

**The Ontario Clean Water Agency: Supplementary Information
Submitted to the Walkerton Inquiry
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On Behalf of Energy Probe Research Foundation
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Since the formation of the Ontario Clean Water Agency (OCWA) in 1993, Ontario's municipalities and citizens have been ill served by this agent of the provincial government. OCWA was created:

- in response to claims of conflict of interest;
- to attract private capital to finance investment in water and sewage works;
- to assist municipalities and the province in providing water and sewage services on a cost recovery basis; and
- to protect human health and the environment, encourage conservation of water resources, and support provincial policies for land use and settlement.¹

In eight years of operation, OCWA has failed to deliver on any of these objectives. In fact, it has become a major obstacle to an economically efficient and environmentally secure water and sewage sector in Ontario. The Ministry of Environment and Energy (MOEE) cited "continuing confusion over OCWA's role" as one of the "major shortcomings in Ontario's water and sewage sector."² OCWA embodies a conflict of interest for the provincial government; it is unsuccessful financially and in operations and management; it has not proven itself accountable or beneficial to the provincial government or the people of Ontario; and it stifles competition in the private sector.

A Conflict of Interest

Before OCWA was established, MOEE not only regulated water and sewage plants but also owned and operated several hundred plants. That dual role created a conflict of interest that interfered with the ministry's ability to regulate. Comments on an OCWA Capital Submission from 1995 stated, "One of the reasons OCWA was established was to resolve the conflict between MOEE's role as owner/operator and regulator of these facilities."³

Had the government transferred ownership and operations to a private organization, it may have succeeded in resolving the conflict. However, OCWA is not a private organization. The agency's status is somewhat ambiguous. In his testimony to Part I of the Walkerton Inquiry, James Merritt, who helped create OCWA and who served as its

¹ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario. Ministry of Environment and Energy. July 29, 1996. p. 5.

² Ibid. p. 11.

³ Inquiry Document No. 1023140. Comments on Revised Draft OCWA Capital Submission. October 27, 1995. p. 1.

Vice President of Operations between 1993 and 1996, described the agency as “almost independent” and “kind of semi-private.”⁴ Paul Boucher, a manager of Allied Water, which competes against OCWA for municipal contracts, has speculated that OCWA’s public/private identity is intentionally unclear: “OCWA describes itself as public or private depending on whose lunch it’s trying to eat.”⁵

Despite the ambiguity, OCWA is inextricably tied to the provincial government. A Schedule IV Agency would inevitably create conflicts for its regulator.⁶ A Ministry of Environment (MOE) document described the crown agency’s proximity to the government:

- the Minister of Environment is responsible for the administration of the Capital Investment Plan Act (under which OCWA was created) in respect of the agency;
- a memorandum of understanding between the minister and the chair of the agency’s board of directors defines in more detail the mandate, financial and administrative arrangements of the agency, and the scope of authority given by the minister to the agency;
- the minister reviews and approves the agency’s business plans, and recommends the plans for approval of Management Board;
- the minister is accountable at Cabinet for the activities of the agency;
- the Lieutenant Governor in Council appoints the chief executive officer and all members of the board upon recommendation from the minister and endorsement from Cabinet;
- the board of directors is made up of senior government executives (e.g. deputy ministers);
- since the establishment of OCWA, all deputy ministers of the environment have been appointed to the board of directors.⁷

Such an agency cannot be said to be at arm’s length from either the environment ministry or, more generally, the provincial government.

The province’s financial responsibility for OCWA creates further conflicts. In his discussion paper on the machinery of government, Nicholas D’Ombrain pointed out, “As an agent of Her Majesty, should the agency be found financially liable, the government is committed to paying the amount of any judgment against OCWA from the Consolidated Revenue Fund.”⁸ Under this arrangement, the province is expected to regulate OCWA by issuing fines for which the province ultimately pays – either through cash payment or loss of equity.

⁴ Merritt, James Victor. Walkerton Inquiry Transcript. April 12, 2001. p. 104, line 8, p. 206, line 6.

⁵ Crittenden, Guy. Closed for Business. Report on Business Magazine. June 1999. p. 56.

⁶ “Under revised agency guidelines issued by Management Board of Cabinet on May 3, 2000, OCWA is now categorized as an Operational Enterprise rather than a schedule IV Agency.” Inquiry Document No. 1096089. Scott, Roger. The Ontario Clean Water Agency. October 11, 2000. p. 1.

⁷ Inquiry Document No. 1083518. The Ontario Clean Water Agency. Lieou, John. Ministry of Environment. January 18, 2000. p. 1.

⁸ D’Ombrain, Nicholas. Machinery of Government for Safe Drinking Water in Ontario. Discussion Paper for the Walkerton Inquiry. March 30, 2001. p. 42.

A 1996 MOEE submission to Cabinet acknowledged the problems created by these structural ties between the government and the water and wastewater sector: “the province is still in a perceived conflict of interest position because the province is both owner/operator/financier of water and sewage works and services and, at the same time, acts as the regulator.” The submission concluded that as long as the province, through OCWA, continues to own and operate facilities, the “conflict of interest remains unresolved.”⁹

OCWA’s structure is not the only source of conflict. Conflicts also arise from the agency’s ongoing relationship with its regulating authority. The province seeks advice from OCWA, and then, as regulator, applies this advice to the agency. OCWA has participated in such committees as the Advisory Committee on Water/Wastewater Operator Certification. The ministry “received some criticism from various quarters that OCWA has been represented on the committee, while other operating authorities have not.”¹⁰

An Unsuccessful Business

A 1998 review of OCWA by the Office of Privatization reported that “OCWA is an enterprise of diminishing value.”¹¹ In the review, estimates of the agency’s value (made before the details of the Peel contract were revealed) varied from a high of \$19.9 million to a low of negative \$44.9 million depending on revenue and financing assumptions.¹² The figure drawn from the review by government officials and adopted as a working estimate was negative \$16.9 million.¹³ An addendum to the privatization review noted problems with the Peel contract, implying that the value of OCWA with the contract is lower than previous estimates. In any case, the review concluded, “OCWA in its present form ... is not sustainable over the long term.”¹⁴

OCWA’s financial performance has certainly been unimpressive. Since its inception, it has never paid a dividend to the Province of Ontario, its sole shareholder.¹⁵ The agency’s operations lost \$5.1 million in 1994 and \$7.3 million in 1995.¹⁶ After 1995, the

⁹ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario. Ministry of Environment and Energy. July 29, 1996. pp. 10, 15.

¹⁰ Inquiry Document No. 1054841. Gildner, Brian. Letter to Mona Kornberg, Vice President Human Resources, Ontario Clean Water Agency. November 13, 1996.

¹¹ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November 1998. Volume 1 of 2. p. 37.

¹² Ibid. p. 35.

¹³ Inquiry Document No. 1028125. Value of OCWA ... as of March 12, 1999. For Interministerial Meeting #1, January 26, 2000.

¹⁴ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November 1998. Volume 1 of 2. p. 95.

¹⁵ Inquiry Document No. 1083518. The Ontario Clean Water Agency. Ministry of Environment. January 18, 2000. p. 3.

¹⁶ Inquiry Document No. 1017286. Submission to Cabinet Committee on Privatization. Undated [May 1997]. p. 5.

government determined that OCWA's operations should be self-supporting.¹⁷ However, figures for 1996 are disparate. According to the agency, its operations generated a profit of \$2.8 million.¹⁸ In contrast, former MOE employee Gerry Rupke charged that OCWA lost approximately \$8.5 million in 1996 and covered its loss with profits from financing.¹⁹ In 1998, the Office of Privatization review warned that if the agency didn't increase revenues or cut costs, "OCWA's ability to remain self-sufficient is limited."²⁰ Looking to the future, OCWA has proposed capital investments without which it expects a net loss of \$3.8 million in 2003.²¹

In the past, OCWA has subsidized its money-losing operations business with its money-making financing business. When the agency was established, it acquired from the province, at a considerable discount, a portfolio of outstanding loans to municipalities.²² Some of these loans were made at interest rates as high as 15.5 percent.²³ OCWA derives almost all of its income from payments on the loans.²⁴ In 1996, an OCWA review team wrote, "Currently the profits generated by the loan portfolio offset losses from OCWA's main business, operations."²⁵ Stuart Smith, former president of Philip Utilities Management Corp., criticized the practice as tending "to mask inefficiency in OCWA's operations."²⁶

As the loans are paid off, OCWA's cash assets grow. They had reached \$131 million by the end of 1999. Although the ultimate use of the cash remains shrouded in secrecy, OCWA behaves as if it is entitled to spend the money. It has argued that the cash should not be returned to the province in part because "the amount is not material to the province."²⁷

OCWA has made at least one extremely questionable business decision. In 1998, it won a contract to operate the Peel Region's water system by underbidding the previous contract by \$67 million.²⁸ The 1998 review of OCWA determined that the deal (the agency's

¹⁷ Sterling, Norm. Hansard. The Standing Committee on Resource Development. April 14, 1997. 1620.

¹⁸ Inquiry Document No. 1014582. Ontario Clean Water Agency – Overview of Mandate and Responsibilities. Corporate Planning Section, Finance & Administration. March 2, 1998. p. 4.

¹⁹ Rupke, Gerry. Hansard. The Standing Committee on Resource Development. April 14, 1997. 1510.

²⁰ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November 1998. Volume 1 of 2. p. 37.

²¹ Inquiry Document No. 1083519. Lieou, John. Review of the Mandate of the Ontario Clean Water Agency. January 18, 2000. p. 3.

²² Inquiry Document No. 1083518. The Ontario Clean Water Agency. Ministry of Environment. January 18, 2000. p.3,4.

²³ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario. Ministry of Environment and Energy. July 29, 1996. p. 8.

²⁴ Inquiry Document No. 1014582. Ontario Clean Water Agency – Overview of Mandate and Responsibilities. Corporate Planning Section. Finance & Administration. March 2, 1998. p. 4.

²⁵ Inquiry Document No. 1060393. Towards Increased Private Sector in Ontario's Water and Sewage Industry. OCWA Review Team. Draft. March 27, 1996. p. 9.

²⁶ Smith, Stuart. Hansard. Standing Committee on Resources Development. April 16, 1997. 1600.

²⁷ Inquiry Document No. 1062538. Ontario Clean Water Agency. Discussion Paper on Uses of Excess Cash. October 1998. p. 3 [p. 1].

²⁸ Ibbitson, John. Crown firm won bid, avoided selloff with contractual poison pill. Globe and Mail. April 6, 2000.

largest contract to date) was “decidedly balanced in the favour of Peel.”²⁹ Advisors to the Privatization Secretariat found that the contract would “severely limit the Province’s ability to sell shares of the OCWA to the private sector.” According to the *Globe and Mail*’s John Ibbitson, the Privatization Secretariat was convinced that “OCWA officials had deliberately cooked up the deal with Peel to prevent privatization.” He continued, “the deal would give the existing management of the OCWA an advantage over other bidders if they tried to buy the company themselves.”³⁰

OCWA’s dubious financial record is matched by its operating record. According to OPSEU, MOE found that 34 percent of OCWA’s water treatment facilities were deficient in 2000.³¹ A study conducted by Environment Probe revealed that from 1998 to 2000, MOE recorded violations of standards or guidelines at 56 sewage plants operated by OCWA. Twenty of the non-compliant plants were repeat offenders. Not surprisingly, many municipalities are dissatisfied with the poorly performing agency. An MOE report stated, “Municipalities are frequently critical of OCWA’s operation and management of the facilities.”³² The agency has been sued by one municipality for breach of contract and is embroiled in a dispute with another over allegedly repudiating a settlement agreement.³³

OCWA’s poor financial and operational performance can be traced to its structure. The composition of OCWA’s board contrasts starkly with that of the boards of its competitors. As Jane Peatch, executive director of the Canadian Council for Public Private partnerships, explained, boards of private firms are selected for specific skills. In one water company that she consulted, five of the nine board members came up through the water industry and four had financial and managerial skills. Such boards are technically capable of overseeing their firms’ activities.³⁴ OCWA is governed neither by those who know how to run a business nor by experts in water and sewage. Instead, it is governed by bureaucrats. A draft Cabinet submission by OCWA and MOEE pointed to the “absence of external members in OCWA’s Board of Directors who would provide commercial, industry and independent perspective.”³⁵ OPSEU added that “the Board is completely controlled by direct employees of owners of the enterprise, the Government

²⁹ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November 1998. Volume 1 of 2. p. vi.

³⁰ Ibbitson, John. Crown firm won bid, avoided selloff with contractual poison pill. *Globe and Mail*. April 6, 2000.

³¹ Parkin, Tom. Public Interests in Water Facilities Operations. OPSEU Submission to the Walkerton Inquiry. July 2001. p. 12.

³² Inquiry Document No. 1083518. The Ontario Clean Water Agency. Ministry of Environment. January 18, 2000. p. 5.

³³ Inquiry Document No. 1031859. Scott, Anna. Transfer of Provincially Owned Water and Sewage facilities to Municipalities. Ministry of Environment. June 16, 2000. p. 5.

³⁴ Peatch, Jane. Walkerton Inquiry, Expert Meeting on Implications of Public and Private Operations on the Safety of Drinking Water. July 4, 2001.

³⁵ Inquiry Document No. 1023162. The Role and Mandate of the Ontario Clean Water Agency with Relation to the Proposed Direction of the Ontario Provincial Government. Ontario Clean Water Agency / Ministry of Environment and Energy. Draft Cabinet Submission. September 11, 1995. Part II, p. 3.

of Ontario, raising concerns that such tight control allows for issues unrelated to the proper management of water resources to be played out within OCWA.”³⁶

OCWA’s governance structure allows for political interference in what would, elsewhere in the water industry, be strictly business decisions. The draft OCWA / MOEE Cabinet submission stated, “OCWA’s ability to compete effectively is significantly undermined by a complex governance framework which hinders OCWA’s ability to make timely decisions.”³⁷ An appendix to the submission noted, “OCWA currently operates under a variety of mandates, some of which are in conflict ... [These conflicting mandates have] impeded management’s ability to focus on maximizing financial returns in OCWA’s core business, the operation of water plants under contract.”³⁸ OCWA’s on-again-off-again candidacy for privatization has also interfered with its management. A government document explained, “Uncertainty over the future role and mandate of the Agency may have a negative effect on the ability of OCWA to compete. Some municipalities are concerned about entering into agreements with OCWA while there is still uncertainty regarding the government’s intentions.”³⁹

A Public Disservice

Some might argue that political oversight of OCWA is justified in the public interest and that the agency’s poor performance is mitigated by the public services that it performs. However, the policies and actions of OCWA are often in opposition to the public interest. In addition to the financial and operational failures described above, which harm taxpayers and consumers in the long term, there are a number of other OCWA practices that harm municipalities.

OCWA’s financing practices favour the lender over the borrower. Journalist Dan Westell pointed out that OCWA’s interest rates for small municipalities with little financial expertise may be twice the provincial rate. In his words, “you have a provincial agency that is screwing municipalities.”⁴⁰

Municipalities accuse OCWA of overcharging them in order to support unprofitable operations in other communities. An MOEE document stated, “Municipalities served by OCWA claim that OCWA’s profitable operations contracts subsidize the cost of operations in less commercially-viable locations.”⁴¹ There is a perception that OCWA

³⁶ Parkin, Tom. Public Interest in Water facilities Operations. OPSEU Submission to the Walkerton Inquiry. July 2001. p. 8.

³⁷ Inquiry Document No. 1023162. The Role and Mandate of the Ontario Clean Water Agency with Relation to the Proposed Direction of the Ontario Provincial Government. Ontario Clean Water Agency / Ministry of Environment and Energy. Draft Cabinet Submission. September 11, 1995. Part II, p. 3.

³⁸ Ibid. Appendix III, p. 17.

³⁹ Inquiry Document No. 1017286. Submission to Cabinet Committee on Privatization. Undated [May 1997]. p. 10.

⁴⁰ Westell, Dan. Telephone interview with Elizabeth Brubaker. July 3, 2001.

⁴¹ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario, Ministry of Environment and Energy. July 29, 1996. p. 19.

overcharges municipalities when it can get away with doing so. The extent to which it has reduced its prices when bidding competitively for contracts suggests that its prices were either unjustifiably high before the bidding process or insupportably low (and thus cross-subsidized) after the process. Dr. Smith, whose firm bid against OCWA, noted that competitive bidding brought OCWA's prices down by 35 percent in one case and by at least 50 percent in all other cases. He stated, "A senior executive admitted publicly ... their willingness to lower their prices for the purposes of bidding ... Rockland was one ... [T]here were a couple of dozen others."⁴²

Some of OCWA's practices intentionally increase municipalities' dependence on the agency, locking them into a relationship that is increasingly difficult to escape. A case in point is the OCWAware project, a software program, tailored to the operation of water and sewage plants, for which the agency requested the approval of a capital expenditure of \$21 million in 1998.⁴³ MOEE employee John Lieou warned, "OCWAware will create a significant element of contention with municipalities, since it gives OCWA the ownership and control of the all-important control software for water and wastewater systems." Contrary to OCWA's responsibilities to assist municipalities and to attract private capital to finance water/sewage needs, the program was described by Lieou as one that will "strengthen OCWA's hold on existing OCWA contracts by significantly raising the barriers to the switching of operators by municipal clients."⁴⁴

OCWA has also tried to lock in municipalities by restricting their access to operations training, thus making them less capable of taking back their facilities when their contracts with OCWA expire. In the 1960s and '70s, the environment ministry and its predecessors were the primary sources of operations training in Ontario. After MOEE transferred responsibility for training to OCWA in 1995, the training programs remained open to all operations staff within the province, although priority was given to OCWA staff.⁴⁵ In March 1999, OCWA formally restricted its training to OCWA employees. It did so in part to establish a competitive advantage over small municipalities.⁴⁶ Brian Gildner, then employed in training and certification for MOE, reviewed several concerns: "There may be a perception that the ministry has given OCWA the benefit of training which was intended for all operators ... [I]t may be perceived that OCWA with the Ministry's blessing is trying to shut out municipalities from effectively running their facilities.... The reason I have heard ... for the decision to stop training, is that small municipalities [were] getting their staff to undertake training so that they could either continue operating their own facilities ... or in some cases take back their facilities when OCWA contracts ran out."⁴⁷

⁴² Smith, Stuart. Email to Elizabeth Brubaker. December 7, 2000.

⁴³ Inquiry Document No. 1062538. Ontario Clean Water Agency. Discussion Paper on Uses of Excess Cash. October 1998. p. 5.

⁴⁴ Inquiry Document No. 1062532. Lieou, John. OCWA Board Meeting on October 28. October 28, 1998.

⁴⁵ Inquiry Document No. 1054487. Gildner, Brian. Privatization of Training for Water and Wastewater Operators. December 20, 1996. p. 1.

⁴⁶ Inquiry Document No. 1054498. Ontario Clean Water Agency Training of Municipal Operators. March 18, 1999. p.1.

⁴⁷ Inquiry Document No. 1054499. Gildner, Brian. Subject: Utility Operations Training. March 9, 1999.

The move to restrict training also harmed communities without contracts with OCWA – communities in which OCWA already had a poor reputation.⁴⁸ A document reviewed the potential consequences of the change: “Training opportunities for smaller municipalities will be limited.... In the long term this could lead to an operator community with less training and ability to effectively operate water and sewage treatment facilities.... This could lead to a higher level of non-compliance in small communities.”⁴⁹

OCWA’s failure to meet public service objectives is also demonstrated by its lack of public accountability. OCWA employees have raised concerns about the absence of openness and transparency. The agency, OPSEU noted, has not issued a public annual report since 1999, despite legislative requirements.⁵⁰ The agency is extremely reluctant to release even the most basic information to the public. OCWA refused to give Energy Probe Research Foundation a list of the plants it operates, citing commercial confidentiality. Eric Cunningham of United Water has complained that OCWA will not release information on contracts or operating costs.⁵¹ Nor will it or the province divulge anticipated uses of the cash accumulating in its accounts. In the words of one journalist, “There is a brick wall around OCWA.”⁵² Not even the government has full access to information about OCWA. When OCWA was under review by the Office of Privatization, advisors were not privy to information related to OCWA’s bid for the Peel Region contract. It was only after the fact that they reviewed the contract and concluded that it was decidedly balanced in favour of the region.⁵³

Is there any public interest function that OCWA does serve? It has not created jobs. In fact, despite its origins as a jobsOntario project, OCWA cut staff by 25 percent in its first five years.⁵⁴ It has not promoted wise resource use. In fact, despite its initial mandate to encourage water conservation,⁵⁵ it has removed the role of encouraging the wise use of water resources from its vision statement.⁵⁶ It has not attracted private investment in the province. In fact, despite its creation as a vehicle to attract private sector capital, MOEE acknowledged that “private sector companies have been slow to partner with OCWA because they continue to see OCWA as a competitive arm of the Province.”⁵⁷

⁴⁸ Inquiry Document No. 1054499. Gildner, Brian. Subject: Utility Operations Training. March 9, 1999.

⁴⁹ Inquiry Document No. 1054498. Ontario Clean Water Agency Training of Municipal Operators. March 18, 1999. p.1.

⁵⁰ Parkin, Tom. Public Interest in Water facilities Operations. OPSEU Submission to the Walkerton Inquiry. July 2001. p. 8.

⁵¹ Cunningham, Eric. Interview with Elizabeth Brubaker. February 2, 2001.

⁵² Westell, Dan. Telephone interview with Elizabeth Brubaker. July 3, 2001.

⁵³ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November 1998. Volume 1 of 2. p. vi.

⁵⁴ Inquiry Document No. 1014582. Ontario Clean Water Agency – Overview of Mandate and Responsibilities. Corporate Planning Section, Finance & Administration. March 2, 1998. p. 1. Energy Probe Research Foundation does not believe that the artificial creation of jobs is in the public interest.

⁵⁵ Inquiry Document No. 1020593. Ontario Clean Water Agency – Mandate of the Agency. November 3, 1993. p. 8.

⁵⁶ Parkin, Tom. Public Interest in Water facilities Operations. OPSEU Submission to the Walkerton Inquiry. July 2001. p. 6.

⁵⁷ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario, Ministry of Environment and Energy. July 29, 1996. p. 11.

Unfair Advantages

As long as OCWA maintains its stranglehold on Ontario's water and sewage sector, the agency will perpetuate the problems discussed above. And as long as the agency's structure and government policies concerning it remain unchanged, the development of alternatives will be inhibited. OCWA discourages private involvement in the sector, be it in partnership with the agency or in competition with it. As noted above, private companies have been slow to partner with OCWA. Some private companies have likewise been slow to put themselves forward as alternatives to OCWA, believing that the playing field is tilted in favour of the latter. The Canadian Council for Public-Private Partnerships, which represents both the public and private sectors, has expressed its concerns about "the apparent lack of a level playing field between the OCWA and private operators."⁵⁸ According to Eric Cunningham of United Water, OCWA is "the most serious impediment to the creation of a competitive environment in Ontario." He added that thoughtful companies will not compete against the agency.⁵⁹ Paul Boucher of Allied Water concurred. OCWA, he said, "is killing competition."⁶⁰

OCWA's links to the provincial government give it one advantage over its competitors. One government submission suggested that "OCWA's high rating [with municipalities] is probably attributable in part to the Agency's association with the Province."⁶¹ A briefing note likewise noted, "The private sector has been critical of OCWA because they perceive OCWA having an unfair competitive advantage ... by virtue of ... its close relationship with the province."⁶²

OCWA's financing responsibilities give it another competitive advantage.⁶³ As discussed above, OCWA acquired, at a discounted rate, a municipal loan portfolio worth about \$600 million. The interest rate spread between the loan portfolio and OCWA's loan from the province provides the agency with income that it has used to subsidize operations.⁶⁴ This subsidy prompted Dr. Smith, then president of Philip Utilities Management Corp., to observe, "you could be a chimpanzee and make a profit."⁶⁵ The OCWA Review Team acknowledged that the portfolio "gives OCWA a marketing tool (derived from public funds) to solicit clients. This compounds claims by competitors that OCWA has an unfair advantage in the commercial marketplace."⁶⁶ MOEE's Cabinet submission highlighted claims by competitors "that OCWA maintains an unfair advantage because of: the use of

⁵⁸ Inquiry Document No. 1083774. Canadian Council for Public-Private Partnerships. Letter to J. Fleming, Deputy Minister of Environment. February 27, 1998.

⁵⁹ Cunningham, Eric. Interview with Elizabeth Brubaker. February 2, 2001.

⁶⁰ Crittenden, Guy. Closed for Business. Report on Business Magazine. June 1999. p. 56.

⁶¹ Inquiry Document No. 1017286. Submission to Cabinet Committee on Privatization. Undated. p. 12.

⁶² Inquiry Document 1084343. Clay, Larry and Dhar, Satish. Briefing Note. Review of the Ontario Clean Water Agency. August 6, 1996. p. 2.

⁶³ Inquiry Document 1084343. Clay, Larry and Dhar, Satish. Briefing Note. Review of the Ontario Clean Water Agency. August 6, 1996. p. 2.

⁶⁴ Inquiry Document No. 1014582. Ontario Clean Water Agency – Overview of Mandate and Responsibilities. Corporate Planning Section, Finance & Administration. March 2, 1998. p. 1.

⁶⁵ Smith, Stuart. Hansard. Standing Committee on Resources Development. April 16, 1997. 1610.

⁶⁶ Inquiry Document No. 1060393. Towards Increased Private Sector in Ontario's Water and Sewage Industry. OCWA Review Team. March 27, 1996. p. 9.

the loan portfolio as an ongoing hook to keep clients” and that “the use of the loan portfolio was also seen [by] competitors as a soliciting tool.”⁶⁷

Another advantage springs from OCWA’s 95 percent market share.⁶⁸ It gained this market share not through merit but through government fiat. Private firms could not duplicate this market share “without significant time and substantial expense.”⁶⁹ According to the Office of Privatization’s review, “OCWA is able to retain as much as 20 percent of its contracts through automatic renewal because of the nature of the contractual arrangements OCWA has inherited and permitted.”⁷⁰ OCWA is also able to maintain its market share because “there is a tendency to retain the incumbent, all else being equal.”⁷¹

OCWA enjoys a host of other competitive advantages. It enjoys favourable tax status: It is exempt from charging GST or paying corporate taxes.⁷² Its balance sheet, the result of a provincial subsidy, enables it to bid on large contracts.⁷³ Furthermore, the agency is backstopped by the province for any financial liabilities.⁷⁴ Perhaps as a result, in all cases but one, OCWA has been exempt from posting performance bonds.⁷⁵ As the *Report on Business* explained, competitors believe that the province’s financial guarantee allows OCWA to take risks and to act more aggressively than other firms.⁷⁶ The privatization review confirmed that the agency can appeal to municipalities because “OCWA’s contracts are more flexible and assume more risk ... than private sector contracts.”⁷⁷

A competitor has alleged that OCWA benefits from still another advantage. Wally MacKinnon of USF Canada charged that OCWA has claimed that it has special access to grants that the private sector does not have.⁷⁸ Government documents neither confirm nor contradict this allegation. Regardless, it is important to understand the effects that such perceptions have on the competitive environment.

OCWA’s stifling of competition, along with its failures on so many other counts, call into question virtually every possible justification for its existence. In 1995, the following

⁶⁷ Inquiry Document No. 1074343. Enhancing Private Sector Investment in Water and Sewage in Ontario, Ministry of Environment and Energy, July 29, 1996. pp. 11, 21.

⁶⁸ D’Ombrain, Nicholas. Machinery of Government for Safe Drinking Water in Ontario. Discussion Paper for the Walkerton Inquiry. March 30, 2001. p. 41.

⁶⁹ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November, 1998. Volume 1 of 2. p. 33

⁷⁰ Ibid. p. 47.

⁷¹ Ibid. p. 47.

⁷² Ibid. p. 33.

⁷³ Inquiry Document No. 1062538. Ontario Clean Water Agency Discussion Paper on Uses of Excess Cash. October 1998. p. 5.

⁷⁴ D’Ombrain, Nicholas. Machinery of Government for Safe Drinking Water in Ontario. Discussion Paper for the Walkerton Inquiry. March 30, 2001. p. 42.

⁷⁵ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November, 1998. Volume 1 of 2. p. 33.

⁷⁶ Crittenden, Guy. Closed for Business. Report on Business Magazine. June 1999. p. 56.

⁷⁷ Inquiry Document No. 1028109. Review of the Ontario Clean Water Agency. Ontario Office of Privatization. November, 1998. Volume 1 of 2. p. 47.

⁷⁸ MacKinnon, Wally. Interview with Elizabeth Brubaker. February 26, 2001.

questions arose: “If the private sector is capable and willing to provide water and wastewater services, why should the public sector compete at all with the private sector? Would it not make more sense for the public sector to revert to its ‘core’ function of providing the regulatory environment?”⁷⁹ Six years later, the answer is increasingly clear: It would indeed make more sense for the public sector to focus on regulation. The public provision, through OCWA, of water and sewage services has done more harm than good. Disbanding the agency will benefit taxpayers, consumers, and municipalities, and will enable private firms to provide higher-quality services to the public.

⁷⁹ Inquiry Document No. 1023140. Comments on Revised Draft OCWA Capital Submission. October 27 1995. p. 1.