

MINISTRY COMMENTS ON PROF. d'OMBRAIN'S FINAL REPORT ON MACHINERY OF GOVERNMENT

Paragraph 16(b)

- S.O. 1957, c-88, clause 16 (b) states that it is the function of the Commission ... *to construct, acquire, provide, operate and maintain water works and to develop and make available supplies of water to municipalities and persons;*

Page 8, footnote 10, references "section 16"

- The correct reference in S.O. 1957, c-88 is to subsection 26 (1).

Page 9, footnote 15, references "section 130"

- The correct references in S.O. 1957, c-88 are to sections 30 and 31.

Page 9 footnote 16, references sections 30 and 31

- The correct references in S.O. 1957, c-88 are to sections 30 and 37.

Paragraph 29

- While MNR is no longer involved in enforcement of Section 35 of the federal *Fisheries Act*, the ministry remains involved in the review and referral process for "work that may impact fish habitat." This involves screening and referring work permit applications under both the Public Lands Act and the Lakes and Rivers Improvement Act, and providing fisheries information to Conservation Authorities and the Department of Fisheries and Oceans.
- In addition, the Ministry of Natural Resources and the Ministry of the Environment share responsibility for enforcement of Section 36(3) of the Fisheries Act, which is the key pollution prevention section, and is more pertinent to the issue of water quality.

Paragraph 35

- The province does not provide or manage drinking water – the province regulates drinking water.

Paragraph 37

- County and regional governments are the **only** upper tier municipal governments in Ontario.

Paragraph 38

- A public utility commission does not own the water and sewer facilities. Under the Public Utilities Act, a municipality retains ownership of the water and sewer facilities when it entrusts the control and management of these services to a public utility commission.

Paragraph 50 and 53 and Cabinet Lists

- Individuals, not portfolios, are appointed to Cabinet committees. For example, membership on the Priorities, Policy and Communications Board (PPCB), and the Priorities and Policy Board before it, has been based on individuals' skills, abilities, experience and potential to contribute. These individuals may have other duties. For example, there has evolved an approach whereby PPCB members have been assigned to chair policy committees of Cabinet, although this is not the rule.
- It should also be noted that the PPCB has only existed since 1999, when it replaced the Priorities and Policy Board.

Paragraph 64

- Last sentence should read: "The Ministry **oversees the financial arrangements** of provincial agencies".

Paragraph 67

- While many of the initiatives in the agenda approved by PPCB do relate to election commitments, other initiatives do not. All initiatives are considered by PPCB to be the priorities necessary to good government in the public interest.

Paragraph 68

- The following statement more accurately describes the decision making process:

"New policies and programs are developed through a Cabinet Submission process. The majority of such submissions are developed by line ministries. While the Ministry of Finance is generally called upon by Cabinet Office to comment on fiscal aspects of all submissions, it is only involved in the policy/program development side if there are significant fiscal and/or economic implications.

Submissions are signed by the deputy minister(s) and minister(s) directly responsible for preparing the submission. The minister(s) sign(s) to indicate that this is the recommendation he/she/they is/are making to Cabinet. The deputy minister(s) sign(s) to indicate that the submission

faithfully reflects the direction of the minister(s) and that the analysis is accurate and complete.

Each submission includes an "Inter-Ministry Consultation Record" indicating which other ministries have been consulted in the process, and whether or not they are in agreement with the submission's analysis or recommendations. Ministries present their submissions to the appropriate Policy Committee of Cabinet for ministerial review. Where the Minister of Finance is a member of the Policy Committee, Ministry of Finance staff will provide the Minister with a briefing note summarizing and commenting on the submission and its recommendations."

Paragraph 77 – 81 and 438

- In keeping with its mission of ecological sustainability, the MNR views management of the hydrological system from an ecosystem perspective. Safe drinking water (whether from ground or surface water sources) is dependent on environmentally sustainable land use practices. In not acknowledging this premise, the paper undervalues the essential role played by MNR. MNR's role in management of water is based in legislation (e.g. Public Lands Act, Lakes and Rivers Improvement Act, Conservation Authorities Act, sections of the Fisheries Act), is further developed in policy (e.g. Water Efficiency Strategy, various policy statements under the Planning Act, Watershed Planning Guidelines, etc.), in international agreements that the ministry leads on behalf of Ontario (e.g. SGLFMP, Great Lakes Charter) and culminates in ecosystem based program delivery (e.g. Private Land Stewardship, sustainable forest management, Conservation Land Tax Incentive Program, Managed Forest Incentive Program, Natural Areas Protection Program, etc.). MNR's approach to integrated ecosystem management is supported by inclusion of water management responsibilities.
- MNR has played a leadership role and holds a positive track record in areas such as wetland protection and restoration, riparian zone buffers, shoreline management, and fish ecology. References in the report to these water-related ecosystem components and other critical areas, such as forest management and its impact on water supplies and cleanliness, would have drawn attention to the importance placed on an integrated ecosystem approach as highlighted in the MNR vision of sustainable development and mission of ecological sustainability.
- In mentioning watersheds and conservation authorities (CAs), the report does not convey the leading role that MNR and the CAs have played in developing watershed management and planning. MNR has a series of technical guidelines and other tools that address watershed management. Conservation authorities have authored hundreds of existing plans.
- MNR plays a leading role in international and inter-provincial water management. MNR is the lead ministry on water quantity and fish ecology on the Great Lakes

and is represented on the international bodies such as the Great Lakes Fishery Commission, the International Joint Commission boards, and the Great Lakes Commission and Great Lakes Governors groups. MNR is the representative on the bodies that manage water on the Quebec and Manitoba borders.

- The paper does not report on the range of activities that the MNR leads through partnerships with stakeholders such as the water power industry, Ducks Unlimited, conservation authorities and others. MNR also has a stewardship program, which supports many community-based programs that assist in protecting surface and ground water quality.
- In discussing information management the report indicates the ministry is moving forward in developing organized databases to assist in effective management of water requirements. However, an important contribution to information management, consistent with MNR's approach, is the ministry's leadership in the establishment of integrated information systems, such as the Natural Resource Values Information System, Land Information Ontario, the Water Resources Information Project or the surface water-monitoring network.
- While the report makes reference to key areas of MNR responsibility such as low water management and water power, it does not acknowledge that these are the very areas where the government has taken successful measures such as the Water Response 2000 or the water power new business relationship.
- Much of the future for environmental management can be modeled on successful MNR initiatives related to knowledge management, watershed and ecosystem (wetlands, riparian zones, habitat, etc.) management, community stewardship and partnership building.

Paragraph 85

- Should read: "*The MISA regulations cover nine industrial sectors...*" There are nine MISA regulations, one for each industrial sector.

Paragraph 86

- (i) A provincial officer (not a Director) is a peace officer for the purpose of enforcing this Act: OWRA subsection 5(4).

(ii) OWRA clause 22 (a) states:

22. *"A provincial officer may use such force as is reasonably necessary,*

(a) to carry out an order issued under this Act, other than an order issued by a provincial officer;" (emphasis added)

- The correct reference is solely section 106.

Paragraph 87

- The provision referred to in this paragraph applied to the Ontario Water Resources Commission and was enacted as subsection 26 (1) in S.O. 1957, c-88 in the *Ontario Water Resources Commission Act*. It was re-enacted in S.O. 1970, c-124, section 9.

Paragraph 100

- The following bolded words in the paragraph are inaccurate: **A majority of the members of the board is appointed by the municipality and the remainder by the provincial government.** Medical officers of health and associate medical officers of health are appointed by the boards of health subject to the approval of the Minister of Health, and may only be removed with the Minister's approval and a 2/3rds majority of the members of the local health board. **The Ministry provides** professional guidance (**but not direction**) for medical officers of health through the Chief Medical Officer of Health, although the Minister has the authority to issue directions if circumstances warrant and may in specific circumstances delegate this authority to the Chief Medical Officer of Health. The latter is an officer of the Ministry, who since **1990** has also held the position of Director of the Public Health Branch.
- The following is more accurate:

100. Generally speaking, a majority of the members of the board is appointed by the municipality and the remainder by the provincial government. (section 49(1) of the *Health Protection and Promotion Act* "HPPA"). Boards of health are differently constituted in the case of a regional municipality, a regional corporation or a city that has the powers, rights and duties of a local board of health or in the case of the County of Oxford (section 49(9)(c) of the HPPA). Medical officers of health and associate medical officers of health are appointed by the boards subject to the approval of the Minister and may only be removed with the Minister's approval and a 2/3rds majority of the members of the local health board. (sections 64 and 66, HPPA). While the Ministry may provide professional guidance to medical officers of health through the Chief Medical Officer of Health, the Minister has the authority to issue directions if circumstances warrant or may authorize the Chief Medical Officer of Health to do so (section 86.3, of the HPPA). The latter is an officer of the Ministry and a statutory official who since 1987 has also held the position of Director of the Public Health Branch.

Paragraph 102

- The following is more accurate:

“While the guidelines are not regulations within the meaning of the *Regulations Act*, they are legislative instruments and are enforceable against the boards of health. The guidelines are contained within the *Mandatory Health Programs and Services Guidelines – December 1997* and set out the requirements and standards for public health programs and services across the province. Every board of health is required under the HPPA to provide or ensure the provision of health programs and services in accordance with the provisions of the Act, the regulations and the guidelines (section 82, 83 of the HPPA). The Ministry operates public health laboratories, which under the Act are subject to the Minister’s direction.”

Paragraph 108

- The correct name of the Act is the *Farming and Food Production Protection Act, 1988* (Note: the same error occurs in footnotes 182 and 183).

Paragraph 128

- It is important to note that “reinventing government” is primarily concerned with how services are to be delivered, not whether. Indeed the assumption is that services currently provided by the public sector will continue to be provided, only by others and/or differently.
- Critics have noted that Osborne/Gaebler approach does not call for the elimination of services...an important observation if the government is said to have adopted the “reinventing government” philosophy.

Paragraph 136

- There is a minor typographical error. The reference in this paragraph should be to the Ontario Realty Corporation and not the Ontario **Reality** Corporation.

Paragraph 137

- The Minister, not OCWA, has the authority through the statute to transfer the facilities (see ss. 2(1) – *The Minister may make an order transferring to a municipality the beneficial and legal ownership of a water works or sewage works owned by OCWA*).

Paragraph 152

- The Province’s share of project funding through SuperBuild is expected to vary. There is no basis for the “no more than 30% to 50%” figure. However, over five years, the government has committed \$10 billion to the SuperBuild initiative, with a minimum of \$10 billion to come from the private sector and other partners.

Paragraph 153

- Regarding the last sentence, the following is more accurate:
 “...The program has \$600 million, \$400 million to address infrastructure and \$200 for rural economic development. Currently \$240 million has been set aside for public health and safety priorities, including water and sewage works and bridges.”

Paragraph 154

- Various infrastructure needs estimates have been developed with varying degrees of credibility.
- SuperBuild has commissioned an up-to-date, comprehensive database that will permit a more accurate statement of rehabilitation and investment needs.

Paragraph 174

- The following is more accurate:
 “The Environmental Bill of Rights, 1993 applies to thirteen government ministries and agencies, requiring them to register plans known as Statements of Environmental Values (SEVs). Ministries are required to consider SEVs in making decisions. For certain statutory provisions, a citizen may appeal Ministry decisions if s/he believes the decision to be inconsistent with the SEV, among other reasons”.
- There is no statutory link between SEVs and environmental assessments as suggested in the text.

Paragraph 177

- Tribunal members are appointed by the Lieutenant Governor in Council: subsection 1 (2) of the *Environmental Review Tribunal Act, 2000*.

Paragraph 182

- Upper tiers (regional municipalities or counties) are not authorized to establish public utilities commissions.

Paragraph 186

- Municipalities own water works, not public utility commissions, which are often referred to as the agents of municipalities.

Paragraph 198

- Other sources include: stakeholder representations/advocacy; input from members of the legislature; ongoing policy review; and, general good government.

Paragraphs 203 and 204

- The Assistant Deputy Ministers' Committee on Land and Resource Use does not report to a standing committee of Local Government and Resource Deputy's Committee but may from time to time report on a specific matter to a committee of Deputy Ministers dealing with local government and natural resources. The ADM's committee can also be asked to undertake some tasks by the Deputy's Committee.
- The Deputy's committee does not review proposed cabinet submissions but provides comments to initiatives that may become cabinet submissions and may suggest refinements and consultations to develop a satisfactory submission.

Paragraph 216

- Proper citation is Ontario Regulation 903.

Paragraph 217

- Applicability of the *Environmental Assessment Act* to an undertaking (including a proposal for water works or sewage works) is not universal and depends upon whether the undertaking satisfies the criteria prescribed in section 3 of that Act and the regulations.
- Conditions in approvals impose obligations on a variety of actors, including owners, depending upon the circumstances and particulars of the application.

Paragraph 222

- Subsection 7 (1) of O. Reg. 459/00 places an obligation to ensure that sampling and analysis is carried out on the "owner of a water treatment or distribution system".

Paragraph 227

- MOE Directors and provincial officers have no legislative authority to act under the *Health Protection and Promotion Act*. Their powers are conferred by the Ministry of the Environment's legislation and where designated, the federal *Fisheries Act*.

Paragraph 252

- The Provincial Auditor's Special Report also says: "Over time, there have been many amendments to legislation and ministry policies and guidelines. These have resulted in more stringent conditions attached to certificates of approval that require greater accountability and due care by the owner or operator of a facility" (at p. 13).

Paragraph 259

- Municipalities do not have the authority to approve their own official plans. A significant number of upper tier municipalities have been assigned or delegated the responsibility to approve the official plan and amendments of their lower tier municipalities. The Province still approves official plans of all upper tier municipalities, all single tier municipalities and many lower tier municipalities.
- Granting MMAH sole authority to appeal municipal decisions to the OMB enables the Ministry to coordinate provincial intervention. MMAH plays a coordinating role in accordance with an appeals protocol that has been developed with other ministries. In fact, a majority of appeals are undertaken by MMAH on behalf of other ministries. Where MMAH is the approval authority, a one-window service is in place for provincial input, review and approval. The one-window planning service is another example of coordination of provincial policy implementation. MOE is very much involved in the review of official plans, but it comments to MMAH, who then coordinates these comments with other ministries comments. The approval by MMAH is based on balancing the concerns of all affected agencies.

Paragraph 261

- There is no point in repeating in a regulation legal rules that are already established by statute. Besides being redundant, repeating legal rules that already exist could lead to confusion in interpretation if there are subtle differences between the language of the original rules and the language of the repeated rules. There may also be questions of statutory authority, since you can only make regulations if they are specifically authorized by statute. Legislative counsel wouldn't normally draft a statute to include regulation-making powers to deal with subjects that they think are already fully dealt with in the statute.

Paragraph 265

- While there are difficulties using the period when energy was part of the ministry, there are other periods of time which can be compared. The “Historical Budget and staffing (1990 to 2000) Trends” was provided to the Commission (Inqdocno: 1090231).

Paragraph 271

- Provincial support for operations and capital has varied. In particular, smaller municipalities have consistently received higher levels of support under available programs reflecting ability-to-pay considerations.
- The government disburses funding pursuant to set criteria and not on an ad hoc basis. For example, under OSTAR, 6 criteria will be used to evaluate proposals:
 - 1) need for the project;
 - 2) technical quality and innovative features of the project;
 - 3) cost-efficiency of the proposed infrastructure;
 - 4) partner contributions;
 - 5) quality of the financial plan for the project; and
 - 6) adequacy of the municipality’s long-term capital asset management plan for the project, including plans to recover the full operating and capital costs through water and sewer service charges where appropriate.

Paragraph 281

- SuperBuild will commission a study on the economics of water and sewer as part of development of the long-term water and sewer infrastructure investment and financing strategy.

Paragraph 289

- The Premier’s Office does not control access to the decision-making system. Each Cabinet agenda has time set aside for Ministers to raise issues and matters that they feel are important. In the event of conflict, the ultimate arbiter of what gets onto the Cabinet agenda is the Secretary of the Cabinet (who is also the Clerk of the Executive Council). She makes her decisions based on a number of factors that include relevance to the program determined by the PPCB, urgency, the needs of good government, and public interest.
- In the event of conflict, the ultimate arbiter of what gets onto the Cabinet agenda is the Secretary of the Cabinet (who is also the Clerk of the Executive Council). She makes her decisions based on a number of factors that include relevance to the

program approved by the PPCB, urgency, the needs of good government, and public interest.

- The government also has many other processes (e.g. business planning and other types of planning exercises) for Ministers to bring forwards issues and business relevant to their portfolios for consideration and decision making.

Paragraph 291

- The Priorities, Policy and Communications Board (PPCB) reports to Cabinet and interested ministers are routinely invited to PPCB.

Paragraph 292 and 293

- Cabinet committees review and recommend policy prior to items, with financial implications, going to MBC. Generally, MBC decisions come forward to Cabinet for review in the context of the relevant policy recommendations. This is to ensure that policy, fiscal and operational decisions are integrated and consistent. This practice is not intended to sub-ordinate MBC, but rather to uphold the collective responsibility of Cabinet and ensure integrated decision-making.
- The Premier's Office is an advisory, and not a decision-making body. The Premier's Office, with Cabinet Office, does review material coming before Cabinet, and provides advice to the Premier, but has no authority to block or "filter" Cabinet decision, or items going to Cabinet.
- The term "politicized" is not explained. Does the author suggest that, in making decisions, ministers ought not to take into account a wide variety of factors and criteria, some of which might be labeled "political"? Does the author suggest that there is a bright-line test that can be used to demarcate between decisions based on good policy and decisions based on good politics? To the contrary, many would argue that the supposed dichotomy between sound policy and good politics is false.

Paragraph 294 and 295

- This is not unique to this government. The 1990-95 and 1985-90 governments appointed parliamentary assistants to Cabinet committees. This practice may also have been followed prior to 1985.
- Parliamentary assistants are members of the executive branch of government. They are appointed under the Executive Council Act. As parliamentary assistants, they are responsible to the Lieutenant Governor in Council, who appoints them and may prescribe their duties.
- They are sworn to confidentiality.

- Just as ministers, parliamentary assistants are paid by the government (not by the Legislative Assembly) for their executive (as opposed to legislative) duties.
- Just as a minister who breaks with government policy, a parliamentary assistant who opposes the government would have to resign as a parliamentary assistant .
- The premier sends “mandate letters” to parliamentary assistants, making clear their responsibilities.
- Note that Parliamentary Assistants do not attend Cabinet, where the ultimate decision is made.

Paragraph 296

- Cabinet Office staff provide briefing material to policy committee members and brief the Chairs of policy committees prior to committee meetings. The sponsoring Minister and senior ministry officials speak to the proposals at the committee meetings.

Paragraph 297

- A clear division of responsibility exists in Ontario between the management of political issues and management of the operations of government. The Premier's Office staff provides advice. Execution of the Premier's decisions and all operational matters are the responsibility of the professional public service. Even when some aspect of government operations results in a political issue, responsibility for the resolution of the operational issue – be it day-to-day or longer-term – still rests squarely with the Secretary of the Cabinet and/or her senior officials.

Paragraph 298

- The Deputy Minister of Ontario Public Service Restructuring and Associate Secretary of the Cabinet, Centre for Leadership leads two related functions that support public service transformation and build executive leadership capacity.
- The Ontario Public Service Restructuring Secretariat (OPSRS) supports the Secretary of the Cabinet and provides advice on matters of public service restructuring to ensure performance effectiveness and efficiency. This has included, developing models and alternatives regarding government organization, program realignments, cultural change, and ministry mandates. However, the selection of ministers and their specific portfolios or duties rests solely with the Premier and is outside the scope of this advisory role.
- The Centre for Leadership is the focal point for the development of executive leadership of the Ontario Public Service. Specifically, the CFL provides:

- 1) strategic planning and advice on senior management group human resource issues to the Secretary of the Cabinet and the Premier;
 - 2) executive human resources services;
 - 3) executive education, training and development; and
 - 4) deputy minister administration.
- The CFL supports and works with the Executive Development Committee, a committee of seven deputies, chaired by the Secretary of the Cabinet who's role is to provide direction to and oversee decisions regarding senior management issues.

Paragraph 299

- This model is not unique to Ontario. It has been adopted by other provinces.
- Communications directors report dually to the line deputy and the Cabinet Office deputy in a co-operative, rather than hierarchical arrangement. Communications directors are not more or less responsible to Cabinet Office than they are to their own DMs and Ministers. Rather, they are also responsible to Cabinet Office. The report also fails to acknowledge that similar models have been, or are being, implemented for a number of functions across the OPS (e.g. legal, auditing, IT), and are part of a more effective approach to government administration in general.

Paragraph 300 and 301

- All central agencies work together to both challenge and assist ministries with the development of comprehensive policy proposals and resource submissions to ensure that all ministries' proposals are consistent and fully integrated with respect to policy, fiscal, operational and communications considerations.
- Cabinet Office leads the policy review; Management Board Secretariat evaluates the resource requirements, including financial, human resource, I&IT and realty requirements; Ministry of Finance considers the impact to the fiscal plan; and SuperBuild reviews any capital components. Every central agency has a portfolio analyst/policy advisor with sectoral expertise assigned to every ministry.
- Collectively, these agencies ensure a ministry's proposal is well considered without unnecessarily duplicating the expertise of the other central agency partners. Consequently, there is an effective and efficient challenge capacity within central agencies to ensure that sound proposals are put forward by ministries for Cabinet decision-making.

Paragraph 302

- While it is true that operational and administrative support to the Civil Service Commission is currently provided through the Management Board Secretariat and the Centre for Leadership, the Civil Service Commission continues to meet regularly and to exercise its various statutory powers and functions related to human resources management under the *Public Service Act*, particularly in respect of senior levels of the Ontario Public Service. It also continues to exercise regulation-making authority under the Act. The provision of support to the Commission by these organizations is necessary because the Commission does not maintain a separate bureaucracy.
- The codification by statute of the administrative support structure is not legally necessary in order to achieve transparency, and would serve primarily to reduce flexibility in reorganizing the administrative support structure at any time in the future. The author acknowledges the benefits of this structure when he states that ***“The effect is to give the Government an efficient and effective means of managing its human resources.”***
- The Lieutenant Governor in Council appoints members of the Commission through Order-in-Council under subsection 2(1) of the *Public Service Act*. In recent years, the Civil Service Commission has consisted of three “permanent” members: the Chair (who is also the Secretary of Management Board of Cabinet and the Deputy Minister of Management Board Secretariat), the Secretary of Cabinet and the Associate Secretary of Cabinet responsible for the Centre for Leadership; and approximately five other deputy ministers appointed for one-year terms. The appointment as Commissioners of these senior public servants, who are not permitted to engage in most forms of political activity under Part III of the *Public Service Act* and who are not political partisans, promotes neutrality in the Ontario Public Service. The fact that the Chair is also the Secretary of Management Board of Cabinet and Deputy Minister of Management Board Secretariat is organizationally efficient and consistent with the principle of neutrality since each of these positions is strictly apolitical.
- There is no evidence that there is or has been any politicization of the public service. Indeed, all the evidence is that the civil service’s professionalism and non-partisan neutrality has been fostered and protected since 1995.
- It should be noted that the Commission has, under section 24 of the Act, delegated the power to recruit qualified personnel, except at the most senior levels, to all deputy ministers so that ministries can effectively recruit their own personnel in accordance with applicable human resources policies (e.g., hiring on basis of merit as set out in Management Board of Cabinet’s Equal Opportunity and Staffing Operating Policies) and their own operational requirements. The fact that most staffing decisions are made at the ministry level further reduces any risk of politicization of the Ontario Public Service.

- Certain of the Commission's powers and functions are, however, subject to approval of the Lieutenant Governor in Council. Such powers or functions consist of recommending salary ranges for each classification where such ranges are not determined through collective bargaining under section 4(b) of the *Public Service Act*; the paying of special termination allowances under section 84 of Regulation 977 under the *Public Service Act*; and the making of regulations under subsection 29(1) of the Act. These powers or functions involve the expenditure of public funds and the making of subordinate legislation, respectively, and are matters which are appropriately subject to political control by Cabinet.

Paragraph 305

- The role of PPCB is to set the government's overall strategic directions and key priorities.
- Central agencies at every level work together to challenge and assist ministries to ensure that ministries' proposals are strategic, integrated and address government's policy and fiscal priorities for sound decision-making.
- As noted in paragraphs 292 and 293 above, the Premier's Office is an advisory body only. It encourages ministers and their ministries to think and act strategically.
- The Ontario government does have a document called the Ontario Cabinet Decision-Making System: Procedures Guide. It is publicly available, and provides an overview of the government's decision-making process. It is currently being updated to reflect changes to cabinet committee structures.

Paragraph 307

- There is in fact a statute establishing the Ministry of Agriculture, Food and Rural Affairs.

Paragraph 324 a) and 325

- This paragraph overstates the closeness of the relationship between the MOE and OCWA in day-to-day matters. Firstly, by referring to the "Ministry" of the Environment it creates the impression of a directing role for the Ministry at the bureaucratic level. OCWA does interact with the bureaucracy within the MOE but in the appropriate sense of an operator asking questions of Ministry staff and dealing with issues that are of a regulatory nature. OCWA staff will also be in contact with Ministry staff in its role as project manager working for municipalities on capital projects. This would be no different for a private sector company in a constant working relationship with a regulator.

- The *Capital Investment Plan Act* talks to the **Minister** issuing directives consistent with policies issued by the Lieutenant Governor in Council (see ss. 16(2), *CIPA*). The distinction between “Ministry” and “Minister” is meaningful in a formal sense.
- Notwithstanding the OCWA/Minister reporting relationship, at a practical level the President of OCWA maintains an ongoing dialogue with the Deputy Minister (MOE).
- Note, OCWA was established before the February 2000 *Agency Establishment and Accountability Directive* came into effect.

Paragraph 327

- To state that the current arrangements in Ontario blur accountability between ministers and agency heads neglects the role of the implementing legislation and memorandum of understanding (MOU) which serve to define and clarify roles and responsibilities. Annual ministry and agency business plans which are mandatory and implemented as a result of the 1995 Ontario Financial Review Commission (OFRC) report, also serve to enhance accountability and performance expectations.

Paragraph 342

- The criticism that the Ontario system of governance lacks transparency is at odds with the fact that the annual ministry and agency business plans are published to communicate goals and priorities, and as a way of measuring performance (recommendation of the 1995 OFRC report). Many agencies seek stakeholder input on their strategic priorities which are published at the beginning of their fiscal year.

Paragraph 343

- At a formal level, the *Capital Investment Plan Act*, serves as OCWAs defining document and sets what it is about. OCWA has acted consistent with its statutory mandate throughout. Accountability is preserved through *CIPA* and the memorandum of understanding (between MOE and OCWA) both of which clearly set out who is accountable for what.

Paragraph 344

- Certain Ontario regulatory agencies such as the Securities Commission, are clearly arms-length although bound by certain directives. The government does not intervene in its regulatory decisions.

- The Ontario SuperBuild Corporation is directly accountable to the Minister of Finance and functions as part of the ministry. The creation of SuperBuild was recognized by the OFRC as an example of best practices in capital planning.
- SuperBuild's advisory board provides advice and counsel to the Minister of Finance on the creation of new public-private partnerships, approaches to privatization and key infrastructure challenges (e.g., long-term water and sewer strategy).
- All provincial infrastructure policy, investment and capital planning decisions are consolidated under a single Cabinet Committee on Privatization and SuperBuild (CCOPS). SuperBuild makes recommendations to CCOPS.

Paragraph 358

- The model of agency described in paragraph 358 is the federal "Special Operating Agency" model not used in Ontario. In Ontario, the policy framework expects all classified agencies to operate independent of government, but subject to varying degrees of administrative control. This distinction, ideally, should be embedded in the legislation. However, the directive is still relatively new and there have not been opportunities to address any potential issues in long standing agencies.

Paragraph 360

- The policy framework sets out the separate roles for the board and the minister. The minister under the Agency Establishment and Accountability Directive does not provide operational direction. The Minister's obligation to provide strategic direction allows the board to plan and budget effectively.

Paragraph 364 and 365

- As indicated under paragraph 344, SuperBuild's advisory board provides advice and counsel to the Minister of Finance on the creation of new public-private partnerships, approaches to privatization and key infrastructure challenges (e.g., long-term water and sewer strategy).
- SuperBuild was not established to behave autonomously. Its agency status provides greater flexibility for it to enter into public-private partnerships or establish new innovative financing mechanisms.

Paragraph 369

- MOUs serve to address those administrative arrangements deemed necessary between the agency and the minister/ministry.

Paragraph 391 and 392

- The Province will consider how water and sewer systems are financed as part of the development of a long-term water and sewer infrastructure investment and financing strategy.
- A study has been commissioned on the financing of water and sewer systems.

Paragraph 394

- Transparency in crown agencies is achieved through annual publication of business plans, MOUs, and Statements of Priorities (where applicable). The 2001 OFRC report and the recommendation for accountability legislation and the role for "independent performance enhancement offices" will further the debate on ensuring quality of service.

Paragraph 403

- The role of CO policy and CO communications is exactly one of coordination and integration. CO not only does this but also actively encourages integration within and between ministries.
- The conclusion about the importance of co-ordination for effective policy-making is an obvious one. It is however, somewhat inconsistent with the paper's earlier criticisms about over-centralization. This comment also applies to other paragraphs in the report, such 319, 382. As noted before, what one perspective can position as centralization, another can position as integration and co-ordination.

Paragraph 404 and 405

- Governments everywhere are recognizing the importance of integration, coordination, and governance/accountability. This government is no exception and it has made a number of strides in this area (agency accountability structure, delegation policies, MOU's with agencies, etc.)

Paragraph 406

- Choices for government about devolving standard-setting and regulatory authority are substantially different from choices about delivery and enforcement. Many jurisdictions are shifting from direct delivery to a standard setting and monitoring role. Public expectations about the role of government in providing safeguards in relation to critical areas of public interest will ensure that governments maintain a standard setting and monitoring role where the health, safety and security of the public is affected.

Paragraph 407 and 408

- As in the case of other jurisdictions, Ontario is moving rapidly towards a broader and more integrated approach to resource protection. There has been a growing recognition of the inter-relationship between land-use planning, regional economic development and the environment (e.g. Deputy Ministers' (DM) committees, and Smartgrowth DMs and Secretariat).
- The Managing the Environment report's recommendations will provide additional guidance in developing a comprehensive systemic response.
- The Province's long-term water and sewer infrastructure investment and financing strategy is being developed to make sure that the infrastructure required to ensure safe drinking water is available in the future.

Paragraph 417 - 420

- As mentioned in the report, municipalities are democratically elected, self-governing, law-making, taxing and service delivery governments (page 35). They are accountable to their citizens for the decisions they make. Their role is to provide services and to govern in a manner that responds to the needs of their local community. While they must conduct their activities in accordance with provincial legislation, municipalities are given flexibility, within the provincial regulatory framework, to serve the local community in a way that is tailored to the community's preferences. For instance, under current legislation municipalities can provide water in house through a department of the municipal administration; local municipalities can establish public utility commissions to run water works; or they can contract out the service. Municipalities can also enter into agreements with other municipalities for water supply services. They can finance water supply services through user fees or taxes or a mixture of the two. Municipalities enjoy a considerable latitude to make decisions on local matters.
- As regards pooling of resources suggested in the report, municipalities have the option of entering into agreements with other municipalities for the supply of services, as indicated above. Under the Savings and Restructuring Act, Bill 26, 1996, municipalities were provided the tools to restructure their governance system (i.e. undertake amalgamations, for instance), thereby enabling them to "pool their resources". Among the purposes of these restructuring initiatives was to improve and strengthen the capacity of municipalities to provide local services.
- It should be pointed out, as indicated above, municipalities can, under current legislation, involve the private sector in the supply of services by contracting out the provision of a service (e.g., City of Hamilton and the Region of Peel have contracted out the operation of their sewage treatment systems). OCWA operates numerous water and sewer services in Ontario under contract to numerous municipalities. In addition, municipalities also have the authority to undertake joint ventures with the private sector (section 210.1 of the Municipal Act) for the provision of capital facilities related to municipal services (such as water and sewer).

Paragraph 423 and 424

- Guided by the Managing the Environment Report, the government is moving forward with a new framework for environmental protection. The change process has already begun with the establishment of the new Cabinet Committee on the Environment and the appointment of an Associate Deputy Minister to implement the new framework.

Paragraph 426 and 427

- The Ministry of the Environment is the lead ministry for drinking water responsibilities and the Minister of the Environment will lead the implementation of the new environmental protection framework in collaboration with other ministries. The government will also respond to the conclusions and recommendations of the Walkerton Inquiry. In implementing the new environmental protection framework, the government intends to work closely with municipalities and the private sector in ensuring water quality.

Paragraph 440

- A comprehensive framework of this kind is recommended in the Managing the Environment report and the government will be guided by this when implementing the new environmental framework.
- MMAH has a history of factoring in provincial policies on land use planning, developed to deal with the interests of other Ministries, when it makes decisions related to the approval of official plans. Should a comprehensive water policy be developed, the land use implications of this policy could be incorporated in a provincial policy statement under the Planning Act, which could then be considered by MMAH and other approval authorities in their decision-making on land use planning matters.

Paragraph 441

- The Minister of the Environment is the lead.

Paragraph 471

- Investments in metering are being encouraged through OSTAR.

Paragraph 475 – 477

- MOE and SuperBuild work closely together on water and sewage infrastructure. MOE provides technical expertise while SuperBuild guides capital planning and provides advice and support for public sector organizations wishing to pursue investment partnerships with the private sector.

Paragraph 476

- The cost of facilities (new or modified) are arrived at through a bidding process for design and construction services. OCWA is not involved as either designer or contractor. OCWA, if it is involved at all, would be involved as a project manager (usually after competing against engineering firms for the project management contract).
- The rates ultimately paid by the consumer are set by the municipality and not by OCWA.

Paragraph 478 e)

- The government will be guided by the Managing the Environment report and the Walkerton Inquiry recommendations to ensure that appropriate policies, legislation and accountabilities, and financing and reporting mechanisms are in place, both inside and outside of government.
- There will be a role for central agencies in supporting these frameworks and ensuring coordination and compliance. CO is already ensuring that appropriate accountability mechanisms are put in place as policies are developed.

Paragraph 480

- This is envisaged by the Managing the Environment report and will guide the government in implementing the new environmental protection framework.