

WALKERTON COMMISSION PROPOSAL FOR
PART 2 STUDY PAPERS

(A)



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

October 26, 2000

Mr. Harry Swain
Chair, Research Advisory Committee
The Walkerton Inquiry
180 Dundas Street West, 22nd Floor
Toronto, Ontario
M5G 1Z8

Dear Mr. Swain:

RE: PROPOSED PART II ISSUE PAPER – SAFE DRINKING WATER LEGISLATION

We acknowledge receipt of your letter dated October 13, 2000 with respect to the Part II Study List.

We note that you have expressed interest in our suggestion that an additional issue paper be prepared with respect to the *Safe Drinking Water Act*.

Accordingly, please find attached a copy of CELA's proposal to draft such a paper for the Commission in order to facilitate discussion among the inquiry parties (and the public at large) on this critically important issue. In particular, we have attached a concise description of the proposed paper (including a draft table of contents), as well as a proposed budget for this research/writing project.

In essence, CELA is proposing an issue paper which will:

- describe and evaluate the current legal regime for protecting drinking water in Ontario;
- undertake a comparative analysis of safe drinking water legislation in other Canadian, American, European and Commonwealth jurisdictions; and
- determine whether legislative reform is necessary in Ontario, and if so, identify the guiding principles and essential elements of safe drinking water legislation.

In our view, this issue paper will address a significant gap in the current Part II Study List, and more importantly, will greatly assist the Commission in fulfilling the Terms of Reference for the inquiry.

Please contact the undersigned if you have any questions or comments about this research proposal. If requested, we would be pleased to meet with you (or the Advisory Panel) to further discuss CELA's proposed issue paper.

We look forward to your reply.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Richard D. Lindgren
Counsel

cc. Grace Patterson

ORIGINAL BY COURIER

PROJECT PROPOSAL: PART II ISSUE PAPER

SAFE DRINKING WATER LEGISLATION

SUBMITTED BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION TO THE WALKERTON INQUIRY

INTRODUCTION

This is a proposal by the Canadian Environmental Law Association ("CELA") to research and write an issue paper for the purposes of Part II of the Walkerton Inquiry.

The focus of the proposed research paper is safe drinking water legislation. In particular, the authors (see below) intend to:

- describe and evaluate the current legal regime for protecting drinking water in Ontario;
- undertake a comparative analysis of safe drinking water legislation in other Canadian, American and European jurisdictions; and
- determine whether legislative reform is necessary in Ontario, and if so, identify the guiding principles and essential elements of safe drinking water legislation in Ontario.

RATIONALE FOR PROJECT

Ontario's current regime for protecting drinking water can be fairly described as a mix of general legislation (e.g. the *Ontario Water Resources Act*), certain regulations (e.g. the recent Drinking Water Regulation), and numerous policies, objectives, and guidelines of varying vintage. Thus, at the present time, Ontario lacks a *Safe Drinking Water Act* that is specifically designed to protect drinking water and its sources.

The absence of safe drinking water legislation in Ontario stands in contrast to other jurisdictions which have seen fit to entrench drinking water rights/remedies into law. For example, the United States enacted the federal *Safe Drinking Water Act*, which has now been in place for over 25 years.

Given these differing approaches, it is both timely and important to determine whether special drinking water legislation is preferable to Ontario's current regime. This broad issue, in turn, raises a number of legal and public policy questions which merit careful consideration. Is there a need for safe drinking water legislation in Ontario? If so, then what are the guiding principles which should direct the development of such legislation in Ontario? What components should safe drinking water legislation contain in order to be effective, efficient and enforceable?

Upon review of the Part II Study List, it does not appear that these important questions will be fully (or even partially) addressed in other issue papers being drafted for Part II of the Walkerton Inquiry. CELA therefore proposes to research and write an issue paper which will canvass these and other related questions regarding safe drinking water legislation.

It should be noted that the overall goal of the project is to compare and contrast regulatory approaches for protecting drinking water and its sources. Thus, the issue paper will not be focusing on quantitative differences in contaminant standards among various jurisdictions, nor will the issue paper examine the causal connection between specific contaminant standards, drinking water quality, and public health outcomes.

PROJECT TEAM

The project team will consist of two principal authors, who will be assisted by legislative researchers, and a project manager.

(a) Authors

The principal authors of the issue paper will be Richard Lindgren and Grace Patterson (see attached c.v.'s).

Mr. Lindgren is a staff lawyer with CELA, and his casework and law reform activities have frequently involved drinking water quality and quantity. In addition, Mr. Lindgren prepared CELA's recent Application for Review under the *Environmental Bill of Rights* regarding the need for a *Safe Drinking Water Act* in Ontario. The requested review was granted by the Ministry of the Environment, and the results of the review are imminent.

Ms. Patterson is a lawyer with the Toronto firm of Olthius, Kleer, Townshend, and she is a member of CELA's Board of Directors. Prior to serving as the Chair of the Environmental Assessment Board, she was CELA's Executive Director and, among other activities, Ms. Patterson drafted CELA position papers on safe drinking water legislation.

(b) Researchers

The authors will be assisted by researchers whose primary responsibility will be to identify, collect, and analyze the relevant legislative provisions related to drinking water protection in Ontario and other jurisdictions.

On-line research assistance will be provided by the Resource Library for the Environment and the Law. Additional research assistance will be primarily provided by CELA's former articling student, as well as by other research associates as may be required.

(c) Manager

CELA's Office Coordinator, Sarah Miller, will serve as project manager for the issue paper. The project manager will administer the project, coordinate research/writing efforts, and liaise with Commission staff as required to ensure the timely delivery of the issue paper.

PROJECT SCOPE AND CONTENT

The project team proposes a three-part issue paper, as described below. A draft Table of Contents is attached to this project proposal. It is anticipated that the draft Table of Contents may evolve as the research/analysis occurs over the duration of the project.

Part I of the issue paper will consist of an overview of Ontario's current legal regime for protecting drinking water. This Part will include a brief description of the constitutional framework, since the division of powers under the *Constitution Act* delineates the basis for federal and provincial jurisdiction respecting the protection of drinking water and its sources. Part I will conclude with a chronological review of past and present attempts to enact safe drinking water legislation in Ontario (e.g. private member's bills such as Bill 96).

Part II of the issue paper will identify and analyze relevant legal regimes in other jurisdictions. In particular, drinking water provisions selected from across Canada, the United States, Europe, Australia and New Zealand will be systematically evaluated in this Part. It is expected that this comparative analysis will include an easy-to-read chart which compares/contrasts the components of these various legal regimes. Where there have been attempts by these jurisdictions to assess the effectiveness of their respective legal regimes, then the issue paper will refer to and discuss such documentation.

Based upon the findings and conclusions in Parts I and II, Part III of the issue paper will determine whether there is a need for safe drinking water legislation in Ontario. CELA has long asserted that safe drinking water legislation is necessary, but the project team is proposing to examine this question objectively upon review/comparison of legal regimes in other jurisdictions. Should the issue paper conclude that legislative reform is necessary in Ontario, Part III will examine whether such legislative provisions should be incorporated into existing Acts, or consolidated within a "stand-alone" *Safe Drinking Water Act*. Similarly, in the event that the issue paper identifies the need for legislative reform, Part III will describe the guiding principles (e.g. precautionary principle) and essential elements of safe drinking water legislation in Ontario (e.g. safeguarding drinking water sources through the establishment of wellhead/aquifer protection zones under the Act).

The project team also proposes to provide an executive summary, glossary, and appendices containing relevant documents (e.g. statutory excerpts).

PROJECT BUDGET

The project team proposes the following budget for the CELA issue paper:

1. RESEARCH AND WRITING BUDGET

Principal Authors

Richard Lindgren, Counsel, CELA

7.5 days (8 hours/day) @ \$165/hour

\$ 9,900 *

Grace Patterson, Counsel, Olthius, Kleer, Townshend

7.5 days (8 hours/day) @ \$175/hour

10,500 **

Research Assistants

Lisa McShane, Resource Library for the Environment & The Law

8 hours/week x 9 weeks @ \$60/hour

4,320

Elisabeth Bruckmann, Junior Lawyer

8 hours/week x 9 weeks @ \$70/hour

5,084

Project Manager

Sarah Miller, CELA Coordinator

6 hours/week x 8 weeks @ \$60/hour

2,688 *

Editing & Desktopping

2,000

Travel to interviews

1,300

Photocopying

800

Phone & Fax

600

Delivery & Postage

200

Overhead

3,000

SUBTOTAL

\$40,392

Less CELA contribution

-12,588 *

TOTAL RESEARCH/WRITING BUDGET REQUESTED

\$27,804

* CELA contribution

** GST applies

2. CONSULTATION AND PUBLIC MEETING BUDGET

At this time, it is unclear how much time will be required by the project team in order to participate in the consultations and public meetings on the CELA issue paper. Therefore, no budget is being submitted at this time for such activities. However, the principal authors will be

billing at the above-noted rates for attending public meetings, undertaking further research/writing if required, or undertaking other related tasks regarding the issue paper.

PROJECT MILESTONES AND TARGETS

The project team understands that the Commission has proposed that draft issue papers be submitted to the Commission "starting in December 2000". The project team further understands that the draft issue papers will be published shortly thereafter on the Commission's website for the purposes of facilitating public meetings in early 2001.

Accordingly, the project team is proposing the following schedule for the research and writing of the CELA issue paper:

TASK	TIMING (WEEKS FROM NOV.1 TO DECEMBER 31, 2000)							
	1	2	3	4	5	6	7	8
Assembly of information	●	●	●	●				
Preliminary review of information		●	●					
Develop analytical framework		●	●					
Comparative evaluation of information				●	●			
Prepare detailed outline					●			
Prepare first draft of paper					●	●	●	
Review/edit first draft							●	●
Submit final draft								●

PROPOSED TABLE OF CONTENTS
PART II ISSUE PAPER

SAFE DRINKING WATER LEGISLATION

EXECUTIVE SUMMARY

PART I – OVERVIEW OF CURRENT LEGAL REGIME IN ONTARIO

- 1.1 Introduction
- 1.2 Constitutional Framework
- 1.3 Description of Current Legal Regime
 - (a) Federal Regime
 - (b) Provincial Regime
 - (c) Municipal Regime
- 1.4 History of *Safe Drinking Water Act* Proposals

PART II – SAFE DRINKING WATER LEGISLATION IN OTHER JURISDICTIONS

- 2.1 Introduction
- 2.2 Other Canadian Provinces
- 2.3 American Jurisdictions
 - (a) The U.S. *Safe Drinking Water Act*
 - (b) State Laws
- 2.4 European Jurisdictions
 - (a) EU
 - (b) England
 - (c) France
- 2.5 Australia
- 2.6 New Zealand
- 2.7 Comparative Analysis of Safe Drinking Water Legislation in other Jurisdictions

PART III – RECOMMENDATIONS FOR REFORM IN ONTARIO

- 3.1 Rationale for Reform
- 3.2 Special Act or Amendments to Existing Acts?
- 3.3 Guiding Principles for Safe Drinking Water Legislation in Ontario
- 3.4 Essential Elements of Safe Drinking Water Legislation in Ontario
 - (a) Definitions
 - (b) Statement of Purpose
 - (c) Application to Crown
 - (d) Responsible Minister
 - (e) Setting Contaminant Standards and Regulations
 - (f) Enforcing Contaminant Standards and Regulations
 - (g) Licencing of Water Works, Operators and Testing Facilities
 - (h) Duty to Monitor, Test, Notify and Act

- (i) Community Right to Know
- (j) Protection of Sources of Drinking Water
- (k) Prohibitions and Penalties
- (l) Research, Funding and Technical Assistance Programs
- (m) Advisory Committee
- (n) Other Matters

GLOSSARY

APPENDICES – References, Supporting Documentation, Statutory Excerpts

Curriculum Vitae

Proposal Participants

RICHARD D. LINDGREN, B.A., LL.B.
Barrister & Solicitor

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Toronto, Ontario
M6G 4A2
Phone: (416) 960-2284
Fax: (416) 960-9392
E-mail: lindgrer@olap.org

HOME ADDRESS: P. O. Box 92
Wolfe Island, Ontario
K0H 2Y0
Phone (613) 385-1686
Fax: (613) 385-1952
E-mail: r.lindgren@sympatico.ca

EDUCATION

1987 - 88 Bar Admission Course
Law Society of Upper Canada

May 1986 LL.B. Queen's Faculty of Law
Kingston, Ontario

October 1982 B.A. (w. Dist.) Queen's University
Kingston, Ontario

Awards

- Canada Law Book Prize in Conflict of Laws, 1985
- Campbell, Godfrey & Lewtas Prize in Tort Law, 1984
- Adams Scholarship, Queen's University, 1981
- Dean's Honour List, Queen's University

EMPLOYMENT

March 1988 to
present

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

- employed as staff lawyer; duties include representing individuals and public interest groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues; legal drafting and research; law reform;

summary legal advice; and community education and organization. Member of the Ontario Task Force on the Environmental Bill of Rights; the Attorney General's Advisory Committee on Class Action Reform; and the Environmental Assessment Board Advisory Committee.

Casework has included the following:

- counsel for plaintiffs in civil actions involving environmental torts;
- counsel for CELA in friend of the court interventions;
- counsel for parties in judicial review applications and statutory appeals;
- counsel for informants in private prosecutions under environmental statutes; and
- counsel for parties in hearings before the Ontario Municipal Board, Environmental Assessment Board, Joint Board, Environmental Appeal Board, Niagara Escarpment Hearing Office

May 1994 to
Present

CANADIAN ENVIRONMENTAL LAW REPORTS (NEW SERIES)

- served as editor of topical law report series on environmental law; duties include case reviews and selection; preparation of case headnotes; and drafting of case comments.

1992, 1994 to
present

FACULTY OF LAW - QUEEN'S UNIVERSITY

- employed as Special Lecturer; duties include teaching and advising students in an upper year course in environmental law (LAW 517)

1991 to present

TRENT UNIVERSITY - ENVIRONMENT AND RESOURCE STUDIES PROGRAM

- employed as Course Instructor; duties include teaching and advising students in undergraduate courses in: advanced environmental law (ER 499B); introduction to environmental law (ER399B); and environmental impact assessment (ER306)

September 1987 to
February 1988

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

- employed as student-at-law under the Law Society of Upper Canada Bar Admission Work Study Program; duties include appearances before civil and criminal courts and administrative tribunals; legal drafting and research; law reform; summary legal advice; and community education and organization.

August 1986 to
August 1987

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

- employed as student-at-law; duties include appearances before civil and criminal courts and administrative tribunals; legal drafting and research; law reform; summary legal advice; and community education and organization.

May 1986 to
July 1986

FACULTY OF LAW - QUEEN'S UNIVERSITY

- employed as research assistant, and researched/revised criminal law textbook (Canadian Criminal Law (2nd ed.)) and children's law casebook.

PUBLICATIONS

List available upon request.

MEMBERSHIPS (PAST AND PRESENT)

Queen's Student Legal Aid Program
Law Union

Law Society of Upper Canada

Board Member, Coalition on the Niagara Escarpment

Board Member, Canadian Environmental Law Association

Board Member, Canadian Institute for Environmental Law and Policy

Board Member, Federation of Ontario Naturalists

Executive, Environmental Law Section, Canadian Bar Association - Ontario

REFERENCES

Available upon request

Grace Patterson

2 Cornish Road, Toronto, Ontario M4T 2E2

Telephone: (416) 484-6293 or 485-5493

E-mail: patsor@interlog.com

LAW PRACTICE

From June 1999, practicing environmental law with the Aboriginal Law group at Morris/Rose/Ledgett, now **Olthuis, Kleer, Townshend** (as of October, 2000).

From 1986 to 1997, Vice-Chair and Chair, **Environmental Assessment Board** (see separate heading).

From 1980 to 1986, Clinic Director (i.e. General Counsel/Executive Director) of the **Canadian Environmental Law Association (CELA)**. In addition to counsel duties as described below, the managerial aspects of the position involved:

- working in partnership with the Board of Directors to implement the Board's priorities
- maintaining working relationship with the Legal Aid Plan staff, who recommended funding levels for the association's activities
- managing office activities and personnel including allocation of legal work, consultation on cases, professional staff recruitment, administration and policy setting.

From 1978 to 1980, Counsel to the Canadian Environmental Law Association. This involved:

- advocacy work before administrative tribunals such as the Environmental Assessment Board, the Environmental Appeal Board, Ontario Municipal Board, and Niagara Escarpment Hearing Officers, including major Official Plan Amendment hearings related to expansion of urban boundaries and major waste management hearings
- appearing before the courts on civil and quasi-criminal matters
- working on law reform activities and appearing before standing committees dealing with legislative amendments
- writing articles and speeches on hazardous wastes, water quality, landfills, environmental assessment, planning, and other aspects of environmental law.

From 1976 to 1977, Articling Student with **Morris/Bright/Rose** (now Morris/Rose/Ledgett). This involved various areas of practice, including litigation, real estate and corporate/commercial work.

CONSULTING PRACTICE

From 1998, providing consulting services related to environmental assessment and environmental protection issues.

ENVIRONMENTAL ASSESSMENT BOARD

From 1990 to December 1997, Chair of the Ontario Environmental Assessment Board. The Board holds hearings on contentious projects or undertakings where environmental effects are predicted.

As Chair of the Board, responsible for overall management of the Board and its hearings. These duties included:

- conducting various types of hearings, primarily under environmental statutes including the Environmental Protection Act and the Environmental Assessment Act, but including Joint Board hearings with the Ontario Municipal Board on matters related to planning as well as environmental issues
- facilitating pre-hearing conferences and otherwise managing hearing processes
- writing reasons for decisions
- chairing quarterly meetings of the full Board
- communicating the Board's mandate and process to individuals and organizations
- chairing an advisory committee comprised of client representatives
- representing the Board with the Ministry of Environment and Energy to obtain appropriate budget, services, and information exchange
- reporting to the Minister on workload, policy/process changes, and decisions of the Board
- appointing hearing panels and doing performance reviews for Vice-Chairs
- participating in law reform activities.

From 1986 to 1990, Vice-Chair of the Ontario Environmental Assessment Board. This involved holding hearings (as described above); drafting rules, regulations, and guidelines; and participating in review of decisions and other administrative duties.

TEACHING

In 1998, **Co-chair** of the Society of Ontario Adjudicators and Regulators' training program for adjudicators, spring session.

From 1994 to 1997, occasional **Coach** for hearing simulation and decision writing exercises at Society of Ontario Adjudicators and Regulators' training program for adjudicators.

In 1995, **Workshop Leader** at Ministry of Health Public Appointees' Development Workshop for health profession regulatory bodies.

In 1993 and 1994, **Workshop Leader** for Rent Review Officers' annual training.

From 1985 to 1990, **Special Lecturer at Queen's University** on Environmental and Planning Law.

ADVISORY BOARDS

From 1998, member (and now Chair) of the **Consumers Advisory Council, Technical Standards and Safety Authority**.

From 1997 to 1998, member of the **Advisory Board of the Impact Assessment Centre**, Carleton University.

From 1985 to 1988, member of **Canadian Environmental Assessment Research Council**.

From 1984 to 1986, member of **Science Advisory Board** to the International Joint Commission on the Great Lakes.

VOLUNTARY PROFESSIONAL AFFILIATIONS

1998 - Member of the Board of Directors and Management Committee, Canadian Environmental Law Association.

1996 - 1997 Member of the Board of Governors, Society of Ontario Adjudicators and Regulators (SOAR), an organization to advance the professionalism of tribunals through the development of standards and practices.

1996 - 1997 Chair of the Circle of Chairs, a section of the Society of Adjudicators and Regulators dedicated to improvements in tribunal practices through information and advice sharing, and cooperation, among tribunal chairpersons.

1996 - 1998 Member of the Board of Directors, the Canadian Council of Administrative Tribunals.

1993 - 1995 Chair of the Conference of Ontario Boards and Agencies (1993) and member of committee organizing this educational opportunity for members of Ontario tribunals.

1984 - 1986 Founding Director, Canadian Environmental Defence Fund.

1982 - 1986 Member, Board of Directors, Canadian Environmental Law Research Foundation.

1981 - 1985 Vice-President, Coalition on the Niagara Escarpment.

- 1983 - 1984 Secretary, Environmental Law Subsection of the Canadian Bar Association of Ontario, which organized professional development activities for lawyers specializing in environmental law.
- 1978 - 1984 Associate Editor, Canadian Environmental Law Reports and the CELA Newsletter.

EDUCATION

- 1978 Admitted to the Ontario Bar, April 13, 1978
- 1976 L.L.B., Osgoode Hall Law School
- 1970-1972 University of Saskatchewan, Saskatoon. (Early admission to law school after two years in Bachelor of Arts program.)

CONFERENCE PRESENTATIONS AND LECTURES (Selected)

"Reflections on the Role of the Ontario Environmental Assessment Act in Attaining Sustainability" at Ontario Association for Impact Assessment's Annual Conference entitled *Environmental Assessment and Its Role in Sustainability, Biodiversity, Environmental Management Tools and Climate Change*, May 8, 1998.

"Alternative Dispute Resolution at the Environmental Assessment Board" at a York University symposium entitled *Collaborative Decision-Making*, November 1996.

"Environmental Assessment and Joint Board Hearings" at a Canadian Institute conference on Ontario's new Environmental Assessment legislation, October 30, 1996.

"Enhancing Environmental Assessment Hearings" at the Ontario Association for Impact Assessment *Colloquium*, May 1996.

"Environmental Law and the Adjudication Process" at a Political Science class at University of Guelph, February 1996.

"Decision-Making within the Environmental Assessment Process: The Role of the Board" at a Faculty of Environmental Studies class on Environmental Assessment, December 1993.

"Legislative Requirements for Public Consultation" at an Insight Conference on *Critical Elements for a Winning Environmental Strategy*, November 1993.

"Lessons Learned from the Ontario Environmental Assessment Process" for the Low-Level Radioactive Waste Management Siting Task Force at an Environmental Assessment Workshop for the Community Liaison Groups Cooperative Siting Process, January 1993.

"Legislative Requirements for Public Consultation" at an Insight Conference titled *Strategies for Effective Public Consultation*, November 1992.

"Environmental Assessment: An Environmental Assessment Board Perspective" at the Canadian Bar Association - Ontario 1991 INSTITUTE of Continuing Legal Education *An Environmental Primer*, January 1991.

"The Ontario Environmental Assessment Process" at The Canadian Institute conference *Environmental Law and Regulation in Ontario*, November 1990.

"Challenges Facing the Environmental Assessment Board in the 1990's" at the Canadian Bar Association Environmental Law Section dinner meeting, November, 1990.

"The Ontario Municipal Board and the Environmental Assessment Board: Planning and Environmental Assessment Issues" at a meeting of the Ottawa members of the Canadian Bar Association Environmental and Municipal Law sections, November 1990.

"Making the Assessment Process More Efficient: The Mechanics of Change" at The Canadian Institute conference *Environmental Assessment - Strategies and Procedures for Getting Results*, September 1990.

"The Environmental Assessment Board and Sustainable Development" at University of Toronto Institute for Environmental Studies Environment and Sustainable Development Seminars, February 1990.

"The Problems of Integrating Conservation Strategies in Planning and Development: Comments" at a York University Symposium titled *Development at the Edge*, February 1986.

"Compensation of Pollution Victims" at CORPUS conference on *Corporate Liability and Victim Compensation*, May 1984.

"The Issues and the Alternatives" at Environment Canada conference on *Environmental Challenges: 1983*, October 1983.

"Implications of Winter Navigation from the Perspective of Public Interest Environmental Organizations" as part of a seminar for United States Congressmen on Seaway Capacity held by the Centre for Legislative Exchange, September 1983.

"Environmental Assessment Act Hearings: Preparation and Conduct of the Intervenor's Case" at Law Society of Upper Canada Continuing Education Programme titled *Environmental Assessment Proceedings in Ontario*, October 1981.

PUBLICATIONS

Author or co-author of the following briefs and articles (also see conference presentations, many of which were published):

Report to the Great Lakes Institute on "Legal Mechanisms for Control of Toxic Contamination", March 1986.

"Environmental Assessment in Canada", published in the British Journal, *Environmental Education and Information*, Vol. 3, No. 3, 1984.

"The Future of Environmental Assessment in Canada: The Ontario Public Interest Context", in proceedings of a workshop on *The Future of Environmental Impact Assessment in Canada*, (University of Toronto Institute for Environmental Studies), October 1983.

Submission to the Committee on General Government of the Ontario Legislature with respect to Bill 159, An Act to Revise the Planning Act, March 1982.

Submission to the Justice Committee on Hydro Affairs (regarding the regulatory and jurisdictional framework governing uranium mining and milling), September 1980.

"Radiation Health Risks: Does the Law Protect Us?", *The Advocate*, Vol. 14, No. 2, February 1980.

ELISABETH BRÜCKMANN

253 Borden Street, Toronto, M5S 2N5, (416) 964-1785, celaarts@olap.org

EDUCATION

1996 – 1999 **Osgoode Hall Law School, York University, L.L.B.**

Graduated in the top 2% of the class

Awards: 1996-1997 Paroian, Raphael Prize in Torts
 Samuel Rubinoff Prize for Legal Research and Writing

 1997-1998 Weir and Foulds Prize in Administrative Law

 1998-1999 Helen Kinnear Prize in Criminal Procedure

 Osler Hoskin Harcourt Prize in Labour Relations

 The Alexander David McKenzie Scholarship

Intensive Program: Parkdale Community Legal Clinic, Worker's Rights Division

1995 – 1996 **York University**
 Master of Environmental Studies Program

1989 – 1994 **McGill University**
 Honours B.A., Anthropology/Environmental Studies

WORK EXPERIENCE

July 1999 – August 2000 **Canadian Environmental Law Association**
 Student at Law

- ♦ Intake and initial interview of all new clients;
- ♦ Provision of extensive summary legal advice relating to a broad range of environmental and planning law problems;
- ♦ Legal research into matters relating to environmental law, planning and municipal law, administrative law, civil procedure, and constitutional law, among others;
- ♦ Drafting of legal documents, including one part of a factum to the Supreme Court;
- ♦ Representation of CELA clients in motions;
- ♦ Carriage of 5 cases, including:
 - ♦ Preparing a request for review under the *Environmental Bill of Rights* of the SWARU incinerator in Hamilton;
 - ♦ Preparing a request for investigation under the *Environmental Bill of Rights* in a severe noise pollution matter; and
 - ♦ Representing the Coalition on the Niagara Escarpment in an appeal before a Niagara Escarpment Commission Hearing Officer.
- ♦ Frequent attendance at Federal and Divisional Court hearings;
- ♦ Participation in law reform activities, including producing:
 - ♦ CELA's brief on Intensive Agricultural Operations in Ontario; and
 - ♦ CELA's response to the proposed "Red Tape #3" amendments to nine statutes administered by the Ministry of Natural Resources.
- ♦ Representing CELA at speaking events, workshops, and conferences;
- ♦ Production of articles for *The Intervenor*, CELA newsletter;
- ♦ Responsibility for French media interviews.

January – August 1998

**Parkdale Community Legal Services
Caseworker, Workers' Rights Division**

- ♦ Carriage of 20 – 30 client files;
- ♦ Legal research and preparation of legal documents;
- ♦ Representation at hearings, fact-findings, and mediation sessions at:
 - ♦ Ontario Ministry of Labour;
 - ♦ Ontario Human Rights Commission; and
 - ♦ Canada Employment Insurance Board, Board of Referees.

May 1997 – June 1998
(intermittent)**Sunnybrook Centre for Rehab Medicine
Medico-Legal Report Writer**

April – September 1996

**Metropolitan Toronto and Region Conservation Authority
Assistant Director, Watershed Infrastructure Program**

- ♦ Developed a multicultural community outreach and media campaign;
- ♦ Supervised Environmental Youth Corps staff;
- ♦ Liaison to Project Management team, and corporate and government partners.

May 1994 – Sept 1995

**City of Toronto, Task Force to Bring Back the Don
Community Involvement and Outreach Coordinator**

- ♦ Coordinated communications, educational programs, public events, and volunteers;
- ♦ Provided staff support to Task Force committees;
- ♦ Managed and fundraised for special projects.

Dec 1993 – Feb 1994

Youth Challenge International Volunteer, Costa Rica

- ♦ Produced a guidebook for the Santa Elena Cloud Forest Reserve;
- ♦ Assisted in a bat species identification project.

VOLUNTEER ACTIVITIES & INTERESTS

- ♦ Youth Challenge International, Vice-chair, Board of Directors;
- ♦ Canadian Environmental Law Association, Secretary, Board of Directors;
- ♦ Osborne Collection of Early Children's Books, Newsletter Editor;
- ♦ Malaysian Elephant Appeal, Website Development (www.elephantappeal.org);
- ♦ Sports, including canoeing, hiking, and squash;
- ♦ Gardening.

LANGUAGES

Fluent French, basic Spanish

REFERENCES

Paul Muldoon, Executive Director, Canadian Environmental Law Association
Theresa McClenaghan, Counsel, Canadian Environmental Law Association
Stewart Elgie, Executive Director, Sierra Legal Defense Fund
Prof. Toni Williams, Osgoode Hall Law School

WRITTEN WORK UPON REQUEST

EMPLOYMENT EXPERIENCE

- June 1997- present **Librarian, Resource Library for the Environment and the Law**
- I. Managing the library and providing library services to staff and the public:
 - Providing reference services, including research assistance and the preparation of bibliographies
 - Providing public education information related to environmental law and policy through the design and development of a library web site (www.ecolawinfo.org)
 - Conducting a public environmental education outreach campaign aimed at schools, community organizations and public libraries
 - Providing in-depth bibliographic and Internet research for law reform projects
 - Preparation of a monthly Library Bulletin
 - Providing collection development, current awareness, cataloguing, library database design and management
 - II. Planning and development of the library and its services including:
 - Administration, budget preparation and control
 - Selection, training, and supervision of library project staff and volunteers
 - Fundraising, including research, proposal preparation, and reporting
 - Administration of the library charitable corporation
- May 1996-June 1997 **Assistant Systems Administrator, Canadian AIDS Treatment Information Exchange (CATIE)**
- Providing end user support and computer training for 26 staff
 - Web site construction and updating for CATIE (www.catie.ca) using various HTML editors and Lotus Notes
 - Database development using Paradox
- 1991-1996 **Librarian, Ontario Arts Council**
- Established and managed the resource centre at the Ontario Arts Council
 - Provided reference, research, current awareness, cataloguing, and online searching services
 - Designed and implemented an Internet training program for staff
 - Supervised acquisitions and clerical work of research secretary and clippings assistant

1990-1991

Reference Librarian, Fairview Branch, North York Public Library

- Provided reference service for a large public library
- Managed collection development and services for the philosophy, psychology, religion, French language, and map collections
- Supervised several support staff assigned to these areas

1989-1991

Librarian, Legal Services Branch, Ontario Ministry of the Environment

- Provided reference services, collection development and cataloguing, established policies and procedures
- Introduced and implemented use of an automated library software program

1987-1989

Cataloguer, Canadian Music Centre

- Retrospective cataloguing in English and French of a large collection of scores by Canadian composers
- Construction of a customized searchable database of the scores (now at www.culturenet.ca/cmc)

SPECIFIC SKILLS

Information technology:

Experience with Inmagic DB/TextWorks, Edibase, and Dynix library software; Windows and Macintosh-based platforms, WordPerfect Office, MS Office; Front Page, Page Mill, and Hot Metal web authoring software, Lotus Notes and Domino, some Photoshop and PageMaker, database design using Paradox and Access, 5 years of Internet-based research and user training; online searching on Quicklaw, Dobis / Amicus, Dialog, Infomart, and Infoglobe; CD-ROM user assistance, and Novell network administration

Subject specialization:

Environmental law, arts, political science, economics. Reading knowledge of French, an acquaintance with Italian and Russian.

EDUCATION

1986

Master of Library Science (M.L.S.)
University of Toronto

1985

Master of Arts, Political Science (M.A.)
University of Toronto

1982 Bachelor of Arts, Political Science and Economics (B.A.)
University of British Columbia

1977-79 First two years of a Bachelor of Science in Biology
University of Toronto and University of British Columbia

Graduated with first class standing in all three degrees

SELECTED PROFESSIONAL DEVELOPMENT ACTIVITIES

1998-present Member of the Board of Directors, Earth Appeal (a collaborative
environmental workplace fundraising organization)

1998-1999 Ontario College of Art and Design: credit courses in mixed media
and 3D design, continuing education course in Photoshop

1995-1999 Volunteer at the Design Exchange

1997-1999 University of Toronto: continuing education courses on integrating
electronic and other reference services, various web site design
courses, Internet research

RESUME

Sarah Miller
16 Second Street
Ward's Island
Toronto, Ontario
M5J 2A8

Phone: (416) 203-0821
e-mail: sarahmil@web.net
Citizenship: Canadian

Education

Bachelor of Arts, 1966
Modern Literature and Art History
The State University of New York at Buffalo

Employment

1978 - present: Coordinator of the Canadian Environmental Law Association (CELA), a public interest legal-aid clinic which supplies access to environmental justice to the poor, campaigns for law reform to improve environmental protection and public participation in environmental decision - making and education on the environment and the law.

1973 - 1978: Administrator and Production Assistant, the *Canadian Forum*, magazine.

1966 - 1969: Administrator, the Coach House Press, Toronto.

1963 - 1966: Assistant to the Director, the Student Bookshop and Gallery, Buffalo, NY

Experience

ADVOCACY AND COMMUNITY ORGANIZING

Responsibilities as a community legal worker at CELA involve; advocacy, law reform campaigns, community organizing and education on local, provincial, national, international aspects of Great Lakes water quality and quantity issues. I have also been involved in work on the linkages between health and environmental protection.

In this and other volunteer efforts, I have organized numerous public interest campaigns, information forums, workshops and corporate annual general meetings.

I have also been involved with the growing movement of community and conservation land trusts to advance the protection of agricultural, natural areas, as well as, limited equity and affordable housing alternatives in Ontario.

I have also been involved in a leadership role with a five year community - led planning process which included drafting principles and an advocacy campaign which led to Ontario legislation to preserve and enhance the Toronto Island community; a community - based site plan, housing designs, environmental assessment of the plan and the development of a plan for stewardship of the unique Island park environment.

ADMINISTRATIVE

My job responsibilities as Coordinator of CELA have included fundraising, personnel management, and primary responsibility for financial management of the diverse activities of the organization. These include; the operation of a legal aid clinic, law reform programmes, education programmes, health and environment programmes, international programmes, and client trust accounts with an overall budget of over \$800,000.

COMMUNICATIONS

I have acted as spokesperson for a number of environmental and community groups and in this capacity have participated in planning and participation in press conferences, press interviews and documentaries. I have made submissions, written briefs to a number of commissions, government standing committees, and presentations to conferences. These include:

- the International Joint Commission,
- the Royal Commission on the Future of Toronto's Waterfront,
- the City of Toronto's Neighbourhood, Public Health and Executive Committees,
- the Ontario Ministry of the Environment,
- a Committee of the US House of Representatives; and
- the Great Lakes Commission.

PUBLICATIONS

My writing experience includes:

- Articles for *The Intervenor* (the newsletter of the Canadian Environmental Law Association) and the *Great Lakes United* and for other community newsletters,
- Chapter 7, *Water and Free Trade*, edited by Wendy Holm, James Lorimer & Company, Publishers, 1988,
- Co-authoring *A Citizen's Agenda for Lake Ontario*, Great Lakes United and the Lake Ontario Organizing Network, 1987,
- Co-authoring *Island Regeneration, Site Planning Report (Volumes I, II and III)* for the Site Planning Committee with the Island Planning and Building Collaborative, 1994,
- Editing and coordinating research for *The Fate of the Great Lakes; Sustaining or Draining the Sweetwater Seas?* CELA and Great Lakes United, 1997.

ENVIRONMENTAL VOLUNTEER EXPERIENCE

1984 - 1995 Canadian Director, Great Lakes United, an international coalition dedicated to the preservation and clean-up of the Great Lakes - St. Lawrence ecosystem.

1983 - 1988 Founding Director and Treasurer of the Canadian Environmental Defence Fund, a charitable group which works to increase public access to environmental legal remedies and dispute resolution.

1980 - 1988 Spokesperson for Stop Contaminating Our Waterfront (SCOW) a Toronto group working to improve dredging and lakefilling practices.

- 1985 - 1988 Member of the City of Toronto's Waterfront Remedial Action Plan Committee which produced the first clean-up plan for the waterfront.
- 1987 - 1993 Stakeholder in the Hamilton Remedial Action Plan for restoration of the Bay.
- 1989 - 1995 Environmental sector representative, Metropolitan Toronto Waterfront Coalition of residents and interest groups concerned with impacts of development proposals on the urban and natural environment.
- 1990 - 1993 Member of the Great Lakes Action Plan Strategic Advisory Committee to Environment Canada.
- 1990 - 1991 Member of a group consulting with the Ministry of Natural Resources drafting "A Water Efficiency Strategy for Ontario".
- 1990 - 1997 Canadian Chair of the Sustainable Water Resources Taskforce of Great Lakes United.
- 1993 - Treasurer of the charitable organization the Resource Library for the Environment and the Law.
- 1997 - Founder of Save Ontario Water, a coalition of health, environment and unions opposing the privatization of Ontario's water resources.
- 1997 - Member of the "Everyday Carcinogens" project steering committee planning a conference and campaign to build understanding of the need, and tools to promote primary prevention of cancer in Ontario.
- 1998 - Founding member of the Common Front to Protect Our Water, a national group promoting protection of our water resources and systems with strong public controls and conservation.

OTHER VOLUNTEER EXPERIENCE

- 1978 - Founding Member Toronto Island Residents' Housing Co-op
- 1983 - Board Member and artist, Shadowland Theatre Company, a collaborative community theatre troupe.
- 1990 - 1994 Founding Board member Toronto Island Community Residential Land Trust.

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# ***Draft for discussion***

August 17, 2000

## **Walkerton Part 2: Study List**

The following is a preliminary list of studies that may be commissioned for Part 2 of the Inquiry. The list is being provided now in order to give those applying for standing or funding a general idea of what will be involved in Part 2. It is emphasized that the list is preliminary and subject to revision. Updates will be posted from time to time on the Inquiry website. Topics may be combined or repartitioned to fit the competences of authors. Some general principles apply to all:

- Quality is the topmost consideration. The papers will be reviewed by peers, the Advisory Panel,<sup>1</sup> and ultimately the public, including interest groups and the press. Both the science and the public policy implications must stand rigorous scrutiny.
- In general, the Inquiry requires descriptions of the Ontario reality, plus assessments in the light of theory or best practices around the world. From the contrast will spring suggestions for public policy. These are best expressed in terms of guiding principles plus options for their implementation. Detailed prescriptions from different studies may need to be reconciled.
- Some authors may be called on to give expert testimony in the public hearings on Part 1; if so, this will be arranged for separately, but authors should be aware of the possibility.
- Most papers will be reviewed by peers and the Advisory Panel, published as drafts for public comment on the Inquiry's website, and finalized after a period for comment. Authors should expect to present, discuss and defend their work in one or more roundtables and discussion groups involving interested parties, the media and the general public.
- The emphasis will be on reviewing the current state of the art in engineering, science, management etc., rather than performing original research. Where the literature is ample, citing and summarizing it is better than drafting anew. Readers will be intelligent non-specialists.
- Copyright will lie with the Crown in right of Ontario, but authors are encouraged to publish elsewhere after final acceptance by the Inquiry, if they wish, and will have a royalty-free license to do so.

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<sup>1</sup> Dr. George Connell, Prof. Steve E. Hrudehy, Prof. William Leiss, Dr. Doug Macdonald, Prof. Allison McGeer, Prof. Michèle Prévost, Dr. Harry Swain (chair)

**1      *Management of social risks***

Philosophical backgrounder. Reprise theory of rational risk management, enrich with attitudinal information regarding probability and severity of bad outcomes. Sketch how applied in water supply management; examples of best practices. Show implications for budgetary allocations given equimarginality of risk reduction as a criterion.

**2      *History of drinking water management in Ontario***

Institutions, laws, regulations; key individuals; scientific, funding and other resources. The whole story, including provincial and (generic) municipal entities and all regulatory and accrediting bodies, with the last 20 years in some detail. Funding, efficiency and effectiveness evaluations where available, workload, personnel turnover rates, oversight of localities and private sources, labs, reassignments of duties. Should include "field work" in key institutions, perhaps interviews with former employees: MOE and predecessors, MOH, several public utility commissions. Note timing on parts of this may be dictated by progress of Part 1. Could be combined with 4.

**3      *History of drinking water pollution outbreaks in Ontario***

Emphasis on threats to health. What, when, where, why; non-fatal and chronic as well as acute; institutional responses at all levels of government. Boil-water advisories. Particular attention to pathogens. Costs, impacts and consequences where available. General report, not specific to Walkerton.

**4      *Ontario machinery of government***

Do the laws and institutions of Ontario conduce to the primacy of clean water among other public goods? Is water supply given an appropriate priority in land use planning? Are there particular regulations, practices or institutional arrangements that stand in the way of high quality source waters? What changes might be made without sacrificing other important objectives (or what might be the price of change)? What has been the effect of the recent downloadings/changes in responsibilities – and what reinvestment and retraining may be required by these changes? (Note timing of parts of this may be dictated by events in Part 1.)

**5      *Drinking water standards***

How established in Ontario/Canada; basis in risk assessment: descriptive background paper, with comparisons with excellent standard-setting systems elsewhere. Microbiological hazards, present and potential, in Ontario drinking water sources – bacteria, viruses and protozoa. Consequences (quantified risk measures where possible) for population health, including especially vulnerable groups. Could be combined with 6.

**6      *Water pollution; sources of contamination***

General review of quality of source waters, ground and surface; sources and sinks of major pollutants, both man-made and natural, point and non-point, as they affect the cost and quality of drinking water. Remediation practices and possibilities. Particular attention to pathogens and other contaminants capable of causing acute public health problems, but including an overview of other (chemical, physical) health threats. Governing regulations: describe, assess – with attention to enforcement as well as rules. Requirements (regulatory, personnel, other costs) to bring Ontario up to, and maintain, its current standards.

**7      *Measurement of source and finished water quality***

Describe and assess current state of art in Ontario, comparing with best practices elsewhere, noting time lags; conclude with principles of good practice and options for implementation in Ontario

(NB not Walkerton-specific). Looking across all contaminants and sizes of systems, how can measurement lead to the most risk reduction per dollar spent?

- Sampling protocols: sites, frequency, reporting and intervention responsibilities
- Indicator species, risk projection models, new species; risk vs. uncertainty
- Accuracy, timeliness, cost, consequences of error
- Standards in documentation and in operator training
- Quantified economies of scale and scope

## **8      *Production of drinking water***

A major paper – integration of treatment (including disinfection) and measurement. Big systems: best practices in bigger cities; case examples of Toronto and at least one or two other North American/European cities thought exemplary in the industry; effects of source quality on cost and risk. Smaller systems. Best practices, costs and risks, source quality effects on costs. Private supplies: rural homes, cottages, farms; effects of source quality on costs/outcomes. (Could be useful to have a brief early paper on latter, focussing on government role in providing information and assuring availability of timely testing.) Role of ISO standards, if any. Implications of non-real-time measurement. Establish costs in some detail as a function of system scale and scope, water source, and customer density.

## **9      *Wastewater treatment***

Review paper. Municipal sewage treatment plants – best practices v. Ontario norms and actualities, Ontario compared with leading jurisdictions in terms of standards, technologies, costs, training, accreditation, testing, audit, public reporting. The same for rural, untreated industrial, and agricultural wastes, including those from intensive livestock raising – best practices abroad (e.g., Netherlands, Denmark, UK, France...Canadian/US examples). Ontario regulatory system – standards, enforcement; lacunae, costs to bring Ontario up to present and to world-class standards. Quantify costs as a function of scale and scope of systems.

## **10     *Training and accreditation***

Describe Ontario system of training and accreditation of operators, regulators, and public health authorities; likewise approval, inspection, re-inspection of all critical facilities (water treatment plants, distribution systems, sewage treatment plants, testing labs, regulatory oversight labs). Describe (including costs), assess against exemplary practices elsewhere, note gaps, suggest principles and concrete options for improvement.

## **11     *Management and organizational behaviour***

“Why do good people do bad things?” What can be done about it through organizational design, separation of functions, leadership, transparency, independence. Are there machinery of government or public-private implications? What lessons can be drawn from well-performing organizations, concerned with analogous areas of public safety? How does one design for resilience in the face of inevitable error and ignorance? Why do essentials get under-funded? Compare theory and best practices elsewhere with the Ontario drinking water reality, at all scales (but avoid Walkerton specifically).

Where water supply and treatment is privately provided and publicly regulated, describe cases (e.g., France, UK, maybe Germany, Scandinavia, Canada and US), results/outcomes, best practices in terms of accountability, transparency, regulation, effective enforcement, costs, public input. Note the elements of accountability that need to be in place regardless of where the public-private interface lies or whether it exists at all.

Suggest principles for structuring the production, regulation and financing of potable water, plus concrete alternatives for the Ontario reality.

**12      *Communications***

When some action by the public may be called for ("Boil water!"), what mechanism best balances Type 1 (warning when there is no danger) and Type 2 (no warning when there is danger) risks? What happens when one link in the chain balks? Empirically, how do Ontarians react to warnings – and can public response be improved through better communications? Distinguishing between emergency and longer term situations and big city v. small-town and rural situations, what mechanisms, including media, messengers and maybe novel technologies, are most effective in gaining immediate and continuing compliance in public health crises? When a water crisis occurs, what should be the public communications obligations of the various officials?

**13      *The costs of Walkerton***

Quantify as best as possible the costs and economic losses suffered by Walkerton-area households and businesses, the ultimate incidence of those losses and their likely course over time. Requires also a descriptive essay on personal, non-quantifiable costs borne by area residents, drawing in part on testimony at informal July community meetings. (*Good answers may require survey research.*)

**14      *Infrastructure financing***

Drawing on 7-9, a paper focussing on financing (capital and operating) of potable water treatment and distribution, and sewage collection and treatment facilities. Recognizing the basic responsibility of the municipal level of government, examine borrowing and financial management capacity and costs as a function of size; suggest any institutional reforms that might improve matters, especially for smaller systems. Describe the costs and risks borne by each level of government, and comment on the incentives created by grant and loan schemes of senior governments. Recognizing that there is but one rate (or tax) payer, suggest principles for an infrastructure financing scheme. Model the outcome in terms of costs that would be borne by households, businesses, and intensive water users.

**15      *The cost of clean water***

Summarize the investments that need to be made (a) to bring Ontario's drinking water up to its own published standards, and (b) to bring Ontario to the standards of best practices anywhere, under present institutional arrangements. Suggest alternate institutional arrangements that could reduce costs. Produce reasonably detailed alternative plans for attaining (a) and (b) in terms of capital and O&M costs and personnel as well as regulatory and institutional reform. Provide detailed policy options or programming alternatives, taking into account quality management principles and distributional equity questions.



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