

# **The Walkerton Inquiry**

## **Detailed Notes on the Expert Meeting**

### **“Government Responsibility for Drinking Water”**

**Ryerson University  
May 16, 2001**

#### **FINAL DRAFT**

#### **Topics Discussed**

Role of the Federal Government  
Role of the Provincial Government  
Role of the Municipal/Regional Governments  
The Need for Co-ordination Among Levels of Government  
First Nations and Responsibility for the Safety of Drinking Water

The detailed notes for this expert meeting have been prepared to brief the Commissioner and to facilitate participation in Part 2 by those who were not present at the meeting. The notes are intended to represent the major items of discussion and positions put forward by participants. They are based on notes taken by Rapporteurs and are not intended to be an official report or transcript of the meeting. They do not represent the views of the Commissioner.

## Meeting Summary

The agenda, prepared for the meeting by the Chair, provided the framework for the meeting notes. The notes summarize the main points of contention and agreement between the parties under the themes of the agenda:

- 1. Role of the Federal Government:** There was general agreement that room exists for a Federal role in managing drinking water. An obligation for First Nations was recognized, and further areas of responsibility can extend to research and development, setting of standards, source protection, and financing. It was noted that confusion exists in terms of lines of responsibility. Overlaps in this regard mean roles need to be clearly defined.
- 2. Role of the Provincial Government:** Responsibility for drinking water safety clearly rests with the Province. This responsibility includes the development and maintenance of a policy framework or strategy, as well as specific aspects of drinking water safety, such as infrastructure and long term sewer and water management. Serious consideration must be given to watershed management. Concerns about capacity were raised.
- 3. Role of the Municipal/Regional Governments:** There is a definite role for municipalities to play in determining what is desirable for individual communities. Notwithstanding this, the new regulations have created economic hardships for some small municipalities to be able to afford operational costs. If municipalities continue to be responsible for the delivery of drinking water, the Province must recognize that one model does not fit all situations and provide a larger set of tools to assist the municipalities in this role. There are opportunities for economies of scale for municipalities' treatment and delivery of drinking water and these should be examined for viability.
- 4. The Need for Co-ordination Among Levels of Government:** Notwithstanding that various mechanisms for coordination already exist there is opportunity for better coordination to occur. Coordination should include all those affected and the appropriate mechanism should be chosen on a situation specific basis. A first step for coordination should include definition of roles and expectations of each role. Coordination, however, is not a substitute for good management and both are required.
- 5. First Nations and Responsibility for the Safety of Drinking Water:** The responsibility for safe drinking water is part of the federal government's fiduciary duty. While the federal government has jurisdiction over First Nation land, it lacks expertise in water standards and provision, an expertise which resides in the provincial government. Current provincial standards in Ontario, which are higher than federal ones for first nations lands, have created a two-tier level of standards for drinking water which is unacceptable. A more active provincial role would assist First Nations in attaining better quality drinking water. Coordination between the federal, provincial, municipal and First Nations is necessary. First Nations must participate in the development of any permanent or interim solution affecting their lives and lands. A sustainable solution, respectful of aboriginal rights, is the desired end goal.

## Meeting Participants and Affiliations

Chair	Ron Foerster
Issue Paper Author	Nicholas D'Ombra
Issue Paper Author, University of Ottawa	Jamie Benidickson
Issue Paper Author, University of Western Ontario	Andrew Sancton
Issue Paper Author, University of Western Ontario	Teresa Janik
Government of Ontario	
Ministry of the Environment (MOE)	Doug Barnes
Ministry of Natural Resources (MNR)	Peter Wallace
	David de Launey
Ministry of Municipal Affairs and Housing	Scott Thompson
Ministry of Agriculture, Food and Rural Affairs	Jim Wheeler
Ontario Superbuild	Geoff Hare
Smith Lyons	Jim Ayres
	John Callaghan
Association of Local Public Health Agencies (ALPHA)	Gordon Fleming
Ontario Water Works Association/Ontario Municipal Water Association (OWWA/OMWA)	Joe Castrilli
Ontario Public Service Employees Union (OPSEU)	Tim Hadwen
Canadian Union of Public Employees (CUPE)	Ron Crawley
Association of Municipalities of Ontario (AMO)	Nicola Crawhall
	Pat Vanini
Concerned Walkerton Citizens/ Canadian Environmental Law Association (CELA)	Theresa McClenaghan
	Rick Lindgren
Energy Probe	Tom Adams
Ontario Medical Association (OMA)	Carol Jacobson
Chiefs of Ontario	Jonathan Kahn
	Allison Thornton
Conservation Ontario (CO) / Grand River Conservation Authority	Charley Wort
	Bonnie Fox
	Paul Emerson
	Barbara Veale
Association of Chemical Professions of Ontario (ACPO)	Walter Brown
Research Advisory Panel Members	George Connell
	Doug MacDonald
	Allison McGeer
Walkerton Inquiry Staff:	James Van Loon
Rapporteur Team Leader	Carolyn Johns
Rapporteurs	Sarah Hartley
	Judith Muncaster

## **Discussion of Substantive Issues**

### **1. ROLE OF THE FEDERAL GOVERNMENT**

Overall, there was general agreement that the constitutional role of the federal government is clear under several sections of the constitution. Primary responsibility for drinking water is with the province. There is room for more federal involvement, however, this should not come at the expense of provincial responsibility. There is a federal role for R&D, standards setting, source protection and financing. There is some confusion in terms of lines of responsibility and overlap, therefore clarification of these roles is needed.

#### **1.1. Constitutional Jurisdiction**

There was general agreement on constitutional jurisdiction and discussion of statutory responsibility of the federal government in several areas.

##### ***Finance***

- It was suggested that there was constitutional support for a federal role in terms of finance and funding (OWWA/OMWA). This issue is discussed below under de facto power.
- The AMO noted that federal government has a fiduciary responsibility for financing.
- It was suggested that there is a constitutional basis (the federal spending power under the Constitution) for a federal role with respect to financing and funding (OWWA/OMWA)

##### ***First Nations and Federal Lands***

- The Federal role is a potential role, lying in a complex constitutional construction that will take time to clarify. For this reason, the Province should take a practical role in this area until the Federal role can be unpacked (D'Ombain).
- Federal and Provincial cooperation, not currently present, is essential regarding First Nations and Federal land, particularly for financing and enforcement etc. Coordination in this regard must be clear, and should not simply be an 'understanding' (D'Ombain).
- The Chiefs of Ontario pointed out that cooperation and coordination should be tripartite. The First Nations must be included in decision-making and management of water on Reserves
- The Federal government has a fiduciary responsibility for First Nations, including a responsibility to assess needs by analyzing both problems and solutions. It was stressed that the federal role was not just a jurisdictional issue, but also one that concerned the provision of resources. Once standards have been set, the federal government has a duty to provide funding and resources to meet those standards.
- At present the willingness and capacity of the federal government is not sufficient in this area. There is a practical need to increase provincial responsibility in this area

(Chiefs of Ontario)

- The role of medical officers on federal lands (Pearson Airport, military bases) is not clear. While they have no authority on federal lands, they may have responsibilities. It was noted that disease has no respect for political boundaries, therefore these roles and responsibilities need clarifying (OMA).

### ***The Fisheries Act***

- Energy Probe and the CELA suggested that one current area of federal responsibility for water quality was law enforcement through the Fisheries Act. Increased activity in this area of federal constitutional responsibility could have great consequences (Energy Probe)
- It was recognized that using this Act to protect aquatic ecosystems could have real benefits for human health (CELA).
- Responsibility for the Fisheries Act was passed to the Provinces in the 1990s, but the Provinces failed to embrace this responsibility, leaving the Act between the two levels of government (Energy Probe)
- However, Conservation Ontario noted that Conservation Authorities support implementation of the Fisheries Act through agreements with the federal Department of Fisheries and Oceans and this is thought to be an important tool in terms of source protection.
- OPSEU outlined however that the heart of the Fisheries Act is not drinking water protection.
- The Chiefs of Ontario pointed out that the aim of the Fisheries Act was not to protect water, therefore, while increased responsibility by the federal government was possible through this Act, it was not sufficient to ensure effective protection.

### ***Emergencies***

- CELA expressed the concerns of Walkerton citizens that the Federal government did not exercise its constitutional role and respond to the emergency in Walkerton.

### ***Peace, Order and Good Government (POGG) and the Criminal Law Power***

- OWWA/OMWA suggested that reliance on POGG as a basis for federal legislation would interfere with provincial authority to legislate with respect to drinking water. However, the criminal law power under the Constitution, because it has historically been the basis for federal health legislation and has been interpreted by the courts as being compatible with concurrent, non-conflicting provincial health legislation, would be less intrusive of provincial authority. A broad reading of the Supreme Court of Canada decision in *Hydro Quebec* supports this view.

### ***Other***

- CELA outlined that the federal government has a role to play in connections between waters, Great Lakes, international waters in terms of quantity and quality

## **1.2. De Facto power: Areas where the Federal Government can and/or should get involved?**

### ***Standard Setting, R&D, Resource Management***

- Due to economies of scale, the Federal government should be involved in setting standards (through federal/provincial forums) and R&D (AMO, Benidickson, Foerster).
- The CELA agreed that national minimum standards should be in place, but noted that this can lead to the problem of the lowest common denominator (where standards are set at the lowest level).
- The AMO also noted that standards should not be so broad that they require interpretation.
- It was suggested that the federal government had a responsibility for resource management (AMO).

### ***Finance***

- Discussion continued to move toward issues of finance despite the Chair's attempts to stay away from this issue. Finance was to be discussed at future meetings.
- Discussion in this area focused on an estimate "that \$9.1 billion is needed to rehabilitate Ontario's water and sewage systems" (referenced by D'Ombra as footnote 161, page 45 of his issue paper. Originally from the AMO Municipal Action Plan, June 2000).
- OWWA/OMWA outlined that there is a history of federal involvement with respect to financing of water and sewage works. If the estimate of \$9.1 billion needed to rehabilitate Ontario's water and sewage system is accurate, it is unclear whether the province and municipalities have sufficient resources to meet this need.
- The figure of \$9 billion was recognized to be just one estimate. It was noted that data does not currently exist to enable an accurate assessment. Studies are now being conducted to rectify this situation (Ontario Superbuild)

There was some contention on the role of the federal government in terms of funding, and further contention on the merits of grants or loans if such a role should exist.

- Energy Probe referenced the Sancton (p.18) and D'Ombra papers (para.388) when arguing that there should not be a federal financing role. Instead a user-pay system should be enacted. Federal financing, it was argued would run the risk of protracted discussions and government 'ping pong' between the Federal and provincial levels.
- AMO stressed that grants should be concerned with financing infrastructure in two important ways. First, concerning the deficit, a finite amount is needed to bring infrastructure up to safety standards. Second, investment is needed each year, forever. The OMA agreed, but noted that grants were unpredictable, funding should not be a grant and that funding must be sustainable and predictable - grants are subject to the whim of the province.
- However, the OWWA/OMWA argued for loans instead of grants based on problems

experienced with grants in the past outlined for example in the D'Ombrain report (pg.14 of D'Ombrain report notes that reliance on subsidies instead of charging real costs to customers had not served conservation or economic efficiency objectives).

### ***National Policy***

- Due to the impact of water allocation issues on water quality, it was suggested a need existed for a national water policy (Conservation Ontario).
- AMO suggested that the federal government needed to appreciate issues of capacity for implementation when setting policy and the relationship to public expectations.

### ***Food and Drug Act***

- What about the suggestion that drinking water be added to the Food and Safety Act? (Foerster)
- To use the Food and Drug Act would be a narrow approach. A more integrated, broad approach is needed (CELA).
- It was recognized that a new way of doing business was needed, one that involves all actors (OMA).
- Listing in the FDSA might make the public think the problem has to be addressed (OPSEU)
- Discussion on this Act was considered to be too narrow (MNR)

### ***Consensus*** (Foerster)

There is clear provincial responsibility and federal role should not take away from that. There is however definitely room for a federal role and scope in the constitution. A desirability for a federal role has been identified in the areas of source protection, international waters, standards and financing. Important for federal, provincial, municipal and first nations governments to work together.

### **1.3. Need for/availability of Federal leadership and coordination in respect of issues related to drinking water safety**

This issue was not directly addressed from a federal perspective. Issues of coordination and leadership are addressed in Section 4 of this report.

## **2. ROLE OF THE PROVINCIAL GOVERNMENT**

Overall, there was clear acceptance of the responsibility of the Provincial government. This responsibility included drinking water safety, infrastructure and long term sewer and water management. Pricing was also identified as a crucial issue.

### **2.1. Constitutional Jurisdiction**

- It was noted that while constitutional and statutory obligations exist for the province, there are so many different statutes with implications for drinking water that it "gets lost" in the different statutes (ALPHA).
- The OWWA/OMWA noted that the provincial government has the primary constitutional and statutory responsibility for addressing activities that lead to non-point source water pollution.
- CELA agreed with OWWA/OMWA that the province does not have a policy to deal with source protection. CELA summarized its jurisdictional review of "who is doing what" as part of its document "Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act" (see Appendix from CELA). This review attempts to provide greater clarification of the jurisdictional role of the provincial government, and fill in gaps that exist. A total of eleven areas of responsibility related to drinking water policy and management were reviewed.

## **2.2. De Facto Power**

### **2.2.1. *Are there aspects of the safety of drinking water where the Provincial government has, or should take responsibility including standard setting, source protection, treatment, distribution, as well as non-municipal and private systems?***

#### ***Need for a policy framework / strategy***

- There was agreement that it was a Provincial responsibility to develop and maintain a policy framework or strategy (D'Ombra, CELA, CO, Benidickson, MOE, MNR).
- There was some contention concerning what has already been achieved in terms of developing a policy framework and what should be included in this policy framework or strategy.
- It is the province's role to conduct an examination of its responsibility and then to translate this into the right institutions. These institutions are the fundamental building blocks of a policy framework. The MOE should be the lead authority, and policy should be built within this framework of institutions. Once these blocks are in place, finance, operations, roles of municipalities, and broader issues, such as ecosystem management, can be examined. Developing and maintaining a good strategic framework is a dynamic process (D'Ombra, CELA, Benidickson).
- The MNR agreed, but added that two problems existed. First, Federal jurisdiction is not considered reliable. Second, the outline of government sequencing offered by the D'Ombra paper may be difficult to achieve as it takes time, yet government may need to respond quickly.
- Sancton cautioned that there is a temptation when things go wrong to create new institutions but existing provincial and local institutions need to be recognized and flexibility for local conditions needs to be considered.
- The MNR noted that the Province already takes responsibility for the policy framework and argued that most of what was discussed in terms of a policy framework already exists and urged full consideration of the current framework: "lets not redesign the wheel". MNR also stressed that developing this kind of policy



framework takes time.

- At the moment, government is trying to identify the key drivers of behavior, rather than a coherent and comprehensive policy (Ontario Superbuild).
- It was acknowledged that theoretical discussion about strategies was relatively easy compared the practical difficulties of delivery. While there may not be a perfect policy, a system that can identify problems and provide reasonable security that they will be dealt with in some way should be the goal (D’Ombrain, CELA, Benidickson, AMO).
- The Province must provide a guiding vision within this framework (CELA).
- Benidickson noted the need for the Provincial government to take seriously the precautionary approach in developing a policy framework. In the past, government has been reactive, and is traditionally late and sluggish. Province has role in shaping public values in order to achieve a proactive approach. A framework of values is needed.
- The MNR noted the difficulty in achieving broad societal change. Full integration of all actors who are critical players, including the private sector, will be needed.
- The Provincial government must try to be aware of the unintended consequences of policy decisions. A policy framework capable of responding to these unintended consequences is needed. The example of small operators was offered. These operators cannot afford to manage their water resources, so two unintended consequences arise: either municipalities are asked for help, or further wells are dug which results (AMO).
- The Chiefs of Ontario noted that at present policy is developed by aggregating discrete functions, therefore externalities are created. For example, the Provincial government collects data in the Province, but not on First Nation reserves, leaving large gaps in knowledge within the Province. A more comprehensive approach is necessary.
- The Conservation Ontario stressed the importance of an integrated approach looking at all aspects of water when developing the policy framework
- The recent Gibbons Report may be relevant for discussions concerning an integrated approach (MOE, MacDonald)
- The MNR warned against considering a policy framework as a panacea.
- The MOE argued that considerable progress had been made in last nine months.
  - \* In August 2000 a new regulation for drinking water was announced including: regulation of quality standards; testing and sampling regimes; direct reporting regimes; requirements for treatment of groundwater and surface water by end of 2002; accreditation of labs; and quarterly reporting.
  - \* A capital upgrade program has been initiated, along with annual inspections of all water treatment plants, and engineer reports on Municipal systems.
  - \* Biosolid standards and applications are also regulated except in Northern Ontario .
  - \* There has also been consultation with agricultural operators and smaller water works for policy development. Further, since 1998, the Ministry has funded a series of groundwater identifications and assessments (quality, risks) have been carried out on risks and contaminants (30 of 34 studies completed so far) under the Groundwater Monitoring Program.

- \* Implementation of a provincial groundwater monitoring network is moving forward through agreements with Conservation Authorities.
- Studies are currently being conducted to look at financing, pricing, alternatives, and best practice. This will include looking at other regulated utilities (Ontario Superbuild).
- The MOE acknowledges there is more to be done.

### ***Capacity***

- Concerns were raised about Provincial government capacity in terms of implementation of policy, and crisis management. Government need to be fully equipped (D'Ombra, AMO).
- There is a need to establish what resources are needed and to provide these resources in order to effectively manage water quality (OPSEU).

### ***Other Aspects of Drinking Water Safety and Provincial Responsibility***

- The Province has a significant role to play regarding health concerns, particularly prevention and promotion (OMA, CELA).
- Historically municipalities were primarily responsible for public health, then as the problems of disease were better understood, the Province took over certain aspects of public health - there has been long standing cost sharing between the province and the municipalities (OMA).
- There is a need to clarify the roles of provincial agencies, municipalities and Conservation Authorities. There is definitely a provincial role in research, data collection and making data accessible. (CO)
- There was concern about whether municipalities were suitable for this role, as disease cannot respect political boundaries (OMA), and municipalities are not at the cutting edge of health (Sanction).
- There was general agreement that a Provincial role exists for education. This was considered to be a significant issue (MOE)
- There was agreement that the Province has a role to play in data gathering. The Province has a role in establishing and coordinating a computer database (OPSEU).
- The Chiefs on Ontario noted present inconsistencies in this regard concerning data gathering on First Nation reserves. It was argued to be irrational to leave these areas out of this Provincial role
- The Province has a role in terms of improvements in infrastructure (MacDonald)
- The Provincial role should include inspection of filtration plants and training. There is a need for private laboratories to be inspected and accredited by government, and for chemists to be licensed. The lack of a Provincial role here contributed to the problem in Walkerton (ACPO).
- There is a Provincial role for setting standards and objective limits (ACPO).
- The MOE raised concerns about the public (through representative government) making decisions for private owner-users. It was noted that the discussion at the meeting was concerned with treated water rather than owner-users.
- It was generally agreed that the Province had a role to play in source protection

(OWWA/OMWA, CELA, MOE).

- CELA noted that the present source protection approach is piecemeal now, and needs to be more comprehensive. The Province needs to exercise its authority in this area.
- There was concern that the Province needs to do more doing in terms of the management of non-point source water pollution (OWWA/OMWA). Two thirds of water pollution is from non-point sources, the bulk from agriculture and urban areas. It was noted that this was discussed extensively in a previous meeting.
- The MOE argued that progress is being made in this regard, including consultations with agricultural operators, and groundwater source assessment studies.

### ***Watershed Management***

- The need for watershed management, as an integrated approach, was recognized and the Conservation Authority model was recommend (Conservation Ontario).
- Connell raised concerns about managing on a watershed basis when water is piped in from outside the watershed. London was offered as an example.
- It was noted by Conservation Ontario that when water is piped from elsewhere, concern about watershed management tends to be reduced. However, water management is not solely concerned with drinking water, but also includes sewage, etc., therefore a strong case can still be made for using this approach. Connell agreed with this argument.
- Conservation Ontario argued that watershed management increases a general awareness of occurrences both up and down stream, brings relevant actors to the discussion table and that there is capacity for area municipalities and Conservation Authorities to work together.

### ***Finance***

- Discussion on the financial role of the government was limited by the Chair, as this issue was to be the focus of a later meeting.
- Following a question by MacDonald, Ontario Superbuild noted that in August 2000 a move to full cost pricing was announced by the government. At that time there was recognition to move with urgency to bring treatment facilities up to standard. Estimates were around \$240 million. It was also noted that the process of making policy is currently underway and will include funding from municipalities, although it is acknowledged that small municipalities will contribute less, based on their ability to pay. There is a commitment by the government to more funds should they be needed
- Sancton argued that providing more provincial money for upgrades violates user-pay principles.

#### ***2.2.2. Should the Provincial Government be the repository of ultimate responsibility in respect of matters affecting drinking water safety?***

There was agreement that the province holds the greatest responsibility for matters

affecting drinking water safety. However, some believed that there should be a national drinking water policy, the development of which should be led by the federal government. Moreover, notwithstanding that the expertise for drinking water quality resides with the province, constitutional jurisdiction for First Nation lands resides at the Federal level. Additionally, there was general agreement that it is desirable for local municipalities to assume a number of responsibilities with respect to the issue, including having a voice in decisions affecting their drinking water sources, treatment and distribution systems.

### **3. ROLE OF MUNICIPAL GOVERNMENT**

#### **3.1. Municipal role in respect of source protection; operation of treatment/distribution systems (should these continue to be local responsibilities?)**

- Sancton argued that while a strong role for the Province exists, the policy framework should not cover all aspects of drinking water safety. Municipalities should be able to decide what is best for significant parts of the system, as local people have more incentive. Notwithstanding this, a less than ideal arrangement exists in some amalgamated municipalities, where the municipal council that is responsible for a water supply is not actually served by it. This issue merits some attention. (Sancton)
- AMO outlined that municipalities can only do what they are told to do and that there authority exists under a number of pieces of provincial legislation. The challenge is to give municipalities authority to respond. There has been a shift in philosophy from build capacity and then responsibility to give responsibility with the expectation that capacity will come.
- Conservation Ontario noted that some water quality programs are funded by municipalities (e.g. Rural Water Quality Program in Waterloo), and implemented by the Conservation Authorities. Similar programs such as Clean Up Rural Beaches (CURB) were initially funded by the Province who then walked away, leaving the municipalities to pick them up.
- OPSEU noted that yes these exist but highlighted the question of capacity of Conservation Authorities to perform these roles and outlined that this capacity varies (e.g. Waterloo and GRCA leaders, others far behind) given provincial funding cuts and increased reliance on municipal financing and fundraising.
- Local public health units could provide a protective role for drinking water as “essential” to the community (CELA)
- Municipalities and Conservation Authorities have a role to play in education regarding source protection (environmental studies/conservation) in the absence of that instruction in schools. At the local level, monitoring of source water could be performed through the Conservation Authorities and results displayed on their websites (Conservation Ontario)

#### **3.2. Interface between Municipal and Provincial/Federal Governments (Is the**

**local role primarily to implement the policies set by senior levels of government?)**

- The interface between municipal and provincial roles needs clarification (Conservation Ontario)
- This interface should be concerned with linkages rather than the separation of duties; municipal government needs to be at the table (AMO).
- Debate on the interface between municipal and provincial governments detracts from the important question of who should take the lead (OPSEU)
- There should be a delicate balance between the province and municipalities (OMA)
- The operational components of drinking water safety seem to favor local involvement. This would require municipalities carrying out policy made at a higher level. (Foerster, CELA)
- Sancton stressed the need for a Provincial/Municipal policy framework to deal with health issues.

**3.3. Can small municipalities play the same role as large ones?**

- The new regulations have created hardships for small water works operators. In particular, the cost of operating small communal wells, whose creation resulted from a provincial strategy, is now prohibitive under the new regulations. This is providing a strong disincentive for people to start hooking up to them; people are walking away from them. As a consequence, the Ministry is ordering municipalities to take responsibility for them and this is creating a huge liability for municipalities. If there is a consensus that these systems be subject to the same requirements as larger systems, there must be an acknowledgment of the implications and a need for clarification of the Province's overall intention with respect to them and support for compliance. (AMO)

**3.4. Do municipalities have the tools to perform their role?**

- Municipal authority is driven by a huge number of pieces of legislation and policy statements. Municipalities can only do what they are authorized to do, so there is a significant number of legislative amendments, changes imposed by the Province and these are difficult to track. Municipalities must also be allowed to respond in advance of an issue (AMO)
- Municipalities currently have (and should have) authority for the delivery of drinking water. However, there are concerns whether they have the tools to do so. Responsibility for delivery of drinking water can be provided by an alternative body, if it can provide citizens with the same rights of access, service and accountability: it is not important *who* delivers water, but rather a question of whether they have the *tools* to do so. The question of responsibility for waterworks in smaller municipalities is not so much "who is doing it?" but rather "what are they doing it with? What are

the tools? What do people have to work with and how are these tools developed to manage risk? Municipalities must be given a larger tool box with which to respond, given the appropriate resources, municipalities can come out of crisis with a lot of new processes. (AMO)

**3.5. Is there a need for an intermediate level of responsibility? (Groups of municipalities to realize economies of scale for treatment or in recognition of the importance of the watershed as an organizational tool)**

- The Ontario Clean Water Agency (OCWA) plays an important role and is huge value to small municipalities, providing them with much needed expertise (CELA, CUPE, OPSEU, Sancton)
- Sancton noted that he would be reluctant to envisage a policy that required the Provincial government to conduct all operating roles. The use of OCWA was recommended.
- Energy Probe questioned the involvement of government in delivery. It was suggested that this is an old and invalid argument. Two paradigms of the role of government were presented as possible options. First the strategic policy approach, which sees the role of government as 'bundled'. Second, the 'unbundled' paradigm that is working in the economy today, where rule making is separate from adjudication, ownership and delivery.
- Sancton was sympathetic to the unbundled paradigm and noted that it was not inconsistent with having an arms length agency such as OCWA. He also noted that the OCWA had certain tax advantages which should be removed, arguing that the playing field should be level.
- CUPE suggested that in the absence of the OCWA municipalities could not take over operations in an emergency, and that the only alternative would be the private sector.
- Foerster disagreed with CUPE, arguing that public bodies, as well as private industries can offer these services. The examples of Waterloo and Peterborough were offered, where local governments could take over this role for smaller municipalities.
- Energy Probe noted the tendency for OCWA to create a structured conflict of interest in terms of being a polluter, operator, and regulator. There is a legitimate argument to reduce conflict of interest. Similar problems exist with investment functions.
- OPSEU argued for the need to hear from the OCWA in this debate, whose representatives were not present at the table.

**4. THE NEED FOR COORDINATION AMONG LEVELS OF GOVERNMENT**

There was consensus regarding a number of issues pertaining to coordination:

1. The input of all those involved with drinking water safety is important for effective regulation and water resource management.
2. There is no one model that serves all purposes (some could result in dysfunction);

- the appropriate mechanism should be chosen on a situational specific basis.
3. There are some coordination mechanisms already in place which lack capacity. Some are good models that could be used or developed into a broader range.
  4. Coordination of drinking water spans a wide spectrum and a mechanism that will achieve a successful coherent result must be carefully chosen.
  5. A first step toward coordination includes a need for the definition of roles and a need to explain what is expected of each party. The need for legislation and a policy framework were discussed.
  6. The final desired result is a well-managed water system. Coordination is not the end-all, be-all. It is not a substitute for good management.

#### **4.1. Areas where coordination is most important?**

- Coordination should be clarified around drinking water because it is so serious (CELA)
- There is a need to coordinate policy but also information. For example, there are 134 First Nations communities and the province does not collect data on these lands or their water works. First Nations need to be involved in coordination efforts. (Chiefs of Ontario)
- Four broad areas need to be coordinated: land use planning (agricultural and urban); regulatory; fiscal; educational/voluntary and could be coordinated through an overarching framework that could be statutory (OWWA/OMWA).
- Effective coordination is essential and is one area that requires investigation and recommendations. On the municipal level, some flexibility is required for the way in which the provincial requirements for municipalities are implemented. That may be a coordinating mechanism which could be complex (such as high level of elected official) to ensure a continued capacity to deal with the very practical problems that AMO has pointed out (D’Ombrain)
- There are a whole variety of mechanisms and coordinating committees already in existence. There is a need to be careful about making sweeping generalities about coordination. It often needs to be thought through on a specific basis (MNR). There are a large and complex number of stakeholders (AMO, Conservation Authorities, municipal government departments, public health units) as well as political representatives, staff and different departments to be considered which make it difficult to even categorize, let alone coordinate. (Sancton, MNR)
- Municipal boundaries do not necessarily match watershed boundaries so there is a need to ensure that all partners involved with water provision in an area (Conservation Authorities, municipal councils) work together. There is also a problem of incentives for how water sources are treated by municipalities which draw from/ send effluent into sources which extend beyond their own jurisdiction (CELA)

#### **4.2. Suggested mechanisms for coordination?**

- CA’s have been partners with municipalities in watershed management for over 60 years, during which the quality of water has improved dramatically. CA’s have

established a record of coordinating with levels of government, bringing the federal, provincial and municipal levels of government together (i.e. groundwater mapping, funding, commenting on municipal environmental plans). These coordination successes could be built upon. (Conservation Ontario)

- Health Units as administered by the Boards of Health Act are not municipal entities but are agencies designed to ensure that minimal programs are carried out at the local level and to adjust these to suit local needs. A similar system, which can take into account local conditions, might be appropriate for coordination of drinking water. (ALPHA) Conservation Authorities can fill this role under the Conservation Authorities Act (CO).
- A coordinating mechanism requires a level of authority which will allow it to make independent decisions as things are actually happening, to bring broad policy to specific applicability. (OMA)
- A lack of coordination and understanding of roles led to the Walkerton situation. People should know their roles in day-to-day as well as emergency situations. All roles should be described in one place; some roles need to be ad hoc and others institutionalized so that people do not have to worry about repercussions when they make a decision or act. Enshrining this in a statute or regulation will ensure good accountability. (CELA) Good management is ultimately important. (Connell)
- Each level of coordination must be tied to both overall objectives as well as the objectives of coordinating exercise and must take into account different types of coordinating and consultation, conflicts of interest, availability of resources, capacity, and ability to adjust. (MNR)
- There is agreement that an integrated water policy is necessary. Coordination depends on a common vision and common goals as a starting point. The coordination must be vertical and horizontal and must be inclusive of implementers, land owners, applicants, regulators, and the public. (Conservation Ontario, OPSEU)
- Coordination is subject to timing. There is often no predictability in place (changes in government, staff, Minister). There is a need to understand how policy gets built and rolled out, as well as a method for informing institutions about policy changes and their effects. (AMO)
- The model used for the provincial drought legislation developed a good product through a process which was defined, included input, review, comment and was inclusive. Involvement of central role players in policy development is crucial to good results. (AMO) However, the health profession was not invited to the table. (OMA)
- As it moved forward with the development and implementation of Regulation 459, MOE attempted to coordinate as well as possible under the circumstances and timing. There was some good consultation with AMO, which resulted in review of some of the regulation and there has been an ongoing attempt (not perfect) to coordinate with AMO. MOE held conference calls with some municipalities regarding the impending regulation, asked some larger municipalities to do self-inspection, worked with smaller municipalities to have inspections done, and developed a series of "Questions and Answers" through consultation. (MOE)



## **5. FIRST NATIONS AND RESPONSIBILITY FOR THE SAFETY OF DRINKING WATER**

Much of the discussion concerning First Nations and responsibility for the safety of drinking water has been dealt with in other sections of this report, particularly Section 1 - The Role of the Federal Government. What follows here is a summary of the discussion on this issue that occurred in previous sections, and discussion that occurred exclusively under this agenda item.

- The responsibility to ensure safe drinking water for First Nations is ultimately at the federal level, as part of its fiduciary responsibility.
- The First Nations have similar problems to those faced by municipalities but with the added complexity that the federal government has jurisdiction over their lands and not much expertise, while the province (which has jurisdiction over municipalities) have expertise but no jurisdiction over First Nations water works.(Chiefs of Ontario)
- With the new Ontario standards, which are higher than federal standards, there are two tiers of water standards. This is unacceptable (Chiefs of Ontario).
- Water knows no boundaries and there has to be cooperation in managing water as a resource. More coordination of provincial strategies and programs is needed and desired. First Nations would like to, and are constitutionally entitled to, participate in discussions and decisions concerning drinking water with both the federal and provincial levels of government. (Chiefs of Ontario)
- A more active provincial role would help to deliver a better product as the Province has more resources to deal with the problem. If the First Nations had more resources, they would take care of the problems. Any relationship would be on a government-to-government level.
- There is a role for the provincial government in prevention and education of diseases, as residents of reserves do not remain isolated on reserves, and when ill, do use Ontario medical facilities for treatment. (OMA)
- An example of cooperation between First Nations is the Six Nation/Grand River watershed area. The Conservation Authority has tried to have membership from the Six Nations community on the Conservation Board. Six Nations is willing but there is no legislative mechanism which will allow their membership (levy appears to be the issue).(CO)

Many First Nations are located in remote parts of northern Ontario where resource sharing with neighbouring municipalities is not a viable consideration. Workable partnerships with neighbouring municipalities, moreover, require that First Nations have access to funds which is often not the case. The Chiefs of Ontario is a political organization representing 134 distinct First Nations. Their issues, concerns and relationships with neighboring municipalities are quite diverse, although all First Nations are collectively interested in sustainable solutions which will achieve improved water quality on reserves. (Chiefs of Ontario).

**APPENDIX**  
(provided by CELA)

**Table 1. Example of Potential Assignment of Roles in a Multi-Barrier Safe Drinking Water System**

<b>Multi Barrier Item</b>	<b>Primary Delivery of This Barrier</b>	<b>Establishment of Requirements for this Barrier</b>	<b>Oversight Responsibility</b>
<b>A. Source Protection (including planning and development decisions)</b>	Local municipalities & conservation authorities	Provincial standards and requirement for local authorities to establish source protection per the standards – Provincial Drinking Water Commissioner (reporting to the Minister of the Environment)	
<b>B. Drinking Water delivery (wells, pipes)</b>	Local municipalities & public utilities	Provincial standards for infrastructure, well siting & maintenance etc. and requirement for local authorities to ensure compliance – Provincial Drinking Water Commissioner	Ministry of Environment to ensure compliance
<b>C. Monitoring (source water and delivered water)</b>	Local municipalities and public utilities	Provincial standards for monitoring & reporting – Provincial Drinking Water Commissioner	Auditing by local medical officer of health and by MoE/ Drinking Water Commissioner; Ability of both to require action; specified communication among the agencies in case of adverse results. Regional and provincial scale review of results by Drinking Water Commissioner to identify issues in specific communities or regions
<b>D. Treatment</b>	Local municipalities and public utilities	Provincial standards for treatment according to specified conditions, including continuous examination of whether “groundwater” is subject to surface water influence – Drinking Water Commissioner	Ministry of Environment & Medical Officers of Health
<b>E. Fix any Problems in source, treatment or delivery</b>	Local municipalities and public utilities		Powers to make orders: Ministry of Environment & Medical Officers of Health
<b>F. Emergency Response</b>	Local municipalities and public utilities to have the plans and act on them, including contingency plans and communications plans	Provincial standards as to content of plans – Drinking Water Commissioner	Additional powers to initiate operation of plans or aspects of them: Medical Officer of Health; Ministry of Environment

<b>Multi Barrier Item</b>	<b>Primary Delivery of This Barrier</b>	<b>Establishment of Requirements for this Barrier</b>	<b>Oversight Responsibility</b>
<b>G. Inspection</b>	Dedicated Inspectors – Ministry of Environment; Follow up and ensuring compliance with deficiencies – Ministry of Environment; If health issues, also follow up responsibility of Medical Officer of Health	Provincial standards as to frequency and content of inspections and as to performance requirements – Drinking Water commissioner	Auditing of inspections (frequency, results, follow up) – Drinking Water Commissioner
<b>H. Labs</b>	Accredited, Certified & trained labs	Provincial standards as to accreditation, certification, testing, training requirements including auditing performance – Drinking Water Commissioner	Annual public reporting listing accredited, certified labs and audit performance
<b>I. Training</b>	By each agency in the system as to their staff and their roles, including understanding roles of the others: municipal / local; Ministry of Environment; Drinking Water Commissioner; Health Units; labs etc.	Provincial standards as to training requirements; re-training requirements; content and frequency of critical continuing education topics – Drinking Water Commissioner	Auditing each of the agencies for compliance with training requirements; annual reporting on same: Drinking Water commissioner
<b>J. Public Reporting</b>	Local municipalities, public utilities	Establishment of standards for content and format of public reporting – Drinking Water Commissioner	Auditing of compliance by local municipalities and public utilities with reporting requirements: Drinking Water Commissioner; Annual or more frequent reports by Drinking Water Commissioner as to each of the topics of its responsibilities under this Act
<b>K. Research and Emerging Issues</b>	Dissemination of recent / new research results; emerging issues etc. by Drinking Water Commissioner and Ministry of Health to local municipalities, utilities, health units and Ministry of Environment staff; ensuring receipt and review of these materials by each of these agencies	Identification of research priorities and advice re: same: Drinking Water Commissioner	

Note 1: Public input and advice to the standard setting process and to the Drinking Water Commissioner in carrying out its mandate must be specified and mandated in the legislation.

Note 2: The Drinking Water Commissioner would report to the Minister of the Environment; the Minister of the Environment would remain accountable for the system as a whole.