent trajectory of EPR policies in British Columbia. Because it brought together previous regulations, it was not exactly a new piece of legislation. However, the terms in which the Regulation is framed are very different, including EPR as an explicit guiding principle, extensive recycling targets, fines, and a Design for Environment goal. In addition, the government's decision to expand the regulation to include new product categories, thus imposing new costs on business, suggests that EPR has indeed become an entrenched policy model that supersedes interests and ideology.

Summary

Contemporary EPR policies in BC and Ontario can only be understood in light of the history of waste management in each jurisdiction. Ontario's Waste Diversion Act and the subsequent establishment of Waste Diversion Ontario in 2002 further reinforced the 'shared responsibility' model, as well as reliance on the blue box for as a mechanism for diversion. The WDO has become an institutional barrier to EPR in the province, which links into the status-quo bias of institutions as discussed by Pierson.

In BC, the Liberal government's decision to streamline EPR policies with particular neoliberal ideals created increasingly pro-business conditions, while also creating a framework for new stewardship programs for materials such as electronic

waste. The government's ongoing commitment to EPR in the province, including a willingness to impose new costs on business is not consistent with its history of making significant cuts to other environmental areas. Businesses have accepted, or at least resigned themselves to this regulation and also new policies. All this is evidence that EPR has become entrenched as a model for waste management in the province. The path in BC continues in this direction

CHAPTER 5 – CONCLUSION

Canada is only beginning its journey into EPR. All provinces, including British Columbia, which has had forms of product stewardship in place for over 30 years, have a significant distance to go before EPR is implemented for a broader range of products, and before important outcomes can be observed. However, the future looks promising.

Waste issues continue to plague Canadian municipalities. With the ongoing political difficulty of establishing new landfills or incinerators, and increasingly wasteful consumer culture, the EPR approach can address many of these problems at their core. EPR in Canada is currently used primarily as a tool for shifting the financial burden of paying for waste off of municipalities and onto consumers and industry, and while this is a necessary and attainable goal, full EPR requires a deeper perspective and a strong commitment from industry, regulators and consumers. With the right market signals and incentives in place, EPR can indeed effect behavioural change among manufacturers – who will begin to produce more environmentally benign products – and consumers, who will purchase these products because they are cheaper.

Indeed, the regulatory component of EPR, which has been the focus of this paper, represents only piece of the puzzle. Many industries have begun to recognize their role in waste issues, and have taken initiative in the absence of – or in anticipation of – public policies. Examples of this include the computer manufacturer Dell which is launching a global take-back program for their electronic waste (Dell Inc. 2006), and the American carpet company Interface, an industry giant which has reformulated its products to use recycled, non-toxic and bio-based materials and, and developed closed-loop waste and waste-to-energy systems (Interface Inc. 2004). The impact of EPR policies on product

design has been a central part of the EPR debate (see OECD 2006) and relates to what I believe to be the most vital goal of product stewardship. Perhaps one of the most interesting perspectives on the issue comes from William McDonough and Michael Braungart, who coined the 'Cradle to Cradle' concept:

> in a world where designs are unintelligent and destructive, regulations can reduce immediate deleterious effects. But ultimately a regulation is a signal of design failure (McDonough and Braungart 2002, 61).

This dimension contributes to the governance debate, where diverse actors, particularly private ones, bring new forms of governance to various issues in what James Rosenau (1995) describes as "the crazy-quilt nature of modern interdependence" (15). EPR is an interesting case for understanding the changing relationships between governments, the private sector and nongovernmental organizations on environmental issues.

Despite the vital role that industry plays in effecting positive change, it is doubtful that extensive change can occur without some degree of regulatory intervention. The most successful EPR initiative to date is Germany's Green Dot Program, established through the National Packaging Ordinance, in place since 1990. The Ordinance forces retailers to take back discarded packaging unless a recycling system with specific characteristics is established for packaging materials. The Ordinance has had many positive observable implications, including very high recycling rates,[20] and has also been credited for triggering significant design changes (Lindhqvist 2000, 107). It has also resulted in a vast decline in overall packaging consumption, with an average yearly reduction of approximately 3% in households and small businesses (*ibid*, 108). While there are many political and cultural reasons why Canada may never be able to emulate

[20] In 1997, glass and paper were recycled at around 90%; recycling rates for aluminum and tinplate packaging were above 80% (Lindhqvist 2000, 96).

its western European counterparts on environmental policies, the success in Europe has provided an adaptable model for the Canadian situation.

All of the experts I interviewed, as well as several others who write on the subject, have expressed that EPR will continue to spread as a policy principle in Canada and internationally. The reasons for this relate to the elegant simplicity of the concept, although we have seen in this paper that in practise, a number of messy real-world factors can serve to prevent implementation, or at least dilute a policy's goals. In Ontario, the government has recently expressed its renewed interest in EPR, and has simultaneously recognized that Waste Diversion Ontario (WDO), the industry-dominated agency established in 2002 to formulate waste diversion programs, has become an institutional barrier to effective product stewardship in the province. The WDO in effect has stopped Ontario's path to stewardship from progressing. It is hard to surmise at this point what the outcomes of the proposed regulations will be, how actors will respond, or whether they will be implemented at all. Nonetheless, the proposed regulation is a signal that EPR remains on the government's agenda as a policy solution. In British Columbia, the government continues to build on its strong regulatory framework, designating new materials for product stewardship, thus extending its particular path and confirming that product stewardship is indeed an entrenched norm.

Many Canadian jurisdictions, including BC and Ontario are currently developing programs or investigating options to deal with electronic waste, certainly one of the most significant new waste streams presenting risks to public and environmental health. The amount of electronic waste sent to landfills at home and abroad (much of it still in working condition) has been described as "a looming crisis" (Slade 2006, 263). One

concern relates to North American jurisdictions shipping electronic waste to parts of Asia for 'recycling', where conditions for salvaging discarded electronics are frequently unregulated and unsafe (*ibid*, 279). Technological innovation can be seen as one of the causes of the ever-increasing amount of electronic waste, but it must also be considered in the wider consumer context of planned obsolescence and the general trend to disposability. EPR may indeed provide the tools to reverse these admittedly entrenched consumer trends, by forcing manufacturers and marketers to consider the broad environmental costs of disposal when designing a product.

It is difficult to predict how or the extent to which EPR will continue to expand across BC and Ontario, and throughout Canada. Stewardship programs for Electronic Waste are challenging to design and implement, and this will likely be the predominant waste issue in the next decade. There exists, however, a growing movement for sustainable design, with small-scale producers embracing clean technologies and materials that are biodegradable, made of recycled components or are built for easy recyclability. Growing public awareness about sustainability issues generally, and a rising trend of green consumerism will likely contribute to this movement. There may well be an intersection between policy and design in the near future, one that will hasten the path to a waste-free society.

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APPENDIX A: EPR programs in British Columbia prior to 2004

Stewardship program	Setup date	Primary responsibility	Revenue source
Beverage containers	1970 (Litter Act) expanded in 1997 (Beverage Container Stewardship Program Regulation)	Industry	Deposit-refund system unredeemed deposits, recycled commodity revenues and brand-owner fees if needed
Financial Incentives for Recycling Scrap Tires (FIRST)	1991	Government	Government levy
Lead-Acid Battery program	1991	Government	Government levy
Used oil	1992	Industry (retailers)	Industry fees internalized in price
Post Consumer paint program	1994	Industry	Industry levy disclosed on receipts (eco-fee)
Medications return program; Solvents/flammable liquids, domestic pesticides, and gasoline	1996 1997 (Post-Consumer Residual Stewardship Regulation)	Industry	Industry fees internalized in price (meds); Industry levy disclosed on receipts

(adapted from British Columbia, 2002a)

APPENDIX B: Interviews

Ontario

Name/organization	*Date*
Government, bureaucracy (1)	
David McRobert, Policy analyst at the Ontario Ministry of Environment Waste Reduction Office (1991-1995)	21 June, 2006
Interest group/advocate/academic (1)	
Usman Valiante, Senior Policy Analyst/Partner, Corporate Policy Group LLP	10 July, 2006

British Columbia

Name/organization	*Date*
Government, bureaucracy (1)	
Ron Driedger, BC Ministry of Environment (1972-2002); Executive Director of the BC Used Oil Management Association (2002-present)	12 June, 2006
Interest group/advocate (2)	
Allard Van Veen, co-founder of Pitch-in Canada (formerly Outdoors Unlittered)	10 July, 2006
James Matkin, Chair of Paint Care, BC (1994-1999)	27 June, 2006

APPENDIX C: Ontario government advertisements for refillables, 1976-77

Fig 1.

MONEYBACKS VS. THROWAWAYS.

YOU PICK THE WINNER.

By April 1, every retail store must give Ontario buyers their choice of soft drink containers. You will now be able to buy your favourite flavours and sizes in money-back bottles as well as in throwaways.

Thoughtful buyers will choose the money-back, refillable bottles for good reasons:

- they help conserve raw materials and manufacturing energy.
- they help solve Ontario's litter and solid waste disposal problems.
- they guarantee the return of your deposit money.

Ontario is taking other firm steps to encourage the use of refillable bottles. Next year, throwaway bottles for soft drinks will be banned altogether. This summer, pull-off can openers will be replaced. And, as another common-sense measure, plans are underway to limit soft drink bottles to the three most popular retail sizes.

All of these improvements are being introduced to give buyers a real choice. We expect the result to be wider use of the more desirable refillable bottles.

Ontario already enjoys some of the most advanced environmental legislation in North America. Your provincial government is dedicated to keeping it that way with effective programs such as this. Now the choice is yours.

Moneyback bottles.
They make good, clean sense.

Ministry of the Environment
Ontario Hon. George A. Kerr, Q.C., Minister

From: The Globe and Mail, March 22, 1977

APPENDIX C (cont'd)

Fig 2.

From the Globe and Mail, October 5 1976

APPENDIX C (cont'd)

Fig 3.

NON-RETURNABLES VS. RETURNABLES MEET THE WINNER

In large newspaper advertisements, the Ontario Ministry of the Environment recently said it is introducing new, amended regulations on April 1 this year which will require every retail store to give Ontario buyers their choice of soft drink containers.

You were told you would now be able to buy your favourite *flavours* and *sizes* in returnable bottles as well as in non-returnable bottles or cans.

Here's what the ads didn't tell you.

The original regulations – widely publicized by the government only a few months ago – promised consumers the choice of *brands* as well as *flavours* and *sizes* in both returnable and non-returnable soft drink containers.

Now, in an abrupt change of policy, *the matching brand requirement has been scrapped.*

Most popular brands in single drink containers will only be available in cans.

Some choice.

And there's more.

Next year, all family-size non-returnable bottles will be banned.

Then, the metal can will be the only soft drink throwaway container on the market.

So much for the environment.

There's more yet.

We estimate that last year *800 million cans* of soft drinks were sold in Ontario — nearly half the entire soft drink container market in terms of total gallonage. The corresponding figure for non-refillable bottles — the majority of which are sold in family-sizes — *is only about 150 million* containers, representing about 16 per cent of total gallonage.

When the family-size non-returnable bottle disappears, with no alternative in a convenience container of comparable size, sales in cans will undoubtedly increase. Even with an add-on tax.

So why then has the *non-returnable* bottle been singled out for a discriminatory ban?

Good question.

Family-size non-returnable bottles are *not* the major litter and waste problem. Many people believe cans *are*.

Nor do family-size non-returnable bottles use vital natural resources. And the family-size non-returnable bottles only require about the same energy to make, fill and deliver as soft drinks in cans.

And furthermore, soft drinks in family-size non-returnable bottles are cheaper than cans on a per ounce basis at regular retail prices.*

It just doesn't make any sense.

Nor is it fair.

Only the 3,800 employees of the Canadian-owned glass container industry in Ontario are being forced to bear the full economic brunt of these flip-flop regulations.

HUNDREDS OF BADLY-NEEDED JOBS ARE AT STAKE

*Price comparison survey of 20 representative retail stores selected at random in Metropolitan Toronto March 23, 1977. Available on request.

An effective option that's fair

The government of Ontario should return to its original policy and restore freedom of choice in the marketplace.

But if bans or penalties are to be imposed, isn't the government obligated to apply them without discrimination — *fairly* and *equally* against non-returnable soft drink bottles *and* cans?

The Government of Ontario promised you a policy based on a full and fair choice in the marketplace.

Just a few months ago.

As it stands now, you won't get the chance to exercise the choice that the government originally promised you.

Isn't it time somebody asked you, the consumer, what *you* want?

Perhaps it's time to speak up.

THE GLASS CONTAINER COUNCIL OF CANADA

67 Yonge Street, Toronto. M5E 1J8 Telephone: (416) 364-4109

Representing: Ahlstrom Canada Limited, Consumers Glass Company Limited, Domglas Ltd.

From: The Globe and Mail
Wednesday, March 30, 1977