



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

June 11, 2002

Submission by the Canadian Environmental Law Association to the Joint Meeting of the City of Toronto Policy & Finance and Works Committees on the Staff Report
Recommended Governance Structure for Water & Wastewater

Background

The Canadian Environmental Law Association (CELA), is a public-interest legal clinic located in Toronto. CELA has worked for 31 years on water law and policy reform to strengthen both water quality and quantity regulation and public involvement in water decision-making. Since 1985 when then-Premier Mike Harris announced in the legislature that his government was considering the privatisation of water, we have been conducting research and written reports on privatisation in other countries, and on the implications of privatisation for public accountability, and safety. This research has also extended to other governance models for water such as public private partnership arrangements. CELA international staff have worked since 1985 on the impacts of international trade agreements and globalized markets impact environmental resources, including water.

In 2000 CELA represented the Concerned Walkerton Citizens in Part 1 of the Walkerton Hearings into the causes of that drinking water tragedy. We were also invited by Justice O'Connor to make submissions as a party to Part 2 of his work to consider what changes are needed to Ontario water protection regimes. He invited CELA to make submissions on the need for a Safe Drinking Water Act and on Keeping Water Public in Ontario.

We have been gratified that most of our recommendations were supported by Justice O'Connor's comprehensive set of recommendations. All of CELA's work has convinced us that the safest, most accountable, healthiest and most sustainable future for water protection is in retaining direct municipal control over these essential services. Justice O'Connor agrees that there is no major reform needed for the governance of our water services, particularly for large cities. He cautions against large expenditures to reinvent systems that are working well. He emphasises that funds need to be spent on improving our margin of safety and to do the infrastructure replacement we have been ignoring. This, he says, is affordable if we do life cycle financing for our systems.

Research that our consultants, C. N. Watson & Associates, did for the Walkerton Inquiry that I already submitted to you at your November debate on this study, concludes that municipal governments have distinct financial advantages in the financing of infrastructure over the long term. Justice O'Connor points out that on average in Ontario the increased costs of his recommendations will be less than many people spend on their cable service.

Needs Unsubstantiated

CELA did not make submissions to the City's consultation phase of their study because frankly we felt there was too little tangible rationale and no business case for the need to change water governance and undertake this major restructuring. We were anticipating that the completed staff study would make that business case and would elucidate what the true cost for the service is. We were very disappointed that the focus of the staff report was a chronicle of who does what in water and wastewater services and contains little new data. The main rationale for a new governance model still seems to be to save you from yourselves. Historical City management structures, no longer in the public interest because they promote cross subsidies between departments and the siphoning off of water revenues to other budget lines need to be changed. The bottom line is the City is refusing for ideological reasons, to implement change and solve these problems. Is the rush to put a new management model in place to avoid new legislative requirements that will force this change? The recently introduced provincial Bill 155 will require all Ontario municipalities to report on the true cost of water delivery and its financing.

Remaining Risks

What are the risks of accepting the recommendations of your staff report?

Your report readily admits that there will be less direct public accountability and transparency with the Municipal Service Board option. One facet of public involvement that your study has not studied is the tremendous value that the City of Toronto has gained from direct public involvement in improving water policy and practices. All the environmental strides that the City has made in watershed management, cleaning up its waterways and Harbour, limiting pollution from sewers and storm water and wastewater plants have come from the grassroots and have often resulted in working groups with City staff. These unique innovative partnerships will certainly be at risk and will be unlikely to be part of the business of a Board that meets only once a month. This amounts to the loss of a public interest culture that has contributed greatly to the health and reputation of this City as an environmental innovator.

Your staff has not fully assessed the risk of changing governance to the long-term safety and security of our water. Never before in the history of Ontario and internationally has there been so much regulatory flux and change concerning water. Many of these changes are proposed but not yet implemented. However, they could restrict the City's control over its water in the future in ways that are not yet known or well understood. Some of these are:

- Changes governing water and development expected in *The Municipal Act*,
- Changes governing water financing and reporting in Bill 155,
- Justice O'Connor's ninety-three recommendations that will need to be framed in regulations and other statutes and in *The Safe Drinking Water Act* he has recommended. This will take considerable time.
- Recommended changes arising from the City's DSI & Works Best Practices reviews. The City, as your report readily admits, is in flux with a number of other management reviews underway. Their outcomes are unknown.

- The outcome of your Alternative Service Delivery Study now underway. It is our belief that once the public understands the scope of all the core city functions this study may propose to devolve, there will be a real public crisis of confidence in elected officials' wholesale avoidance of responsibilities that could result in revisiting decisions already made.

CELA questions the wisdom of making water and wastewater the first candidate for governance restructuring. Water, the one thing that runs through the health and well being of all sectors and enterprises in the City, is being severed from the City at a time of turmoil when we do not know the shape of things to come.

Safety

The City of Toronto has already resolved many of the safety problems that Justice O'Connor identified in smaller water systems. We have much more frequent testing of our drinking water supply, in-house training, our own labs and an established roster of experts and consultants on various aspects of safety. Why would we risk those being changed or eroded by a Municipal Service Board that will certainly want to do a makeover to put their stamp on our well-run system? How much will it cost for the Municipal Service Board's operations and executive salaries that are bound to be in the range of those of other executive salaries now causing broad public concern?

In order to regain my perspective on the work to be done by the City of Toronto, I visited the PollutionWatch web site (www.scorecard.org/pollutionwatch). The City of Toronto's own discharge data places them as the number 1 polluter of discharges harmful to its resident's health, with 3,436,671 kilograms of substances to air and water in 1998. This puts the City's wastewater plant at Ashbridge's Bay in the 90% of polluters in Canada. This is the reason that CELA feels that water and wastewater operations should remain as part of the City. Today water is subject daily to a working relationship with the staff of the Department of Health and under the direct scrutiny of the Medical Officer of Health, who has the ultimate responsibility for drinking water and recreational water safety. The Municipal Service Board model will distance this accountability. Walkerton was a lesson in the consequences of moving the provision of drinking water away from the direct scrutiny of public health officials.

The last area of risk to the City that your staff has under estimated is the risk from the GATS service agreement negotiations now underway. Two weeks ago the Canadian Environmental Law Association and the Canadian Centre for Policy Alternatives released a report entitled *From Global to Local: GATS Impacts on Canadian Municipalities*, by CELA Lawyer, Michelle Swenarchuk. I have provided you with a copy of this report today and hope you will ask your Legal Department to review it. Her analysis points out that Canada has made many commitments to open up municipal services to foreign companies. Water companies could now use GATS to challenge local control and public ownership of water. Your staff analysis of the governance options does not adequately assess the GATS implications of setting up an incorporated body for water outside of the City. This arrangement could be interpreted to be a monopoly over water and wastewater services. Ms.

Swenarchuk's analysis extrapolated to the Municipal Service Board model recommended by your report, shows that GATS provision XVI could allow foreign companies to claim that such an incorporated company constitutes a monopoly and could through their national government challenge it. This alone should be reason to err on the side of caution and reject your staff's recommendation.

To conclude, CELA can find no overwhelming reason to substantially change the way we manage and govern water in the City of Toronto, except to perhaps make it a stand alone department to better control its budget and give it the importance it requires. The issues at hand are water and wastewater safety, security and self-sufficiency. Governance approaches are only one small way to achieve these goals. Timing could not be worse. The risks of changing governance for water at this time are far too great because of flux in globally marketplaces and in provincial regulation. Your staff report makes it clear, the City of Toronto with its citizens have the tools to do this job ourselves and are have made real strides in doing so. Please do not imperil the future of our city's water by accepting your staff's shortsighted recommendations.

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