

The Walkerton Inquiry

Notes from the Expert Meeting on:

Provincial Regulation of Drinking Water Safety I

May 22-24, 2001

Day 1 & 2: Ryerson University, Oakham House
63 Gould Street
Toronto, Ontario

Chair: Ronald Foerster

Day 3: 123 Edward Street, 6th Floor Boardroom
Toronto, Ontario

Chair: Harry Swain

Topics of Discussion:

1. Operations of the Ministry of Environment

- 1.1 Policy and Standard Setting
- 1.2 Regulation
- 1.3 Inspection, Abatement and Enforcement
- 1.4 Operations
- 1.5 General

2. Operations of the Ministry of Health

- 2.1 Role of the Ministry of Health
- 2.2 Relationship with the Ministry of Environment
- 2.3 Public Health Units

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 Participants and Affiliations

Chairs	Ronald Foerster Harry Swain
Issue Paper Authors	Jamie Benidickson, University of Ottawa Mark Winfield, Pembina Institute Hugh Benevides Andrew Sancton, Univ.of Western Ontario Nicolas d’Ombrain
Ontario Public Service Employees Union (OPSEU)	Tim Hadwen Bob Holland Nancy Johnson Mike Ladouceur Tom Parkin
Conservation Ontario (CO)	Craig Mather Bonnie Fox
Canadian Environmental Law Association (CELA)	Ramani Nadarajah Rick Lindgren Karyn Keenan
Ontario Society of Professional Engineers (OSPE)	John Bray Bob Goodings
Office of the Chief Coroner (OCC)	David Gruber Thos Wilson
Ontario Water Works Association/ Ontario Municipal Water Association (OWWA/OMWA)	Brian Pett (May 22 only) Joe Castrilli
Association of Local Public Health Authorities (ALPHA)	Gord Fleming Andrew Papadopoulos
Government of Ontario	John Callaghan, Smith Lyons Jim Ayres, Smith Lyons
Ministry of Natural Resources (MNR)	Peter Wallace David deLaunay
Ministry of Environment (MOE)	Carl Griffith Jim MacLean
Superbuild	Geoff Hare
Chief Medical Officer of Health	Colin D’Cunha

Association of Municipalities of Ontario (AMO)	Gail Alleyne Robert Walton, County of Oxford Nicola Crawhall
Ontario Medical Association (OMA)	Ted Boadway Carol Jacobson George Pasut David Williams
Energy Probe (EP)	Elizabeth Brubaker Tom Adams
Canadian Environmental Defense Fund (CEDF)	David Donnelly
Canadian Council for Public-Private Partnerships (CCPPP)	Jane Peatch
Research Advisory Panel	Doug Macdonald Allison McGeer
Inquiry Staff	James Van Loon Bay Ryley
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Meeting Summary

Provincial Regulation of Drinking Water Safety I

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 and related questions on the agenda. Issues that were discussed but not articulated on the official agenda have been addressed within the body of the notes.

1. Operations of the Ministry of Environment:

1.1 Policy and Standard Setting

There was widespread agreement that the Ministry of Environment should be retained as the lead agency for policy and standard setting. The possibility of an alternative form of lead agency, such as an independent drinking water commission, was discussed in terms of its potential impacts on transparency, funding, political accountability and on the broader functioning of the Ministry of the Environment. The need for coordination with other actors (hub and spoke model) was emphasized.

1.2 Regulation

There was general agreement that the new MOE regulations are a step in the right direction. However, weaknesses in the current regulations; reporting requirements, parameters and frequencies; implementation issues; tracking of health impacts and drinking water standards were all discussed as potential areas of improvement. Other key topics were the regulatory needs of small systems, the capacity of municipalities and the creation of compliance incentives were also discussed. The resource limitations of the Ministry of the Environment and the need for creating an overarching safe drinking water act were discussed at length.

1.3 Inspections, Abatement and Enforcement

Discussion focused on whether the current inspection program is adequate and what needs to be done to improve inspections. There was concern regarding adequate resources for inspection. Most of the discussion focused on the performance of the abatement and enforcement functions and whether the enforcement function should be transferred from MOE to the Ministry of the Solicitor General as a means to strengthen the police function of the investigations and enforcement branch. No consensus was clearly articulated. There was also some discussion around the issue of prosecutions, incentives for compliance and the role of culture and morale in inspections, abatement and enforcement.

1.4 Operations

Limited discussion was allocated to this topic. A primary focus was on the actual and potential roles of the Ontario Clean Water Agency (OCWA) including service to smaller municipalities, emergency response, information dissemination and economic efficiency of service provision as compared to the private sector. There was no consensus on these issues.

1.5 General

The contributions and implications of the Gibbons report in relation to the structure and function of the MOE were discussed as well as the information gathering and dissemination role of MOE. There was no consensus on the Gibbons report however, there was some consensus that the information role of the MOE and public access to that information could be improved.

2. Operations of the Ministry of Health

2.1 Role of the Ministry of Health

There was consensus that the Ministry of Health was not the appropriate lead agency to address safe drinking water issues. However, some of its resources are key to safe drinking water provision and greater communication and collaboration is necessary among responsible entities.

2.2 Relationship with the Ministry of Environment

Barriers to coordination were discussed. There is a need for integration at both the policy and the operational level between the Ministry of Health, Environment and the relevant Federal actors.

2.3 Public Health Units

Discussion focused on the role of the medical officers of health. The independence of the medical officers requires more than statutory protection; maintaining full time staffing positions as well as sufficient financial and information resources is required. Nurturing relationships with regional governments was also highlighted as an important step towards ensuring sustainable and proactive health services. The need for institutional change and alternative models for service provision were also briefly discussed.

Discussion of Substantive Issues

1. OPERATIONS OF THE MINISTRY OF THE ENVIRONMENT

1.1 Policy and Standard Setting

The MOE is currently the most extensively involved, of various government agencies, in safe drinking water. Looking at the role of setting strategy and broad policy, is it appropriate for MOE to continue to take the central role that it has in the past?

1.1.1 *Does it make sense to keep the MOE as the central ministry with respect to issues dealing with the safety of drinking water? Given that there is general consensus from other meetings around the need for the provincial government to take a strategy/policymaking role, should the MOE take that primary role and act as the lead agency in drinking water safety?* (Foerster)

- There was widespread agreement that MOE should be retained as lead agency (CELA; Winfield; AMO; OSPE; OPSEU)
- Winfield suggested that before discussing particular models, it is important to consider the characteristics of the endpoint we want to get to, and our criteria for evaluation. Based on his paper *Drinking Water Protection in Ontario: A Comparison of Direct and Alternative Delivery Models*, two criteria: Performance/Effectiveness, and Governance/Accountability/Democratic Values were tabled as important criteria to discuss.
- The goals and functions we envision for the lead agency merit discussion (Winfield; OMA)
- AMO asks that we consider what problem we're trying to address before talking about which agency would best address the issue: Lack of policy framework? Districts not relating to the Ministry appropriately? Flawed standards?
- OSPE tabled that it is more an issue of capacity of skilled personnel at MOE and that standards and technical assistance in operations and plants need to be covered.

Conversation focused on the question of a ministry vs. some other form of lead agency. Beyond general comments of desirable features of a lead agency, discussion focused on transparency and accountability as important criteria.

General:

- Any regulatory authority in this area must have both engineering and health expertise. This is how the MOE originally evolved out of the Ontario Water Resources Commission (OWWA/OMWA).

Transparency:

- The "black-box" problem: Ministries always have very complex agendas. Priorities and functional areas can be diminished and from the outside the change is hardly discernible. The problem of putting water responsibility in a ministry is that it is part of a broader mandate and provides such a cover. Transparency cannot always be accomplished in a ministry. Perhaps best to have a ministry set broad policy, while a separate agency that is more transparent/isolated carries other responsibility (OMA). OPSEU stated that we must distinguish between the ministry and the government of the day when citing this process of "cut-and-cover," and advocates renewing MOE, including a discussion of accountability and transparency, rather than blaming current problems on the ministry.
- Winfield refers to the recommendations of the BC Auditor General and the BC Safe Drinking

Water Act: a clear designation of focal point responsibility for drinking water protection. OPSEU agrees with the need for a designated point, to facilitate people's understanding of where to get answers and who in MOE is responsible for water.

Accountability:

- The province needs to speak clearly through law, and through policy. Then implementation, operationally, requires discussion of alternative delivery models. CELA advocates a commission making a distinction between policy and standard setting roles within the regulatory framework of a Safe Drinking Water Act – an act created with full public input including all stakeholders. CELA stated that a specialized, well-resourced branch of MOE would be an acceptable substitute for a Commission, provided that there is a strong statutory framework (eg.SDWA) in place. Sancton suggests that the overarching provincial role is to set policy, while a commission has the role of implementing policy through standard-setting regulations.
- It is difficult to be categorical about “complete” government accountability, because the suggestion of a regulatory commission means some kinds of policy would be within the ambit of that commission. The degree of latitude should be set out. Cites example of hospitals, which have huge policy-making abilities with big effect within an overarching framework that allows such flexibility. While he is prepared to consider a regulatory commission, there is no question of the need for an overarching government hand. The commission must be totally transparent, and must report to parliament (OMA)
- There is an accountability-independence trade-off: it is important to consider whether the agency would be under direct ministerial responsibility, or would be an autonomous agency. If it is very autonomous but reports through the Minister of the Environment, the interesting question is how independent the body is (Sancton). The appeal of a commission is that you can insulate some aspects of decision-making from politics, while the downside is potential loss of accountability. There is no obvious mechanism by which the public holds a commission accountable. (Winfield) Another problem is the need to coordinate, and interact with other agencies, especially for source protection. This is harder for a commission than for a ministry, unless the commission is given powers to operate in that way. Cites example of Energy and Utilities Commission in Alberta (Winfield)
- Lindgren (CELA) names two kinds of accountability: political accountability through the ballot box, and the tradition of court-based accountability. Both are needed.
- Winfield notes that there is a government policy in Ontario dictating that functions such as policy analysis/development, which requires considerable inter-ministry coordination, be retained and not spun out to alternative delivery modes, so that there's a minister accountable. MNR agrees.

1.1.2 Does the MOE have the expertise at its disposal to fulfil the policy/standard setting functions and, if not, what is needed to enable it to do so?

- There has been a reduction in skilled personnel in this area. To go from esoteric to real, applicable standards, we need skilled people with a technical understanding of operators' jobs. (OSPE) Any policy-setting entity needs expertise in engineering and in health (OWWA/OMWA)
- For policy-setting, issues vary by locale. A two-way process for setting standards and dealing with changing information is needed, with local information feeding up to upper-level decision making (OMA).
- The lack of technical expertise for the MOE approvals process in regional offices is a problem. When dealing with local municipalities, their resources vary and government has to play a larger role in some of the smaller municipalities. Funding also needs to be discussed. (AMO)

- OPSEU notes that retirees are not a sustainable resource to put a long-term program together, and that recruiting, internships etc. are needed to groom the experts we need to protect water.
- This prompts the question (OSPE) of how to prevent government from allowing such programs to wither away when someone decides not to spend the money. OPSEU replies that there is a shared responsibility to hold government accountable, and that there are ways of making sure we get full reports of what's going on. There is a need for public accountability and public accessibility.

1.1.3 *If the MOE has primary responsibility, what mechanisms are needed to ensure coordination with other ministries/agencies?*

- Drinking water. Water quality and water quantity are not easily capable of being protected by MOE alone, given its current limited statutory mandate with respect to matters such as agriculture, urbanization and watershed management generally. It is best to think of MOE as the hub of a wheel with other agencies being the spokes; other agencies need to be in the same boat rowing in the same direction as MOE with respect to water issues (OWWA/OMWA). Some structure for inter-ministerial policymaking, a mechanism for different ministries to work together, is needed (OMA).
- Each ministry or player is important (local, regional/municipal entities, MNR, Health, etc), but problems often end up with the local medical officer of health because each ministry is constrained by its agenda. An autonomous body is needed, and the issue is less the question of which ministry than the issues of autonomy/independence and resource availability. (OMA)
- Possible institutional options include direct ministry, agency, secretariat, devolution to other levels of government, a regulatory board/commission, delegated administrative authority model, and the possibility of improving the delivery function of MOE. The problem of fragmentation of responsibility leads us to prefer the ministry model. A line ministry is plugged in to ministerial processes, with ministers, assistant deputy ministers, etc. all interacting with other ministries. Horizontal policy coordination, especially for source protection, is very important. (Winfield)
- Drinking water is a multi-barrier issue involving a range of components of which threats to the environment is a central one. Given the fact that environmental protection is fundamentally a governmental responsibility, strong governmental responsibility through a ministry is necessary, and MOE is the best candidate. (OPSEU, CELA, Sancton)
- There is more to managing water than drinking water alone, and drinking water responsibility should not be hived off without relationships and resources to address water policy as a whole (CO). OWWA/OMWA agrees that the issue of drinking water comes within the context of protecting water resources generally, including pollution control and conservation/efficiency. But if you add conservation to the agenda of a specialized drinking water commission, you're creating a very large institution. OWWA/OMWA have not taken a position on the question of whether a drinking water commission can play a central role within a lead ministry, but there is a problem with hiving off drinking water by itself when it is a broader source water issue. The broader the problem, the more institutions involved, the more difficult it is to delegate everything to a commission, and the likely greater the need for a lead ministry such as MOE to maintain its central role in the process (OWWA/OMWA)
- CELA agrees that drinking water is a subset of water issues and that a broader framework is needed. CELA's Model Water Bill and Commentary by Castrilli et.al. has been submitted to the Inquiry.
- On the issue of structure and interconnectedness, a central government unit is necessary to bring all the different players together. To reduce fragmentation, more functions must be consolidated in MOE rather than adding another agency, another piece of the puzzle. Need to for an

integrated/holistic approach, drawing together abatement officers, scientists, people with technical, compliance and public consultation expertise (OPSEU).

1.1.4 Should a drinking water commission be created?

The issue of funding through a commission structure was discussed:

- Although Winfield is not sure he agrees with this conclusion, he notes that the d’Ombrain paper suggests that a commission or other body might be more protected from budget cuts than would a line ministry.
- The CELA proposal calls for legislation that would require mandatory funding. This needs to be entrenched in law. (CELA)

General Organizational Features and Functions:

- Commissions traditionally are used more for allocative functions, and don’t have a clear track record of protection of public goods per se (Winfield). CELA offers the counterexample of the Niagara Escarpment Commission which has the job of protecting. This is an example of provincial-level policy guiding day-to-day activities of a commission.
- A commission would move inspectors, investigators and a technical core from MOE, but these people perform other functions in MOE. Removing them reduces MOE’s ability to function in other areas of its mandate. The delivery arm of MOE is not an “off the shelf” operation; it takes years of work experience to produce people skilled at “science for compliance.” (OPSEU). CELA agrees with the need to properly resource MOE if a specialized drinking water commission is established, but suggests that sufficient expertise of OPSEU members is available.
- d’Ombrain’s paper seems to suggest that the important component is as much the need for a policy framework document, or statute, to give marching orders to all actors/agencies, as which agency is responsible. (OWWA/OMWA)

Do these concerns preclude a commission or entity with responsibility primarily for regulation and enforcement? Can treatment/distribution issues be hived off from the broader issues of water policy? (Foerster)

- d’Ombrain’s paper seems to suggest that the important component is not who’s responsible, but is the need for a policy framework document, or statute, to give marching orders to all actors/agencies. (OWWA/OMWA)

Does the CELA suggestion of a commission encompass a policy role? (Foerster)

- CELA differentiates between “Policy” and “policy.” The province needs to develop an overarching, binding Policy framework, but a commission is needed for implementation and it from time to time will be developing policy (much as the OMB does) to guide day-to-day implementation.
- When dealing with ministries, at the local level often we deal most with protection of jurisdiction. Entities lay out their boundaries and there are gaps. Small-p “policy” is necessary to deal with these gaps, e.g. the problem of drinking water on First Nations lands. Who drives the different sectors to say “this problem *has* to be dealt with” rather than wrangling over jurisdiction? A commission should be able to look at “policy,” and call for “Policy” to be reassessed to deal with

jurisdictional issues, ensuring that the development of Policy addresses on-the-ground problems. (OMA)

- Someone needs to be responsible at a very high level for research, e.g. on climate change impacts on drinking water. Someone also needs to take responsibility for large-scale data gathering and province-wide monitoring (CO).
- The CELA proposal sees a commission statutorily mandated for research and data (Lindgren)

Would a commission be involved in setting broad policy, not just standards, e.g. some involvement in source water protection rather than only focussing on treatment needs? If we had such a commission, what line would we draw between source protection, for example, and water treatment? (Foerster)

- Who do municipalities go to, to understand what is expected of them? How many agencies do they have to go to, and will they get conflicting advice? We are likely to get a clearer message when fewer entities are involved in designing/interpreting policy. Having one particular entity that's responsible may not be the solution, however. The mandate is too big – interpreting, enforcement, monitoring, regulations. We're wary of a commission setting standards and MOE having to interpret them (AMO)
- OPSEU agrees that municipalities or members of the public who have complicated questions are faced with the problem of where to get answers, and suggests the need to keep it simple for the sake of transparency. If people can go to one "window," which can also give feedback and develop policy, then we have an integrated system that makes for the best, most responsive policymaking.
- OMA emphasises the need for inclusiveness rather than areas of jurisdiction. In the system as it stands now, health is the touchstone and the only commissioner with any authority is the Medical Officers of Health, which ends up with the responsibility of trying to draw in other actors. These unofficial "commissioners," the medical officers of health, are left with responsibility but it is not clearly laid out and the resources are not there. The ministry with responsibility has to be inclusive, to advocate for safety and health issues.
- Benevides notes that in their research on models of the "one window" approach, they looked at examples such as devolution of septic system approvals to municipal building inspectors. The OPSEU comment that Benevides heard on that experience was that MOE did a better job, and that there has been a loss of discretion now that inspectors are just applying the building code. The "one window" idea can be a good idea for consistent advice, but at a cost.
- Foerster: even without a commission, it sounds like we need some entity or mechanism to ensure consistency of policy and approach. We might not get all answers from one window but at least need to get the same answers from all windows.
- Sancton cautions that the question is not just one of a "window" to go to, but of authority. Drinking water is not analogous to the Niagara Escarpment Commission which has specific authority related to a geologic entity. Water is much more diverse in the policy problems that stem from it, and we need more specificity regarding what authority any hypothetical commission would have. (Sancton).
- Winfield advocates against decoupling policy from operational functions
- No matter whether it's a ministry or commission, no one organization has enough resources to implement across the province. At some point there is local delivery on the ground, and it is critical to be able to develop small-p policy within a big-p Policy framework (CO)

Consensus:

There is general agreement that overall strategy, from source to source, belongs in government. There needs to be cooperation among ministries. Perhaps this is best described by OWWA/OMWA's point of a hub and spokes, with MOE at the centre and other entities as spokes. But in terms of setting policies, most people here have said that the big-P Policies do not belong in an entity that is in any way removed from government. (Foerster)

1.2 Regulation

1.2.1 *Are the current regulations dealing with drinking water safety sufficient? What areas are in need of improvement? What are the problems or regulatory weaknesses we need to address? Ontario passed new drinking water regulations a year ago. How successful have they been? Is the onus too heavy on some?* (Foerster)

There is consensus that the new regulations are a step in the right direction however numerous suggestions were made related to distribution systems, reporting, implementation, information management and standards. Another gap in the current regulation mentioned was the lack of emphasis on source water assessment and protection (CELA, OWWA/OMWA)

Distribution:

- The regulations for larger systems do a good job establishing notification requirements, standards, but have less emphasis on distribution and the actions required to ensure safe water. (OMA). OPSEU and CELA agree and highlighted the importance of testing distribution systems.

Reporting:

- OPSEU suggests a requirement that information be provided about trends and adverse sampling, including source water testing.
- OMA notes that labs sometimes call in reports without knowing which system is implicated, only knowing that it's within the medical officer of health's area.
- Another problem is that labs only report adverse results, and are not obliged to report results the rest of the time. OMA calls for the development of mechanisms for efficient query of the history of monitoring results from testing within the province. AMO suggests that some of that information is now available in quarterly reports, but OMA explains the need for current-status information (information on which samples, what system, where they were taken, what other samples were taken, etc.). Walton gives the example of his municipality, where they have an excellent relationship with the health unit, and gather as much information as they can before calling in order to give the complete picture on the spot.
- Foerster asks whether an obligation should be extended to labs to give the history along with numbers reported. OMA suggests an interactive system that could be queried. OPSEU agrees with the need for an integrated database that allows trends to be tracked.
- OMA notes that once notification happens, labs know they have covered their requirements under the regulations, and the problem is dumped in our laps, whereas it is very difficult for us to gather the necessary information. The regulations are inadequate in this respect. We need a way for different actors to get together, put information on the table, and make good decisions.

Point of contention: required parameters and frequencies:

- AMO suggests that some of the reporting requirements of the new regulations are a waste of resources, e.g. in systems which need to be upgraded and therefore are routinely slightly above the

reporting levels for turbidity, which must therefore report turbidity levels every 48 hours as a matter of course.

- AMO suggests that, as in the Drinking Water Surveillance Program (DWSP) which was a voluntary program, if after a certain period of time there is no evidence of certain contaminants in the water, we should allow a reduction in the number of times per year that this parameter must be tested for. By basing testing more on historical records, certain parameters e.g. pesticides might not have to be tested as frequently in some areas. These are very costly tests. Certain parameters should always be tested, but others could be discretionary based on history, in negotiation with MOE.
- Winfield disagrees, arguing that testing on the basis of the past, not what is changing in the current system, entails risk. By the time you notice changes, it will be too late. AMO suggests not cutting back on testing of things with immediate impact, and Winfield replies that parameters with long-term impact also would not be caught until after the fact. He recommends against reduced testing.
- OWWA/OMWA gives the example of static temperature and turbidity readings in ground water sources, which have to be taken daily but in groundwater tend not to vary. He suggests that parameters would be looked at individually, with the option of reducing inspections if MOE and health agree. OSPE disagrees, saying that turbidity should always be tested for, as an easy parameter to test for which acts as a guide to other parameters. Pett (OWWA/OMWA) clarifies that he is referring to groundwater in which turbidity values have flat-lined.

Implementation, Maintenance, Groundwater "under the influence":

- There is a lack of resources to implement regulations, for example to deal with the engineering reports and evaluate the qualitative statements in these reports (OPSEU)
- OPSEU notes that the issue of maintenance and upgrading plans or schedules should be better regulated
- Ground water under the influence of surface water needs to be defined/clarified in a way that is adequate to allow people drinking groundwater to understand whether they are in that situation (OPSEU)
- CELA supported OPSEU's comments on the need to define/clarify this important term.

Tracking health impacts:

- Winfield notes the lack of a system for tracking health impacts, e.g. boil-water advisories or orders, and health outcomes that might be associated with water contamination. Some are reported on a voluntary basis to Health Canada, but there is no central collection
- OMA explains that as of last year, the requirements ask that the federal government be advised of any boil water advisories. Disease outbreaks do assemble upwards, and are analysed at federal and provincial levels. However, it is exceedingly difficult to track illness that is directly attributable to water. Much gastroenteritis is usually unexplained.
- OMA asks about public accessibility of this information, and Winfield confirms that information access is only for notifiable diseases.
- MNR cautions that it is quite difficult to create such a database system. Winfield notes that Health Canada produces annual waterborne disease outbreak reports, and suggests that in terms of tying this information together, it is in fact more feasible than it was in the past. OMA agrees.
- OMA notes that there is a cost factor associated with such a database. Such a system is easier to create now than it was in the past, but we still have no design to find such outbreaks. Reporting of these diseases is dependent on the public going to physicians, and ordering certain tests. But the health systems are under scrutiny and have been asked to curtail excess testing. In my experience of outbreaks, we had to look for other methods of indicating disease in a community, e.g. noticing

that lab testing is up.

Drinking water standards:

- OWWA/OMWA noted in CELA's report there is a Table comparing drinking water standards in various jurisdictions. The Table suggests that there are certain parameters (e.g certain pesticides) regulated in other jurisdictions that are not listed in Ontario's new drinking water regulations. He suggested the need for MOE to clarify whether such substances are in use in Ontario. There is also a need for water treatment plant operators to know when a pesticide is being applied, and if it is showing up at water treatment plant intakes or other sites in the system. Lack of information about what substances are being used and when, makes it difficult for an operator to prioritize testing and maximize effectiveness.
- The regulations do not directly refer to parasites (Giardia, Cryptosporidium), only indirectly in guidelines, assuming that barrier filtration is sufficient (OMA)

1.2.2. *Do small systems require a different approach than larger systems?*

- The discussion on policy has been skewed towards municipal pipes-in-the-ground systems, not addressing private wells and other systems serving Ontarians. We have to address large systems under the 459 regulation, small systems which are currently unregulated, and private systems that owners install, plus any other grey areas (OMA).
- Regulations have the effect that many private operators are walking away from their communal systems. MOE orders a municipality to take over communal systems, or else households have to drill their own well. Looking into the future, this suggests that water would only be delivered through municipal systems or one's own private well – a significant shift away from communal systems, which means more holes in aquifers. The regulations are too onerous, too expensive, the risks are too high for communal systems (AMO)
- The solution should be through financing, rather than immediately going the route of altering regulations. The cost of upgrades is a key issue, and the province has a potential role in helping with financing if operators cannot assemble the capital (Winfield)
- Regulations have increased cost. Reporting is quite onerous. Some flexibility is needed, for example on levels of pesticide testing. The major problem is to deal with private/communal systems. The resources are not there. The systems are being handed to municipalities, which are forced to take over systems that serve perhaps six to 100 households, are totally out of compliance and need huge capital influx. Infrastructure updating is the main expense, but operating will be expensive too. (AMO)
- Timelines are also a problem. Often the timeline for the municipality to bring the system into compliance is very imminent, and there is no time for good decisions to be made. We will have until 2002 to upgrade these systems, and some will require environmental assessments. The timeframe is too tight. (AMO)
- Another problem is that people going onto small water systems don't yet know the implications/impacts of future small waterworks legislation. Liability is a problem; normal homeowner insurance does not cover provision of water to others (AMO)
- CELA sees small systems as one of the biggest deficiencies of the current regulatory scheme. CELA and OPSEU agree that exemption of small systems is not the solution, figuring out the appropriate regulations and regulating the systems is.
- OMA agrees that action to protect small systems is the major deficiency. The small water systems are in a vacuum, and we do not know who's responsible for setting standards, ensuring that they

are met, and dealing with problems.

- Another problem in small systems is the escape clause through exemption from the medical officer of health. If the operators say they cannot afford to implement regulations, they attempt to get such an exemption. If we issue a boil-water advisory (BWA), liability for health issues is off the table, and this allows time to deal with the issue. BWAs do not actually exist in the regulations – only boil-water orders. (OMA) CO notes inconsistencies across the jurisdictions of different medical officers of health.
- CO cites training, and the question of who determines what level of training operators should have, as another problem in small systems.
- An operational concern in new regulations would be the possibility that people's homes would be brought under the scope. Going into people's homes is more intrusive than the current nature of MOE operations (OPSEU)

What is the status of the process underway to set standards/regulations for small systems?

(Foerster)

- MNR: there is a consultation process underway. When we move to extend regulations, we will inevitably run into the issue of what the right cut-off size for regulations is. Then there is the problem of unintended strategic incentives. The government will be open to critique on implementation date, costs, frameworks that will be seen by some as deficient and by others as overly onerous. If there is consensus in this room on the need to extend regulations, it masks considerable differences in ideas of how to do that, how to link it in to private wells, how not to force strategic behaviour that puts health at risk, etc.
- Lindgren asks about the timeframe for these consultations. MOE and MNR cannot provide a timeframe. Consultations are ongoing. They add that there is a formal consultation process, with opportunities for input.
- Who participates in this consultation, what are the interests involved, and is anyone other than developers brought in? (Sancton) AMO attended one of the town hall meetings, and the majority of those there were representing campgrounds, as well as some municipalities, farm organisations, bed-and-breakfast operators and others.

What alternatives other than regulation have come under consideration for small systems?

(Foerster)

- Given the nature of risk involved, some sort of regulatory base seems essential, but a wider range of instruments can also be considered (Winfield)
- Options range from not regulating at all, to extending full power of regulation. Also performance standards are envisioned, which could be absolute but with no regulatory oversight, just law that allows people to litigate. But there are also questions of the nature, shape and design of rights and implementation dates. We are also looking at what other jurisdictions are doing. (MNR)
- AMO suggests that the different needs of small systems could best be met by extending a margin of safety through regulation, and letting communities decide for themselves if they want a larger margin.

1.2.3 What is the capacity of municipalities to address local water management issues?

- Sancton notes that smaller municipalities lacking technical capacity do have the capacity to hire consultants to address their water issues. OSPE stated that there is no shortage of available expertise but that they are centrally located. Unlike consultants, government experts do not charge the municipality to come help them. However, he thinks municipalities can afford the cost of consultants,

and that may be the appropriate route rather than expecting MOE to provide support. A question was raised as to whether the MOE should be "holding the hands of municipalities". This point was met with some contention. AMO noted that consultants are not all of equal quality nor always available to remote communities.

- OMA suggested a need for further examination of the use of consultants - questions focused on qualifications and experience should be addressed. McGeer agreed and proposed that it is a huge load to put on small municipalities for them to identify and pay for the good consultants. The technical and financial constraints were also highlighted as barriers to compliance for smaller systems (OWWA/OMWA). A concern that consultants' reports may be required to "match" the municipal council priorities and would produce ad hoc water management programs across the province was tabled..
- MNR argued that the current approach is "looking at the wrong end of the prism" as the pendulum has swung far towards reliance on regulation and enforcement. There is also a need to have opportunities for municipalities to get a wide range of information from MOE staff. The "either/or" model of private/consultants or government is ridiculous. Municipalities need both external consultants AND government which are NOT contradictory elements but complementary elements of a working system.
- OPSEU agreed with MNR and stated that the costs of "reinventing the wheel" should be considered carefully and the role of government should not be eliminated. The range of experiences and pooled common resources should [and must] be incorporated.
- A critical support role the government provides to small waterworks owners is often technical. Ministry technical people are always available to assess consultants relevance and potential value added (OPSEU).
- Allowing comparisons and a watershed or ecosystem approach for municipalities is fine but not to the extent that different areas would choose less effective methods based on financial constraints (CELA).

1.2.4 Should someone regulate private (single family) wells?

- Private wells should be regulated. A well improperly constructed or operated can affect the whole aquifer. Regulations also should be put in place to control where wells can be drilled. There is nothing preventing well drillers from drilling wells anywhere they want, even just to water lawns. Protecting the aquifer is everyone's business. (AMO)

1.2.5 Do we need a Safe Drinking Water Act?

- CELA calls for a Safe Drinking Water Act (SDWA) to consolidate the existing legislative framework into a single statute. The basic requirements of a multi-barrier approach should be entrenched in law, not relegated to regulations. Details of implementation could be subject to fine-tuning through regulations, e.g. parameter limits that will change over time. (Shows the American Safe Drinking Water Act, which is long and detailed.) We do not necessarily need something so detailed, although they have done a lot of good work here. Marion Churley, NDP environment critic, has introduced a SDWA which lays out in five or six pages everything that needs to be done, subject to further more detailed regulations that give operational guidance.
- CELA would also like to see in SDW legislation a more rigorous explanation of goals – health based? Precautionary principle? Vulnerable populations? Cost concerns? Right now all this is discretionary and ad-hoc. CELA also calls for public input in setting and review of standards and regulations, and for periodic review to be entrenched in law Finally, and above all, CELA sees a

need to entrench a clear enforceable public right to safe drinking water

- Sancton agrees that such an act seems attractive, but asks what would be in such an act that is not already in existing legislation and regulations. CELA replies: a right to clean water; the basics on provincial monitoring and testing requirements; judicial review; citizen enforcement tools e.g. citizen's suits. These are addressed only to a limited extent in regulation, and we need a statute with greater permanence and longevity.
- Foerster notes the tradeoff between legislation, and regulations which are easier to change, and CELA replies that we need both.

Do we absolutely need new law, rather than an overall package that gives priority, and has the necessary resources and capability, regardless of whether we have a new law? (MacDonald)

- MacDonald notes that the Ontario government might decide to give drinking water safety the priority that we all agree is needed, and would move quickly to put together a comprehensive coordinated across-the-board policy as quickly as possible, using existing law and administrative structures rather than taking the time to pass legislation.
- CELA responds that tinkering around the edges of the existing legal framework is insufficient. The existing act is 40 years old and was not designed to do what we want to achieve. Putting what we need into law will require some consequential changes to other laws, and will not fix all problems overnight, but it will go a long way.
- One of the ways a society indicates most clearly our overarching principles is by putting them in statute, especially when we make statements about what people deserve and can naturally expect, in short, their rights. A statute requires people taking action in other areas to think about it, and is enduring. (OMA) Winfield adds that such an expression of strong societal will provide a clear signal to government.
- Foerster asks whether standards would not be better put in regulations than legislation, and OMA replies that a statute serves as the banner for all to see.
- MNR cautions against a single focus on an act. While that broader societal response may be needed, in fact much can be done through regulation, voluntary action. Acts and the rights they confer are tremendously clunky instruments; cites example of regulation 459 which had some unintended consequences. We should not lose sight of opportunities to build on the current structure.
- Foerster, OPSEU reply that an act is not intended as a substitute for other action. OMA adds that the unintended consequences of 459 were largely due to insufficient consultation.
- An act would be helpful with the problem of fragmentation of responsibility, by creating a direction that the bureaucracy has to acknowledge and follow. (Winfield, OWWA/OMWA)
- It is important to be able to engender respect for the law and deter malice (as opposed to honest mistakes). Deterrents must be put in place, so that the laws we create are enforceable. (OPSEU)
- CEDF supports the idea of an act both because it is a more enduring solution to water problems, and because it would help to clarify for the public what is now a very stratified set of rules, policies, guidelines, standards, regulations, permits and instruments. CO agrees, noting also that the science and mechanisms for implementation, and the judgement or common sense of those implementing, is also key.
- OMA suggests that CELA's proposal of legislation is intended to be preventative, while past implementation approaches have been reactive. The challenges we are identifying should allow us to craft an act that allows preventative approaches.

The right to safe drinking water in a SDWA:

- Giving citizens additional rights to sue governments or hold them accountable would be a major change. When we talk of a “right” to safe drinking water, there are different categories of rights. (Sancton) In a municipality with a drinking water system, you expect a different bundle of rights than in the countryside drilling your own well. (Sancton; OMA)
- Foerster suggests that this speaks to the right to be informed more than to an absolute right to safe drinking water.
- From whom would you seek remedy if you felt that this right was being violated? The municipality? The province? The implications of entrenching such a right need to be considered. (Winfield)
- Sancton asks whether the abstract proclamation of a right to safe drinking water gives people just outside municipal boundaries the right to be served by safe municipal systems nearby, regardless of whether they pay in to the system. Practical problems and applications of such an act merit consideration. CELA replies that implementation is open to debate, but that we do need the right.

Will a SDWA protect source water?

- Foerster asks CO representatives whether they see a risk in putting source protection in a drinking water law, separating out one aspect of what is a larger issue. CO replies that the organisation has not yet come to an opinion on the matter. However, he adds that because there is so much that affects our water and how we manage it and pollute it, an act that deals only with drinking water at the expense of everything else might win the smaller battle at the expense of the war.
- OWWA/OMWA notes that in the U.S., source water provisions are contained in federal drinking water legislation, and since the 1996 amendments to that law, the US requires that source water analysis take into account more than simply drinking water concerns. Earlier amendments to the US drinking water law in 1986 regarding protection of aquifers also required that not only protection of drinking water be considered but potential impact on recreational, commercial, ecological and related factors as well. As a result, US drinking water law encompasses a fairly broad perspective, including land-use considerations.

Would a SDWA be a "hollow" law?

- The consensus seems to be that we need a new act rather than using existing law. (MacDonald)
- However, governments are interesting in being re-elected, in symbolic action, and are not always as interested in solving the actual problem. The first thing they often do is create an inquiry like this to buy time. The other thing is to create law that is “hollow,” without administrative capacity to enforce law. Is there a danger that calling for an act would give the Ontario government an “out” by letting it take symbolic action without putting money on the table? (MacDonald)
- CEDF agrees that the point is important, but gives an example of the current government bringing in a strong act to protect the Oak Ridges Moraine (in the short term), and suggests that there is strong political impetus for this government to do something substantive to protect water.
- Foerster notes that the proposed CELA act, for example, is not an empty act but comes with specific recommendations. An act can be designed to avoid the result of a “hollow” law.
- Winfield agrees with the problem of creating acts, or institutions, without necessary financing and resources.
- To avoid a hollow act, both political/ministerial and judicial accountability are necessary (CELA)
- To prevent a hollow act, the commissioner should: look to the long-term effects of an act, as its impact might build over time; state categorically what the essential features of such an act must be in order to make it a genuine SDWA; conversely, state what a hollow act would be so that it is labelled up front. (OMA)

- Benevides suggests that instead of being a “shiny new law,” an act is useful as a strong legal framework to tie together a number of things: uniformity of effect rather than of implementation across locales; accountability; addressing fragmentation among ministries; source water issues, quantity and quality; funding and capacity could also be put into law.

1.3 Inspection, Abatement and Enforcement

1.3.1 *Is the current inspection program adequate? What needs to be done to improve government inspection of treatment and distribution facilities?*

- There do not appear to be adequate resources for inspection, and inspection is not comprehensive enough. (CELA) OPSEU agreed and estimated that approximately 10% of investigators purged since 1995.
- AMO outlined that only municipal systems and not private systems are covered and that some inspectors are excellent, but others are not adequately trained. The province is wasting money investigating non-issues now, whereas before reports sat on the table and nothing was investigated to the full degree that the law allows. We’re enforcing in the wrong places. (AMO)
- Even in cases of repeat offenders, MOE did not move to mandatory compliance measures.
- OPSEU notes that abatement is a valid government function, the first response in MOE to deal with complaints and help the public resolve issues. She does not negate the value of voluntary tools nor advocate mandatory enforcement or investigation or charges as a first measure. Historically, however, voluntary abatement techniques went on endlessly. There have been moves to beef up the powers of abatement staff to issue orders, through establishment of provincial officers’ orders in the early 1990s. Originally it was quite cumbersome, but now officers can find a situation, and determine to issue the order without as much dialogue and prior notice. It is much more effective.
- Decreasing frequency of inspections, from every year to every three or four years, is a concern (CELA)
- There is a lack of public disclosure related to inspections and enforcement (CELA)

1.3.2 *What needs to be done to improve performance in enforcement/abatement around treatment and distribution systems? How are enforcement and abatement best coordinated? Is there meaningful guidance regarding when to move from inspection into enforcement?*

- The message from the top is a key problem. There has been a paradigm shift. Although there are instruments that abatement officers could use, the message from the top has been to engage in partnerships and use voluntary approaches. Frontline staff are capable, dedicated, and should be empowered by clear direction from above. (OPSEU)
- CELA notes that the ministry has compliance guidelines that are very clear but haven’t been implemented. Prior to 1995 the MOE took the role of regulator. After 1995, words such as “client” began to be used referring to the regulated community, and the focus shifted to more voluntary approaches. A memo issued (by MOE?) in March of 2000, after Walkerton, admitted the need to shift from voluntary to mandatory abatement.
- CEDF distributed a summary of enforcement activities. It indicated that MOE has maintained a de facto non-enforcement policy for municipalities spanning three decades.
- EP noted that Benidickson’s paper chronicles successive governments’ failures to enforce water quality laws for more than a century.

1.3.3 What needs to be done to improve performance in the enforcement and abatement areas?

- A result of the budgetary cuts has been that those responsible for inspection and abatement are so busy following up on complaints that they are unable to fulfil regular planned inspections (CEDF).
- OPSEU, in its review of the extent of budget reductions, noted that all sectors have experienced diminished capacity and agreed that there are "never sufficient resources". However, they argue that major changes occurred in 1995 and the cuts were a negative watershed moment that significantly compromised the role of the MOE, particularly its inspection and enforcement role. (cites Dicerni, Vol.VI, pg.2)
- EP disagreed and argued, based on data in his submission to the Inquiry gathered from MOE, trade publications, and filings at the inquiry, that the level of enforcement peaked in 1991 or 1992 and started to decline in 1992 or 1993, and then began to increase in 1997. While enforcement actions have addressed a variety of environmental problems, they have rarely concerned drinking water or sewage treatment, in part because the Ontario Drinking Water Objectives have been unenforceable.

1.3.4 Is a self-administered system of operator inspection/certification (eg. with legal liability for negligence) plausible?

- EP advocated strong regulation but not at the expense of the individual right to environmental health through civil or prosecutorial actions. Until the 1950s, individuals could and did successfully sue polluting municipalities. However, the government was afraid that this power would prevent economic growth in Ontario, or substantially weaken it. Regulation should supplement rather than override citizens' rights.
- EP reported that EP had demonstrated some success in citizen-based prosecutions without access to state resources.
- CELA and OPSEU contested the suggestion of relying on the community for environmental resources, noting that prosecutions are very resource intensive so the province should hold primary responsibility for this process and it should be properly resourced. Private prosecutions should not be relied upon; province should be the primary line of defence. If we relied on community sources, a very ad hoc approach would develop.

1.3.5 Should there be a separate agency, at arms length from government which is responsible for regulation, inspection and enforcement?

- Abatement officers are front-line inspectors, who provide occurrence reports to initiate investigations. Now there are SWAT teams, not relying on abatement officers. They do work hand in glove, although conflict between the two functions has been a historical problem. (CEDF)
- There has also been evidence of a communication breakdown between abatement and investigation/enforcement. Prior to the 1995 cutbacks, all occurrence reports generated by the abatement branch were reviewed by the IEB (inspection/enforcement branch) supervisor who made recommendations, but that check and balance was removed and only violations recommended by abatement were reviewed by enforcement. That position has been reinstated in the past three weeks. We need integration, checks and balances, a gradual move towards the ultimate enforcement through prosecution. (OPSEU)
- Adams (EP) cited his paper, which suggests that 1995 does not represent a watershed point in the history of the province's commitment to enforcement, and that the level of enforcement activity began to decline in 1993 (note that CEDF's paper "The Ebb and Flow of Environmental

Enforcement in Ontario" corroborates this point).

- The EP paper argues that enforcement (prosecutorial purpose) and abatement (assisting parties in achieving compliance) are distinct, naturally conflict with each other, and should be separated functions. There is a moral content to enforcement that does not apply to abatement. One risk of the two cohabiting is that the police function can be undermined by abatement's previous communication with the accused. This risks "abuse of process" and "officially induced error" challenges. Enforcement is a police function and should be under the Ministry of the Solicitor-General, not the MOE.
- Foerster asks whether the role of the MOE to give advice in its abatement function would continue to be a legal problem regardless of which ministry did the prosecuting. EP explains that there are administrative solutions to the abuse of process problem. The greater the insulation between abatement and the IEB, the greater the protection from potential risk.
- CELA disagrees, advocating a more coordinated role. She notes that abatement is a front-line response, which works in conjunction with the investigations branch, strengthening the investigative role through its expertise.
- OPSEU agrees that as a practical consideration, the prosecution requires "science for compliance." Investigators rely on technical expertise throughout MOE, informally and formally, and to take enforcement away from that science infrastructure means rebuilding a parallel infrastructure of science to serve that complex public good. IEB would be in a position of showing up at the door of a municipality with a search warrant as their only way to get it, taking a criminal approach, having been cut off from the flow of information on what is going on in the regulated community.
- EP agreed that science is required for successful public prosecutions but said that the science does not have to come from within MOE. There are a host of scientific resources available outside the ministry that prosecutors can and have relied on.
- OPSEU suggests that when abatement officers are clearly informed of dangers of abuse of process, some of the problem can be avoided. Reiterates the need for a continuum between voluntary operations, compliance guidelines, instruments like the provincial officers' orders, and finally from abatement to investigation/enforcement.
- The government is satisfied with the overall structure; it can successfully carry out prosecutions however the debate is worthwhile and structure may evolve (MNR).

1.3.6 Should inspection, abatement and enforcement functions be removed from the MOE?

- EP argued that the enforcement role should be transferred from the Ministry of the Environment to the Ministry of the Solicitor General. EP tabled anecdotal evidence from a trial where the accused was the MOE. An abatement official testified that government should not be subject to prosecution. This attitude clearly indicated the distinction in culture between abatement and enforcement. Rather than a framework that is centrally coordinated, EP argued there is an advantage to atomising the functions or unbundling the functions within autonomous organisations with different cultures and purposes. Unlike abatement, enforcement is a policing function. EP argued that policing, since it responds to criminal activity, can never properly be proactive.
- OPSEU strongly disagrees with the statement that policing should never be proactive. The example of community policing that enhances central regulatory structure was given.
- Regarding OPSEU's claim that MOE suppresses information on non-compliance, and CEDF's finding of a de facto non-enforcement policy spanning three decades, EP stated that these phenomenon provide more reasons to separate the Inspection and Enforcement Branch (IEB) from MOE. A network of financial and political conflicts makes it very unlikely that the ministry will enforce the rules against a municipality. (CEDF)

- Foerster inquired whether an increased overall transparency of the ministry would assist in solving the problem. The EP argued that Ontario had that information in the late 80s-early 90s but it did not solve the enforcement problem. The political climate was totally different but they didn't enforce the law then, or ever. Again, the network of problems and close relationships within the institution was cited.
- AMO agreed with the EP position and proposed that there needs to be balance or consensus on what role we think MOE should play. It is very difficult for the MOE to provide both strong enforcement and support at the same time. There needs to be a balance - now we have a shift from the technical expertise for the municipalities towards having municipalities hiring consultants to provide advice.
- CEDF noted that the blending of technical support with command and control can lead to "permission creep". Regulatees play the system to extend the boundaries of compliance and to put off deadlines.
- Collaboration between professionals in all areas strengthens the organization; removing the abatement and enforcement policies weakens the MOE. There are officers in technical support who routinely bridge the enforcement and abatement responsibilities. Making sure officers understand proper conduct, rights of the individual, etc, is being dealt with at a training level rather than through separation of functions. Joint function allows us to identify emerging policy issues. By separating the two functions it weakens the overall organization (OPSEU).
- On the distinction between enforcement and abatement – each involves both proactive and reactive responses. In the past several months, a proactive unit described as the "SWAT team" was formed, organized around sectors with a combination of abatement, inspection and investigation people. Swoop into sector with training/expertise and inspect/investigate with follow up. Although we embrace the notion of proactivity, there is some concern that this will be a piecemeal response. Better to have a fully integrated approach to problems rather than using police-type uniforms. Highly technical equipment is available to the SWAT team, but everyone in MOE needs that technology - resources need to be better integrated into the entire system (OPSEU).
- OPSEU is against de-integration. There should be coexistence with healthy friction to generate action and the opportunity for transfer of information between the two branches. Also need for enforcement officers to report to a different director than the abatement staff in order to remove the political aspect.
- Winfield: not sure the solutions we have heard are the correct ones. We have yet to see what the political play out is from the improved reporting requirements. Returning to the agenda question of moving admin functions out of the MOE - what exactly is it that we mean? Potential actions range across a spectrum from a designated point in MOE to a separate agency. The public administration literature would suggest caution in de-coupling policy and implementation. Feedback loops need to be very carefully linked, and we need a mechanism for operationalizing policy in the field.

Discussion also centred around the issue of prosecutions as an indicator of successful policy implementation:

- CELA noted that prior to 1995 there were problems with the ministry's prosecution and it is important to put their actions in context of other jurisdictions. Since 1995, fines have declined significantly - although not the only indicator but one criteria (CELA). Ministry can't explain why their numbers are down and OPSEU's numbers may highlight this.
- CEDF noted that the MOE has the authority to suspend or not renew Certificates of Approval if there are outstanding fines for problems. This is not currently being done, but perhaps it should be. Also, while the MOE is hiring new staff and convictions are up in the past year, the number of fines collected are not likely to increase, particularly those levied against municipalities. OPSEU agreed.
- It is critical to remember that the real purpose of prosecution is to act as a deterrent rather than a source of income from fines. For example, in the early 1990s, the government began prosecuting CEOs of companies. Various studies and articles have indicated that the primary reason that

companies have environmental programs in place is to ensure compliance and deterrence is working (CELA). OPSEU noted that a prosecution is not indicative of a 'successful' investigation but actually a failure of the system.

What are the positive incentives that need to be provided to municipalities to influence their behaviour? Can the Ministry influence in a positive way the culture? How can the regulator contribute to a better organisational culture, e.g. a culture of continual improvement in quality? (MacDonald).

- OPSEU stated that there has been a reduction in proactive initiatives due to staffing reductions, citing Dicerni/BFPB, Vol VI, testimony to the Inquiry May 15/16. It is critical that there be 'sticks' in the background, but you want to be in a situation to do more: outreach, assistance, changing the culture of non-compliance.
- Sancton prefers to discuss “incentives” rather than “culture.” Municipalities usually have high incentives to maintain strong drinking water systems. Sewage treatment is somewhat different and sometimes involves significantly different incentives, to dump their problems onto downstream communities.
- EP maintained municipalities have an incentive to perform poorly because reporting bad results enhances eligibility for a subsidy. She suggested that accountability mechanisms for Public Utility Commissions (PUCs) and individual employees to improve management practices and performance. Internalising the benefits and costs of complying or not complying will create incentives to comply.
- The problem is often not a culture of non-compliance but a culture of not knowing. It is in the Ministry's best interest to provide sufficient resources to help, move information and technical assistance to the institutions which require it; this is very important within an appropriate regulatory framework. Substantial value can be gained from the designation and clear articulation of responsibilities (OPSEU).

To what extent is morale within the MOE an issue which inhibits it in the execution of its mandate?

- At a fundamental level, the issue is not about morale but appropriate, and critical, culture being in place for an institution to perform its' functions (OPSEU).
- CEDF proposed that during 1995-6, an un-stated policy existed and was communicated to the prosecution program. The unofficial policy scoped active prosecution as a career limiting approach. This was the "only explanation for a 60% drop in prosecution between 1994 -96" and evidence of a chilling effect [on prosecution of polluters] from this policy.
- A "culture of fear" exists in the MOE. Institutional culture guiding ministry staff is strongly linked to their morale. The culture of fear which has grown within the ministry is pervasive - see d'Ombrain quote of the Ombudsman where civil servants are unable to speak truth to power. There has always been friction but the opportunity for open dialogue existed prior to the current budgetary reductions (OPSEU)
- The impact of hundreds of people being in a situation of employment insecurity sent major reverberations through the organization. In addition, demographic factors within the organisation, where the average age is forty-seven years, ensures an impending shortage of talent and institutional memory. Major reconsideration of the recruitment and retention strategy needs to be implemented The remaining staff of the MOE remain dedicated to doing their best to serve the public environmental interest, despite being under-resourced (OPSEU).

1.4 Operations

1.4.1 *In terms of water treatment, distribution and sewage treatment, should the Ontario Government maintain a role (aside from regulation, inspection and enforcement) in the operation of the systems?*

Is there a need for OCWA or can its functions be better served by other entities (ie larger municipal operators or private sector)? How would the absence of operational expertise affect the provincial government in its ability to fulfil its policy and regulatory functions?

- It would be appropriate for a senior OCWA representative to be here and to articulate their roles; it is unfortunate that no one is here to discuss these issues (CELA).
- OSPE stated that OCWA was one of their best clients for consulting engineers. There are differences in resources available and skills available, but they have the same problems as the private providers. OCWA may be hired to run treatment plants but not distribution and collection. OCWA could be improved.
- d'Ombrain did not offer a conclusion on whether there should or should not be an OCWA but he did view the OCWA question as a "serious machinery of government problem" based on OCWA's relationship to the government not being clear and its financial advantage in the market.

Benefits and strengths of OCWA:

- OPSEU argued for the continuation of OCWA. The scale of the organization, with its 20 -30 hub offices throughout the province, provides an important built-in system of redundancy which provides protection. Also, there are numerous small municipalities in Ontario and the private sector would not be interested [profit wise] to deal with the contracts. The ability to provide the small municipal service is unique to OCWA. OCWA has a strong mix of skills, technology and values in addition to thorough training and certification programs.
- Fundamental argument is that the mix of access and expertise is what makes OCWA most valuable. We need the remediation and emergency expertise for Walkerton-type situations as well as those which are less severe. Water service provision for the public needs to be considered beyond only the client basis and a "super SWAT team" out of Toronto, wouldn't serve the purpose. OCWA is the only functional body that has a provincial capacity and it is in the province's best interest to have a fast and comprehensive interjection (OPSEU).
- Water is a public utility delivered through many successful models and at its foundation is a series of technical, policy and business decisions. There is opportunity for changes and adaptations. The Government of Ontario is very proud of OCWA and it performs very well. (MNR)
- CELA initially supported the creation of OCWA as it was intended to have a range of roles, including water conservation, however it has moved away from mandate and devolved into provider of water and wastewater service provision. CELA believes that good policy reasons still exist for why OCWA should continue to operate. The efficiency to be gained is in having OCWA rather than small systems struggling to figure out who is best to provide water for their community.
- OPSEU asserted that OCWA is generally doing a good job. If it is identified as being non-compliant in some specific cases, there is evidence that it is being regulated in the same way as other drinking water system operators.
- OSPE added that OCWA is under severe pressure to perform in a competitive field in operations. They are reduced to a minimum professional staff to look after 500+ water and sewage systems. The

staff are generally very good and safety of water quality is the most important factors in water operations (same as for most water supply operators). They have good, very good and sometime mediocre results - the same as any organization. If OCWA is to be asked to operate any small system, they cannot do so without full cost charging, or baseline charging plus help from the province. GST and corporate tax exemption will not reduce the cost of basic services enough for many small systems - so this also can be done by the private sector. OCWA's main attraction is that it is seen to be government and any problems in performance are the provincial government's problem, not the municipality's. OSPE thinks this comfort may have helped in OCWA winning some operations contracts.

Arguments against continuation of OCWA:

- EP does not support the continuation of OCWA. EP cited statistics indicating that OCWA's compliance rates for sewage treatment were very low. Since OCWA is not independent, conflicting interests arise. The government's ability to enforce the law against OCWA is compromised, in part because the government has a direct financial interest in the agency. OCWA's existence may discourage the Ministry from enforcing the law against municipalities out of concern for establishing precedents that could harm OCWA. EP advocated privatization and argued that OCWA is the most serious impediment to the creation of a provincial competitive environment for privatization. Other water companies agree and they can not compete with OCWA. EP stated that the Canadian Council for Public-Private Partnerships (CCPPP) can provide more detail on this.
- OSPE suggested that non-compliance rates attributed to OCWA does not necessarily mean that OCWA is incompetent. Most may be minor problems; others may be due to the capacity and physical conditions of the plant process units; some facilities may be too small; there may be excess flow from sewer systems owned and operated by the municipality; there may be excess water demands on the water system or non-compliance may be from unforeseen changes in source water quality. Also, the plants are only operated by OCWA, it is not the owner. Municipal Council clients are the same as those who run their own plants.(OSPE)

1.4.2 Assuming a role for OCWA, is it sufficiently removed (at arms length) from government that issues of conflict do not arise? Are there ways that OCWA could be improved?

- Sancton articulated his support for OCWA but queried whether there was a conflict of interest in that MOE and OCWA employees (inspectors and operators) were both represented by OPSEU.
- OPSEU replied that a series of checks and balances exists within the system and if conflict arises, various steps are taken and there is no evidence that the union they belong to causes problems.
- OPSEU also stated that transparency of the agency is significant and supported any discussion of a change in the OCWA Board in order to make it a more openly accountable to the public. An updated Memorandum of Understanding and a renewed commitment from the government as to its role and establishing a vision was suggested (OPSEU).
- There is a fear that the relationship between operation, regulation and policy has slipped and as a result, the generation of innovative ideas within the province of Ontario has declined (OPSEU).
- EP responded that it is not feasible to mandate innovation nor is it necessary to subsidize it. Innovation springs from competitive environments. The profit motive gives private firms incentives to innovate.

1.4.3 What are the potential roles for OCWA?

Service of smaller municipalities:

- Foerster inquired whether the government should take any role in providing resources to the smaller municipalities.
- EP argued for the potential of the private sector as there is no lower limit to the size of municipality it can supply. The private sector can supply "real experts" who can comply with water regulations better than the non-compliant OCWA can. For example, in the U.S. the smallest systems (serving 25-100 households) tend to be privately owned; the government owns only 7% of them. In Florida, very small plants are bundled together and operate successfully without single, dedicated operators.
- CCPPP disagreed with EP's interpretation of the U.S. private and public sector data on water and wastewater and argued that the discussion was not an issue of private or public responsibilities but whether they are economically viable. For example, many of the US private operators have economic operating subsidies.
- There are major concerns with the private sector provision of water services such as accountability to the public, pursuit of profit motive in water provision, meeting regulations and the role of the government (CELA).
- McGeer found it difficult to believe that there would be small systems that can provide the services that OCWA provides
- OCWA a good example of an agency model in action and its existence provides policy flexibility for the municipalities because they don't have to accept only the standards set by private sector (Winfield).

OCWA in emergency situations:

- d'Ombrain proposed that the Commission should explore whether the government needs an agency to manage crisis situations [if OCWA were to be dismantled]. Also, whether the same requirements would exist for a crisis management body as for an institution dealing water provision.
- In terms of emergency responses, it would be beneficial to examine what other jurisdictions do without "OCWAs". For example, in the UK, those who are responsible for problems are also responsible for fixing them. If they fail to do so, they are fined. (EP)
- Crisis response capacity - we don't have these types of response teams in other sectors of the province. Many other models exist to deal with crisis situations, for example, mutual aid agreements (fire, police etc) where standing agreements exist for situations when institution is overwhelmed. They can immediately draw upon extraordinary resources. There are issues of liability but this type of model should be explored (attribution?)
- CCPPP noted that the private sector can provide emergency response and other services to facilities in need of assistance.

1.5 General

1.5.1 What is the effect of the recommendations in the Gibbons report¹ on the policy/standard setting functions of the MOE?

- MNR notes that funding is an issue. Much of this discussion is very consistent with Gibbons' recommendations for retaining responsibility at the ministry level while giving consideration to an arms-length implementing agency. However, this should be done in a measured way so as not to

¹ Gibbons, Val *Managing the Environment*, 2001

disrupt functions during transition. OPSEU cautions that in terms of Gibbons' recommendations around creating an agency, the whole report including the research papers should be read because the report is internally variable and the research papers do not necessarily support the conclusion that a separate agency should be established.

- CELA sees its recommendations and those from Pembina (Winfield) as very different from those of the Gibbons report. CELA asks Winfield: Do you see differences with respect to accountability in terms of the arms-length agency Gibbons recommended vs. our commission idea, for example in terms of freedom to information, etc?
- Winfield: On the accountability issue, it depends on the form of the entity, although our concluding recommendation is to improve the existing ministry rather than create a commission. The accountability and responsibility of a minister differs from that of a board of directors of an arms-length agency, in terms of how the electorate holds them to account. There are similar accountability issues with a commission. In Ontario a commission is, however, usually subject to audit authority, freedom of information requirements, and ombudsman, etc. Breakdown of accountability becomes more of an issue with the more esoteric entities such as authorities. There is a trade-off in terms of the degree to which a ministry is clearly accountable to the legislature, as compared to other agencies such as boards and commissions, vs. the enhancement of potential autonomy of the agency.
- CELA reiterates that they are not advocating an independent "TSSA-style" (Technical Standards and Safety Authority) commission, but one that is accountable through a minister.

1.5.2 Is the Gibbons Report recommendation of a shift away from "Command and Control" an appropriate recommendation for drinking water safety?

- MacDonald, speaking as an academic rather than a member of the RAP, expressed substantial concern about the "limited intellectual credibility" of the Gibbons report and its value in terms of its role in guiding government policy or extending the debate within the MNR or MOE. He argued that as a result of methodological flaws, no discussion of methods and case study identification, the report fails to offer information on the capacity of government to implement. To say where government should proceed, but not address how we can do it, limits the report's credibility.
- Winfield agreed with MacDonald in that the report did not offer any real assessment on command and control. He proposed that we need a clear and strong regulatory framework and when planning policy outcomes, we must consider the effectiveness of instruments is a function of their cohesiveness. We need to ensure that endpoints are reached. There are significant limitations to voluntary mechanisms.
- The Gibbons report must be considered in the public sector context rather than as an academic paper open to peer review. It is important to emphasize that it does not argue for a shift away from "command & control" but adds other approaches as an addition to other necessary elements (MNR).
- The Gibbons Report cited literature on organizational change and environmental components in order to develop a series of recommendations which clearly encourage the government to move forward in a few different ways. The authors argue for a base of strong regulation and a number of ways to go beyond that. Trying to extend the debate and create advice for the government to go beyond certain benchmarks rather than just passing a new regulation. We need to discuss more co-operative action and how that can be integrated into better water management (MNR).
- OPSEU articulated its fear that the unclear language used within the Gibbons report (which the government is keen to use as a reference source) may engender suspicion and concern. There was a concern that without clear and simple labels, the front line staff will respond with "What is this report trying to do?" and policy changes will be lost.
- Cohesiveness of an approach does not always equal better regulation or better compliance (MNR).

- CELA agreed and urged the government to also focus on positive incentives in addition to the strong regulator framework in the background. Most critically, and in order to promote wider policy, there is a need for a dedicated branch to conduct the research. The Ministry made the shift away from the C&C approach without any type of analysis or public consultation
- In critical situations, where specific outcomes must be achieved or it is an emergency situation, strong regulation is the most important mechanism available (Winfield)
- OPSEU pointed out the "command and control" was a perjorative term for necessary regulation and that once necessary regulation was in place, then additional approaches could be usefully employed. However, those approaches take resources to put into place and the evidence at the Inquiry has been that the capacity to do outreach and additional functions has been compromised by the cutbacks.
- Has there been a whisper that the government back off a strong regulatory framework? No. (MNR)
- Conservation Ontario has indicated its support of the Gibbon's report especially with regard to its emphasis on a place-based (i.e watershed management) approach to environmental management and delivery mechanisms on the ground.

1.5.3 In regard to information gathering and dissemination, is there a need for more information or an enhanced information role for MOE? Do we require greater (or improved) public access to information?

- Need to have a broader perspective on longer term trends in numbers. Also, many of these issues have been forcefully addressed by the government under regulation 459. (MNR)
- CEDF challenged the MNR response on availability of information by citing the early 1990s MOE published "offenses against the environment" where detailed numbers on environmental offences were provided and were publicly accessible. This information source was cancelled in 1995 and it is now extremely difficult to get numbers from the MOE which does not support the MNR's call for long-term analysis.
- CEDF also provided the example of the boil water advisory in North Bay where it was also extremely difficult to secure information on water quality status. The immediate emergency information and communication process was very poor².
- OPSEU agreed with CEDF in the claim that it is very difficult to get information out of the MOE. For example, the State of the Environment reports were not allowed to be released. The culture of fear has developed internally and really constrained level of dialogue and value of debate. A useful recommendation would be to reduce the power and influence of the Communications Branch in MOE so that information could be translated to different benchmark systems.
- OWWA/OMWA noted the information sources available through AWWA annual conferences on safe drinking water. In the U.S, the AWWA has been working with the US EPA to develop more formal policies to set benchmarks.
- Foerster queried whether it is a government function that the information is available to municipalities? (to MNR)
- MNR responded that it is the government's responsibility to attempt to ensure outcomes but government information comes at a cost. Although with technology changes, more information can be made accessible, cautious that we assume that government will provide the range of available information.

² For additional information on emergency communication and for discussion of this issue during the Phase II of the Walkerton Inquiry, refer to: Powell et al (2001). "Best Communication Practices in Communicating a Drinking-Water-Related Public Health Emergency" (Walkerton Inquiry Issue Paper - Meeting #1) or Meeting Summary notes from Meeting #1: Guiding Principles for Drinking Water (Hartley & Wolfe, 2001)

- CO expressed their concern that private well owners are a large proportion which are not being discussed. Where do these people go for information and resources?
- Foerster: this is part of the discussion and needs to be addressed. Huge role for information dissemination that isn't being dealt with. This perspective has been raised at the town hall meetings often.

1.5.4 Is there a need for government operated labs?

This question was not discussed as it will be addressed in an upcoming meeting.

2. OPERATIONS OF THE MINISTRY OF HEALTH

2.1 Role of the Ministry of Health

Safety of drinking water clearly has a strong public health component. Indeed, it could be argued that it is primarily a public health issue. Yet, the MOH (with the exception of the role of the Health Units) plays a comparatively minor role in regard to the issue of safe drinking water.

2.1.1 Can a case be made for transferring lead responsibility for drinking water safety from the MOE to the MOH? Does the MOH have too much on its plate already?

There is general agreement that MOH is not appropriate as the lead agency:

- Swain notes that an entity which spends over 40% of the public budget, and growing, is a lot for one minister. Asks whether there is general consensus that MOH is too heavily loaded to take on central responsibility for drinking water, and that this responsibility is better placed with MOE.
- Historically, MOH was started with a public health focus. However, it is a radically different organisation today, its hierarchy and effort consumed with health service delivery issues. MOH does not have a focus on public health issues, beside a small band of staff. OMA recommends against loading this into their very busy, complex and politically commanding agenda (OMA, d'Ombra)
- ALPHA agrees, noting that the issue would fall to the public health providers who operate according to guidelines that are meant as floorboards but that have become a ceiling, often not reached at all because of resource limitations.
- OMA adds that much of the knowledge necessary for preservation of safe water is held more in the environmental community than in the health community.
- There is a problem in hiving drinking water responsibility off from water issues in general, and if it were hived off to a different ministry that problem would be even greater. Issues that affect waste, soil and air have impacts on water. There would also be the problem of duplication/recreation of scientific capacity (OMA)
- McGeer reminds us that most of what the Ministry of Health does is run the business of health provision.

2.1.2 Short of a transfer of 'lead' responsibility, should the MOH's role in respect of policy development and regulation/enforcement be increased? Are any specific areas more important than others? How can increased input from the MOH be accomplished?

If there is a need for coordination among various entities, what is wrong with the system in place now and how should we improve it in terms of the roles played by the medical officer of health and the public health sector? (Swain)

- In terms of capacity, local public health units are municipal entities, and the ministry does not have enough expertise to back up those units and support them in their role. It is accepted that the mandate for the MOH is to support them technically, but municipalities hold responsibility. We now have 37 different structural entities (Boards of Health) where the medical officer of health and her/his staff are employed by the municipality. These take different organisational forms. Although the "Who Does What" commission and Commissioner Crombie as well as Sinclair recommended the function be made provincial, the government decided that it should be municipal, and the minister is not responsible, but then MOH brought in matching grants to fund it. However, there is big variation in the municipal ability to raise matching funds. (OMA)
- The MOH is not sufficiently equipped or mandated to be responsible for public health, yet MOE also lacks the resources. MOE does not have physicians, and looks to us for health consultation if there is an issue. There is a need for coordination and cooperation, which is done only informally right now. (OMA)
- Sancton cautions that although technically/legally municipal affairs is connected, the ministry of municipal affairs should not be seen as an actor. The link is to the MOH. He notes, too, that there is an advantage to rooting the officers in the communities rather than "provincialising" this function.

The need for collaboration/communication:

- With so many agencies having some kind of subjective jurisdiction over drinking water issues, increased communication among them rather than shifting jurisdictions is the most important issue. This might even point to a new agency made up of pieces of each. (ALPHA)
- The example is given of a boil-water situation in 1997-98 that lasted 13 months but got little attention in Ontario because it was handled well by a cross-sectoral team, with leadership from the municipality and joint press conferences to keep the public informed and the message consistent. Meetings have continued since then, to deal with temporary or new issues. (OMA)
- Conservation Authorities are basically municipal partnerships based on watershed boundaries. Watershed management has importance for public health e.g. knowing what potential sources of contaminants in the watershed are, but watershed management can also be a tool for coordination, as it brings together all types of water managers from all levels of government, including ministries, municipal water managers, treatment plant operators. (CO). d'Ombrain agrees on the need to move towards source protection and a watershed approach (see his paper para. 438, 443 and 458), and sees this as a strong argument for maintaining the lead role of MOE but with a mandate that is strengthened in practical and perhaps in legal ways.
- OPSEU calls for MOE to take the lead, and then for coordination to occur as designated people from the various organisations are empowered to come forward and participate. He suggests memoranda of agreement on respective roles, and invokes the need for transparency so that the public knows what the governmental organisations are doing.
- d'Ombrain notes that there are numerous points of confusion (the relationship among health units and municipalities, the advisory as well as formal and executive roles of the medical officers of health, the funding system whereby municipalities are responsible but the province chooses to pay 50%, etc), and that good coordination as well as clear policy are needed, perhaps entrenched in law but certainly with active leadership from the Premier's Office and transparency to public comment and debate.

How much of its time/resources does the MOH spend on water? Less than one percent? (Swain)

- That figure referred to time spent on municipal treated water systems, not drinking water issues in general (OMA). The business of public health agencies is to engage in programs focussed on disease prevention and health protection/promotion. Safe water is just one of 17 different programs. About one quarter of our inspection staff work on water issues, but the majority of those are smaller systems, private communal systems and private wells.

2.2 Relationship with the Ministry of Environment

2.2.1 *Is the relationship between the MOE and the MOH satisfactory? Is there sufficient opportunity for joint policy development? Are there sufficient mechanisms in place to provide effective communication between the institutions?*

Relationship of MOH with MOE:

- Williams (OMA) notes that often the MOE is unable to act on threats to water, and relies on the medical officer of health to take action. This speaks to the need for overriding policy. We need federal involvement as well, e.g. to deal with water issues in First Nations communities which often fall to us because the resources through Health Canada are not available. An empowered provincial body could seek collaboration from the federal level to address this need, since these are citizens of Ontario within our geographic bounds. Military bases and airports, also under federal jurisdiction, fall into that gap.
- The risk in MOE taking the lead is that the public health functions in MOH will be further marginalized. In B.C., officials at both Environment and Health are designated for water responsibility. This could be helpful because in theory, health should be the natural ally to environment at the ministerial level. (Winfield).
- Barriers to coordination: The focus has been so strongly on one-window delivery in Ontario, together with budget constraints, that ministries have abandoned horizontal coordination functions. (Winfield)
- OMA suggests that whatever mechanism (board, committee) is established should include a medical officer of health, and adequate field representation on implementation of policy. Mechanisms for cross-fertilization between health and environment, such as joint training and secondments, are also needed.

Should MOE have doctors on staff? (Swain)

- OMA calls for infrastructure incentives to break down communication and networking barriers between MOE and MOH. A new culture to the relationship is needed, including opportunities for secondments and training. The relationship between the ministries should be not only between Assistant Deputy Ministers (ADMs), etc, but also between MOE staff and local health staff.

2.3 Public Health Units

2.3.1 *Is the current Health Unit structure optimal? Is there a case to be made for reorganization to combine smaller units?*

- The 37 boards of health are creatures of the health protection and promotion act administered by the Ministry of Health and Long-Term Care. Thirty-three are multi-municipal, four are single-jurisdictional (D'Cunha, CMOH). Swain notes that when the boundaries [of health and environmental jurisdictions] coincide, it makes the development of collegial relationships easier.
- Sancton suggests that institutional arrangements need not be consistent, but are better off reflecting variable local needs/arrangements. OMA agrees that architects trying to redesign the system don't account well for the variable effects. OMA notes that, although OMA does not advocate a cookie-cutter approach, certain things do need to be consistent, e.g. each health unit should have at least one full-time medical officer of health.
- The role of health units with respect to broader planning has been diluted because of the loss of the ministry's responsibility for septic systems, transferred to municipalities and building codes. The public health perspective is being lost here, as we lose the staff members who have the expertise. Municipalities are calling us for advice and we cannot help them. Local building officials are called on only to answer to whether it meets code, not whether it protects health. (OMA)
- OPSEU discusses the expertise available in MOE Regional Offices: regions usually have a staff of about 10 people with broad experience, environmental officers and experts in various media (air, surface water, groundwater, etc). They are stretched to the limit by the core mandate of responding to clients (performing investigation and enforcement, abatement, environmental approvals, etc.). But they are also asked to feed into the Water Policy Branch, and Environmental Reporting Branch. The experience is valuable input for a coordinated model, but to be able to contribute these branches need more backing.
- OMA notes that public health agencies rely on inspectors who are generalists, and don't have people with masters-level training in environmental health, or toxicology. There is a need to bolster public health resources, which are locally inadequate, and to provide central research, preparation and promulgation of standards to preclude the loss of leadership and efficiency if each local unit tries to duplicate this on its own.
- Historically, there has been a disconnect in the relationship between the utility and the medical officer of health, with the latter often only getting involved in emergency situations. OWWA/OMWA members feel that drinking water has become a lower priority for the medical officers of health because of their wider responsibilities in a variety of other areas. (OWWA/OMWA)
- OWWA/OMWA suggested a role for medical officers of health that is more than reactive to emergency situations. The medical officers of health might act proactively, similar to the "circuit rider" proposal for treatment plant operators proposed in Expert Meeting 4, going from jurisdiction to jurisdiction looking for potential health problems before they become emergencies (OWWA/OMWA). OMA suggests that task groups be established to look at particular issues.
- OMA adds that the MOE labs were an essential part of the system of coordination and advice-giving, as Health's labs and the MOE labs could talk over technical issues proactively. When the MOE labs were closed, this left a gap since neither the Ministry of Health nor MOE alone has all of the necessary expertise (hydrologists, toxicologists, etc) to deal with the complex technical issues. From the private labs we get a technician informing us that a test was positive, not expertise on the implications or knowledge of the community. We desperately need that resource to be available.
- In terms of emergency response, emergency planning in most jurisdictions does not address the potential situation of emergency water system notifications, and perhaps the panel should suggest that municipalities actively consider that contingency (OMA)

2.3.2 *Is there sufficient independence for the Medical Officers of Health?*

- We have enough autonomy, thanks to statutory protection under the Health Promotion Act. As Medical Officer of Health, I wear two hats. The CEO reporting to a board, but on issues of protecting the public health I do not need the board to endorse my choices. There is variability across the province, however, as some of my colleagues are employees of municipal governments (OMA).
- When some jurisdictions maintain the Medical Officer of Health as consultative rather than full-time, or reallocate needed staff, they remove the ability of the officer to be an effective whistleblower (OMA), and the task of working part-time in different jurisdictions leaves the medical officer of health exposed to charges of inconsistency in decision-making among them (OCC). OPSEU suggests that the ability to blow a whistle and come forward is an important issue in the broader public service.
- MOH approval is needed to hire and fire the officers, which is an important protection of independence against local capriciousness. There is variation across the province, with more effective pressures depending on where the officer is in the administrative structure. Independence is also eroded if they are split between different areas, and not integrated into the governance of an area (OMA)
- In my experiences as a medical officer of health, I had complete independence and no influence was brought to bear. (D'Cunha, CMOH).

If we cannot afford 37 entities, should there be fewer? (Swain)

- A full-time medical officer of health is necessary, and if you are so small that you cannot afford it then you should combine. There may be some public benefit to resizing.

Should there be direction from Queen's Park? (Swain)

- No one comments on this question.

2.3.3 *Do the Health Units have sufficient tools and resources to fulfill their obligations with respect to safety of drinking water?*

- CO noted that there are no references to Public Health Units in the CO paper and queried as to the involvement of public health units in watershed management/source protection initiatives. OMA indicated that health units often only come to meeting where a crisis is being addressed and out of necessity their focus is on strictly defined core activities. CO observed that they, and CELA, are asking for a policy that encourages players to be at the table so that needed coordination can be achieved (CO). OMA agrees that limited resources often limit the capacity of health units to participate, and D'Cunha (CMOH) agrees that it is difficult to gather all the other stakeholders to reach resolution, in cases of potential public health risks.

2.3.4 *Given the coordination challenges that have been pointed out, are current institutional structures in fact the right ones to address water, or have we come to a very different way of looking at water and do we need new institutions?* (Wallace, MNR)

- MOH and its predecessor organisations have been around for fifty-plus years, and investment has been made in them. If we were to make a big change, it is important to consider the disruptive cost of change which would likely not be worthwhile. Should not make fundamental change in mandate (d'Ombrain)
- While Wallace (MNR) and Swain have mentioned possible institutional changes, both the d'Ombrain paper and mine are remarkably institutionally conservative. I hope we are not

concluding the meeting without talking about some kind of big change that someone has on the agenda but which has not actually been put on the table. (Sancton) Is anyone at the table is calling for institutional change?.(Swain)

- The CELA proposal calls for a specialized commission within the ministry, but calls this incremental rather than radical or revolutionary change. Swain agrees that this is incremental.
- OMA questions whether the present provincial structure is able to identify and deal with national, inter-provincial and bilateral water issues, and suggests the need for a federal role.
- MNR notes that his question about institutional change was not meant as a call for such change. However, there is also a need to delegate more decision-making to the local level rather than pushing all responsibility towards the provincial level. For standards setting and integration the provincial level is institutionally/jurisdictionally appropriate, but for issues like source protection the capacity is with local municipalities. Winfield responds that the province needs to provide frameworks and ensure capacity for local agencies to act, and suggests that the province has withdrawn many such sources. Wallace explains that his suggestion is an invitation to think broadly, not a comment on resourcing levels.
- OPSEU calls for an MOE which really brings all of the environmental tools, opportunities and personnel together to address the full range of environmental issues. MOE needs to take an ecosystem approach e.g. from toilet to tap and back, and notes that such a proposal is a radical idea relative to the current institutional context.
- OMA notes the difference between what the public expects vs. the institution's decision of what is realistic. The institution is driven by standards, while the public is driven by health expectations.