

THE WALKERTON INQUIRY

Commissioned Paper 3

**PROVINCIAL-LOCAL RELATIONS
AND DRINKING WATER IN ONTARIO**

By
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Abstract

Water supply in Ontario has traditionally been a public service. The paper considers the reasons for the Government of Ontario's involvement in a service that appears to be inherently local. The authors examine waterworks as a public service according to three categories: public health, financial assistance, and organizational issues. The conclusion revisits the issue of water as a local public service in light of the various historical reasons for provincial intervention.

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1 Introduction

Water supply in Ontario has traditionally been a local public service. This paper begins by briefly examining the relevance of the terms ‘public’ and ‘local.’ The paper’s thrust is a consideration of the reasons for the Ontario government’s involvement in a service that, superficially, appears to be inherently local. Our examination of waterworks as a public service is grouped into three categories – public health, financial assistance, and organizational issues. The conclusion revisits the issue of water as a local public service in light of the various historical reasons for provincial intervention.

1.1 Water – Public Good or Toll Good?

Piped drinking water is clearly not a ‘public good’ in the economist’s sense of the term. Examples of such public goods are clean air, national defence, or an impressive public square. These are public goods, according to the economist’s definition, because individuals cannot provide these goods for themselves, because no one can be excluded from the benefits, and because they are not divisible. In contrast, it is clear that operators of a water supply system can exclude some individuals from its benefits (for non-payment of bills, for example) and they can allocate different levels of benefits to different consumers (based on willingness to pay, for example). This is why piped water is not a public good in the strict sense of the term.

However, different piped water supply systems cannot compete with each other within the same territory because costs are too high. In practice, there can be only one network of pipes; if competition is ever allowed, a ‘natural monopoly’ soon emerges. In such situations we generally say that the goods provided are ‘toll goods.’

Other toll goods within urban areas involve collection, distribution, and transmission systems for sewers, electricity, telephones, natural gas, cable television, and sometimes even heating and cooling systems. This list makes it

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obvious that toll goods need not necessarily be supplied by public authorities. However, fairly detailed public regulation is inevitable because, without the authority to build and maintain their infrastructure's crossing both public and private property, suppliers of toll-good infrastructure cannot provide their products. Whether special regulation with respect to public safety and/or price is necessary, depends on the characteristics of the good in question and the extent to which there are substitutes for it. Contaminated water is more of a risk to the public than is poor television reception. There are varying degrees of substitute products for toll goods. As the Walkerton experience indicates, bottled water is a partial substitute for piped water; cell phones are substitutes for wired phones.

1.2 Water Suppliers and Competition

Unlike electricity, natural gas, and telecommunications, it is difficult to promote competition among different suppliers of water, even if various suppliers have access to the common underground network of pipes. This is primarily because each supplier would likely be producing water with slightly different tastes and different chemical characteristics. Mixing the water together in a common distribution network would eliminate the differences. To insist that each supplier create a product having exactly the same characteristics would serve no useful purpose, except to allow the suppliers to compete equally with each other concerning price.

Price competition amongst water suppliers might well be a desirable objective. It works for electricity and natural gas, where it is expected that different producers will provide exactly the same product. But electricity and gas suppliers can transmit their products over long distances. The problem with water is that its market is inherently local. A British expert on the privatization of utilities has noted that "The costs of moving water any significant distance through pipes is so high compared to its value that there is unlikely to be much competition in water supply."¹ Such competition therefore could only be local; the financial risks in establishing a new supply of water to meet a specified standard so as to compete locally solely on price would surely be prohibitive.

¹ Newbery, David M., 1999, *Privatization, Restructuring, and Regulation of Network Utilities* (Cambridge, Mass.: MIT Press), pp. 3–4.

1.3 Water Supply as a Local Concern

This paper focuses primarily on local infrastructure for the treatment and delivery of piped water to individual consumers. It is less concerned with government or regulation of our vast and interrelated networks of rivers, lakes, and aquifers that serve as the sources of supply for the piped water that ends up in our homes and businesses. Obviously, such ultimate sources of supply are crucial to our future collective well-being. But no one claims that local governments are well positioned to be important participants in policy-making with respect to such sources. If anything, they are 'policy-takers' on this issue rather than 'policy-makers.' A starting assumption of this paper is that some appropriate regulatory framework is (or can be) in place regarding sources of supply and that agencies charged with treating water and piping it to consumers will be both important objects of the framework and some of its main direct beneficiaries.

It is fairly clear that, on the production side, water supply is inherently local in a sense that electricity, natural gas, and telecommunications are not. At this stage, we need not be especially concerned with the size of particular local areas. The key point is that such areas are considerably smaller than the areas normally covered by more senior levels of government (in this case, the government of Ontario). Later, we shall address the causes and effects establishing regional governments and other larger municipal structures on the delivery of piped water. But, for now at least, even they can be considered as local.

Piped water is a local concern not just because of the particular characteristics of its production. It is also a local concern for reasons relating to consumption. Everybody in a particular local area has a profound interest in keeping their water safe. As the Walkerton experience so effectively proves, unsafe water does more harm to local people – both physically and economically – than to anyone else. Such is not the case with many government functions we often think of as being local. For example, if the location of a sewage outlet is carefully chosen without senior-government regulation, residents in a particular locality can pass on the ill effects of untreated sewage to their neighbours without suffering any direct negative consequences themselves. If local people understand their own interests and are capable of devising governmental and administrative mechanisms to ensure that those interests are served, it seems logical that they would act collectively so as to provide piped water that is guaranteed to be safe. In the real world, however, life is not quite so logical or simple.

2 Public Health

2.1 History of Provincial Involvement in Water Supply

The province first became involved with local water supply systems due to concerns about public health. Such involvement does not appear to have been well studied or documented, so the story that follows might seem to skip across the decades with reckless abandon. Perhaps the explanation for our apparent lack of knowledge is that the supply of water is a function of the provincial government which, almost from its inception, has largely been taken for granted. In any event, the province's involvement in water supply has not received much attention in the past, either from scholars or journalists. After the recent problems in Walkerton, we suddenly want to know more about the province's past initiatives to prevent such problems from occurring. We wish we could have found more information on which to base a full historical narrative but, without much detailed archival research, the full story of provincial involvement in the testing of local water supplies will never be known.

The Ontario government has required that municipal water supplies be tested by public health authorities ever since the passage of the *Public Health Act, 1884*.² Initially, it seems that provincial authorities were more aware than local officials of the health hazards of impure water. However, it was not long before almost everyone recognized the potential danger. Why then were provincial regulations concerning testing and inspection still necessary? One reason was probably that provincial officials were more likely to be up-to-date on newly discovered health threats from tainted water and that they could use regulatory authority to adjust testing requirements accordingly. Another likely reason was that impure water became such a recognized health threat that citizens insisted on a fail-safe testing system. Provincial testing requirements that reinforced the obvious self-interest in testing by the municipalities themselves made perfect sense. Provincial officials with responsibility for public health were no doubt quick to make this point on the few occasions over the years when their usefulness might have been questioned.

The provincial role in relation to ensuring the safety of water has rarely been questioned. However, between 1989 and 1997, the Ontario government

² Neil B. Freeman, 1997a, "The future of OCWA and Ontario's water industry," A submission prepared for the Bill 107 hearings of the Standing Committee on Resources Development, Legislature of Ontario, April 15, 1997.

engaged in a massive re-examination of all governmental functions involving both the provincial and municipal levels. The process has variously been known as “disentanglement,” “who does what,” and “local services realignment.”³ The object of the process was to clarify which level of government was responsible for each function of government by, as much as possible, eliminating shared jurisdiction and shared financing arrangements. Water supply did not receive much attention, at least until the very end of the period. The public health aspects of water supply received even less attention.

2.1.1 The Hopcroft Report

One of the key documents in the process was the 1991 *Report* of the Advisory Committee to the Minister of Municipal Affairs on the Provincial–Municipal Financial Relationship chaired by Grant Hopcroft. The Hopcroft report contained very few references to water supply. However, it did state that “water works – distribution” is one of the government functions “... where the group that benefits can be identified as being predominantly, if not totally, local. In such cases, allocating these services at the municipal level promotes efficiency because the services provided by each municipality will more closely correspond to the preferences of local residents than would be the case if provided province-wide.”⁴ For “water works – plant,” however, the report stated that this was a function that “should be either solely or predominantly a municipal responsibility but for which financing should be a shared responsibility.”⁵ No reason was stated for this conclusion, an issue addressed in the next section of this paper.

In a chart showing the recommended “division of responsibilities between municipal and provincial levels of government,” the report classified the various functions according to the “need for uniform standards.” “Water works – plant” was rated at the highest level – three on a three-point scale; “water works – distribution” rated a two.⁶ Nowhere does the report indicate *why* uniform standards are required, but presumably they relate primarily to public health.

³ One of the authors of this paper, Sancton, was an early public critic of the disentanglement process (Andrew Sancton, 1992, “Provincial–municipal disentanglement in Ontario: A dissent,” *Municipal World*, vol. 102, no. 7).

⁴ Ontario, Ministry of Municipal Affairs, 1991, *Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial–Municipal Financial Relationship* ([Toronto: the ministry] January 3), p. 36.

⁵ Ibid.

⁶ Ibid., p. 34.

2.1.2 Ontario Government Legislation

The Hopcroft report does not outline the history of provincial involvement in waterworks. However, the reality is that, for the last 35 years, the provincial government's authority to regulate municipal water supplies has derived from the *Ontario Water Resources Act*, enacted in March 1966.⁷ From 1994 to 2000, the relevant provincial document was entitled *Ontario Drinking Water Objectives (revised 1994)*. It stated that the Approvals Branch of the Ministry of the Environment and Energy (MOEE) "specifies monitoring requirements based on *recommendations* [our emphasis] contained in the Ontario Drinking Water Objectives document ..."⁸ It is important to realize, however, that the "certificates of approval" that enable municipalities to operate water supply systems are generally granted only on the condition that tests be carried out regularly, which, at a minimum, would be nine samples per month.⁹

Regional staff of the MOEE co-operate with local Medical Officers of Health in controlling potential health problems associated with community water supplies. The Medical Officer of Health, through the Health Protection and Promotion Act ... has the authority to judge whether water is safe for human consumption.¹⁰

The *Ontario Drinking Water Objectives* (1994) contained the following statement with respect to the "maximum acceptable concentration" (MAC) limits for substances found in water that

have known or suspected health effects ... In the event that an MAC is exceeded in drinking water the local Medical Officer of Health (MOH) must be notified. Ultimate judgements regarding human health issues are made by the local MOH under the legislation of the Health Promotion and Protection Act.¹¹

The same document also contains another statement about ultimate responsibility that appears to contradict that above:

⁷ Ontario, Ministry of the Environment, 2000a, *Drinking Water in Ontario: A Summary Report, 1993–1997* (Toronto: Queen's Printer), p. 7.

⁸ Ontario, Ministry of Environment and Energy, 1994, *Ontario Drinking Water Objectives, revised 1994* (Toronto: Queen's Printer), p. iii.

⁹ *Ibid.*, p. 13.

¹⁰ *Ibid.*, p. iii.

¹¹ *Ibid.*, p. 7.

In general, the municipality is responsible for the distribution of treated water. Where there is a Public Utilities Commission that is responsible for the treatment and distribution of water, it acts as a statutory agent for the appropriate municipality, and the municipality therefore remains ultimately responsible for ensuring that water of adequate quality is delivered to consumers.¹²

Ensuring the safety of Ontario's municipal water supplies during the 1990s involved at least four distinct institutions: (1) the Ontario Ministry of the Environment, which required the testing of water through various mechanisms, the legal authority for all of which derived from the *Ontario Water Resources Act*; (2) the local medical officers of health, physicians who are not provincial public servants and whose substantial authority derives directly from the *Health Protection and Promotion Act*; (3) municipalities, which are “ultimately responsible” in some sense for water supply; and (in some municipalities) (4) public utilities commissions, their “statutory agents.”

2.1.3 The Who Does What Panel

Despite this complexity, these arrangements received virtually no attention from the Who Does What Panel chaired by David Crombie. Established in May 1996, the panel was to advise the government on taxation and assessment issues and on “disentangling provincial–municipal responsibilities,” and “governance.”¹³ On November 4, 1996, the Transportation and Utilities Sub-Panel of the Who Does What Panel reported on “water and sewer services” without referring to any potential problems relating to public health. The sub-panel confirmed that “In Ontario the responsibility for the delivery of potable water and the collection and treatment of waste water rests with municipalities.”¹⁴ Under the heading “Provincial Interest,” however, the sub-panel stated the following:

¹² Ibid., p. 10.

¹³ The Who Does What Panel did not issue a report. Its report is in fact a collection of letters, signed always by Mr. Crombie and sometimes by other panellists, to the Minister of Municipal Affairs and Housing. David Crombie and William F. Bell, 1996, Letter to the Honourable Al Leach, Minister of Municipal Affairs, November 4 [released by the Government of Ontario in connection with the Who Does What Panel].

¹⁴ Ibid.

It remains vitally important, however, that the broader objectives of protecting our environment and ensuring appropriate environmental and health standards should be foremost in our collective interest. We recommend, therefore that the province focus its interests on setting and enforcing environmental standards and promoting conservation. To ensure that municipalities have the flexibility to adopt new technologies, stimulate innovative approaches and deliver these services in the most cost-effective manner, the sub-panel recommends that the province introduce performance-based standards wherever possible.¹⁵

In relation to safe drinking water, it is not at all clear what would constitute “performance-based standards.” In any event, it appears that the Ontario government has never formally responded to this particular recommendation.

We have seen that, during the 1990s, the provincial–municipal arrangements for ensuring the safety of municipal water supplies were complex. Various efforts to disentangle provincial–municipal relations generally paid only limited attention to issues concerning safe water. Any efforts at disentanglement were directed, in very general terms, at defining distinct roles for the provincial and municipal levels of government. The reason for defining distinct roles related to the general desire to eliminate “overlap and duplication,” the twin evils thought to be at the heart of much of the assumed inefficiencies within the provincial-municipal system.

2.2 A Two-Track Approach for Ensuring Safe Water

If one carefully reads various provincial documents relating to the testing of water supplies, it soon becomes apparent that tests were required to be carried out by the local water authorities themselves and by the Ministry of the Environment as a part of its Drinking Water Surveillance Program (DWSP) launched in 1986.¹⁶ Nowhere is there any explanation or justification of such a two-track approach. Ministry documents present it only as a matter of fact and the disentanglement documents (Who Does What) make no reference to

¹⁵ Ibid.

¹⁶ On August 26, 2000, the Ministry of the Environment implemented new regulations for testing local water supplies and for reporting the results of such tests to the ministry, the local medical officer of health, and the operator of the facility (Ontario, Ministry of the Environment, 2000b, *Operation Clean Water: A Progress Report* ([Toronto: the ministry] September), p. 2.

it, which seems surprising given that the sub-panel was supposed to be rooting out overlap and duplication.

To many students of public administration, however, such a two-track approach, with its embedded overlap and duplication, makes perfect sense. The justification for it is contained in the academic literature on redundancy, the existence of which is not acknowledged by any of the apologists for disentanglement. The best-known defender of redundancy in public administration is Martin Landau. The passage below captures the flavour of his work.

... [I]t may be quite *irrational* to greet the appearance of duplication and overlap by automatically moving to excise and redefine. To unify ... the great variety of federal, state, and local administrations that function in the same areas may rob the system of its necessary supports. It can be hypothesized that it is precisely such redundancies that allow for the delicate process of mutual adjustment, of self-regulation, by means of which the whole system can sustain severe local injuries and still function creditably.¹⁷

In the summer of 2000 in Walkerton, the system for protecting the safety of piped water in Ontario sustained “severe local injuries.” Notwithstanding the existence of quite independent provincial and local systems for testing drinking water, the problems in Walkerton were discovered when it was too late. By any standards, the system failed. Instead, for testing water, many will advocate the creation of a single province-wide integrated administrative system of a type Landau goes on to describe.

The logic of this position calls ... for each role to be perfected, each bureau to be exactly delimited, each linkage to articulate unfailingly, and each line of communication to be noiseless – all to produce one interlocking system, one means-end chain which possesses the absolutely minimum number of links, and which culminates at a central control point.¹⁸

¹⁷ For a more empirically-oriented, book-length treatment of the subject of redundancy by one of Landau's students, see Jonathan B. Bendor, 1985, *Parallel Systems: Redundancy in Government* (Berkeley: University of California Press); Martin Landau, 1969, “Redundancy, rationality, and the problem of duplication and overlap,” *Public Administration Review*, vol. 29, no. 4, p. 351.

¹⁸ *Ibid.*, p. 354.

The problem with such an arrangement is that, if something goes seriously wrong in such a system, if there is just one “local injury,” the consequences could be disastrous for all who rely on the single interconnected system. In other words, one series of mistakes by one person in a completely centralized water testing system could harm far more people than were harmed in Walkerton. That is why such a system would probably build in its own redundancies, thereby making it more clumsy and costly than Landau’s description implies. But, if that is the inevitable result anyway, why not consider the desirability of inter-organizational redundancies rather than purely intra-organizational ones? It might be just as efficient to have many organizations that might duplicate some of each other’s activities as to have one big organization whose various bureaus must check and balance each other to prevent internal errors.¹⁹

The worst-case result from maintaining inter-organizational redundancies is that neither organization takes its work seriously, each acting as though the other were really in charge. It is quite possible that this was the state of affairs in the summer of 2000 in Ontario.²⁰ Indeed, given the attempts to reduce overall public expenditures by clearly defining who was responsible for what, some officials at both the local and provincial levels might have concluded simultaneously that real responsibility was now at the other level. It would not be possible – especially in the light of the events at Walkerton – to prove that such states of mind actually existed. But it is at least a possibility that should be considered.

One possible remedy, as we have seen, is to eliminate the responsibility of one level. Another remedy is to declare unequivocally that municipalities are directly responsible for the safety of the water that they distribute through their pipes – and to also declare at the same time that the Ministry of the Environment has an equally direct responsibility to ensure that all water flowing through municipal pipes in Ontario is safe for drinking. Both levels could be required

¹⁹ It is at this point where some readers might be convinced that they are being subjected to a form of ‘public choice’ analysis, without being properly informed of the authors’ assumptions. This paper is not meant to be a ‘public choice’ analysis of provincial–local relations, although some insights have indeed been drawn from this approach, just as other parts of this paper have been informed by other analytical approaches to policy-making and public administration. For the view of one of the authors on public choice, see Sancton, 2000, pp. 5 and 75–78).

²⁰ Another possibility is that *neither* organization would have sufficient resources to protect the safety of the water supply system. Assuming, however, that a local operator of a water supply system is charging for the full cost of water and is committed to providing safe water, it is difficult to understand how such an operator could ever be in the position of having insufficient resources for testing.

to report their results on a regular basis to the local medical officer of health. Such an approach violates the core assumption of the disentanglement exercise, but it could well be the approach most likely to ensure that all municipal water supply systems are safe.

3 The Financing of Municipal Water Supply Systems

After public health, the second reason for provincial involvement in water supply systems is the need for financial assistance. This type of involvement is based on the belief that some Ontario municipalities require some form of direct financial assistance to build and maintain adequate water supply systems. Significantly, prior to 1956 there were no provincial programs aimed specifically at subsidizing Ontario's local water supply and sewage systems.²¹ This is an important point to remember when hearing claims that all kinds of new responsibilities and fiscal burdens have recently encumbered municipalities. The fact is that, in the nineteenth and early twentieth centuries, as a matter of course, municipalities were expected to provide and finance, without provincial assistance, the services that their local residents demanded. It was only during the 1950s and 1960s, when municipalities proved manifestly incapable of keeping up with the demands of rapid growth and urbanization, that the province became an active participant in many services that were hitherto considered exclusively local.

3.1 Ontario Water Resources Commission

Premier Leslie Frost introduced legislation to establish the Ontario Water Resources Commission (OWRC) in February 1956. During the debate on second reading, Premier Frost compared the creation of the OWRC with that of the Ontario Power Commission (later Ontario Hydro) 45 years previously:

The conception which has always been followed was of a municipal partnership which would provide power at cost. The conception of this Bill is the same in main. In application, of course, it would be

²¹ However, in 1950, provincial funds (\$50 million) for various forms of municipal infrastructure, including waterworks, were made available for borrowing through the Ontario Improvement Corporation (Ontario, Legislative Assembly, 1956, *Hansard* ([Toronto: Queen's Printer] February 28), pp. 576–77).

impracticable to have such as the immense power grid which now covers the face of Ontario, but this is practicable on an area or community basis.

The conception is water and sewage disposal at cost, the provision of water on a wholesale area basis, and the provision of sewage disposal plants which might serve more than one municipality ... It is a matter of providing the means of establishing both distribution of water and the disposal of sewage.

The present studies and proposals enable the commission to enter into agreements with municipalities on an area basis for the installation of trunk water lines and installation of sewage disposal plants. By this means water would be supplied on a wholesale basis ... The pooling of costs of many engineering and other services, experience etc., would save money all around us ... Municipalities would pay for the services they would receive.

It would not be the purpose of the commission, for instance, to retail water. That would be a matter for local councils and commissions ...

Obviously such a plan provides the basis of partnership which is so greatly needed in many localities, and at the same time would take the burden of the immense strain of initial financing from the municipalities and would enable payment by them on a service basis over a long period of years. It is the principle of service at cost spread over many years.²²

Although Premier Frost made frequent reference to the inherent virtues of fighting pollution, there was no mistaking his main concern: without ample supplies of clean water, Ontario municipalities could not grow. More than anything else, the OWRC was designed as a provincial tool for economic development.

Both the opposition parties – the Liberals and the Cooperative Commonwealth Federation – supported the legislation. However, the Liberal Leader of the Opposition, Farquhar Oliver, complained

²² Ibid., pp. 559–60.

the municipalities in this province are not in a financial position to carry the full burden that will be imposed upon them by the type of corrective measures which will be proposed to them in the next few years.

I believe quite sincerely that the province of Ontario will have to come to the aid of these municipalities, and they will have to be given grants in order to lessen the financial impact upon the municipal taxpayers for these services.²³

Mr. Oliver's prediction was accurate.

During the decade after 1956, the Ontario legislature amended the OWRC legislation on a number of occasions, usually to increase its authority. By the mid-1960s it had become extremely powerful indeed, having taken action on water problems in almost every part of the province. In a pamphlet published during this period, the OWRC explained its sweeping role with respect to municipal water supplies. Its own explanation deserves to be quoted at length:

The Ontario Water Resources Commission Act requires that no public works involving water or sewage facilities can be undertaken without approval of the commission. At the same time, in cases where direct OWRC assistance is sought, the commission offers to municipalities financial assistance as well as expert technical guidance in the planning, construction and operation of both water and sewage works.

Any municipality requiring such works, whether entirely new systems, or extensions or improvements to existing systems, may either arrange for the construction of these works itself, or may ask the commission to carry out the work on its behalf.

An agreement on a project may involve one or several municipalities together, as well as industries in the area, a co-operative and co-ordinated type of arrangement greatly favoured by the commission.

In the case of small communities the commission may also undertake the construction of local water distribution mains or the sewage collection pipes.

²³ Ibid., p. 565.

Under the financing plan offered by the commission, the municipality does not have to sell or issue any bonds. The commission pays for engineering and construction, with this debt payable by the municipality to the commission over a long period, in most instances 30 years. The interest rate is the actual cost of the money borrowed by the province on behalf of the commission. The rate usually is lower than it is possible for the municipality, particularly a smaller one, to obtain on its own.

The municipality makes no payment to the commission until the project is put into operation, and principal payments may be deferred at the outset up to a period of five years ...

When a financial arrangement is made between the commission and a municipality, the commission assumes responsibility for the operation and maintenance of the works during the lifetime of the debt ... with the actual cost of operation paid to the commission by the municipality. Close supervision of the operation by OWRC technical staff, however, is a commission responsibility carried out at no cost to the municipality.

At the termination of the debt, the works may be turned over to the municipality, at the request of either the commission or the municipality.

A key part of this OWRC-municipal program is the arrangement for co-operation between the commission and the municipalities involved. Each municipality is asked to appoint a local advisory committee to work with the commission in all aspects of the program. Thus there is local direction on such matters as appointment of employees, wage rates and administrative procedures.

In small municipalities, where there has been no previous local experience in the operation of water or sewage systems, the commission will advise on rate structures, collection methods, bookkeeping records and similar details.²⁴

²⁴ Ontario, [no date but after 1964] *OWRC: Ontario Water Resources Commission* [Toronto: OWRC] pamphlet.

Starting in 1965, the OWRC itself began to construct large water pipelines, with a view to acting as a water wholesaler for a number of municipalities along the pipeline's path. The most notable early example of such a project was the Lake Huron Water Supply System, designed primarily to meet the needs of the city of London.

3.2 Provincial Funding for Municipal Waterworks

In late 1969, the Government of Ontario began to subsidize the capital costs of OWRC-constructed water supply and sewerage.²⁵ One program provided up to 75% of capital costs for small municipalities whose costs for communal water services were above the provincial average. The other provided a capital grant of 15% to any project involving more than one municipality (such as that serving London).²⁶ Starting in 1974, the 15% capital grant was extended to cover projects built directly by restructured municipalities (i.e., not by the OWRC), such as Metropolitan Toronto, the regional governments, and the cities of Thunder Bay and Timmins.²⁷ In 1977, the 75% grant was extended to private systems "where this is a cost-effective way of solving problems." The idea behind this was that it would "reduce the past tendency of small municipalities to opt for relatively expensive communal systems for the reason that the latter course of action was their only way to obtain assistance".²⁸ Finally, again in 1977, both the 75% and the 15% grants were extended to waterworks built by the municipalities themselves, not by the OWRC.

There is very little documentation readily available on the public record to explain the government's course of action with respect to these grants. Part of the explanation might relate to the fact that, in 1972, the government dissolved the OWRC and transferred its activities to a more powerful Ministry of the Environment.²⁹ One of the effects of this move was to de-emphasize the

²⁵ Ontario, 1977, *Report of the Provincial-Municipal Grants Reform Committee*, vol. 1 [Toronto: Queen's Printer] p. 59; Ontario, 1970, *OWRC*; Ontario, 1970, *Revised Statutes*, p. 50.

²⁶ Ontario, 1977, pp. 18–19.

²⁷ *Ibid.*, pp. 59–60; Ontario, Ministry of Municipal Affairs, 1974, *Provincial Assistance to Municipalities, Boards and Commissions 1974* [Toronto: the ministry] pp. 18–19.

²⁸ Small isolated subdivisions within a municipality might have had their own collective, but private, water-supply systems. Such systems were originally ineligible for assistance. But, if the municipality decided to take them over and upgrade them, assistance did become available. Presumably, this change was aimed at preventing such apparently extravagant and unnecessary expansions to municipal systems by making the subsidies available directly to the private systems. See Ontario, 1977, p. 60.

²⁹ Neil B. Freeman, 1997a, "The future of OCWA and Ontario's water industry," A submission prepared for the Bill 107 hearings of the Standing Committee on Resources Development, Legislature of Ontario, April 5, p. 11.

notion that water supply was a self-financing business, for which the OWRC was merely a facilitator. Having some aspects of the water supply system under the direct control of a minister of the Crown suggested that it was more of a public service.

Notwithstanding the elimination of the OWRC, it is still relatively easy to reconstruct what likely happened. Initially, the government wanted to help extend the OWRC's work into smaller municipalities and to encourage intermunicipal cooperation. Then, after the demise of the OWRC, the restructured municipalities (Metro Toronto, the regional governments, Thunder Bay, and Timmins) claimed they were equally well-equipped to build infrastructure as was the Ministry of the Environment (after all, that is one of the reasons why they had been restructured). After this, the case was made for the private systems. The remaining unstructured municipalities, likely the larger ones (e.g., the city of Windsor), then probably claimed that there was no reason to leave them out, especially by 1977, when the government had already announced that there would be no more regional governments. Such is the likely story (for the 1960s and 1970s anyway) of how a small, targeted grant program became a large, province-wide program.

3.2.1 Funding for waterworks – unintended consequences

Capital grants to Ontario municipalities for waterworks produced at least two significant consequences, both of which were unintended. First, although there was no overt argument that Ontarians in general needed subsidized water, this was the program's essential message. It seems that the program was really aimed at preventing municipalities from having to take on a level of debt that was seen as undesirable. But the effect, of course, was to provide subsidized water, because some consumers were not paying the full capital costs of the infrastructure required to provide the water. In today's political climate – on the right, user charges are in vogue and, on the left, preserving water is in vogue – it seems hard to believe that a decision to subsidize the consumption of water would receive so little attention. But those were different times – or perhaps not so different: one hears few people arguing today that the post-Walkerton costs of testing Ontario's drinking water should be passed on directly and immediately to consumers in the form of higher water rates.

A second unintended consequence of the decision to subsidize waterworks relates only to the grants of 75%, always targeted at small, high-cost

municipalities. By 1979, the criteria had (inevitably) become codified. Small municipalities were specifically defined as those having fewer than 7,500 people.³⁰ Although it is unlikely that such a limitation acted as a strong disincentive to growth in small municipalities, it was almost certainly a disincentive to boundary extensions and amalgamations. Why would municipal elected officials contemplate a local municipal restructuring that would have the effect of reducing the level of capital grants available for waterworks projects?

3.3 Provincial Reviews of Waterworks Funding

In 1977, an important provincial–municipal committee charged with reviewing all provincial–municipal grants noted that, for waterworks, additional federal capital assistance was available through the Central Mortgage and Housing Corporation (CMHC).³¹ This committee arrived at the following important conclusions:

Recognizing that water and sewerage supply are vital local functions, the committee is concerned about the nature of the involvement of other levels of government in this area. Between CMHC and provincial assistance, the total grant rate can reach 100 percent. The ministry is also heavily and directly involved in the planning, building, financing, and operating of facilities. As a result, local responsibility and accountability have been eroded.

The committee wishes to emphasize the merit of more realistic user charges for water and sewerage services. These services are more directly related to individual properties and users than other local services. The committee considers it desirable that the users be made more aware of the rising costs of these services ...

The present dominant provincial role outside regional governments and cities might have led us to consider provincial take-over of this function, at least for small communities. However, the committee prefers to see water and sewerage maintained as a municipal function,

³⁰ Ontario, Ministry of Municipal Affairs, 1979, *Provincial Assistance to Municipalities, Boards and Commissions 1979* [Toronto: the ministry] p. 22.

³¹ The committee was chaired by Don Stevenson, a senior Ontario public servant. Most of the other 14 members were senior staff people in Ontario municipalities.

throughout the sector and, in fact, to put greater emphasis on this, especially in regional municipalities.³²

The longer-term approach preferred by the committee was “that the water and sewerage function be fully assumed by the municipalities in terms of arranging the construction, financing, and notably the operation of facilities, including those now operated by the Province.”³³ The committee acknowledged, however, that the “the ability of smaller municipalities to ‘go it alone’ is of some concern.” For these municipalities, the committee recommended:

That the Ministry of the Environment continue a monitoring system by which it can identify needs for local action, set priorities for grant entitlements, and perform a technical advisory role to municipalities.

That the ministry replace the existing programs with a capital grant for high-cost projects of up to 50% of construction costs net of CMHC assistance and related in terms of eligibility to a threshold of per household capital costs.³⁴

The committee’s first longer-term recommendation was effectively implemented by the Harris government 20 years later. The recommendation concerning changes to the grant program were never implemented, although there were various minor amendments to the scheme during the 1980s.³⁵

The grant program was scarcely mentioned in the 1991 *Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial–Municipal Financial Relationship* chaired by Grant Hopcroft. Perhaps because many of the members of the advisory committee represented municipalities, it concluded that “waterworks – plant” should remain as a municipal function, but with continued provincial capital support. Unlike other reports, however, this one indicated the relative share (for 1988) of each of the provincial and municipal levels of government for capital expenditures on all aspects of waterworks (i.e., plant and distribution). According to the Hopcroft report, provincial transfers made up 24% of the total amount.³⁶

³² Ontario, 1977, pp. 63–4.

³³ Ibid., p. 64.

³⁴ Ibid., pp. 65–66.

³⁵ For details, see the annual publications of Ontario, Ministry of Municipal Affairs, *Provincial Assistance to Municipalities, Boards and Commissions*, especially for the years 1986–88.

³⁶ Ontario, 1991, p. 34.

For a summary of the province's schemes for financial assistance to municipal water supply systems during the period 1969–93, see Table 3-1.

3.4 Ontario Clean Water Agency

In 1993, the Rae government sponsored the *Capital Investment Plan Act*. Among other things, it established the Ontario Clean Water Agency (OCWA), whose

Table 3-1 Provincial Financial Assistance for Water Supply Systems

Prov. Assistance Program	Maximum Allowable Funding to Municipality (%)										
	1969–1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	
Capital grants for major works	N/A						15	15	15	15	
New waterworks in small mun. of less than 7,500	N/A						75	75	75	75	
Prov.-owned high-cost projects in small municipalities	75	75	75	75	75	75	N/A				
Capital gains for prov. area works servicing 2 or more mun.	15	15	15	15	15	15	N/A				
Waterworks servicing restructured municipalities	N/A		15	15	15	15	N/A				

Prov. Assistance Program	Maximum Allowable Funding to Municipality (%)								
	1983	1984	1985	1986	1987	1988	1989	1990–1991	1992–1993
Capital grants for major works	15	15	15	N/A					
New waterworks in small mun. of less than 7,500	75	75	75	N/A					
Major area works for mun. over 7,500	N/A			15	15	33	33	N/A	15–33.3
High-cost grants for mun. of less than 7,500 (funding formula)	N/A			15–85	15–85	85	85	85	85
High-cost grants to regional mun. based on cost-sharing formula	N/A			60	60	varies	varies	varies	varies
Rural water pipeline extension outside urban boundary	N/A			25	25	33.3	33.3	N/A	
Engineering studies –at same % as capital grant	N/A			varies	varies	N/A			
Water distribution needs studies	N/A				15–85	50 min.	50 min.	50 min.	50 min.
Rehabilitation of water distribution system	N/A					33.3	33.3	33.3	33.3

Note: N/A indicates that the program was not in effect for the particular year and that no assistance was available.

Sources: Annual publications of Ontario, Municipal Affairs, 1974–1993, *Provincial Assistance to Municipalities, Boards and Commissions*.

main function was to take over from the Ministry of the Environment all the operating and ownership responsibilities with respect to water and sewage treatment plants. Although the legislation itself did not change the rules for capital subsidies, the government did make changes to these rules at about the same time. During the committee hearings related to the passage of the legislation, Barbara Stewart, a senior civil servant in the Ministry of Finance, stated the following:

The municipal assistance program, which is a revision of the old water and sewer capital grants program, has been designed to respond to provincial priorities and municipal needs. Through it there will be promotion of regular maintenance of existing technology in plants, of water conservation, of the optimization of existing systems and of good environmental and land use planning, including the development of area-wide schemes that may serve several municipalities.

In terms of activities envisaged for 1993–94, just a couple of parameters: Under the Jobs Ontario program, the province will be investing some \$258 million in the upgrading and construction of new water and sewer facilities throughout the province, and that's a commitment over three years. Of that \$258 million commitment, more than \$90 million will actually be spent in the current fiscal year to support 120 projects, and there are estimates that this activity will put some 2,800 people back to work.³⁷

It is clear from these remarks that the government henceforth wanted to target its capital funding for sewer and water facilities so that broader environmental concerns would be met and so that jobs would be created. A rather shopworn and neglected grant program was being given a new look to meet the political objectives of the government and the broader societal concerns of the early 1990s.

During the same hearings, another public servant, Jim Merritt, the executive director of the clean water transition team in the Ministry of Environment and Energy stated that the provincial government would soon be establishing a 5.7% charge to municipalities for overhead costs relating to provincially operated water and sewer facilities. He went on to say that:

³⁷ Ontario, Legislative Assembly, Committee on General Government, 1993, *Hansard* ([Toronto: Queen's Printer] August 16).

Historically, there had been in effect a subsidy because all the overhead costs were not charged back to those municipalities. Municipalities that operated their own plants absorbed these themselves. This was an effort to put all plants on the same basis.

The agency [OCWA], at least in the initial phases when it got started, would anticipate continuing this overhead charge. However, there is opportunity to then sit down with municipalities on a case-by-case basis and look at the overall operation of their facilities and endeavour to find ways to reduce costs. This is one of the major initiatives of the agency through things like water conservation and plant optimization.³⁸

Mr. Merritt confirmed that the methods for calculating the grants were not being fundamentally changed: “The new assistance program still provides a population-based approach so that smaller municipalities are eligible for larger levels of loans and again can receive up to 85%, which was consistent with the earlier program. So that is very much still on the table.”

However, at the same time, he emphasized that its targeting was different:

[T]he old system only provided money for traditional water treatment and sewage treatment projects ... The new program will expand so that if a better alternative is now available – for example, we are asking the municipalities now, if they are looking at an expansion, to look at water conservation and see if water conservation would in fact reduce the size of that expansion or maybe eliminate it altogether. If that is the case and they’ll need some money to implement that water conservation, the water conservation project will now be eligible for a grant. In this way we’re hoping to save them money and the province money through the grant program ...

It’s quite right that previous assistance programs have said that a municipality could allow its system to deteriorate or its water quality situation to become very poor, and therefore, under the ranking and priority system, get a very high score. We’re trying to correct this in the new program. We’re adjusting the scoring and

³⁸ Ibid.

the criteria being set up so that municipalities that are demonstrating they are now in compliance, that they're looking to maintain their systems, to protect their projects, will in fact get enhanced scores through the priority rating system. This would give them a good chance to move up and have the type of score that would give them a good chance for moneys through the system.

There still is in there, however, an opportunity for situations where a municipality is in difficulty, where there are serious health problems or serious environmental problems, to still be eligible. We're not saying that we're not going to deal with the problems, but we want to make the system more equitable, so that those municipalities that are making the effort don't get penalized for that effort.

Finally, he acknowledged that the government knew very little about municipal water rates:

We are currently trying to get information on what municipalities have as their total rates and how they're billing them. It has been very difficult. We hope to move towards getting a better grip on that. Municipalities cover their costs off in many ways and often subsidize those rates through their traditional property tax processes.

Simply looking at their billings for water and sewage is not necessarily a really clear ideas of what those total rates are. I anticipate over time some of those rates in some of those communities are going to have to increase if they're going to meet all their requirements.³⁹

One of the interest groups making a presentation at the hearings was the Ontario Municipal Water Association, which, at the time, comprised both elected and appointed officials from over 200 water authorities in Ontario. It is generally concerned with advancing the interests of municipal water supply systems. In its presentation, the association stressed the need for accurate and comprehensive accounting systems for water supply systems and the need for full-cost pricing.⁴⁰ It claimed that, in the past,

³⁹ Ibid.

⁴⁰ This is also the position of the equivalent organization at the national level, the Canadian Water and Wastewater Association.

... government grants to public water authorities for the development or improvement of municipal water supplies have been inconsistent, and in some cases have been counterproductive by rewarding public water authorities regardless of their performance in long-term planning, the maintenance of their facilities, or their rate charges or accounting practices ...

We believe that one of the first tasks of the agency [OCWA] should be to review and revise the current grant program so that it focuses on loans rather than grants.⁴¹

3.5 Who Does What Panel on Capital Grants for Waterworks

In fact, the capital-grants program was next reviewed in 1996 by the Who Does What Panel, chaired by David Crombie. The Transportation and Utilities Sub-panel reported on the program in its letter to the Minister of Municipal Affairs and Housing dated November 4. Here is its analysis:

Years of generous provincial subsidies have had some undesirable impacts. Infrastructure in some cases has been overbuilt well beyond the realistic growth needs of some communities – to such an extent that ongoing subsidies are necessary to maintain these systems. Consumers haven't had to pay for the full cost of providing water and sewer services – consequently they have had little incentive to conserve our water resources. Many municipalities, in anticipation of provincial financial assistance to cover capital costs of replacement have neglected to build-in [sic] an allowance for depreciation in their costing system – thus perpetuating their dependency on the province. Uniform standards of service have been encouraged across the province rather than services adapted to local circumstances. Finally, subsidies have dampened innovation and the pursuit of creative management practices which could realize better efficiencies, and they appear to have discouraged full private sector participation.⁴²

⁴¹ Ontario, Legislative Assembly, Committee ... 1993.

⁴² Crombie and Bell, 1996, p. 2.

The sub-panel stated its conclusion in the same letter:

After fulfilling its commitments under the existing provincial grant and loan programs, the province should terminate these programs and not issue new grants or loans. Over the long term, the sub-panel feels that municipalities should access private-sector financing for capital works, and demonstrate the need for expansion on the basis of a sound business case.

Further, while the sub-panel feels strongly that municipalities themselves should decide on the method of charging for water and sewer services, the concept of full-cost pricing and user fees – that includes charging against future replacement costs – is supported by the panel. Such an approach will encourage municipalities to reduce costs and will promote conservation by users.

The sub-panel recognizes that there are currently a few systems, very limited in number, which may pose health and environmental risks to local residents. The sub-panel is concerned that, in some cases, these municipalities may be unable to finance the total costs to bring these systems up to standard. The sub-panel recommends that, in cases of extreme emergency situations pertaining to health and the environment, the province provides one-time financing, to be combined with an equitable local contribution, to bring the systems into compliance ... None of this support should be available for systems to service growth, and any future expenditures on systems – for health or growth – should be the responsibility of municipalities.⁴³

3.5.1 Who Does What Panel Report – Ontario's Response

In January 1997, the Minister of Environment and Energy announced the government's response. It was that "municipalities will assume full responsibility for local delivery of all water and sewage services" and that "measures are being developed to assist smaller municipalities facing financial hardship."⁴⁴ In May of the same year, the government announced that "the Municipal Capital and

⁴³ Ibid., p. 4.

⁴⁴ Ontario, 1997, "'Who Does What' reforms": Announcement package for the week of January 13 [Toronto] p. 109.

Operating Restructuring Fund will provide \$200 million for capital needs related to water and sewage facilities, which will be owned, operated and financed by municipalities. Current funding commitments under the Municipal Assistance Program will be maintained until the end of the program in 1998–99.”⁴⁵

In August, the government announced another \$200-million fund, this time called the Provincial Water Protection Fund. It was to be spent over three years “to aid municipalities that may require financial assistance to upgrade their water and sewage systems in response to specific health and environmental problems.”⁴⁶

In the aftermath of the Walkerton tragedy in 2000, the government announced yet another new funding program of \$240 million over two years for water supply and sewage treatment facilities in Ontario’s small towns. According to a government press release, the funds, from the Ontario SuperBuild Corporation,

will flow through the Ontario Small Town and Rural initiative (OSTAR) that was announced in the 2000 Ontario Budget ...

“Our commitment of at least \$240 million will be available to help municipalities upgrade their water systems to comply with the province’s new drinking water regulations,” [Municipal Affairs Minister Tony] Clement said. “The OSTAR initiative will target more support to municipalities that lack the ability to pay for infrastructure improvements based on criteria contained in the OSTAR application.”

Mr. Clement also announced that, as part of Operation Clean Water, the advisory board of the Ontario SuperBuild Corporation will guide the development of a long-term water and sewer infrastructure investment and financing strategy. Moving toward full cost recovery for water and sewer treatment services will be a fundamental principle of the government’s long-term strategy to ensure that future investment needs are met on a timely basis. The SuperBuild advisory board will work in cooperation with the Ministry of Municipal Affairs and Housing, the Ministry of the Environment, the Ministry of Agriculture, Food and Rural Affairs, the Ministry of Northern

⁴⁵ Ontario, Office of the Premier, 1997, “Who Does What: A New Partnership for Taxpayers,” News release [Toronto] May 1.

⁴⁶ Ontario, Ministry of Municipal Affairs and Housing, 1997, *Final Restructuring Proposal for Kent County and the City of Chatham and Order of the Commission* ([Toronto: the ministry] April 28).

Development and Mines, municipalities and other public and private sector stakeholders.

The province will ask the federal government to match Ontario's contribution to OSTAR projects through the Canada–Ontario Infrastructure program currently being negotiated. This federal support, coupled with municipal investments, would make at least three-quarters of a billion dollars available for water and sewer projects and other public health and safety infrastructure.

“Working together does not mean that one government takes on the responsibilities of another,” Clement said. “All governments have their challenges and responsibilities: municipalities are accountable for their water and sewer systems, and need to fulfill their responsibilities to ensure local facilities meet today’s needs as well as tomorrow’s challenges. The provincial government is responsible for establishing and enforcing regulations and standards to ensure the clean water Ontarians expect. With today’s announcement we look forward to working together on shared outcomes for the benefit of all taxpayers and ratepayers.”⁴⁷

For a summary of the amounts of provincial capital spending on water supply and sewage treatment facilities for the period 1968–2000, see the first three columns of Table 3-2. For provincial subsidies for such projects during the same period, see the fourth column of the same table.

3.6 Provincial Funding for Waterworks – Contradictions

The history of provincial financial assistance for Ontario’s waterworks reveals a startling contradiction: funding programs have persisted even though no one has attempted a coherent argument in their defence. Indeed, as we have seen, some interested parties have been explicitly opposed. As recently as 1996, the current government’s own Who Does What Panel was condemning such grants. But, on three occasions since then, the government has proudly announced new funding programs.

⁴⁷ Ontario, Ministry of Municipal Affairs and Housing, 2000a, “Harris government announces next steps in Operation Clean Water including capital funding and long-term strategy,” Press release ([Toronto: the ministry] August 10).

Table 3-2 Provincial Capital Expenditures for Water and Sewage Facilities

Year	Loans for Mun. Projects	Provincial Projects	Total Mun. & Prov. Projects	Provincial Subsidies
1968-69 OWRC	\$3.7M	\$4.2M	\$7.9M	—
1969-70 OWRC	\$3.4M	\$26.5M	\$29.9M	—
1970-71 OWRC	\$3.1M	\$34.9M	\$38.0M	\$0.6M
1971-72 OWRC	\$3.0M	\$42.2M	\$45.2M	\$0.8M
1972-73	\$2.4M	\$78.0M	\$80.4M	\$1.8M
1973-74	\$6.3M	\$75.2M	\$81.5M	\$1.0M
1974-75	\$11.8M	\$115.2M	\$127.0M	\$4.9M
1975-76	N/A		\$154.9M	\$13.6M
1976-77	N/A		\$146.0M	\$17.0M
1977-78	N/A		\$135.0M	\$25.7M
1978-79	N/A		\$147.2M	\$30.5M
1979-80	N/A		\$139.5M	\$44.4M
1980-81	\$0.6M	N/A	\$123.6M	\$70.1M
1981-82	\$2.0M	N/A	\$99.5M	\$115.5M
1982-83	\$0.5M	N/A	\$72.2M	\$113.0M
1983-84	\$0.6M	N/A	\$68.3M	\$94.1M
1984-85	\$0.7M	N/A	\$55.6M	\$107.4M
1985-86	N/A		\$33.9M	\$116.7M
1986-87	N/A		\$15.8M	\$96.6M
1987-88	N/A		\$20.1M	\$127.8M
1988-89	N/A		\$22.4M	\$127.7M
1989-90	N/A		\$33.7M	\$154.9M
1990-91	N/A		\$62.7M	\$181.0M
1991-92	N/A		\$53.8M	\$173.0M
1992-93	N/A		\$50.4M	\$153.9M
1993-94	N/A		\$21.3M	\$94.9M
1994-95	Assets of \$501.2M transferred to OCWA			
1995-96	—	—	—	\$73.1M
1996-97	—	—	—	\$197.3M
1997-98	—	—	—	\$87.4M
1998-99	—	—	—	\$42.2M
1999-00	\$240M SuperBuild OSTAR program for water and sewer infrastructure projects to be cost-shared with municipalities			

Notes: N/A indicates data not available. Amounts are actual dollars and not adjusted for inflation.

Sources: Annual publications of Ontario, 1969-99, *Public Accounts*, Ministry of Environment/Environment and Energy/Energy and Resources Management statements.

What we seem to be seeing here are the results of two distinct theories (or perspectives) on central–local relations, theories that have been described by the Harvard political scientist, Paul E. Peterson. For Peterson, the ‘functional’ theory “predicts that each level will expand in its area of competence but will remain limited or will diminish in its less competent arena.” He goes on to explain that local levels of government are especially competent with respect to ‘developmental’ programs, those that “provide the physical and social infrastructure necessary to facilitate a country’s growth.”⁴⁸ He explains:

Local governments are best equipped to design and administer developmental programs because their decisions are disciplined by market forces as well as by political pressures. Local governments must be sensitive to market considerations when designing and administering roadways, sanitation systems, public safety services, and educational programs. Unless local public services are provided in ways that meet the needs of local businesses and residents, residents will consider moving to another locality better attuned to their needs.⁴⁹

According to functional theory, central governments are better equipped to handle ‘redistributive’ functions, those that “re-allocate societal resources from the ‘haves’ to the ‘have-nots.’”⁵⁰ Water supply is clearly a developmental policy according to this categorization. Central grants to local governments for water supply would only be desirable “to induce local governments to adequately fund programs whose benefits spill over into other jurisdictions.”⁵¹ Most of the apparent experts on water supply issues are implicitly following functional criteria when they conclude that water supply is a local function and that local users should pay the full costs.

The alternative theory, labelled as “legislative” by Peterson, “holds that the political incentives that shape the decisions of policy-makers induce them to make the wrong choices.”⁵² He elaborates:

⁴⁸ Paul E. Peterson, 1995, *The Price of Federalism* (Washington, D.C.: The Brookings Institution), pp. 16–17. Peterson’s book is very much about the United States, where the states hold less effective political power than Canadian provinces and where both the federal and state governments operate according to congressional, rather than parliamentary, principles. We attempt here to apply Peterson’s main points to the Canadian context in as fair and accurate a manner as possible.

⁴⁹ *Ibid.*, p. 18.

⁵⁰ *Ibid.*, p. 17.

⁵¹ *Ibid.*, p. 23.

⁵² *Ibid.*, p. 39.

Legislative theory assumes that elected representatives' primary goal is their own re-election. In pursuit of that goal, representatives seek to secure benefits for – and screen costs from – their constituencies ...

Legislative theory further assumes that constituents easily recognize spatially concentrated costs and benefits, but that spatially dispersed costs and benefits are less perceptible. Legislators therefore support projects that have geographically concentrated benefits but diffuse costs, and they oppose policies that have diffuse benefits but spatially concentrated costs.⁵³

Peterson's analysis helps us understand the politics of provincial–local relations with respect to the funding of local water supply systems. In functional terms, there is simply no good reason for provincial financial involvement. There is no reason why local users of water should not pay the full costs of that water. It is possible, however, that the province might want to subsidize people for living in small, isolated communities. If this is the case, it probably makes sense to support financially the residents rather than the water supply systems. If the people in such communities then wish to use their subsidies to pay for expensive water for their lawns or car washes, then that is their business. It makes no sense to assume that people in small towns are more likely to want to risk providing themselves with impure water than people in large cities are. In any event, as we have seen in the first section of this paper, no one questions the need for province-wide testing for public health purposes of all water supplies.

Nevertheless, the 'legislative' theory of central-local relations reminds us that, no matter what various commissions of experts or panels of inquiry might recommend, the political temptations to use central government funds to assist particular communities with projects having such obvious community benefits as those bestowed by water supply systems are simply too great to resist, even for governments that loudly proclaim their steadfast commitment to parsimony and market principles.

⁵³ Ibid., p. 41.

4 Organizational Issues

4.1 A Provincial Agency for Water Supply?

Because provinces in Canada have jurisdictional responsibility for municipal institutions, the Ontario legislature has a responsibility to provide organizational mechanisms for local water supply systems. An apparently easy way to avoid the central-local financial issues discussed in the previous section would be to have all public water supply systems taken over by a single provincial public body, to be called perhaps, the Ontario Water Corporation. A potential benefit of implementing such a proposal is that it would ensure that local officials could not jeopardize the interests of their own local citizens by recklessly appointing unqualified or incompetent managers to run local systems. Such a proposal, however – not yet featured in the political history of Ontario water supplies – carries with it obvious difficulties. Since communities in Ontario (even in the heavily populated southern area) are not all connected with each other by a common water supply grid, it is far from obvious that there would be any economic or management advantages in establishing such a huge organization. In any event, it would seem very strange to do so, just as a similar organization for electricity – Ontario Hydro – is being dismantled. Pricing issues would be extremely difficult. A common rate would involve significant intermunicipal cross-subsidies but, if there were no such common rate, it would be a formidable challenge to work out fair pricing mechanisms for different places.

4.2 Local Water Supply Systems

There are, of course, numerous variations on a scheme to establish a provincial body to run waterworks systems. There could be various regional public water corporations established across the province. Some, or all, could be offered for sale to the private sector. These are no doubt issues that provincial policy-makers will want to explore. Some of them will be returned to later in this paper.

Perhaps the most important point to remember in such discussions, however, is that the connection between local water supply systems and municipalities goes back more than 100 years in Ontario. For the past 30 years at least, Ontario policy has been to strengthen municipal involvement, rather than to weaken it. This will be shown in subsequent pages of this section as we examine how, in the late 1960s and 1970s especially, the Ontario government took steps in

major cities and regions to place water supply under the direct control of municipal and regional councils rather than local special-purpose bodies such as public utilities and water commissions. Taking steps now to remove water from municipal control would be a dramatic break from traditional Ontario practices.

4.3 Water Supply Systems of the Past

4.3.1 Privately Owned and Operated Systems

Given current interest in privatization, it is ironic indeed that Canada's first urban water supply systems were owned and operated by private companies holding franchises issued by municipal councils. Such arrangements are well described by Armstrong and Nelles in *Monopoly's Moment*. British North America's first water mains were built in Montreal by Joseph Frobisher's Company of Proprietors of the Montreal Water Works, which was granted a 50-year franchise starting in 1801.⁵⁴ Toronto started to receive a communal water supply in 1843, when the Toronto Gas Light and Water Company began pumping from Lake Ontario.⁵⁵ Two years later the Toronto city council located a major sewer outfall next to the company's water intake, leading to numerous complaints about poor water quality.⁵⁶

Regulation, such as it was, resulted from what Armstrong and Nelles call 'a peculiar market situation' in which "monopoly was poised against monopsony: a single supplier served markets dominated by a large buyer."⁵⁷ In the early days of communal water supply, the provision of a constant water pressure to city-owned fire hydrants was at least as important as piping water to private purchasers. The level of domestic water rates was closely linked to the terms of the deal concerning the fire hydrants as worked out between the city and the company.

⁵⁴ Christopher Armstrong and H.V. Nelles, 1988, *Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830–1930* (Toronto: University of Toronto Press), p. 12.

⁵⁵ Ibid., p. 13.

⁵⁶ Ibid., p. 14.

⁵⁷ Ibid.

4.3.2 Early Municipal Water Supply Systems

After decades of local wrangling and after approval by ratepayers and the Ontario legislature, the Toronto city council finally purchased that city's private water supply system in 1872.⁵⁸ In other Ontario cities, private ownership was not an inevitable first step. The Hamilton city council built its own system in the 1850s after it became evident that private entrepreneurs were not interested.⁵⁹ In London, Ontario, a private water company was formed in 1854 but it went out of business the following year after its one source of water had completely dried up; the pond on which it relied was fed only by surface drainage.⁶⁰ London's first functioning system was built by the municipality and began operations in 1879.⁶¹

London, Ont. The local debate in London prior to 1879 illustrates one of the classic problems in the provision of a 'toll good' such as piped water. Local ratepayers were first asked to approve a municipal water supply system in 1873. But the referendum was defeated, apparently because of a clause in the provincial enabling legislation stating that all ratepayers would be taxed for the system even if they opted out by continuing to use their own wells. Five years later the offending clause was removed and the required local referendum was approved.⁶² It is not clear when it became illegal in London to use a private well in areas served by the city water supply.

Another interesting feature of the establishment of London's system was that its construction and operation was placed in the hands of a board of water commissioners comprising two members elected at large by the ratepayers and the mayor, *ex officio*.⁶³ Such an arrangement was originally requested by the city in 1873 and legislated by the province immediately thereafter.⁶⁴ It was not until 1882 that the provincial legislature passed its first *Municipal Waterworks Act* by which all cities, towns, and incorporated villages were given the option of themselves exercising the authority granted them under the act or passing it on to boards of commissioners of the kind already established in certain major

⁵⁸ Ibid., p. 18.

⁵⁹ Ibid., p. 32.

⁶⁰ E.V. Buchanan, 1968, *London's Water Supply: A History* (London, Ont.: London Public Utilities Commission), p. 9.

⁶¹ Ibid., p. 86.

⁶² Ibid., p. 9.

⁶³ Ibid., p. 12.

⁶⁴ Ibid., p. 9.

municipalities such as London.⁶⁵ As far as general Ontario legislation is concerned, current provisions in the *Public Utilities Act* still perpetuate the same option.⁶⁶

4.4 Statutory Evolution of Water Supply in Ontario

Writing in 1997, Dr. Neil B. Freeman provided the best general description of the statutory evolution of water and public utilities commissions. Commenting on the period after 1882, he notes:

When run by commissioners, waterworks did enjoy a level of administrative freedom that did not exist when under the control of councils. The water commissions were to keep their own accounts, submit an annual report to the council, and charge their borrowing against the works constructed. This meant waterworks were structured from the beginning as self-financing entities, and this principle has stood water utilities in good stead for over 115 years.

The water utility commissions, however, were not fully autonomous from their municipal councils, which retained power to exercise control over all local government affairs. Not only were the waterworks declared the property of the municipal corporation, but the councils were also given the power to pass bylaws governing the administration of the utility, and indeed councils could set the salary of commissioners, or could even take over a commission. Most important, the excess of revenues over expenses were to be paid over to the council on a quarterly basis. Thus, water utility commissions did not fully enjoy dedicated revenues despite having the power to keep their own accounts, and this has been a problem to the present day.⁶⁷

⁶⁵ Ontario, *Statutes*, 1982, ch.25, s.38. See Section 4.8 of this paper below.

⁶⁶ Ontario, *Revised Statutes*, 1970, ch.©390, s.37[1].

However, cities and towns that entered into contracts with Ontario Hydro for the provision of wholesale electricity are *obliged* (s.39[3]) to retail the electricity through a separate commission, which is also authorized to operate the water supply system. These dual-purpose commissions were usually known as 'public utilities commissions.' As a result of the recent reorganization of Ontario's electrical supply system, the *Public Utilities Act* no longer applies with respect to electricity.

⁶⁷ Freeman, 1997a, p. 7. It appears that Dr. Freeman wrote this submission on his own behalf. At the time, however, he was also acting as a consultant to the Ontario Municipal Water Association. See his (1997b) "Ontario's water industry: New legislative framework." A report prepared for the Ontario Municipal Water Association (OMWA), [Toronto] April 21.

The *Public Utilities Act* was legislated in 1913 as part of the creation of what eventually became Ontario Hydro. In addition to permitting municipalities to have both electricity and water supply services run by the same public utilities commission (PUC), the act also made it possible for sewage to be placed under PUC jurisdiction. Furthermore, the act provided that commissions operating under it would have “all the powers conferred to municipalities to perform their function” and each would “be a ‘body corporate’ and thus in law legally distinct from their municipal councils.” Other provisions prevented cross-subsidization among utilities, although nothing was enacted to prevent municipalities from capturing profits from waterworks operations.⁶⁸

Freeman describes a number of subsequent amendments to the act, including some in 1931:

These changes spelled out new avenues for municipalities to dispose of their utilities, or parts of them. However, the sale of all utilities, including water, could only proceed with the assent of the electors. The proceeds from the sale had to be applied to the debt of the public utility. Where the proceeds exceeded the debt, the municipality, with the permission of the Ontario Municipal Board, could apply the money to other municipal debt or capital projects. The 1931 amendments, however, also strengthened the provisions that, where commissions exist, the commissions rather [than] the municipal councils are responsible for the administration of the utility. In addition, commissions were now given a new measure of financial authority through the power to appoint their own auditors.⁶⁹

In 1946, amendments restricted the authority of municipal councils to set water rates to situations “where the existing ones were insufficient.” More amendments in 1951 provided “that the surpluses of the water utilities were only available to the municipality after stocking a council-authorized reserve fund for improvements and expansion.”⁷⁰ Freeman claims that there were no significant changes to the *Public Utilities Act* with respect to waterworks between 1951 and 1996.⁷¹

⁶⁸ Ibid., p. 8.

⁶⁹ Ibid.

⁷⁰ Ibid., pp. 8–9.

⁷¹ Ibid., p. 9.

4.5 Metropolitan and Regional Governments and Water Supply

The creation of the Ontario Water Resources Commission (OWRC) in 1956 did nothing to affect the local governance of waterworks. In the most heavily urbanized parts of the province, however, the advent of various forms of metropolitan and regional government did bring about significant change, although such changes were implemented by individual legislative acts that applied to particular areas rather than by amendments to the *Public Utilities Act*.

4.5.1 Metropolitan Toronto

The first such change was the creation of the Municipality of Metropolitan Toronto (Metro) in 1953. In its report on governance issues in Toronto in that same year, the Ontario Municipal Board (OMB) recommended that a complete takeover of the water supply system by the new metro level of government was “desirable” but “not deemed absolutely essential to the success of the plan.” Similarly, the OMB favoured the delegation of this function to an appointed metropolitan utilities commission, but concluded that “it is not, however, an essential part of the plan, particularly in the initial period.”⁷² In the end, the provincial government decided that the metro government, without a separate commission, would be the water wholesaler while area municipalities, with or without commissions’ depending on their existing arrangements, would maintain responsibility for retail distribution. This was the state of affairs throughout Metro’s history until it was abolished in 1997 by the legislation establishing the amalgamated city of Toronto. This legislation does not provide for a separate commission to look after water supply. Instead, the function is carried out by the Water and Wastewater Services Branch of the Department of Works and Emergency Services.

4.5.2 Regional Governments

There can be no doubt that one of the reasons for the creation of Metropolitan Toronto was to finance and build water supply systems in the fast-growing suburban areas. However, this could not possibly have been a reason for the establishment of regional governments in the late 1960s and 1970s because by

⁷² Ontario Municipal Board, 1953, *Decisions and Recommendations of the Board Dated January 20, 1953* (Toronto: Queen’s Printer), p. 50.

then the OWRC had been established, with full authority to build facilities to serve intermunicipal water needs in particular areas. Indeed, regional governments can be viewed as a local mechanism for *countering* the influence of the OWRC on development. Consider the following comments from academic experts at the time. First, from Professor Henry Mayo (Carleton University) when writing about the need for a regional government in Niagara:

The OWRC water and sewerage policy should therefore, wherever possible, be coordinated with a locally adopted overall land use plan covering a wide area. If this is not the case, urban development will be influenced more by the presence of sewers and water mains than by sound land use planning. The OWRC would, in effect, be determining land use ...

OWRC policy constitutes an argument for regional planning ... and there is not much reason to suppose it will occur without a firm base in regional government.⁷³

Professor Eric Beecroft (the University of Western Ontario) reinforced this point:

It is now possible for the province to plan, construct and operate, region by region, the entire facilities required for water supply and pollution control ...

Certainly we should welcome the province's initiative and the very practical benefits to be gained by the province's assumption of responsibility for capital borrowing. It is our failure to create viable municipal centres at the regional level ... that should be our concern. Water use and water-purification must be related to our programs for land-use and the location of industry, agriculture, housing, recreation, and the means of transport. It is a multi-purpose regional government that appears to be needed.⁷⁴

Between 1969 and 1975 the Ontario legislature established 12 two-tiered restructured systems of municipal government (ten regional municipalities,

⁷³ Ontario, Department of Municipal Affairs, Niagara Region Local Government Review, 1966, *Report* (Toronto: the department) p. 12.

⁷⁴ Eric Beecroft, 1966, *The Municipality's Role in Water Management* (Ottawa: Canadian Federation of Mayors and Municipalities), pp. 16–17.

one regional district, and one restructured county). In each case – contrary to the situation within Ontario’s traditional, two-tier county-based system – the provision of piped water became a regional, or upper-tier responsibility. In Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Muskoka, Ottawa-Carleton, Oxford, Peel, and Sudbury, the regional level was also made responsible for distributing water to individual consumers, thereby eliminating all direct lower-tier municipal responsibility for the water supply system. In each of the 12 cases, the water supply system was made a direct regional responsibility; there were no regional special-purpose bodies established for water supply.

The creation of the OWRC in the 1950s was about encouraging the provision of water-related municipal infrastructure necessary for local economic development; the creation of regional governments in the 1960s and 1970s was about planning and controlling the physical manifestations of economic development. As we have noted, jurisdiction over water-related infrastructure was seen as a crucial tool for regional governments to carry out their central mission.

4.6 Public Utilities Commissions

It is important to realize, however, that the effects of the OWRC and of regional governments were quite different in different parts of the province. For example, major facilities owned and operated by the OWRC were built in Peel County; then the Regional Municipality of Peel was established, in theory at least, to help plan and control the urban growth that the facilities made possible. In areas of the province that were not growing so quickly – Walkerton, for example – there were no facilities owned and operated by the OWRC and there were no regional governments. Instead, local PUCs carried on much as before, except that they could receive capital subsidies and were subject to increasing regulatory oversight, first from the OWRC and, after its demise, from the Ministry of the Environment. By the mid-1970s, the provincial system for water supply was fragmented into three quite different sectors: (1) areas served by provincially owned and operated facilities; (2) areas served by metropolitan and regional governments operating their own facilities; and (3) other areas in which water was likely to be supplied by local water or public utilities commissions.

In 1986, the Ontario Ministry of the Environment was itself directly operating 99 of the province’s 466 water treatment plants. These provincial plants were

producing 15.5% of the province's municipal water supply.⁷⁵ Even within the same municipal jurisdiction, however, some plants could be provincially owned and operated and some would not be. Figure 4-1 shows how water supply was organized within Ontario's municipal structure in 1990. There is no attempt to account for provincially owned and operated facilities, only to classify all municipalities that existed at the time as to their formal responsibility (if any) for water supply.

4.7 Ontario Clean Water Agency

The creation of the Ontario Clean Water Agency (OCWA) in 1993 had no effect on how municipalities were organized to supply water. OCWA took over the Ministry of the Environment's role with respect to owning and/or operating water supply facilities, just as the ministry had previously taken over from the OWRC. In other words, OCWA was a direct descendant of the OWRC.

4.8 Harris Government Initiatives

In 1996, the Harris government sponsored two pieces of legislation, Bills 26 and 86, that amended the *Public Utilities Act* and had the effect of strengthening municipal councils with respect to water commissions and public utility commissions that are responsible for water supply. Freeman has pointed out that

the autonomy that water and public utilities commissions have enjoyed from municipal councils has rested in their *Public Utilities Act* base. From the inception of the Act in 1913, they could only be established and disestablished with the 'assent of the electorate' ...⁷⁶

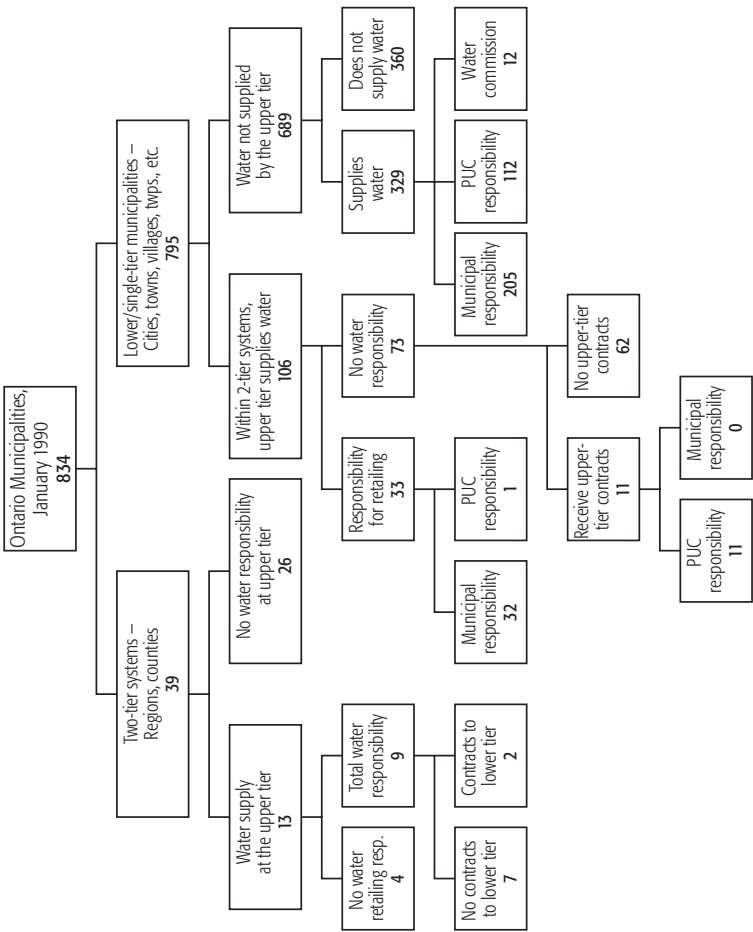
However, the new legislation effectively made it possible for municipalities to abolish or alter such commissions (with ministerial approval) as part of restructuring plans or, in other circumstances, simply to pass by-laws to override the necessity of gaining the "assent of the electorate."⁷⁷ They could not, however, act to change their functions with respect to electricity.

⁷⁵ Ontario, Ministry of the Environment, Water Resources Branch, Water and Wastewater Management Section, Municipal Pollution Control Unit, 1986, *Municipal Water Treatment Works in Ontario* [Toronto: the ministry] p. 7.

⁷⁶ Freeman, 1997a, p. 15.

⁷⁷ Ibid., pp. 15–16.

Figure 4-1 Provision of Water in Ontario Municipalities – 1990



Sources: Ontario, Municipal Affairs, 1990, *Municipal Directory 1990* (Toronto: Queen's Printer), pp. 280-88 and 300-01; Ontario, Environment, 1986, "Ontario water treatment plant listing," December, telephone interviews with selected officials from local water authorities.

These changes were part of the provincial-municipal disentanglement/Who Does What process that was so important in the early and mid-1990s. For example, the Hopcroft report in 1991 found that

... accountability would be better served with fewer special purpose bodies. The issue here is not special purpose bodies that are directly accountable to municipal council; the committee feels that the number and scope of these types of boards and commissions should remain a local decision. The problem arises from provincially mandated special purpose bodies where both political and financial accountability are beyond the reach of municipal council.⁷⁸

Provincial requirements for local referendums to eliminate commission control over water were a form of provincial regulation that municipalities did not like. Eliminating such requirements – and alienating such relatively weak organizations as the Ontario Municipal Water Association – was much easier for the province to accomplish than taking on other powerful interests, such as the Municipal Electric Association and the police lobby, which were adamantly opposed to allowing municipal councils to have unfettered control over electricity and police.

Bills 26 and 86, together with the ministerial regulations that they authorized, also made it easier for lower-tier municipalities within counties to decide among themselves to move jurisdiction for water and wastewater services upward to the county.⁷⁹ It appears, however, that no such changes have yet been made.

4.8.1 *Water and Sewage Transfer Act, 1997 (Bill 107)*

By far the most important piece of legislation with respect to water that the Harris government has sponsored is the *Water and Sewage Transfer Act, 1997* (Bill 107). This legislation was introduced as a direct result of findings of the Who Does What Panel. After confirming that municipalities should “be fully responsible for the provision of water and sewer services,” panel members stated the following:

⁷⁸ Ontario, Ministry of Municipal Affairs, 1991, p. 43.

⁷⁹ Freeman, 1997a, p. 16.

Hand-in-hand with the consolidation of the responsibility for delivery of sewer and water at the municipal level, the sub-panel feels that all treatment facilities should be owned by the most appropriate municipal government. In the case of provincially-owned systems [referring to OCWA] serving individual municipalities, ownership should be transferred to the municipality in which they are located, if necessary by legislation.⁸⁰

For facilities serving more than one municipality, the panel briefly outlined various alternative arrangements for municipal ownership, the key point being that the province, through OCWA, would no longer own any facilities. The panel's only qualification was this:

Notwithstanding, the sub-panel notes that some municipalities may be reluctant to assume ownership of older facilities in the latter stages of their life cycle, or which may be out of compliance. The sub-panel recommends that the province address all existing compliance problems prior to transferring a facility to a municipality.⁸¹

Debate in the Legislature on Bill 107 focused on privatization. Opponents claimed that municipalities taking possession of OCWA facilities might well not be able to afford to operate them and would be forced to sell to the private sector. The government claimed that it was actually acting to prevent undue privatization by requiring any municipality that did sell its waterworks assets to repay the cost of previous provincial capital grants. Despite all the rhetoric, the bill had only a limited impact on provincial–municipal relationships. Most of the municipalities that already owned and operated their own waterworks were not affected at all. Contrary to many claims made at the time, municipal indebtedness was not increased by the transfer of ownership. Municipalities were already responsible for funding the non-subsidized capital costs of provincially owned facilities. The subsidies program was not affected by the legislation.

It was OCWA that was most affected by the legislation. It was no longer in the business of owning waterworks facilities. But even so, it remained very much in existence, continuing to provide waterworks operational and management services on the same contractual basis for most of its municipal clients and continuing to operate, albeit on a new contractual basis, most of the facilities

⁸⁰ Crombie and Bell, p. 3.

⁸¹ Ibid., p. 4.

transferred from it to the new municipal owners. Indeed, OCWA has been so successful in winning municipal contracts, notably in Peel Region, that private-sector operators have retreated significantly from the Ontario market, one that they have found remarkably hostile given the apparent political objectives of the current provincial government. As of March 1998, however, OCWA has officially been referred to the government's Office of Privatization so that its status as a public-sector organization can be reviewed.⁸²

4.8.2 Municipal Restructuring

Two other recent policy initiatives of the provincial government have had much more impact on the local government of water than Bill 107. The first relates to municipal restructuring and the second to the reorganization of the electricity industry. Each will be treated in turn. There is no need here to revisit the debate about municipal amalgamation.⁸³ Two points, however, need to be made with respect to the concerns of this paper. The first is that water supply was not a particular concern of the advocates of amalgamation, either provincially or locally. These were amalgamations that were not driven by any particular functional concerns. The apparent motivation was to reduce costs and the number of local elected officials, and to increase economic competitiveness. No doubt dozens of local studies in the province claim that particular municipal amalgamations will reduce the costs of providing water. We do not know if such cost reductions have materialized, nor do we know what effect, if any, they might have had on the quality of the service. What we do know is that none of these studies seriously examined the actual operation of water supply systems. Therefore, such considerations could not have influenced decisions about particular amalgamations. For example, there is no evidence whatever that any amalgamations resulted from the fact that particular municipalities shared common sources of water supply; nor is there evidence that others were prevented because the relevant municipalities drew on quite different sources of water supply. All we know is that in 1990 there were 834 municipalities in Ontario and that on January 1, 2001, there were 447. (See Table 4-3.)

⁸² Ontario, Office of Privatization, 1998, "Government's role in operation of water and sewage treatment systems to be reviewed," News release, March.

⁸³ One of this paper's co-authors, Sancton, has arrived at some rather strong conclusions on the subject, the nature of which is easily discerned from the title of his latest book, *Merger Mania: The Assault on Local Government* (Sancton, 2000). For recent events in Ontario, see pp. 101–59.

In any event, even if the territorial imperatives of a safe, efficient water supply system have transcended municipal boundaries, Ontario possessed provincial mechanisms for the building of such systems from 1956 (creation of the OWRC) until 1997 (passage of Bill 107). Many such systems have already been built. Even in the absence of provincial authority to build intermunicipal systems,

Table 4-3 Provision of Water in Ontario Municipalities

Water Responsibility/Year	1990	2000	2001
No. of Ontario Municipalities	834	571	447
<i>Two-tier systems – regions, counties</i>	39	35	30
Water supply at upper tier	13	12	8
<i>No water retailing responsibility</i>	4	3	3
<i>Complete water responsibility</i>	9	9	5
1. No contracts to lower tier	7	9	5
2. Contracts to lower tier	2	0	0
No upper-tier water responsibility	26	23	22
<i>Lower/single-tier municipalities – Cities, towns, boroughs, villages, townships, etc.</i>	795	536	417
<i>Within 2-tier systems where upper-tier supplies water</i>	106	87	57
<i>Responsibility for retailing</i>	33	28	28
1. Municipal responsibility	32	28	28
2. PUC responsibility	1	0	0
<i>No water responsibility</i>	73	59	29
a. Received upper-tier contracts	11	0	0
PUC responsibility	11	0	0
Municipal responsibility	0	0	0
b. No upper-tier contracts	62	0	0
<i>Water not supplied by upper tier</i>	689	449	360
<i>Lower/single-tier supplies water</i>	329	272	235
1. Municipal responsibility	205	228	220
2. PUC responsibility	112	41	15
3. Water commission responsibility	12	3	0
<i>Does not supply water</i>	360	177	125

there is still nothing preventing joint municipal action. In southern Saskatchewan, for example, the municipalities of Regina and Moose Jaw, 60 kilometres apart, built a shared water supply facility at Buffalo Pound Lake in 1951 that still provides water for both communities to this day.⁸⁴

Some of the municipal amalgamations in Ontario had the effect of moving the water supply function from a public utilities commission to the direct control of the newly amalgamated municipality. One such amalgamation, the city of London and the town of Westminster, actually occurred in 1993 under the previous NDP government. In his report to the minister of municipal affairs recommending the merger, John Brant also recommended that the water supply function be moved from the PUC directly to the city. His entire analysis of the issue consisted of the following:

Water and sewage are a single subject in both planning and provision of an area's infrastructure and cannot be managed independently. Several suggestions were made that the opportunity to surcharge water usage as a measure of sewage creation, particularly in industrial situations, makes a single responsible body for water and sewage essential.⁸⁵

Such a bald statement contradicted decades of practical experience in Ontario. Nevertheless, the recommendation was implemented.

The commissioner whose report had the effect of merging the city of Chatham with all the municipalities of Kent County similarly devoted little attention to water. He noted that "... Kent County has 11 public utilities commissions providing electricity to the municipalities throughout the county. Nine of these commissions supply water as well, and in some cases, the water is extended into the rural areas." Without any further analysis of water supply issues, the commissioner concluded that "the new municipality of Chatham-Kent would be well served by one public utilities commission, responsible for both electricity (hydro) and water, appointed by and from the new council, giving due regard

⁸⁴ Andrew Sancton, Rebecca James, and Rick Ramsay, 2000, *Amalgamation vs. Inter-Municipal Cooperation: Financing Local and Infrastructure Services* (Toronto: Intergovernmental Committee on Urban and Regional Research), pp. 53–4.

⁸⁵ Ontario, Ministry of Municipal Affairs, Greater London Area Arbitrator, 1992, *Co-opportunity: Success through Co-operative Independence* ([Toronto: the ministry] April), p. 16.

to the importance of elected accountable commissioners.”⁸⁶ Such a decision had virtually the same effect as making the new municipality directly responsible for water. The elaborate wording was probably due to a desire, for the short term at least, to keep the local electricity service operated by a body that met the requirements of the *Public Utilities Act*.

In another commission, the 137-page final report amalgamated all the municipalities of Victoria County into the new city of Kawartha Lakes but included no analysis of water supply issues.⁸⁷ After having been the responsibility of various public utilities commissions in the area, water supply is now the responsibility of the new city council.

4.8.3 Reorganization of Electricity Industry

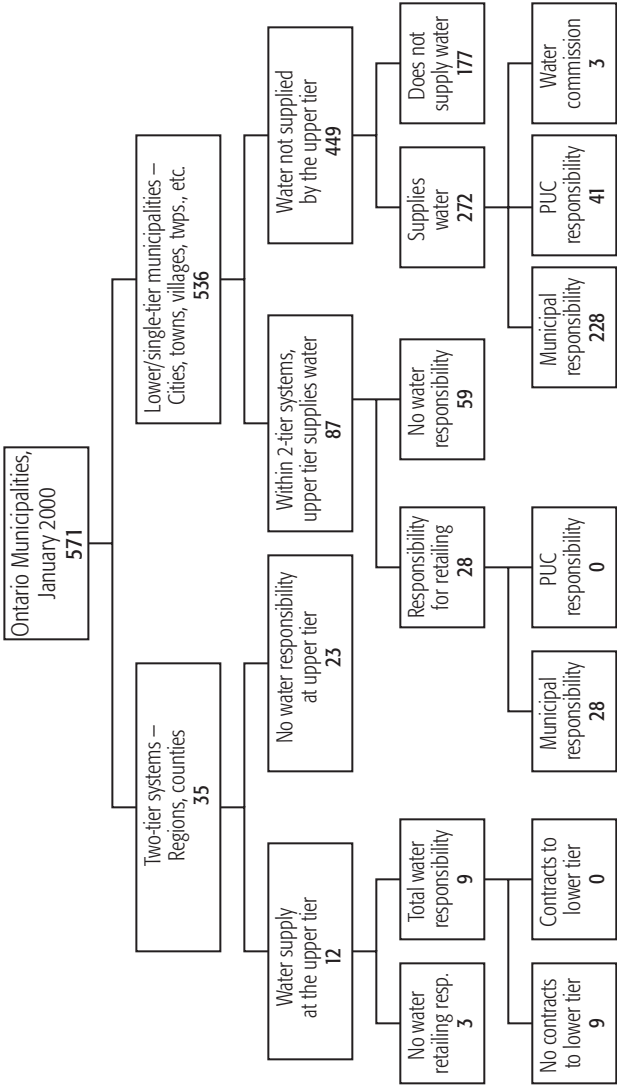
The effects of the government’s electricity policies have had an even greater impact on public utilities commissions than amalgamations. At the local level, the policies’ main impact has been to force municipal councils to establish new companies under the *Ontario Business Corporations Act* to own and operate local electricity assets. This has meant that public utilities commissions no longer deal with electricity, causing many municipal councils (and various participants in the municipal restructuring process) to question whether they are needed at all. Table 4-3 shows that, while there were 124 PUCs and water commissions with responsibility for water supply in 1990, there were only 15 in 2001.

Figures 4-1 to 4-3 provide details on the organizational arrangements for the provision of municipal water supply for three different years: 1990, 2000, and 2001. The figures show the extent of the dramatic changes with respect to municipal organization concerning water supply that have been experienced in Ontario over the last decade, and especially very recently. To facilitate comparison, Table 4-3 summarizes the contents of the three figures.

⁸⁶ Ontario, Ministry of Municipal Affairs and Housing, 1997, *Final Restructuring Proposal for Kent County and the City of Chatham and Order of the Commission* ([Toronto: the ministry] April 28), pp. 22–23.

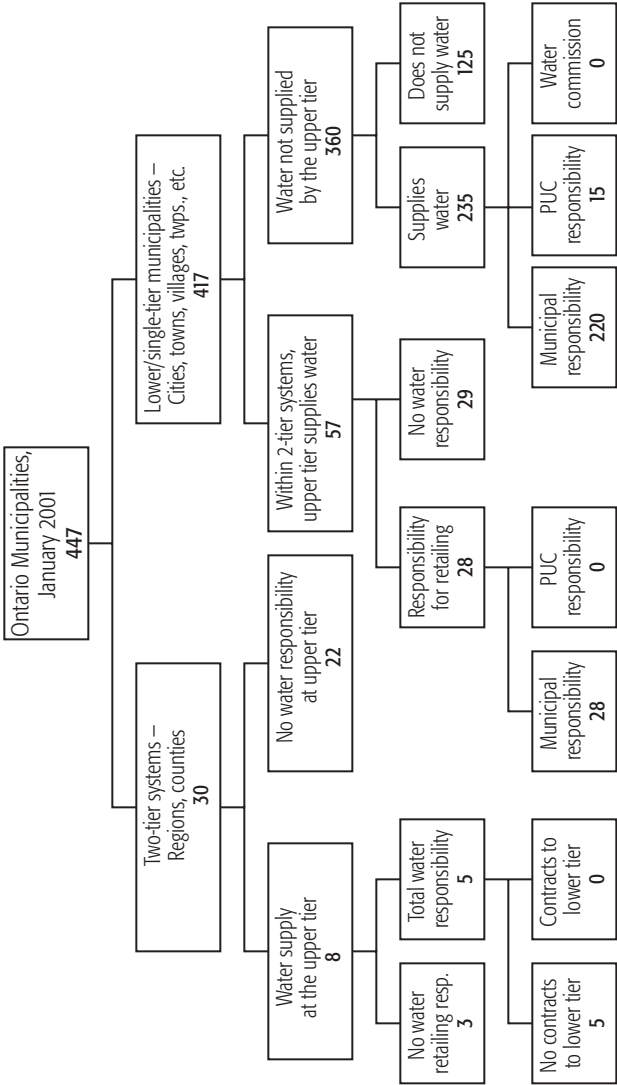
⁸⁷ Ontario, Ministry of Municipal Affairs and Housing, Victoria County Restructuring Commission, 2000, *Municipal Government for Victoria County: A New Beginning – Final Report and Order* ([Toronto: the ministry] April 19).

Figure 4-2 Provision of Water in Ontario Municipalities – 2000



Sources: Assoc. of Municipal Managers, Clerks and Treasurers of Ontario, *2000 Ontario Municipal Directory* (Toronto: AMCTO), pp. 43–132; Ontario, Environment, 2000, “Ontario Drinking Water Surveillance Program Plant Listing,” November; telephone interviews with selected officials from local water authorities.

Figure 4-3 Provision of Water in Ontario Municipalities – 2001



Sources: Assoc. of Municipal Managers ... pp. 43–132; Ontario, Environment, 2000, "Ontario Drinking Water Surveillance ..."; Ontario, Municipal Affairs and Housing, 2000, "Restructuring Flash News," August 1; telephone interviews with selected officials from local water authorities.

4.9 The New Public Management Approach

What is truly remarkable about recent issues relating to the organization of water supply systems in Ontario is the almost complete absence of any reference to the principles contained in what academics call “the new public management,” an approach popularized for practitioners in the best-selling book, *Reinventing Government*.⁸⁸ Ontario governments of various political stripes have seemed less interested in implementing such principles than in rigidly determining what government functions are provincial and what are local. Notwithstanding its apparent commitment to these principles, the current Ontario government has maintained its presence in water supply operations through its ownership of OCWA, an organization that seems remarkably congruent with the new public management. For example, its organizational form is that of a special operating agency, with its own board of directors and a measure of independence from the day-to-day concerns of the government; it competes openly and effectively with the private sector; it was available to take over operation of the Walkerton water supply in a crisis situation at a moment’s notice. There are many reasons to celebrate OCWA rather than to treat it as an embarrassing remnant from earlier times when the provincial government was much more directly involved in the provision of water.

Because special operating agencies such as OCWA seem to work at the provincial level, it is surprising that provincial officials have not encouraged them more at the local level. They have done so with respect to electricity – most municipal corporations now own companies that operate electricity-distribution systems. For water supply, however, most municipalities have taken direct responsibilities themselves and now manage the function as a line department in the municipal bureaucracy. Some still have the theoretical and legal option of operating water supply through a public utilities commission or a water commission but, as we have seen, on January 1, 2001, there were only 15 such commissions remaining in the entire province.

The Ontario Municipal Water Association (OMWA) still favours directly elected water commissions because it considers this the best method of perpetuating efficient, self-financing public water supply systems and of insuring that ‘profits’

⁸⁸ Christopher Hood, 1991, “A public management for all seasons?” *Public Administration*, vol. 69, no. 1; Peter Aucoin, 1995, *The New Public Management: Canada in Comparative Perspective* (Montreal: Institute for Research on Public Policy); David Osborne and Ted Gaebler, 1992, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (Reading, Mass.: Addison-Wesley).

are not directed to other municipal activities. The Association of Municipalities of Ontario (AMO) wants municipalities to be able to decide for themselves what to do about their own structures for delivering local services, including water. But one option that municipalities appear not to have considered is the establishment of municipally owned companies to operate water supply systems. Such an option should at least be on the agenda for public debate.

Under current Ontario law, municipalities can contract out the operations of their water supply systems. Many have chosen to do so, with OCWA being the main contractor.⁸⁹ They also have the right to sell their water supply systems to private companies, as long as they refund to the province any capital subsidies they might have received for these systems. Notwithstanding the fears of the critics of Bill 107, none have chosen to sell their systems. There are no apparent advantages in pursuing this particular course of action, presumably because water supply remains a natural monopoly, because within a particular water distribution system there can be no competing suppliers, and because there are no viable substitutes for piped water, especially for sanitary and cleansing functions.

5 Conclusion

Given all the upheaval to which Ontario municipalities have been subjected in recent years, it seems hard to believe that further drastic structural changes – such as stripping them of their water supply function – could possibly be justified. Nor does there seem to be any special virtue in forcing them all to follow a particular organizational model, including contracting out, be it to OCWA or anyone else. But there are aspects of each of the three major issues – public health, finance, and organization – discussed in this paper that merit further consideration.

5.1 Public Health Concerns

First, there can be no doubt, in light of the events at Walkerton, that all aspects of public-health concerns about water – including the roles of the provincial and local governments – need to be revisited. The temptation is to suggest that

⁸⁹ The best-known example of a contractor other than OCWA is Azurix North America, which purchased Philip Utilities in 1999. In 1994, Philip Utilities and the Regional Municipality of Hamilton-Wentworth entered into a contractual arrangement concerning the operation of water supply and sewage treatment facilities.

one big provincial organization, such as the Ontario Ministry of the Environment, be charged with comprehensively monitoring the quality of municipal water supplies throughout the province. Indeed, such a suggestion makes perfect sense and is likely in line with what most Ontarians expect from their provincial government.

Providing safe water is likely to remain a municipal responsibility, and municipalities – with perhaps the most rare of exceptions – will be just as concerned as the province to ensure that their water supplies are safe. This is as it should be. The point here is that *both* provincial *and* municipal responsibility for ensuring safe water is a form of double protection that should be applauded and supported. It is not evidence of wasteful overlap and duplication. Rather than establishing a situation in which officials at each level hope those at the other will be doing the work, the various levels should be given the opportunity to compete with each other to be more conscientious, more alert, and more technically competent. Indeed, such a form of competition might well produce better results than exhortations of individuals within a single large organization to try harder. It is admittedly difficult to test such a proposition in the real world, but it *is* the approach that seems most consistent with current approaches to management, both in the private and public sectors.

5.2 Provincial Funding for Water Supply

With respect to provincial financial assistance for municipal water supply systems, the only real issue is whether users should pay the full cost of piped water. If so, there is no place for provincial subsidies, capital or otherwise. If small towns need financial help or if new rules are necessary to facilitate capital borrowing, then such issues need to be addressed apart from concerns about water supply systems. If municipalities are so overburdened with new costs that they cannot take on the full capital costs of water supply systems, the answer is not to provide capital subsidies for water to make up for the alleged failings of provincial policies in other sectors.

Municipalities are always going to ask for whatever provincial funds they think might be available. Because of the events at Walkerton, municipal leaders probably believe that capital funds to ensure safe water should be an easy target. But, if financial relief for municipalities is genuinely required – and there is a strong case that it is – then provincial funds (or shares of provincial tax revenues) to reduce municipal contributions to OntarioWorks payments or to public-

transit deficits make much more sense economically. Income support payments and subsidized public transit produce positive externalities outside municipalities in a manner that water supplies do not. It is true that impure water in a public system produces huge negative externalities, but the costly effects beyond that municipality's are never as high as the damage caused within the municipality itself. To repeat a point made earlier, it is never in the economic interests of a particular community to provide itself with impure water although it might well be in the interests of the majority not to provide decent public transit or welfare services.

5.3 Organization of Water Supply Systems

Privatization of water supplies dominated public discussion of Bill 107 in 1997. It turned out in the real world not to be much of an issue. Ontario citizens seem to be in no mood to sell their local water supply systems. There is no evidence that they should be. In any event, even if there were such evidence, we must always remember that a privatized system would require a comprehensive regulatory system. As explained in our Introduction, this is because water supply is a 'toll good' that will always be distributed by a monopoly operator. But, even if there is no privatization, there are many reasons to applaud the fact that private companies now compete for contracts to manage and operate Ontario's waterworks facilities. There are perhaps even more reasons to be pleased that OCWA, a provincially owned agency, has been able to compete successfully for the same contracts and that some municipalities consider their own line departments to be at least equally as effective. There is now competition for the management and operation of Ontario water supply systems and we are all likely to benefit, as long as the rules are fair and monopolies are prevented from emerging.

It is possible that elected councils in Ontario's smaller municipalities might not be capable of determining effectively what is in their own best interests with respect to organizing water supply. This (in itself) is not a reason for forcing them to amalgamate with their neighbours or for placing ownership of the local water supply system in some huge and distant organization over which local people have no control. There could be justification, however, for provincial rules requiring municipalities below a certain population level (to be determined by people with better technical knowledge than us) to contract the management and operation of their local systems to OCWA, or to an approved private company.

This is the kind of incremental response to provincial–local problems – together with the modest proposal outlined earlier to allow larger municipalities to establish their own companies to operate water supply systems – that has characterized Ontario’s responses to such issues in the past. It produces rules, arrangements, and practices that might seem unduly complex to the outsider. But most problems of public policy and administration are complex, including the problem of efficiently providing safe piped water in both large and small communities. It should not be surprising, therefore, that most such problems require more than simple solutions.

References

- Armstrong, Christopher, and H.V. Nelles. 1988. *Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830–1930*. Toronto: University of Toronto Press.
- Association of Municipal Managers, Clerks and Treasurers of Ontario. 2000. *2000 Ontario Municipal Directory*. Toronto: the association.
- Aucoin, Peter. 1995. *The New Public Management: Canada in Comparative Perspective*. Montreal: Institute for Research on Public Policy.
- Beecroft, Eric. 1966. *The Municipality's Role in Water Management*. Ottawa: Canadian Federation of Mayors and Municipalities.
- Bendor, Jonathan B. 1985. *Parallel Systems: Redundancy in Government*. Berkeley: University of California Press.
- Buchanan, E.V. 1968. *London's Water Supply: A History*. London, Ont.: London Public Utilities Commission.
- Crombie, David. 1996. Letter to the Honourable Al Leach, Minister of Municipal Affairs, December 23 [released by the Government of Ontario in connection with the Who Does What Panel].
- Crombie, David, and William F. Bell. 1996. Letter to the Honourable Al Leach, Minister of Municipal Affairs, November 4 [released by the Government of Ontario in connection with the Who Does What Panel].
- Freeman, Neil B. 1997a. "The future of OCWA and Ontario's water industry." A submission prepared for the Bill 107 hearings of the Standing Committee on Resources Development, Legislature of Ontario, [Toronto:] April 15.
- . 1997b. "Ontario's water industry: New legislative framework." A report prepared for the Ontario Municipal Water Association (OMWA). [Toronto:] April 21.
- Hood, Christopher. 1991. "A public management for all seasons?" *Public Administration*. Vol. 69, no.1.
- Landau, Martin. 1969. "Redundancy, rationality, and the problem of duplication and overlap." *Public Administration Review*. Vol. 29, no. 4.
- Newbery, David M. 1999. *Privatization, Restructuring, and Regulation of Network Utilities*. Cambridge, Mass.: The MIT Press.
- Ontario. 1882. *Statutes*. [Toronto: Queen's Printer.]
- . [no date but after 1964]. *OWRC: Ontario Water Resources Commission*. [Toronto: OWRC] [pamphlet]

- Ontario. 1969–99. *Public Accounts*. Ministry of Environment, Environment and Energy, and Energy and Resources Management statements for the years 1969–99. [Toronto: Queen's Printer.]
- . 1970. *Revised Statutes*. [Toronto: Queen's Printer.]
- . 1977. *Report of the Provincial-Municipal Grants Reform Committee*. Volume 1. [Toronto: Queen's Printer.]
- . 1997. “‘Who Does What’ reforms”: Announcement package for the week of January 13, 1997. [Toronto.]
- Ontario. Legislative Assembly. [various dates]. *Hansard*. [Toronto: Queen's Printer.]
- Ontario. Legislative Assembly. Committee on General Government. 1993. *Hansard*. [Toronto: Queen's Printer], August.
- Ontario. Ministry of Environment and Energy. 1994. *Ontario Drinking Water Objectives, revised 1994*. Toronto: Queen's Printer.
- Ontario. Ministry of Municipal Affairs. 1974. *Provincial Assistance to Municipalities, Boards and Commissions 1974*. [Toronto: the ministry.]
- . 1975. *Provincial Assistance to Municipalities, Boards and Commissions 1975*. [Toronto: the ministry.]
- . 1979. *Provincial Assistance to Municipalities, Boards and Commissions 1979*. [Toronto: the ministry.]
- . 1990. *Municipal Directory 1990*. Toronto: Queen's Printer.
- . 1991. *Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial–Municipal Financial Relationship*. [Toronto: the ministry] January 3.
- Ontario. Ministry of Municipal Affairs. Greater London Area Arbitrator. 1992. *Co-opportunity: Success through Co-operative Independence*. [Toronto: the ministry], April.
- Ontario. Ministry of Municipal Affairs. Niagara Region Local Government Review. 1966. *Report of the Commission*. Toronto: the department.
- Ontario. Ministry of Municipal Affairs and Housing. 1997. *Final Restructuring Proposal for Kent County and the City of Chatham and Order of the Commission*. [Toronto: the ministry] April 28.
- . 2000a. “Harris government announces next steps in Operation Clean Water including capital funding and long-term strategy.” Press release. [Toronto: the ministry] August 10.
- . 2000b. “Restructuring FlashNews.” [Toronto: the ministry] August 1.
- Ontario. Ministry of Municipal Affairs and Housing. Victoria County Restructuring Commission. 2000. *Municipal Government for Victoria County: A New Beginning – Final Report and Order*. [Toronto: the ministry] April 19.

- Ontario. Ministry of the Environment. 1986. *Ontario Water Treatment Plant Listing*. [Toronto: the ministry] December.
- . 2000a. *Drinking Water in Ontario: A Summary Report, 1993–1997*. Toronto: Queen's Printer.
- . 2000b. *Operation Clean Water: A Progress Report*. [Toronto: the ministry] September.
- . 2000c. *Ontario Drinking Water Surveillance Program Plant Listing*. [Toronto: the ministry]
- Ontario. Ministry of the Environment. Water Resources Branch. Water and Wastewater Management Section. Municipal Pollution Control Unit. 1986. *Municipal Water Treatment Works in Ontario*. [Toronto: the ministry]
- Ontario Municipal Board. 1953. *Decisions and Recommendations of the Board Dated January 20, 1953*. Toronto: Queen's Printer.
- Ontario. Office of Privatization. 1998. "Government's role in operation of water and sewage treatment systems to be reviewed." News release. [Toronto: the office] March.
- Ontario. Office of the Premier. 1997. "Who Does What: A new partnership for taxpayers." News release. [Toronto] May 1.
- Ontario Water Resources Commission. 1970. *Annual Report*. [Toronto: Queen's Printer.]
- Osborne, David, and Ted Gaebler. 1992. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. Reading, Mass.: Addison-Wesley.
- Peterson, Paul E. 1995. *The Price of Federalism*. Washington, D.C.: The Brookings Institution.
- Sancton, Andrew. 1992. "Provincial-municipal disentanglement in Ontario: A dissent." *Municipal World*. Vol. 102, no. 7.
- . 2000. *Merger Mania: The Assault on Local Government*. Montreal and Kingston: McGill-Queen's University Press.
- Sancton, Andrew, Rebecca James, and Rick Ramsay. 2000. *Amalgamation vs. Inter-Municipal Cooperation: Financing Local and Infrastructure Services*. Toronto: Intergovernmental Committee on Urban and Regional Research.