

ARBITRATION TO DETERMINE  
THE 2014 STEWARD OBLIGATION FOR THE Blue Box PROGRAM

B E T W E E N:

ASSOCIATION OF MUNICIPALITIES OF ONTARIO and THE CITY OF TORONTO

Applicants

- and -

STEWARDSHIP ONTARIO

Respondent

Affidavit of Geoff Rathbone

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Introduction

1. My name is Geoff Rathbone. I am employed as the Vice President, Resource Recovery of Progressive Waste Solutions Inc.. My CV is attached.
2. I will be a witness at this arbitration because I have been compelled to do so by summons. I am not retained or paid to testify by either municipalities or stewards.

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3. I am neutral, as between municipalities and stewards, on the subject of Blue Box (BB) waste funding. I take no position on the amount of the 2014 Steward's Obligation.

### My Background and experience

4. I have over 30 years of experience in the environmental sector, having held significant roles with private and municipal organizations. I was employed in BB waste management from 1988 to present.
5. I hold an Honours Bachelor of Environmental Studies degree from the University of Waterloo, Ontario.
6. I was the BB coordinator for the Essex Windsor Solid Waste Authority from 1986 to 1988.
7. I was the Recycling Markets Manager for Domtar Recycling from 1988 to 1991.
8. From 1991 - 1997, I was National Recycling Director for Laidlaw Waste Systems Ltd.
9. I worked for CSR (Corporations Supporting Recycling) with Derek Stephenson from 1997 to 2001 where I was VP, Market and Technical Development. During that time, I was involved in the Interim Waste Diversion Organization (OWDO) which developed the September 2000 report, Achieving Sustainable Municipal Waste Diversion Programs in Ontario.
10. In 2001, I joined the City of Toronto as its Director, Policy and Planning. I held that position until 2007 when I was promoted to General Manager, Solid Waste Management Services for the City of Toronto. I held that position until 2011.
11. I sat on the MIPC on AMO's behalf, from inception to about 2008. At first, the City was a member of AMO, but after it separated from AMO, the City was given one seat on MIPC and I represented the City on MIPC.
12. I joined Progressive Waste in 2011. I am responsible for the identification and development of new material diversion and recovery opportunities and oversee all of Progressive Waste's material recovery facilities (MRF).
13. I sit on the Recycling Council of Ontario board of directors.

### Our company

14. Progressive Waste is a publicly traded company and one of the largest full-service, vertically integrated environmental solutions companies in our industry. We employ more than 7,000 people who provide collection, recycling and landfill disposal solutions in our valued local markets. We provide our services in three main geographic segments – the U.S. South, the U.S. Northeast and Canada.
15. We are the third largest waste service provider in North America and the largest in Canada. We handle all kinds of waste and recycling, including BB recyclable material. We think of ourselves as North America's most progressive waste solutions provider. We operate more than 40 MRFs throughout North America. We market BB services directly to municipalities, among others.

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16. In 2012, Ontario had a very competitive market for municipal BB waste collection and processing. We have found municipal BB programs to be very interested in cost and efficiency, in minimizing residue and maximizing the value of the recovered materials and in effectiveness in terms of increasing diversion.
17. In 2012, we operated two Ontario BB MRFs owned by municipalities under competitive free market contracts, namely, Barrie and Bracebridge.
18. In 2012, we collected municipal Blue Box material in the Ontario municipalities of Chatham-Kent, Simcoe County, and the City of Barrie under competitive free market contracts.
19. In 2012, we charged Ontario municipalities only what they were legally obliged to pay us for Blue Box waste collection/ processing, and that is exactly what they paid us.
20. We are constantly upgrading our MRFs. For example, on May 24, 2013, we opened a new \$14 million Construction and Demolition Material Recovery Facility in Vaughan, Ontario, just north of Toronto. This high-tech facility will redirect up to 85% of the construction, demolition and renovation waste it receives away from landfills for reuse or conversion to biofuel.
21. The new facility is equipped to process about 100,000 tonnes of waste per year, representing the equivalent of 3,500 tractor trailer loads of material that can be diverted from landfills. The wood that is recovered at the facility will be processed into clean fuel to be used at electricity and steam generating plants, replacing fossil fuels and reducing greenhouse gas emissions downstream.
22. As the market is extremely competitive, it is essential that we keep confidential certain aspects of our operations, including internal financial details.

### Toronto BB program, when I ran it

23. The Toronto Blue Box program is one of the largest in North America and certainly the largest in Canada. Close to 1 million households served, with about half multi-family households. This makes the Toronto program unique and skews all of the numbers compared to all other Ontario municipalities. For example, the amount of recyclables available per household is less than in single family households.
24. Toronto is one of the few municipalities that sends almost all materials to transfer stations first. Most municipalities can send collection trucks directly to the MRFs. That is not practical in Toronto due to its unique traffic and density challenges. Suburban GTA municipalities are in the sweet spot: they have enough density without too much traffic. The Toronto BB program will necessarily cost more.
25. The Toronto BB program was a very good program. We had one of the most extensive lists of acceptable materials. We provided residents with enough capacity to accumulate the broad mix of materials, combined with efficiency by collecting recyclables every two weeks.
26. Our program was very effective, we diverted a huge amount of material.
27. The Toronto program was well run. I always looked for opportunities for greater efficiency, and pursued them, for example I contracted out collection in half the city to reduce collection

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costs. We also contracted out the MRF processing. We always used competitive free market bids, we did not just renew what was there.

28. Because of our scale, Toronto bids were also extremely competitive. We had a wide range of vendors interested, they had to sharpen their pencils.
29. In your opinion, was it operated using best practices? Yes, and we did this throughout our integrated waste system. For example, the first of its kind was our shift to picking up garbage only once every two weeks. This allowed us to collect recyclables the other week, which was efficient, and drove more people to separate their BB material and put it in the BB.
30. In addition, as we developed the list of WDO “best practices” which reward municipalities in the payout model, Toronto was already doing the majority of those “best practices”.
31. I believe that, in general, Toronto’s Blue Box system was efficient and provided a template for other municipalities.
32. Because we represent about 20% of the total province, our costs and results received a high amount of scrutiny from WDO. We were audited almost every year. We welcomed the scrutiny, we had nothing to hide. For example, we were brutally honest about distinguishing, as accurately as we could, residential from other sources of BB material. For example, schools, City Hall, etc. This made our overall cost per tonne look higher than perhaps it was.
33. Toronto worked hard to provide accurate Datacall tonnage and financial reports every year. We took it very seriously. But a lot of judgment goes into filing those reports, and reasonable people can differ. For example, allocating costs in a two sided collection truck: how much should be allocated to the BB program v. the garbage?
34. How do you know exactly what portion of the recyclables come from ICI v. residential sources? No matter how we tried to follow the WDO rules, it was not black and white. It’s no surprise that auditors sometimes disagree with how municipalities have allocated BB costs and tonnage.

## OWDO

35. The original deal for the 50/50 cost split was struck in the negotiations leading up to the OWDO September 2000 report. There was much negotiation between the industries prior to agreeing amongst themselves to a model that could be implemented in legislation. They ultimately agreed to a 50-50 model, or the shared responsibility model, in which actual Blue Box costs would be split equally between stewards and municipalities. This is what became s. 25(5) of the Waste Diversion Act.
36. Stewards always wanted to pay only 50% of the costs of an “efficient” program. Stewards did not want to have to pay for inefficiencies. Their idea was that there was a theoretical cost of an efficient program and stewards wanted municipalities to run their programs at that “efficient” level. But the final deal was 50% of actual costs, with performance incentives to individual municipalities to improve their efficiency and effectiveness. See p. 70 to 73 of the ODWO report.
37. The ODWO recommended that the 50 percent funding obligation should be measured against total municipal net costs, and not against the net costs of each. If every municipality received

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50 percent of its costs, no matter how it performed, inefficient municipalities would receive financial rewards, and better performers would be discouraged. The concept was that the better municipal performers would get more than 50% of their actual costs, and the weaker performers would get less than 50% of their actual costs, while the stewards would pay 50% of the total provincial costs.

38. I helped support the development of the Municipal Funding Allocation Model that was used as the payout model in the early years. It is described at page 14 of the OWDO report and at page 50 of the BBPP. It was intended to reward better programs by paying them more than 50% of their actual costs.

### The Blue Box Program Plan

39. There was some consultation with municipalities when Stewardship Ontario (SO) and WDO were developing the Blue Box program plan (2002/2003). It was clear during this process that total actual costs were to be split 50/50. To the best of my knowledge, nothing in the BBPP changed the 50 /50 actual cost split that is in the WDA.
40. At the time the BBPP was developed, no one had reliable data as to the actual costs of municipal Blue Box programs. It took several years to get accurate information through the Datacall process. It's a constantly evolving process.
41. The Datacall was developed to collect actual cost and tonnage data to municipalities. The legislation provided no guidance as to what the rules were and the first thing that the parties had to determine was what were the eligible expenses. For example, what percentage, if any, of capital depreciation or the mayor's salary or administrative cost would be included?
42. The Effectiveness and Efficiency Fund (later the CIF) was created out of the perceived cost difference between efficient and inefficient blue box programs; see p. 16 of the BBPP. The fund was designed to assist municipalities to improve the efficiency and effectiveness of all municipal BB programs, especially the weaker ones. The intention was that total actual costs, through innovations funded by the E&EF, would be reduced over time.
43. SO was still paying for 50% of actual costs, but with a portion of that being diverted to this fund. I believe that municipalities, by accepting this approach, acknowledged that improvements could be made.
44. Toronto did apply for E&E /CIF funding, which was helpful. I believe that, in general, municipalities did get back, through grants, most of the money that was diverted to the E&E/ CIF. It was a means by which smaller municipalities could get funding for certain projects that would otherwise have been impossible, and which did help improve efficiency and effectiveness over time. We even paid for help to smaller municipalities so they could apply for grants.

### Cost containment plan

45. The first year of the Datacall, the costs reported by municipalities were noticeably higher than the estimate in the BBPP, because the baseline information had been weak and not inclusive of all costs. As well, commodity prices fell dramatically and this affected the "revenue" component of the net cost formula. (The three year "rolling average" for revenue

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helps to buffer against the volatility in the commodity prices market. MIPC recognized that this approach was fair.)

46. When we saw the Datacall results, it strengthened our resolve to find opportunities to improve efficiency. It also made us realize that there were opportunities to improve the data collection process, both costs and eligible tonnes.
47. The Minister issued a letter in December 2003 asking Waste Division Ontario to develop a Cost Containment Plan (CCP). Municipalities understood that cost containment meant steps, to be taken by both stewards and municipalities, to control actual future costs, and to ensure that actual municipal costs were accurately calculated and reported. Not a change in the cost split.
48. MIPC set up a cost containment committee, I sat on it. I think we wrote the CCP, at least oversaw the writing of it.
49. What was the CCP about? How was it expected to contain future costs? As we examined individual municipal programs, we expected to find opportunities to improve a practice or policy. We would share that learning with other municipalities, who could learn from that. This way the overall system would gradually become more efficient and effective. But of course the more you divert, the more it costs stewards. It is a bit of a catch 22.
50. In addition to changes we made to individual programs, there were changes that needed cooperation between municipalities. One of the biggest topics was consolidation of MRFs, needing cooperation on a regional basis. The number of MRFs when we started was 85 to 90; we're probably at half of that now. One of the best examples of that was the London MRF, where the E&E fund helped to consolidate MRF processing in the London area. This resulted in significant cost savings.
51. Municipalities supported the development of the CCP and I voted for it to be approved. The CCP was funded with money from the E&E Fund, which was money that stewards owed to municipalities. Municipalities supported the CCP because municipalities pay half of BB costs and therefore cost containment (gains in efficiency) would also benefit our municipal budgets.
52. It was always in municipalities' interest to improve on efficiency and lower costs and municipalities agreed that reducing costs was good in general.
53. The definition of cost containment in paragraph 3.1, p 7 of the CCP does describe my understanding of what the CCP was about. It was about reducing future costs, not about changing the cost split.
54. I supported the principles on page 18 of the CCP, and understood them to mean the same thing: the CCP was about reducing future costs, not about changing the cost split. Principle 3 had to be interpreted in the context of the other principles and the rest of the CCP, especially principle 4. Municipalities did not consider principle 3 to be contentious, we thought it was about our agreed goal to pursue best practices (as per principle 4). Note that AMO did not comment on principle 3- see p. 56 of CCP.

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55. If it had been our intention to change the cost split, we would have been much more explicit, and would not have used vague and confusing language. Municipalities would not have supported changing the principle of the equal 50/50 cost split of actual BB costs.
56. Did municipalities support benchmarking? Yes, because it would help us to find who was doing best practices, and who needed help. One of the general themes in municipalities, unlike private companies, is a real spirit of sharing findings and learnings, so that all programs could benefit and improve. We had no fear of competition, all very open, very shared. We took pleasure in helping other municipalities, with a goal of making them all more effective and efficient. It's quite different in the municipal world from competition in the private sector. We saw the collective benefit of moving everyone towards best practices through benchmarking.
57. Cost bands were supposed to make it easier to benchmark municipal BB programs that were somewhat alike. It became clear though that it was really impossible to make apple to apple comparisons amongst municipalities. Every program has unique features, and it's a huge challenge to accurately capture the true costs of each and to understand why they are different. A lot comes down to the allocation question.
58. Within a cost band, why might one program have lower than average costs, that could not be matched by a higher cost program? What we found over time that in many cases the individual circumstances of a local municipality were as important in determining their costs as the practices they were using, i.e. that they could control. For example, look at how we manage our Barrie plant. Barrie happens to benefit from the fact that our company has a commercial MRF in Barrie, and can tuck the residential material into that existing facility less expensively than it would be otherwise. In some cases, it is just lucky that something happens to be close by.

### Payment containment

59. Is payment containment the same as cost containment? No. Cost containment is a joint goal: we both benefit from making programs more efficient. Payment containment is about one side paying less than the other.
60. There were a lot of ways that could happen. I like the analogy of the Income Tax Act, you can reduce the tax you actually pay if you can change what counts as what you have earned, and if you can claim eligible deductions. Reducing what could be reported through the Datacall (tonnage and financial), i.e. what counted as verified actual costs, was a big part of negotiations in the years I was on MIPC.
61. Does the CCP contain any method to calculate a different cost split, other than 50%? Not that I am aware of.
62. Did the Minister of Environment ever approve any method to calculate a different cost split, other than an equal 50/50%? Not that I am aware of.
63. On several occasions after the CCP was approved, you heard Ministers of the Environment speak about the Blue Box program. Did you ever hear a Minister of Environment say that municipalities were no longer entitled to receive a full 50 percent from stewards of the net

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costs actually incurred to run municipal Blue Box programs? Never. Ever see a letter that said that? No.

64. Ministers did express concern about the total cost of the Blue Box programs, and urged both municipalities and stewards to do what they could to keep the future cost down. At the same time, Ministers also wanted municipalities to increase waste diversion, which often increases costs.
65. Do you now believe that the CCP changed the 50/50 cost split, i.e. whether each side should pay 50% of verified actual costs? No. Municipalities gave up some money in some subsequent annual negotiations for particular years, but we never changed the general principle. In particular, we never changed the principle for the stewards obligation in 2014.

### Why have costs gone up since the CCP?

66. BB costs have gone up a lot since the CCP was adopted, but that's not because of bad conduct by municipalities.
67. Since 2005, municipalities tried hard to comply with the CCP. Municipalities are always interested in containing costs and in improving towards best practices, and made a lot of changes to make their BB programs more efficient.
68. The main driver behind the increasing cost of the BB program since 2005 is the exponential change in the waste stream. It used to be maybe 60% old newspapers, which are cheap to collect and process and easy to sell. We could sell it for more than it cost us to process. Now the majority of BB material is plastic which is expensive to collect and process. Fibre is only 40 to 45%, and it costs us more to process than we can sell it for.
69. The plastic packaging we handle has changed. Ten years ago, we would get a tonne of plastic from about 35,000 plastic water bottles. Now it takes about 70,000 bottles to recover a tonne of plastic. Every one of those bottles has to be handled, and they are still working on making them thinner. Also there are more kinds of plastic than there used to be and they all have to be separated.
70. We need much more sophisticated and expensive equipment to handle all the new packaging and complex (eg laminated) materials. Fuel and other costs have also gone up. The costs of building and running an old style MRF on the KPMG cost curve don't have any particular relevance to what it costs to build and operate an MRF today. Nor could the old style MRFs manage today's complex mixture of packaging.
71. It is much more expensive to collect the new packaging than it was to collect newspaper. They take a lot of room in a collection truck; among other things, they can't be compressed as much as garbage, because the pieces have to be separated at the MRF. We compress garbage about 5:1 at the point of pickup; recyclables can only be compressed about 2:1. Most of the cost of running a collection truck are driven by the number of hours and miles driven, not by the weight of the materials picked up.
72. There have been other changes too. For example, there are now fewer people per house. Also there have been cost of living changes, such as labour, fuel cost, electrical, etc.



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73. Because of all these changes, Toronto found that our total tonnes of recyclables marketed stagnated, (despite the total number of pieces of BB material going up). We were working very hard to increase our participation and capture rates and accepting more materials, and costs were going up. We commissioned a report from Maria Kelleher to explain what was going on. Her 2010 Blue Bin report concluded that BB programs were going to continue to get more expensive because of these demographic and packaging changes.
74. Note: Measuring costs by weight is about 80% wrong, because many of the costs are driven more by volume and number of units. But we don't have anything better yet.
75. Have stewards done anything comparable to comply with their obligations under the CCP? No. They have taken some tiny steps that help us, e.g. Walmart has changed some details of their pharmaceutical bottles. But on the whole, we have not seen stewards making packaging easier to recycle. On the contrary, there is a direct negative correlation between the packaging changes stewards have made since 2005 and BB costs. For example, moving Ritz crackers out of a boxboard container (easy to recycle) and into a plastic pouch (no recycling market, very challenging to sort at the MRF). This is also part of why recycled tonnes are stagnating.

### Best practices

76. "Best practices" is a pretty well understood business term, though it can mean different things in different contexts. It can mean a specific operation, eg baling before shipping, and it can mean policies, eg picking up garbage every two weeks. We originally thought it meant mostly operations, but the KPMG report focussed mostly on policies.
77. Best practices are recommended based on experience of similar operations. They used as a target or a benchmark, not a minimum standard. They don't necessarily apply in the same way to every program.
78. Have BB best practices changed since 2007? They are always evolving. Partly they have to evolve because the waste stream is evolving. The technology also changes, eg optical sorting.
79. Do best practices always reduce costs? No, they can be about efficiency and/or about effectiveness, which can increase cost while increasing diversion.

### KPMG study

80. I was a municipal representative on the team that developed the KPMG report, Blue Box Program Enhancement and Best Practices Assessment Project and Advance Practice System report, completed in 2007. This was a project which WDO commissioned to clarify the best practices that municipalities and stewards should strive for, and to estimate what the theoretical cost would be once all best practices were adopted by all municipal programs.
81. The KPMG report Volume 2 confirmed that, for the most part, municipalities were running their programs efficiently. That is, the actual costs reported by municipal programs were less expensive than if all municipal Blue Box programs did operate at best practices, because the existing Blue Box programs were undercapitalized. It was really helpful to have a credible third party show stewards that we were within the range of efficiency.

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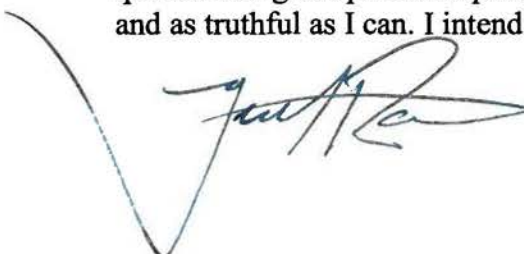
- 82. The KPMG report Volume 1 set out “best practice” benchmarks. This was not a complete, exclusive list of BB best practices.
- 83. We were pleased to see in the list that the majority of their “best practices” were what we, at Toronto, were already doing. We learned that there was no silver bullet to efficiency. These practices were mostly useful to us in the payout model.

Annual negotiations

- 84. I was involved in the annual negotiations with stewards in about 2004 to 2008.
- 85. There were members of MIPC who felt that there should be no reduction in the amount of money that SO had to pay and that it was 50% of what was actually incurred by municipalities. However, I felt that it was more practical to agree to some payment containment, in the early years. I was willing to make concessions in some annual negotiations to make the whole arrangement work. I tried to make the best deal that we could at the table.
- 86. I was concerned that the alternative may be that the industry would lobby government to change the legislation and municipalities would get even less. Also, we didn’t yet have very much confidence in the reported numbers.
- 87. Each of the annual negotiations only affected the obligation for that year. We did not give up the right to a full 50% in future years.
- 88. I thought that the gap between actual costs and the theoretical “best practice” program cost would decrease with time, as municipalities implemented best practices, although actual costs would continue to rise.

Conclusion

- 89. I understand that this affidavit is sworn evidence to be offered to a legal tribunal deciding a question of great public importance. I have done my best to make this evidence as accurate and as truthful as I can. I intend to be bound by it.



WITNESS

Sworn or Affirmed before me *William CHYRETZ*

On April 3, 2014  
at the City of Toronto  
in the Province of Ontario



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A Commissioner, etc..