

**SUBMISSIONS TO PART II OF THE  
WALKERTON INQUIRY**

**CONCERNING  
PUBLIC HEARING NO. 1:**

**GUIDING PRINCIPLES  
AND  
GOVERNMENT STRUCTURE**

**BY**

**OPSEU**



**SEFPO**

**JULY 2001**

## **1. Introduction to OPSEU and the Front Line Public Servants it Represents**

1. The Ontario Public Service Employees Union (OPSEU) is a trade union with approximately 100,000 members. We represent 50,000 employees who work directly for the provincial government in the Ontario Public Service. We also represent employees who work in the broader public service (including funded agencies such as public health units and hospitals), community colleges and the private sector.

2. OPSEU represents all non-management and non-engineering staff at the Ministry of the Environment (MOE), or about 928 employees of a ministry total of 1,384. We also represent all non-management staff at the Ontario Clean Water Agency, or 563 employees of an agency total of 691.

3. OPSEU has a long standing commitment to participating in the public debate on public services. It does so with the intention of forwarding public awareness of the importance of those services and the public servants who provide them.

4. OPSEU's participation in Part II of the Walkerton Inquiry has included active involvement by as many front-line public servants as possible in the Expert Meetings, by extensive membership consultation culminating in the production of two issue papers, Renewing the Ministry of the Environment and Public Interests in Water Facilities Operations. This submission continues that pattern. To restate the impetus of this participation:

The recommendations ... are offered to the Walkerton Inquiry in the spirit of proud service to the public, and with the conviction that we can and must learn from the errors that led to the tragedy. It is time to move forward better prepared to protect the public interest, the environment and communities like Walkerton – small in size, so significant in their contribution to Ontario's social fabric and economy – and fully entitled to be protected from the risks of unsafe drinking water (OPSEU, Renewing, para.165).

## **2. Summary of OPSEU's Recommendations**

5. OPSEU recommendations for the first of the Part II public hearings are set out in the order dictated by the list of topics proposed by the Inquiry. The recommendations themselves are set out below under the topics they address.

### **Recommendations Regarding Guiding Principles:**

#### **a. Clear Responsibilities and Leadership**

##### **Recommendation #1:**

- That the government formulate a drinking water policy setting out clear responsibilities and accountability, in accordance with the “Policy Capability” and “Policy and Institutional Coherence” sections of the d’Ombrain paper.

##### **Recommendation #2:**

- That the drinking water policy contain the following principles with respect to all institutional participants charged with responsibilities under the policy:
- A commitment to ensuring the institutional capacity (including staffing and resources) needed to properly carry out those responsibilities;
- A commitment to ensuring the organizational culture that is appropriate to properly carrying out those responsibilities;
- A commitment to transparency: i.e. to full public information about the responsibilities, capacity and culture;
- A commitment to resolving shortcomings by monitoring progress to and maintenance of needed capacity, culture and transparency.

#### **e. Public Participation**

##### **Recommendation #3:**

- That the drinking water policy contain affirmation of the principle that public participation happens in two ways:

- Through direct public participation: which should be promoted;
- Through the proper functioning of the public service, which is a crucial permanent mechanism for public involvement in political decision making.

**f. Other Principles:**

**Recommendation #4:**

- That the policy be developed by a Ministry of the Environment task force composed of a cross-section of Ministry staff;
- That a consultative committee composed of interested parties be an integral part of the policy development process, and that there be provision for full public input.

**Recommendations Regarding Overall Role of Government:**

**a. Constitutional Responsibility**

**Recommendation #5:**

- That the current complexity concerning constitutional responsibility not be an excuse for inaction, that the *de facto* responsibility of the provincial government be confirmed, and that the provincial government take up its full leadership responsibility for drinking water safety.

**b. Provincial Government Structure to Provide Safe Drinking Water**

**Recommendation #6:**

- That the provincial government be structured to provide safe drinking water, as follows:
  - That there be a single public entity that has fundamental responsibility for water issues in the province and leads the delivery of both safe drinking water and protection of water resources;

- That this entity be a Ministry of government;
- That the Ministry be the Ministry of the Environment.

**Recommendation #7:**

**That the Ministry of the Environment establish a Water Branch integrating policy, technical and planning staff including:**

- The Water Policy Branch of the Integrated Environmental Planning Division;
- The relevant personnel in the Environmental Assessment and Approvals Branch;
- The relevant personnel from the Environmental Monitoring & Reporting Branch (including Water Well Records Services);
- The Water Resources Unit of Technical Support;
- The Drinking Water Specialists in the Drinking Water Surveillance Program of the Environmental Sciences and Standards Division.

**Recommendation #8:**

**That the Government provide adequately skilled staff, organizational support and funding to build and maintain Ontario's drinking water infrastructure, as follows:**

- The Regional Offices of the Operations Division require increased capacity and drinking water specialization in order to become the strategic foci of interaction and influence with drinking water providers;
- The Ontario Clean Water Agency (OCWA) must take a new role as a centre of operational advice for all drinking water providers, particularly in the provision of engineering advice;
- A peer committee of certified operating staff from OCWA, with the support of the Water Branch, must be mandated to review and upgrade the curriculae and examinations of the certified operator program;
- OCWA's Memorandum of Understanding must be updated to require the Agency to forward compliance and incident data to the Water Branch;

- OCWA and the Ontario Water Works Association should partner with the MOE to develop the best practices to form the Government's recognized Environmental Management System;
  - The drinking water infrastructure assessment function must be transferred from the SuperBuild Corporation to OCWA;
  - Waterworks financial support programs currently held by the SuperBuild Corporation must be transferred to MOE and operationalized under a multi-year policy and delivered by OCWA;
  - That the Government, through OCWA, should create a capital pool for municipalities;
  - That various measures be taken to encourage operational scale including mandating the smallest scale operators to be served by OCWA.
- That, to augment the Government's power to provide operational knowledge and experience and to provide leadership in providing information to the public, the Ontario Clean Water Agency (OCWA) be revitalized with a new Memorandum of Understanding and an arms-length public Board of Directors.

**Recommendation #9:**

- That the structure of the Ministry of the Environment not be further fragmented by the creation of new external structures, and that the following structures not be employed:
  - A Secretariat;
  - An Operational Agency;
  - An Enforcement agency.

**c. Safe Drinking Water Act**

**Recommendation #10:**

- That a Safe Drinking Water Act be passed as a central part of the overarching drinking water policy.

### **Recommendation #11:**

- That the entity referred to in the Safe Drinking Water Act as responsible for government implementation be the Ministry of the Environment and in particular the Director or Assistant Deputy Minister of the Water Branch.

### **d. Other Recommendations Regarding Overall Role of Government**

### **Recommendation #12:**

- That the Government of Ontario assist the Commissioner of the Walkerton Inquiry in the finalization of his recommendations by being required to table organizational plans for development of the water policy, the Water Branch and the changed Ontario Clean Water Agency within the mandate of the Inquiry, and that these plans be discussed at a further Part II hearing of this Inquiry.

The rationale for each of OPSEU's twelve recommendations will now be set out.

## **3. Recommendations Concerning Guiding Principles**

6. OPSEU will focus its submissions concerning guiding principles on two topics, a) clear responsibilities and leadership and e) public participation. OPSEU urges the Inquiry to formulate clear and substantive recommendations concerning all the other guiding principles.

### **Recommendation #1: The Need for an Overarching Policy Setting Out Clear Responsibilities and Leadership**

7. The Government of Ontario needs to formulate an overarching drinking water policy providing for "clear responsibilities and accountability". The rationale for and component parts of such a policy are fully articulated in Nicholas d'Ombrain's paper "The Machinery of Government for Safe Drinking Water in Ontario" in the sections on "Policy Capability" and "Policy and Institutional Coherence". (d'Ombrain, Machinery, paras 378-382 and 478). OPSEU supports those portions of the paper, and notes there is a consensus amongst most parties to the Inquiry

that such a policy needs to be developed. At the Inquiry's Expert Meeting on Protection of Drinking Water Sources, there was consensus that the "Province must set standards and regulations and policy with implementation responsibilities assigned to the municipalities and conservation authorities" (Expert Meeting Notes, May 3 and 4, section 2.1, bullet 1). To the same effect, the Expert Meeting on Government Responsibility for Drinking Water, May 16, concluded that there was "a need for the definition of roles and a need to explain what is expected of each party". (Expert Meeting Notes, May 16, section 4, number 5). The need to formulate a drinking water policy is not in contention.

8. However, as summarized at the Expert Meeting on Government Responsibility For Drinking Water, as follows, "there was some contention concerning what has already been achieved in terms of developing a policy framework and what should be included in this policy framework or strategy" (Expert Meeting Notes, May 16, section 2.2.1, second bullet). Both Ministry of the Environment and Ministry of the Natural Resources representatives agreed that "it was a provincial responsibility to develop and maintain a policy framework or strategy" (Expert Meeting Notes, May 16, section 2.2.1, first bullet), but were not as definite on the responsibilities to be assumed by the province under such a policy. At the Expert Meeting, the government representative outlined difficulties with policy development, pointing out that it is a time consuming process and asking that the policy "not redesign the wheel" (ibid, sixth bullet).

9. The view of the front-line staff of the Ministry of the Environment is that now is the time for the Government and the Ministry to take responsibility and show leadership (OPSEU Renewing, paragraph 12). As the staff put it,

There is no body in society other than government charged with and accountable for protection of the public good. The provincial government has a non-transferable responsibility for ensuring the health of Ontario's people and environment. The provincial government is responsible for ensuring the safety of Ontario's drinking water.

Ministry staff believe that it's time for the provincial government to fully embrace this leadership role. It must take up this commitment to protect the needs of future generations. Checks



and balances must be in place to objectively prove drinking water is safe now and will be safe for the future.

10. In OPSEU's submission, an overarching water policy is long overdue and the effort to develop it must now be made. The Inquiry should not be satisfied that its recommendations are effective unless such a policy is made a priority of government.

11. The assertion that the "wheel" need not be redesigned, that much of the policy framework already exists, needs to be challenged. Some of the pieces of a policy framework may exist, but by no means enough and, more importantly, an overall framework setting out responsibilities and accountability does not exist.

12. Through Environment Minister's statements on May 2 and June 4, 2001, the Government announced "a government wide commitment to frame a new approach to protecting the environment", in part, through implementation of the Executive Resources Group, Managing the Environment report (Gibbons Report). In light of the endorsement, the report is obviously important to carefully consider. While the Report contains many worthwhile observations and conclusions, OPSEU disagrees fundamentally with many of the recommendations. These disagreements will be outlined later. At this stage, OPSEU wishes only to comment that the Gibbons Report is not the policy framework that the d'Ombra paper calls for.

13. The Gibbons Report at page 12 contains a summary of the "shifts" it advocates and two central ones are:

- a shift from "one ministry having sole responsibility for environmental protection" to "a high level government-wide vision and goals with implementation shared across different departments", and
- a shift from "a primary emphasis on ensuring compliance" to "a new and broader emphasis on strategies to promote continuous improvement".

The wisdom of such "shifts" will be debated but it suffices to say at this point that they:

- Do not provide for clear responsibilities and accountability;
- Do not include integrated recommendations for legislation that identifies responsibilities, powers and accountabilities;
- Do not ensure that a comprehensive drinking water policy is adopted and respected by all relevant parties.

The Government should not be left with the impression that it has fulfilled its policy framework responsibility through the Gibbons Report.

### **Recommendation #1:**

- **That the government formulate a drinking water policy setting out clear responsibilities and accountability, in accordance with the “Policy Capability” and “Policy and Institutional Coherence” sections of the d’Ombra paper.**

### **Recommendation 2: Crucial Pieces of the Policy Framework: Real Commitments to Institutional Capacity, Culture and Transparency**

14. OPSEU advocates that the drinking water policy incorporate three guiding principles to be made applicable to all the institutional participants charged with responsibilities under the policy:

- A commitment to ensuring the full institutional capacity (including staffing and resources) needed to properly carry out assigned responsibilities;
- A commitment to ensuring the organizational culture appropriate to properly carrying out those responsibilities, including good management and good workplace culture;
- A commitment to transparency by ensuring full public information about the responsibilities, capacity and culture.

15. The recommendation that these three guiding principles be applicable to all institutions arises out of the experience of the front-line staff of the Ministry of the Environment with their own cherished institution. The Ministry has been severely reduced by huge budget driven cuts. The Ministry has not ensured that it maintained the capacity to properly carry out its responsibilities. Ministry staff experience a large gap between stated responsibilities and resources. Such gaps defeat the efforts of institutions to

do their job. Staff of the Ministry of the Environment have further experienced the loss of the organizational culture required to properly carry out the responsibilities of the Ministry. Cynicism abounds. Demoralization has sapped proactive initiative. A “climate of fear” has prevented healthy debate within the Ministry. Finally, the current government’s fixation with control of communications and its’ failure to maintain a priority on public outreach and information has made the Ministry of the Environment incommunicative and much more opaque to the public. The public does not know about the state of affairs in the Ministry of the Environment nor does the public know what tasks and responsibilities the Ministry of the Environment can be expected to perform. Poor culture and lack of transparency handicap institutions and reduce trust.

16. Generalizing from the specific experience of the MOE, all institutions need to have the capacity, culture and transparency appropriate to their roles.

17. Indeed, this need is recognized by most other Inquiry parties and paper authors. Conservation authorities and municipalities have repeatedly raised concerns about their lack of capacity to carry out that which they perceive to be their responsibilities. Expert Meetings and papers concerning drinking water providers have underscored the importance of ensuring that drinking water providers have the capacity (or scale) and culture (including good management) needed to fulfill their functions. (For example, see CH2M Hill, A Total Quality Water Management System for Ontario, and its discussion of the need for competence and the right culture.)

18. The requirement of transparency is particularly self-evident, given that a major purpose of this Inquiry must be to restore public trust in drinking water. The public needs to be fully informed about the responsibilities, capacity and culture of the institutions which purport to deliver and safeguard their drinking water. The importance of transparency is highlighted in the d’Ombrain Report at paragraphs 394 and 396 as follows:

394. The responsibilities of the government need to be enunciated clearly and formally. The players and their roles need to be identified. The mandates of institutions should be precise and delegated functions and general powers of direction should be avoided. Accountability should be clear.

396. All participants should be required to report at least annually on their activities and performance. Where appropriate, performance criteria should be set and reported on. All organizations should be required to evaluate their activities as part of their annual reporting requirements, and there should be periodic audits of their results. This includes private sector suppliers of drinking water, whose contracts should reflect such requirements.

19. There will be a substantial amount of remedial work to do in ensuring that all institutions with shortcomings develop the capacity, culture and transparency they require. MOE employees are conscious of the efforts that need to be made to renew their Ministry. However, they are committed to making the effort. Similarly, MOE staff are well aware of the wide range of competence and ability of other institutions (such as municipalities and conservation authorities) involved in drinking water issues. Steps must be taken to resolve shortcomings by monitoring progress to, and maintenance of, full functional capacity.

#### **Recommendation #2:**

- **That the drinking water policy contain the following principles with respect to all institutional participants charged with responsibilities under the policy:**
- **A commitment to ensuring the institutional capacity (including staffing and resources) needed to properly carry out those responsibilities;**
- **A commitment to ensuring the organizational culture that is appropriate to properly carrying out those responsibilities;**
- **A commitment to transparency: i.e. to full public information about the responsibilities, capacity and culture;**
- **A commitment to resolving shortcomings by monitoring progress to and maintenance of needed capacity, culture and transparency.**

#### **Recommendation 3: Public Participation and the Public Service**

20. The importance of public participation in all aspects of policy formulation and implementation of drinking water issues has been raised time and again during Part II of the Inquiry. Public participation improves processes and outcomes, and increases trust in results. The merits of direct

public participation are persuasively and fully put forward by non-governmental participants in Part II of the Inquiry (notably the Canadian Environmental Law Association and the Canadian Environmental Defence Fund), and OPSEU will agree with their submissions. (See CELA, Tragedy on Tap, Recommendations 6(e), 9, 11 and 12 and CEDF, Transparency, Reporting and Accountability.) The front-line staff of the Ministry of the Environment are committed to fostering greater direct public participation and only regret that cutbacks to the MOE have made it much more difficult.

21. For public participation does not occur on its own. It needs to be facilitated. (The complexities of doing so were canvassed in a brief way at the Expert Meeting on Public Involvement in Drinking Water Safety on June 6). The issues on which the public should be consulted must be identified. The mechanisms for public participation need to be established. The practical details of public participation need to be arranged. When public participation does occur, the views expressed need to be taken in and digested. Those views then need to be synthesized. Options developed from those views needed to be presented in a compact and manageable form to the political decision makers. The public needs to be kept informed about the decisions that are made and the basis for these decisions.

22. The entire process of facilitating public participation is prone to distortion and misunderstanding. It is a process that must be carried out in the public interest. OPSEU wishes to point out that it is a function that is best performed by the public service.

23. “The most important defining factor for the role and values of the public service is its democratic mission: helping ministers under the law and the Constitution, to serve the public good” (Canadian Centre for Management Development, A Strong Foundation: Report of the Task Force on Public Service Values and Ethics, Canada 1996, p. 17). This is a role that front line MOE staff are proud to perform.

In the heart of most public servants lies the conviction that service to the public, to the public good, or to the public interest is what makes their profession like no other. It is why they chose it, for the most part; and why they keep at it, with enthusiasm and conviction, despite difficulties and frustrations along the way.

(A Strong Foundation, p. 32). But the “public good” is not an abstract concept. Public servants should be “soaking up what the perceived priorities would be from different stakeholders” (Richard Dicerri, former Deputy Minister, MOE, Inquiry Testimony, May 14, p. 157, line 22), because “governments don’t necessarily have a monopoly on wisdom and they benefit from receiving inputs from a variety of sources, on the basis of which they formulate options for political consideration” (Dicerri, May 14, p. 161). The expert report of Professor Rod Dobell thoughtfully canvasses the various roles that public servants can and should perform in respect of inserting the public interest into political decision making. (See Rod Dobell, Social Risk, Political Rationality and Official Responsibility: Risk Management in Context and especially “The Consultative Public Servant as Communicator” and “The Deliberative Public Servant as Convenor”).

24. The growing importance of the public service obligation to facilitate public involvement has been well captured in Mohan Kaul, Better Policy Support, Improving Policy Management in the Public Service, Commonwealth Secretariat, 1997, at page 32:

In today’s world, *a more integrated and collaborative approach to policy development* is required. The policy capacity of the Public Service must be strengthened so that the Public Service views policy development as more inclusive and approaches it in a more inclusive manner. The Public Service must promote the involvement of citizens in the public policy debate in order to meet their growing demands for greater access to information and greater participation in decision-making. Citizens want their voices to be heard.

25. The badly needed fostering of the capacity, culture and transparency of the public service will be a subject of OPSEU submissions to the Inquiry in Public Hearings 2 and 3. The point of OPSEU’s submission at this stage is to advocate for recognition of the principle that full public participation in political decision making happens crucially through the public service.

### **Recommendation #3:**

- **That the drinking water policy contain affirmation of the principle that public participation happens in two ways:**

- **Through direct public participation: which should be promoted;**
- **Through the proper functioning of the public service, which is a crucial permanent mechanism for public involvement in political decision making.**

#### **Recommendation 4: The Process for Formulating the Needed Overarching Policy**

26. The Ministry of the Environment can make a much greater contribution to Part II of the Walkerton Inquiry. To date, its involvement has been largely reactive, consisting of answering questions and participating briefly in Expert Meeting discussions. OPSEU members at times have made some contribution in filling the resultant gap. The Ministry, while limited in resources and time, and reduced in expertise, does have much more to offer. For reasons spelled out in the d’Ombrain report, the Ministry should have the lead in policy development. That lead role should commence immediately. The needed overarching policy should be developed by the Ministry through a task force composed of a cross-section of Ministry staff, including front-line staff. Such a process would provide an opportunity for the fullest range of Ministry expertise, knowledge and experience to be brought to bear. In addition, the task force should work closely with a consultative committee composed of interested parties from outside the Ministry of the Environment, including other ministries, conservation authorities, municipalities and non-governmental organizations (such as the Canadian Environmental Law Association and the Concerned Walkerton Citizens). There was consensus at the Expert Meetings about the importance of the input of all those involved with drinking water safety (Expert Meeting Notes, May 16, section 4, point 1). There should be full provision for public input. Finally, the policy should be forwarded by the Ministry of the Environment to Cabinet for approval so that the commitment of the current government to the policy can be made transparent.

#### **Recommendation #4:**

- **That the policy be developed by a Ministry of the Environment task force composed of a cross-section of Ministry staff;**
- **That a consultative committee composed of interested parties be an integral part of the policy development process, and that there be provision for full public input.**

#### 4. **Recommendations Regarding Overall Role of Government:**

##### **Recommendation #5: Constitutional Ambiguity Is No Excuse**

27. In matters of water policy, as in many public policy areas, Canada and Ontario suffer from the “constitutional disability” (Expert Meeting Notes, May 3 and 4, item 2.1, 3<sup>rd</sup> last bullet) of complicated constitutional responsibilities. “The federal role is a potential role, lying in a complex constitutional construction that will take time to clarify. For this reason, the province should take a practical role in this area until the federal role can be unpacked” (Expert Meeting Notes, section 1.1, first bullet). There was a broad consensus in the Expert Meetings that the province cannot wait for federal leadership in the implementation of a comprehensive source water protection strategy (Expert Meeting Notes, May 3 and 4, point 1) and that the present state of some confusion cannot be an excuse for an action. As the expert meeting on Government Responsibility for Drinking Water put it “responsibility for drinking water safety clearly rests with the province”. (Expert Meeting Notes, May 16, point 2).

##### **Recommendation #5:**

- **That the current complexity concerning constitutional responsibility not be an excuse for inaction, that the *de facto* responsibility of the provincial government be confirmed, and that the provincial government take up its full leadership responsibility for drinking water safety.**

##### **Recommendation 6: A Lead Role for the Ministry of the Environment is the Best Provincial Government Structure to Provide Safe Drinking Water**

28. The d’Ombrain report outlines why the provincial government structure to provide safe drinking water should centre on a single public entity with responsibility for both source protection and drinking water quality (d’Ombrain, Machinery, paras 426 to 443). Furthermore, at the expert meetings, there was “widespread agreement on the Ministry of the Environment as the lead ministry for policy and standard setting” (Expert



Meeting Notes, May 22<sup>nd</sup>, page 1, 1.1). It is not proposed to rehash those arguments but rather to provide some supporting insights.

29. The front-line public servants of the Ministry of the Environment advocate that there should be a single government entity with lead responsibility and secondly that this entity be a government Ministry. As spelled out in OPSEU's Renewing the Ministry of the Environment report:

12...There must be a single public organization to lead the delivery of safe drinking water and the protection of water resources in Ontario. The Ministry of the Environment is the best candidate to undertake this duty.

13. The regulatory framework that protects Ontario's water supply must include consideration of the whole complex system. The MOE, more than any other agency, body or sector, has the mandate, experience and expertise to regulate, study, and communicate to protect and conserve our water resources.

30. The former Deputy Minister of the Environment, Richard Dicerni, conceded that it "definitely helps" to have a strong lead Ministry with the resources to ensure the "public good" (Dicerni, Inquiry Testimony, May 14, p. 149-150).

31. The crucial role of central government agencies was commented upon in the leading report of The World Commission on Environment and Development (The Bruntland Commission), Our Common Future, (Oxford University Press, 1987). The report discusses the environmental challenges facing human society and how to respond to them. An important insight concerns the role of the state:

Central agencies and major sectoral ministries play key roles in national decision making. These agencies have the greatest influence on the form, character, and distribution of the impacts of economic activity on the environmental resources base. It is these agencies, through their policies and budgets, that determine whether the environmental resource base is enhanced or degraded and whether the planet will be able to support human and economic growth and change into the next century.

The Bruntland report advocates that:

...the major central economic and sectoral agencies of governments should now be made directly responsible and fully

accountable for ensuring that their policies, programmes, and budgets support development that is ecologically as well as economically sustainable

and that

Governments should also strengthen the role and capacity of existing environmental protection and resource management agencies. (Bruntland, p. 311-314).

32. The reasons why central agencies are the most effective mechanism for environmental protection were canvassed at the Expert Meetings (Expert Meeting Notes, May 22-24, pp.6-7). The assignment of the role to a government ministry ensures direct political accountability. It empowers interministerial co-ordination. It ensures the highest level of institutional co-ordination, planning and control.

33. As identified by staff attending an OPSEU workshop, it means that “as a provincial agency, the MOE reviews the issues independent of parochial interest, political and watershed boundaries. We are in a position to see all of the problems and rank them in order of importance and deal with transboundary issues effectively”.

#### **Recommendation #6:**

- **That the provincial government be structured to provide safe drinking water, as follows:**
  - **That there be a single public entity that has fundamental responsibility for water issues in the province and leads the delivery of both safe drinking water and protection of water resources;**
  - **That this entity be a Ministry of government;**
  - **That the Ministry be the Ministry of the Environment.**

**Recommendations 7 and 8: Re-alignment of the Ministry and the Ontario Clean Water Agency to better serve the public interest in safe drinking water**

34. OPSEU believes that central objectives of the Ministry of the Environment must be the protection of water resources and ensuring safe drinking water. The following submissions suggest structure of government mechanisms for ensuring these objectives are met.

35. It seems best to create a more dedicated and specific focus on source protection, watershed management and drinking water treatment. There are several main reasons for this.

36. First, a more focussed point of attention to drinking water would help to overcome the “black box” problem. To external parties, the Ministry’s internal organization may not be clear. There may not be enough understanding of who is responsible for what. Parties external to the Ministry do want and need to know which portions of the system to deal with in respect of drinking water and source protection issues (Expert Meeting on Provincial Regulation of Drinking Water, May 22, page 10). A focus of expertise within the Ministry would provide external parties with something more akin to a “single window” through which to raise and discuss concerns and issues.

37. Secondly, and perhaps more importantly, a more focussed attention on water issues within the MOE would facilitate more effective attention to the issues by the MOE. There is institutional history in respect of these organizational issues. At one point there was a Water Resources Commission which contained a great deal of the expertise in respect of drinking water issues (d’Ombrain, Machinery, para. 22). It was absorbed into the MOE and operated as a Water Resources Branch. In the words of some Ministry staff attending an OPSEU workshop, when you had a “Water Resources Branch, you had one-stop shopping. Now all is dispersed”. Although a small Water Policy Branch was maintained, other activities were designed around a “multi-media” approach (James Merritt, former Assistant Deputy Minister, MOE, Inquiry Testimony, April 12, p. 33, lines 5-15).

38. The result of this gradual undoing of a strong water focus was an “unfocussed, non-strategic, piecemeal approach to water [that] has been recognized for many years” (D’Ombrain, Machinery, para. 238). It is now

apparent that some more focussed attention on water needs to be put into place. Such a focus would be the needed organizational “agent of change”.

39. Third, the Province has a major responsibility to fulfill in respect of municipal water treatment plant operation. In the Provincial Auditor’s Special Report on Accountability and Value for Money, page 78, the following statement is made:

“Under the Ontario Water Resources Act and the Environmental Protection Act, the Ministry of Environment and Energy is charged with ensuring that drinking water and sewage effluent process by treatment plants meet established health and environmental guidelines.... Effective November 13, 1993, responsibility for operating all plants formally operated by the Ministry was transferred to the newly created Government agency, the Ontario Clean Water Agency. However, it is the Ministry’s responsibility to ensure that drinking water and sewage effluent from all plants meet Ministry guidelines regardless of plant ownership.”

This Ministerial responsibility is understood throughout the system. John Earl, Environmental Officer testified (Earl, Inquiry Testimony, Oct. 31, 2000, p. 67, line 18-24):

Q. So a PUC provides the water but the MOE is responsible, as is the PUC of course, for ensuring the quality is appropriate, correct?

A. I would say it would be more accurate that the Ministry’s responsibility is to ensure that the operating authority is producing a safe water supply.

40. Municipalities have a strong desire for government attention and support for their water treatment plant needs (Expert Meeting Notes, May 16). Government technical assistance could be of substantial benefit to municipalities and is viewed by some as preferable to the cost and expense of retaining private consultants (Expert Meeting Notes, May 22, section 1.2.3). In addition, there is the need for a full and public assessment of the state of municipal assets in the province and a determination of the needed funding support. Indeed, the government of Ontario (through SuperBuild Corporation) accepts the need for policy development to occur with a focussed commitment to help small municipal entities fulfill water treatment plant operational requirements (Expert Meeting Notes, May 16, page 11).

41. In sum, and leaving aside the issue of who operates and maintains water treatment plants as a topic for a later public hearing, there is obviously a large and unfilled role for the provincial government in organizing and fostering the development of the capacity, culture and transparency of water treatment plant operations.

42. The front-line staff of the Ministry of the Environment see the need for this role to be taken up. In their view, the Ministry of the Environment must provide adequately skilled staff and organizational support and ensure funding to build and maintain Ontario's drinking water infrastructure. The basis for those submissions is set out in Renewing the Ministry of the Environment at paragraphs 153 and following.

155. The Water Protection Fund has expired, and many of Ontario's water treatment plants and sewage treatment plants and other elements of the water system are old, crumbling and need repair.

156. Current funding plans are not adequate to maintain Ontario's water infrastructure.

159....As a central source of expertise, the province would spare municipalities both the expense of seeking solutions in isolation and the cost of making sub-optimal choices.

161...Trained ministry staff with engineering expertise are necessary to assess community needs and the technical solutions to them. Economic and policy expertise is needed to develop an overall framework that will ensure the existence of the needed infrastructure.

163. Once the appropriate framework is in place, it must be implemented. The Ministry must have the capacity to supervise that implementation. Staff must be in place who can stay abreast of the economic and policy challenges inherent in following through with such a project. Changes in water treatment technology must be tracked and incorporated. Continuous quality maintenance must be ensured. The Ministry must redevelop the capacity to conduct the needed supervision and inspection, and to have expertise on call when problems in the field surpass the capacity of inspection staff.

43. To provide for these increases in focus, OPSEU recommends the formation of a Water Branch within the MOE and a revitalized Ontario Clean Water Agency. A more detailed structural rationale is set out below.

### **Source protection and watershed management**

44. The protection of sources of drinking water, in the form of both surface waters and aquifers, may be considered the outer perimeter of defence in a safer water regime. Appropriate drinking water treatment and distribution forms the inner perimeters of this defence.

45. Source water monitoring programs need to be upgraded to allow for the measurement of threats to human health in raw water and the communication of alerts to appropriate parties.

46. Programs that abate the risks to source waters need to be implemented. The MOE needs to take a stronger role in mandating the outcomes from storm sewerage, street run-off and other matters relating to urban form. Means of protection from hazards emanating from agricultural sources needs to be clarified and implemented. Industrial and communal outfall into the watershed must be monitored and performance objectives must be achieved.

### **A stable and integrated approach to safe drinking water**

47. A Water Branch would provide the integrated strategic, policy, technical, regulatory, and financial support required for the development of a safe drinking water regime. Currently the Ministry's water programs are fragmented among the Ministry's Four Divisions:

- Integrated Environmental Planning Division contains the Water Policy Branch;
- Corporate Management Division hosts the Organizational Development and Learning Section within the Human Resources Branch which guides the operator certification and training process;
- Environmental Science and Standards Division contains:

- the Water Monitoring Section within the Environmental Monitoring and Reporting Branch;
  - The Water and Sewage Support Program, the granting section, which is also within Environmental Partnerships Branch;
  - The Drinking Water, Wastewater and Watershed Standards specialists who are within Standards Development; and
- Operations Division hosts the Environmental Assessments and Approval Branch within which is the Application Evaluation Section whose Water and Wastewater unit issues Certificates of Approval.

The combination of these functions would produce a more integrated approach to water issues.

48. The creation of a Water Branch may be necessary for the creation of a fully integrated approach to drinking water safety, but it is not, in itself, sufficient to establishing a safe drinking water regime.

49. Without the power to bring water treatment plant operations into conformity with the Water Branch's system of rules, policies and guidelines it cannot be asserted that there is a "regime" for the provision of drinking water. A punishment-based system, as recommended by others (Energy Probe, The Promise of Privatization, pages 51-58) is insufficient to achieve desired outcomes and does not fully utilize Government's proactive ability to cause action to occur.

50. Similarly, the Government has an ongoing need for advice. Without a means for allowing operational experience and knowledge to constantly refresh and update the thinking – and therefore the policy and standards – of the Water Branch, policies, regulations and guidelines may become antiquated, contradictory and ineffective and cannot be considered safe.

51. Central to the function of the Water Branch is the provision of advice to the Minister and Cabinet regarding the assessment and management of drinking water risk. In particular, the Government must be concerned with the financial and structural optimization of the waterworks industry. Although the public service plays a key function in providing information and advice, judgements regarding these factors can only be made by authorities with direct responsibility to the people of Ontario.

52. The people of the province should provide the ultimate judgement of appropriate risk. Hence, the provision of information to the public regarding the quality of their own drinking water is an essential step in creating a safe drinking water regime with integrity. The safe drinking water regime cannot rely only on its own logic for self-correction but must have, as a core virtue, a profound public transparency that will allow the water consumer to become a powerful actor in the safe drinking water regime.

### **Ensuring conformity to drinking water standards and policy**

53. The interactions between the Water Branch and drinking water operators can occur at many points along a continuum of activity. In order to serve all points, the Government, from its policy base in the Water Branch, needs to be able to exert power through a range of mechanisms. These may be described as licencing, reporting, advice, abatement, enforcement and direct control.

54. These powers would be realized through the District Offices of the Operations Division or the Ontario Clean Water Agency. District Offices bring forward the power of the regulator, while OCWA brings forward operational knowledge and power.

55. The remediation of the Walkerton waterworks was completed by the Ontario Clean Water Agency and was essential for the Government's efficient discharge of duty towards the citizens of Walkerton (OPSEU, Public Interests in Water Facilities Operations, pages 14-15). OCWA "provides the provincial government with ready access to the expertise and operational capability to respond to water emergencies" (d'Ombrain, Machinery, paragraph 460).

56. The Government has also made direct trusteeship of a water system into a real possibility through the existence of the Government water agency, OCWA. Though rarely used, the threat and security of this power serves many functions in a properly performing safe drinking water regime (OPSEU, Public Interests, pages 19-20). The requirement for this power may grow dramatically if, as expected, operating licences become contingent upon higher performance standards.

57. The abatement function of the Water Branch should continue to occur through the District Offices of the Operations Division and serve as the



strategic focus of interaction between the MOE and the operator community. However, the number, the resources and the specialization of abatement employees needs to be upgraded. Water treatment plant inspectors need to have access to deeper and wider knowledge of plant operational issues.

58. Reporting from water treatment plants has now increased to include the submission of an Action Plan, and Accredited Laboratory and Quarterly Reports. New reporting requirements raise additional liabilities for the Government that must be addressed. Receiving and filing reports is not sufficient for a safe drinking water regime. A new Water Branch must be able to not only cite a failure but to cause action that fulfils the reporting requirements. In order to build on-going and knowledgeable relationships between the MOE and operators, the appropriate mechanism for this interaction is through the District Officers of the Operations Division.

59. The ability to provide technical, and, in particular, engineering advice could be an effective means of risk reduction. Elsewhere it has been noted that “in terms of the government’s responsibilities, OCWA provides two necessary functions...[one being that] it has the expertise to advise municipalities on the design and construction of water and sewage facilities. If OCWA were to be wound up or privatized, this core of advisory expertise should be transferred to the Ministry of the Environment” (d’Ombrain, Machinery, para. 465). However, an advisory centre on operations isolated from actual on-going operational practices raises the likelihood that, over time, such a group would lose the confidence of municipalities. Rather than move the engineering advice role from OCWA to MOE where it would likely become isolated and ossified, OPSEU recommends an reinvigoration of OCWA’s advice function by increasing the engineering and facilities operation experience within the Agency to provide a broader range of advice to municipalities. The helpful role of OCWA in respect of municipalities is notable and can be further built upon (Expert Meeting Notes, May 16, section 3.5).

60. The system for providing operator training has fallen into disrepair and needs to be rebuilt (Brian Gildner, former Policy Advisor To the Operator Certification Program, MOE, Inquiry Testimony, June 7, 2001, pp. 118 -124). OCWA and the MOE have ceased to provide public training based on recognized training standards. A plethora of uncertified private trainers and some community colleges have filled the breach for municipal utilities while OCWA continues to provide training based on MOE

curriculum, but only for its own employees. When the MOE exited training provision, it was with the public understanding that OCWA would continue to provide this public service. “OCWA would be in a better position in the long term to maintain courses and update the courses based on their operational experience which the Ministry would no longer have” (Gildner, Inquiry Testimony, p. 136, lines 3-6). However, in 1999, OCWA discontinued public training citing the inability to recover costs for provision of the service. Since OCWA is governed by a Board of Directors consisting of Deputy Ministers and directed under an MOU with the Ministry, it would seem the elimination of training role was implicitly supported by the Government of Ontario. In the current situation, with the exception of OCWA’s own employees, there is no guarantee that training outcomes match the learning objectives originally set out by the MOE. OCWA continues to provide training in all regions of the Province. This training must be made publicly available and the cost for this training must be recovered by OCWA from the client, the Consolidated Revenue Fund or a mixture of both.

61. As the policy and regulatory hub of the safe water regime, the Water Branch would need a constant flow of information regarding the culture, training, technology and practices within water treatment plants. This flow of information refreshes and constantly updates the Water Branch, protecting it from becoming isolated from the real world of drinking water safety.

62. The vehicles for achieving this information flow to the Water Branch would be the certified operators, operating entities and the Clean Water Agency. The subject of this information would be the training standards of the operator certification program, the regulatory standards and the Environmental Management System standards.

63. The training standards for the curriculae and tests for operator certification need to be regularly reviewed and revived to meet emerging challenges from waterworks operations. Prior to the transfer of the MOE’s operational role to OCWA, MOE’s Human Resources Branch developed skills charts, curriculum, training, testing and certification for water treatment plant operators. Currently, there is no exam and curriculum review based on a profound operational knowledge or experience. This is not as it should be. Curriculum and tests must be periodically peer reviewed and authorized for use by the operating staff of the Clean Water Agency, the

inheritor of the Government's base of detailed operational knowledge of water services. Additionally, curriculum trainers should be experienced and senior certified operators who have completed an appropriate course on instruction and mentoring.

64. Regulatory drinking water standards bridge the world between public health concerns and technical capability. As technological innovation and best practices develop, efficient regulatory regimes must respond. The development of drinking water standards belongs within the Water Branch and must be insulated from improper influence by water service providers even while having access to the knowledge that only day-to-day involvement brings. To fulfil this goal, a new Memorandum of Understanding with the Clean Water Agency should be pursued to ensure constant forwarding of aggregated information to the Water Branch and to provide for the availability of test facilities.

65. New consideration has been given to developing new EMS standards consisting of:

- a methodology for documenting, assessing and reducing risk,
- additional standards for asset and financial integrity and
- operator and management training.

OPSEU has envisioned a partnership between MOE, OCWA and the Ontario Water Works Association for the purpose of standardizing best practises that would form the basis of this standards development function.

### **Assessing and responding to structural risk**

66. A role of the Water Branch must be to analyse risks to drinking water safety and assess the options available to the Government for the reduction of these risks. Risk may be managed through sampling and reporting, minimum technical requirements, application of best practices, operator or management training and other factors that have been discussed as contributors to the conformity of a safe drinking water regime.

67. Risk analysis must also assess the infrastructure, financial and structural soundness of the waterworks industry. Ensuring the underlying soundness of the waterworks industry is a fundamental contribution to the production of safe drinking water.

68. SuperBuild has commissioned a report to assess the inventory and condition of waterworks infrastructure. This inventory and condition assessment is an essential step to understanding future liabilities that need to be funded in order to maintain safe drinking water. But, the building up of infrastructure knowledge in SuperBuild Corporation is duplicative of knowledge already established in the Ministry of the Environment and the Ontario Clean Water Agency. Furthermore, it is not clear that SuperBuild has the technical basis to assess and develop an adequate picture of the needs of municipalities. Such an understanding involves a clear picture of the maintenance and upgrading standards that municipalities are to be held to. Finally, SuperBuild does not have the necessary focus on environmental and water related issues. For these reasons, it is recommended that the functions of SuperBuild in respect of water infrastructure be incorporated into MOE and OCWA government structure.

69. The role for allocation of subsidies to the waterworks industry is currently done by the SuperBuild Fund. This is an inappropriate location for subsidy disbursement due to the impure mandate of the Fund, funding instability and a lack of integration with an overall drinking water strategy. SuperBuild's relation to Cabinet through a political Board of Directors makes it susceptible to an overt political manipulation unhealthy for drinking water safety. Subsidies should be granted based on policy, rather than political, considerations.

70. The waterworks granting role of SuperBuild should be terminated and transferred to the MOE with instructions to develop a clear policy on the role of government subsidies. D'Ombra argues, and OPSEU agrees, that "the Ministry of the Environment, as the policy and regulatory agent for the government, ought also to administer any available infrastructure funding for water and sewage facilities. Most importantly, the government needs to include coherent financial arrangements in a future policy framework for safe drinking water" (d'Ombra, Machinery, para. 477).

71. Waterworks grants should flow through the Clean Water Agency, which has the project management expertise to ensure the capital projects are completed at best value to the Government. The Government cannot be sure that a conditional grant to a municipality is spent appropriately.

72. OPSEU asserts that the original role envisioned for OCWA in developing a pool of finance for municipalities needs to be revisited in order to give municipalities efficient access to a range of financing options.

### **Public information**

73. Through the Water Branch and OCWA there will be the possibility to create a higher level of public dissemination of water quality information and the creation of an on-going relationship between the community and the service provider. These options need to be more fully developed.

74. As part of this drive to increase transparency to the public, a new public Board of Directors for OCWA should be created which brings together the skill sets and stakeholders crucial to the role of the Agency and removes it from the direct control of the government.

75. In order to establish the best functioning Water Branch, the Ministry of the Environment should be required to table a reorganizational plan for establishing such a Branch with the intention of pulling together policy, technical support and planning staff concerned with water. The component parts are likely to be those listed in paragraph 47 above, currently fragmented among the Ministry's four divisions.

76. Finally, a Water Branch organization would have a side benefit. There have been concerns raised about the vulnerability of the Ministry to cuts in the budget (d'Ombrain, Machinery, para 451). The creation of such a branch with focussed attention on water issues, along with full transparency, would better permit the tracking of fulfillment of the Inquiry recommendations concerning ministerial organization and funding. (The staff of the Ministry of the Environment hasten to add that this suggestion should not be taken as an excuse to underfund or fail to restore funding to other parts of the Ministry.)

### **Recommendation #7: Water Branch**

**That the MOE establish a Water Branch integrating policy, technical and planning staff including:**

- **The Water Policy Branch of the Integrated Environmental Planning Division;**

- The relevant personnel in the Environmental Assessment and Approvals Branch;
- The relevant personnel from the Environmental Monitoring & Reporting Branch (including Water Well Records Services);
- The Water Resources Unit of Technical Support;
- The Drinking Water Specialists in the Drinking Water Surveillance Program of the Environmental Sciences and Standards Division.

#### **Recommendation #8: OCWA**

- That the Government provide adequately skilled staff, organizational support and funding to build and maintain Ontario's drinking water infrastructure, as follows:
  - The Regional Offices of the Operations Division require increased capacity and drinking water specialization in order to become the strategic foci of interaction and influence with drinking water providers;
  - The Ontario Clean Water Agency (OCWA) must take a new role as a centre of operational advice for all drinking water providers, particularly in the provision of engineering advice;
  - A peer committee of certified operating staff from OCWA, with the support of the Water Branch, must be mandated to review and upgrade the curriculae and examinations of the certified operator program;
  - OCWA's Memorandum of Understanding must be updated to require the Agency to forward compliance and incident data to the Water Branch;
  - OCWA and the Ontario Water Works Association should partner with the MOE to develop the best practices to form the Government's recognized Environmental Management System;
  - The drinking water infrastructure assessment function must be transferred from the SuperBuild Corporation to OCWA;
  - Waterworks financial support programs currently held by the SuperBuild Corporation must be transferred to MOE and operationalized under a multi-year policy and delivered by OCWA;
  - That the Government, through OCWA, should create a capital pool for municipalities;

- That various measures be taken to encourage operational scale including mandating the smallest scale operators to be served by OCWA.
- That, to augment the Government's power to provide operational knowledge and experience and to provide leadership in providing information to the public, the Ontario Clean Water Agency (OCWA) be revitalized with a new Memorandum of Understanding and an arms-length public Board of Directors.

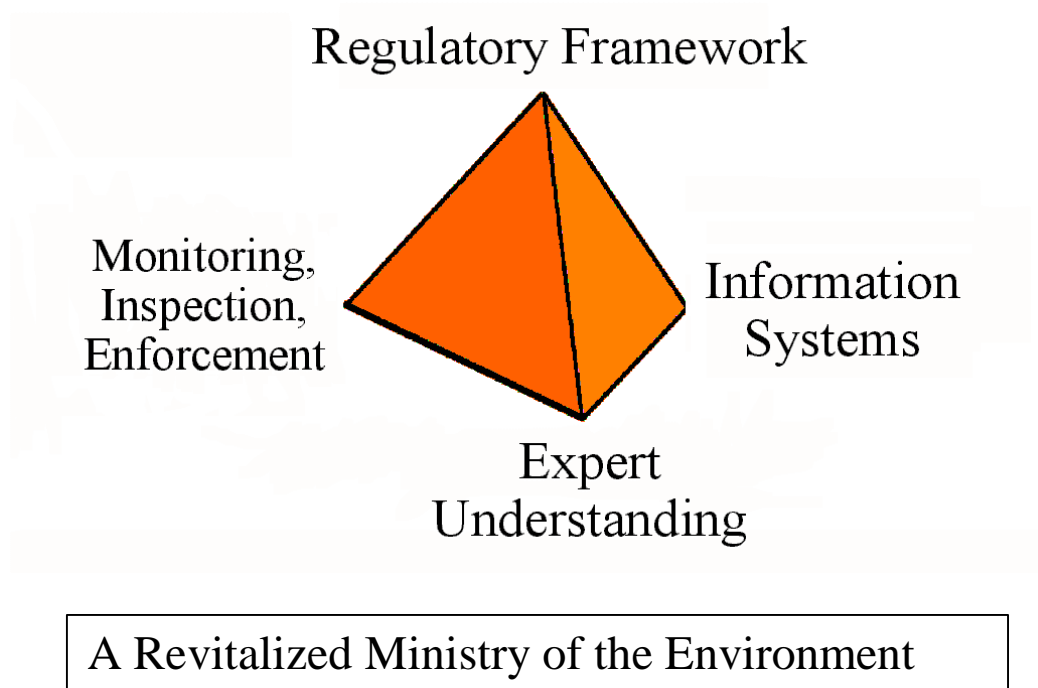
### **Recommendation #9: Integration, not fragmentation of government**

77. Again and again in the Expert Meetings, government was requested to provide leadership in a wide array of deeply inter-connected areas: policy, database development, education, regulation and enforcement, research and development, inspections, etc. (For example, see Conservation Ontario, The Importance of Watershed Management, p. 44 requesting provincial leadership in standards, regulation, enforcement, watershed planning initiatives, research and development, and decision support tools).

78. In order to respond effectively, the staff of the Ministry of the Environment have the clear sense that a multi-function Ministry of the Environment is the best model. In particular, they see clearly that the appropriate government agency contains within it a series of functional areas that must work together to protect Ontario's drinking water, including:

- field work, namely: monitoring, inspection and enforcement;
- expert understanding of the system;
- information systems, and
- regulatory framework.

OPSEU's Renewing the Ministry of the Environment paper notes that each functional area supports the others in an ecosystem approach. The Ministry of the Environment can be viewed as a strong four-sided pyramid.



Staff further point out “it is crucially important to collaborate and work closely with other participants in the system, but the system must have a robust core and must be able to stand independently”.

79. Indeed, d’Ombrain addresses the point when he concludes at para. 479 of his report: “The organization of government responsibilities for the provision of safe drinking water must work as a coherent system. Policy, expert advice, funding, regulation, enforcement and operations need to be linked together in a continuous cycle.” Much of this continuous cycle is best accomplished within one structure, the Ministry of the Environment.

80. The over-arching regulatory framework and policy direction of the Ministry must provide a clear mandate of environmental protection. Within that mandate, there must be sufficient expert knowledge of the processes and factors that can affect the entire system. Regulation and policy development requires an expert understanding of the current state of the environment and expert consideration of potential stresses that the environment will face. Enforcement proceedings provide crucial insights into the challenges faced by the regulation, and how to overcome them. Monitoring, data collection and reporting in an appropriate and timely manner is another necessary



component, as is readily available scientific support and insights. There must be scientific and technical assessment of new and emergent risks and responses.

81. There is a great deal of knowledge and expertise about all these functions resident in the remaining staff of the MOE.

“Many agencies are repositories, and their staffs are trustees, of specialized knowledge, historical experience, time-tested wisdom, and a degree of consensus about the public interest as it relates to a particular function of society. Persons staffing agencies have often been charged with executing the popular will in ways that sustain and nurture the public interest”. (Wamsley et al. “The Public Administration and the Governance Process: Refocusing the American Dialogue” in R.C. Chandler (ed.), A Centennial History of the American Administrative State (London: Collier-Macmillan, 1987), p. 300)

82. There is a real need for co-ordination and “not reinventing the wheel”. Many of the efforts of those institutions involved in the provision of safe drinking water can be most effectively put to good use if they are participating as part of an integrated and co-ordinated scheme. After all, many of the issues faced by the participants in the production of safe drinking water are similar across the entire province:

- technical and scientific knowledge concerning water, source protection and contaminants;
- knowledge concerning treatment and delivery systems including infrastructure technology;
- regulatory expertise;
- training requirements;
- database design and organization;
- etc., etc., etc.

In order to avoid re-duplication of information and efforts, and in order to ensure the best co-ordinated approach, it makes sense to pool functions and expertise in a central resource for the common good. For all of these reasons, the Ministry should be held intact and not fragmented.

83. Several specific suggestions for fragmentation of the Ministry have been made. They will each be responded to in turn.

## **A Secretariat?**

84. A suggestion made in the Gibbons Report is that a Secretariat need be established for forwarding the integration of the Ministry of the Environment with other entities. This is not a timely initiative. The robust core of the Ministry of the Environment needs to be rebuilt, and resources, time and attention and organizational expertise devoted to doing so. A creation of a separate Secretariat will not enhance the crucial central functioning of the Ministry. It will take resources away and weaken the policy core needed by the Ministry and particularly now to resolve water issues.

85. Nonetheless, the new position of Associate Deputy Minister has been filled, and a Secretariat has been formed. There has been a series of employee discussion forums held to discuss with MOE staff exactly how the Gibbons Report will be implemented. This implementation is based on 5 “Essential Shifts” that the Associate Deputy Minister’s Secretariat will implement.

86. OPSEU certainly agrees that there is a need for high-level government wide vision and goals, which will involve several Ministries in order to improve the delivery of safe drinking water in Ontario. However, the Gibbons Report focusses too much on “Partnerships” and “Opportunities” and “Strategy” and does not adequately deal with responsibility for getting a job done.

87. The Inquiry’s proceedings to date raise resourcing, regulatory reform, communication with water treatment plants and Medical Officers of Health as serious needs to be addressed, amongst other issues. Strategic shifts and discussions of partnerships do not provide any concrete basis for solving the important issues that have been identified.

88. OPSEU’s recommendations to the Inquiry are concrete and action-oriented. They are not managerial shufflings and shiftings which serve to divert attention from the actual delivery problems inside the Ministry of the Environment. The formation of the “Transition Secretariat” is anticipated to actually further disrupt the Operations Division of the MOE.

89. The role of the Secretariat is to guide the implementation of the Gibbons Report. However the Gibbons Report faced academic challenge during the Expert Meeting on Drinking Water Regulation (Expert Meeting Notes, May 22-24, section 1.5.2, p. 26). The report authors were absent from that forum and from the Inquiry and have not addressed the concerns expressed by a variety of the parties attending that Expert Meeting. Given the serious issues expressed at that meeting, OPSEU challenges the wisdom of forging ahead with implementation of a report that has not been fully discussed and debated in an open forum.

90. In June 2001, the new Associate Deputy Minister and V. Gibbons produced a slide show outlining the plans for the Secretariat, which was presented to MOE staff and a copy of which is appended.

91. Slide 7, “Assumptions in Building a Secretariat” suggests a 3 to 5 year term, with start-up staffing drawn from the Ministry, while the various Divisions continue to deliver core environmental services. The last bullet point is poignant: ***“Limit disruption to current organizational structure, people and locations.”*** OPSEU challenges this assumption as unrealistic. How can this be delivered without additional resources?

92. The staffing requirements for the Secretariat have been discussed with MOE staff, and have generated some serious skepticism. Approximately 50 to 70 staff are expected to become involved, with appropriate management and administration staff and office space. Staff questions the claim that the conceptual solution to an overworked, resource starved Ministry will be found by removing staff from their duties without replacements, and spending additional resources on more management.

93. The organizational structure of the Secretariat has 4 conceptual nodes. They are described on Slide 9. Project Management, Strategic Policy, New Program Development, and Stakeholder Involvement Offices are to be formed.

94. Nowhere in this framework is there any consideration of the problems now faced by the MOE. This Secretariat will not address any Human Resource management issues such as staffing levels, succession planning, recruitment, retention, staff development or training, despite testimony at the Inquiry that the Ministry needs a great deal of attention in those areas.

95. Examination of the past practices of Ministry is in order, considering the wide belief that the MOE once was a “leading jurisdiction”. The Gibbons report examined 13 external research papers, and interviewed 41 other agencies and toured other jurisdictions. It failed to discuss the matter with either MOE retirees, or older staff who can remember when the MOE was envied and respected around the world. The question of “*What did MOE do right?*” never really was asked.

96. OPSEU members have read the recent statement to reporters by the Minister of the Environment that “her beleaguered department needs more money and staff to do its job” (Toronto Star, Thursday, June 28, 2001, A21). Such a statement is cautiously welcomed, but the truth is in the details. In the meantime, OPSEU will agree that planning additional resources for the Ministry is far more productive than forwarding its fragmentation through a Secretariat.

### **A separate Operational Agency?**

97. Another longer term suggestion for fragmentation of the Ministry is the creation of a “more arms length operating agency for operational/program delivery” (Gibbons Report, p. 213) in three to five years time. The general structural merits of this suggestion are discussed and ultimately recommended against by the d’Ombraïn paper (d’Ombraïn, Machinery, paras. 445-458, 482-483). OPSEU endorses that conclusion, both for the reasons set out in the d’Ombraïn paper and for all the additional reasons favouring an integrated multi-function Ministry.

98. At the Expert Meeting on Provincial Regulation of Drinking Water Safety, the idea of a separate operational agency was further discussed. It was thought to lead to fragmentation and dilution of accountability. Ironically, it would also result in reduction of the ability to produce interministerial co-ordination, otherwise so touted in the Gibbons Report (Expert Meeting Notes, May 24, section 1.1.3, p. 8 and section 1.5.1, pg. 25). It was also highlighted that a creation of new structures is an intensely disruptive matter. It requires redeployment of staff, changes to legislative mandates, creation of new capacity and culture, building of new networks and relationships with other parties, etc. The “disruptive cost of change” will “likely not be worthwhile” (Expert Meeting Notes, May 22-24, section 2.3.4, p. 32)

99. Indeed, the agency concept is not even fully supported by the research paper commissioned by Gibbons on the topic of Review of Governance Models in Environmental Management (Research Paper #3), which states at p. 15 and 16:

First of all, it should be noted that changes in environmental governance are often driven by a broader political agenda (e.g., New Zealand) which is usually independent of the nature of the environmental challenges confronting a particular country. Thus, the level of powers exerted by municipal governments and the creation of semi-autonomous subordinate agencies are matters generally resolved as machinery of government issues rather than environmental policy. ...

Because it is possible to find agencies with different structures (e.g., Denmark and Massachusetts) pursuing similar, innovative policies (cross-media permitting), it is difficult to conclude that structure necessary leads to policy innovation. Other factors, such as political leadership (e.g., the relative influence of the Minister of the Environment) appear more important. ...

It is very difficult, therefore, to reach definitive conclusions about the relationship between different governance models and effectiveness. The examples of the Netherlands and Sweden, however, imply that process (i.e., degree of public involvement and consensus-building) and vision (i.e., articulation of both long term goals and targets to reach them) may be more important than structure.

Most fundamentally, there is no stated advantage of an agency which outweighs the strengths of an integrated fully capable Ministry.

100. There is a need to resist the urge to “throw the baby out with the bath water”. There are many questions and concerns about the Ministry of the Environment’s operations, its mandate, regulatory budget and the approach of the current government. OPSEU asserts that it is largely for these reasons that there has been such debate about whether an agency should be created. Ultimately, the solution to these difficulties is not to create a second-best structure such as an agency, but rather to ensure that the Ministry shortcomings in capacity, culture and transparency are properly resolved.

## **A separate Enforcement Agency?**

101. It has also been advocated that a separate environmental enforcement agency should be created (Energy Probe, The Promise of Privitization, pp.51-58). OPSEU reiterates its overall argument against the fragmentation of the MOE and has some additional specific points to make.

102. Abatement Officers are front-line inspectors, who perform compliance functions and provide the occurrence reports that initiate investigations. As such, they work closely with Investigation and Enforcement Officers to provide a continuum of voluntary compliance, mandatory compliance and investigation/enforcement. Environmental concerns can be assessed and the appropriate choice of instrument to respond can be made. As noted by one former MOE employee, most of those persons being regulated by the Ministry of the Environment “are not biker gangs”. Where one is dealing with those who generally wish to comply, some attempts can first be made to ensure compliance without enforcement.

103. The Investigations & Enforcement Branch relies heavily on the Ministry’s occurrence reporting system to learn of suspected environmental infractions. Abatement Officers find problems when inspecting facilities or responding to complaints. They record their findings and responses on occurrence reports and indicate if there is a suspected violation and whether an investigation is recommended. The bulk of the Investigation & Enforcement Branch’s work is generated from this body of information. The relationship between the abatement/inspection section and the IEB is somewhat analogous to the relationship between the uniform patrol division and the detective division of a police force. Should the IEB be segregated from the Ministry, it would be without the best source of information about enforcement needs.

104. A separate Investigation & Enforcement Agency would also create an additional bureaucracy. This would result in duplication of work at the time of handover. It would be confusing to the public. It would slow down the process of environmental enforcement as time was taken to transfer from the abatement Ministry to the investigations and enforcement agency.

105. The liaison between abatement and enforcement allow each to enrich the other’s performance. Abatement staff have a clear sense of the needs of the Enforcement Branch of the Ministry and of the enforcement powers that

are available and when those can be usefully employed. Enforcement staff have a clear sense of the abatement concerns and of the compliance difficulties of those regulated agencies. The regional and district offices of the MOE have both abatement and IEB officers. The close proximity allows for direct and timely communication during normal business hours, as well as after hours, if the need should arise. Questions are regularly asked between officers of both sections to clarify items from legal matters to regulatory matters. The opportunity for communication allows for the rapid transfer of information when significant incidents occur. It also facilitates information, idea, and experience sharing.

106. Further, both abatement and enforcement require “science for compliance”. The functioning of both the abatement section and the investigations and enforcement branch are strongly dependent on informal and formal linkages with scientific expertise. Ministry experts are informally consulted about abatement activities and investigations, then formally enlisted to sample, analyse and interpret data and then finally asked provide expert testimony in court. To separate environmental enforcement from its scientific infrastructure can be compared to separating criminal enforcement from its forensic expert base. Establishment of a separate regulatory enforcement agency would necessitate the establishment of a parallel scientific infrastructure, which is a costly and unnecessary venture.

107. It has been suggested that abatement and enforcement roles are contradictory and that abatement staff sometimes prevent formal enforcement action by not recommending referral to IEB or by expressing inappropriate opinions which impede prosecution. However, those branches have co-existed quite successfully within the Ministry. It is clear from the testimony in Walkerton, that even as its functioning was suppressed, the Investigation & Enforcement Branch was able to maintain an independent commitment to enforcement activities, Gord Robertson testified eloquently to the fact that he clearly understood he didn’t have stakeholders or clients, he had defendants, victims and witnesses (Gord Robertson, Investigator, MOE, Inquiry Testimony, April 24, p. 185, line 5) and the relevant panel testified they still “did their job” (Robertson, April 25, p. 153-154). Certainly there is a need to be fully cognizant of the need to ensure a strong uncompromised enforcement element to the role of the Ministry and recommendations in respect of Ministry operations should be made to ensure that this continues.

## **Integration**

108. In sum, fragmentation of the Ministry is not appropriate. There should be co-existence so as to make the best use of the expertise of all Ministry staff, and to ensure an integrated approach to the problems and difficulties of the environment and those whose activities have an impact on it. Joint function and collaboration between professionals in all areas allows identification of emerging policy issues and the preparation of an integrated response. Finally, the involvement of all aspects of environmental protection in one Ministry produces internal feedback loops and an overall mechanism for operationalizing policy in the field (See discussion in Expert Meeting Notes, May 22-24, pages 19-21).

### **Recommendation #9:**

- **That the structure of the Ministry of the Environment not be further fragmented by the creation of new external structures, and that the following structures not be employed:**
  - **A Secretariat;**
  - **An operational agency;**
  - **An investigation and enforcement agency.**

### **Recommendations #10 and #11: A Safe Drinking Water Act and the Ministry of the Environment**

109. OPSEU supports the implementation of a Safe Drinking Water Act (and joins in commending CELA for preparing such a detailed and persuasive recommendation). OPSEU is quite conscious of the danger that such an Act could be a hollow initiative and give the appearance of change where none is in fact occurring. The commitments in the Act must be properly resourced. But, such an Act can provide a push for action. The Act can be developed through the Water Branch of the Ministry of the Environment, and that branch should be given responsibility for implementation. (CELA has indicated that its proposed Commission could be implemented internally to the MOE, and OPSEU suggests that the Water Branch perform that role.) The combined result of a new branch and a new Act, along with a commitment to the necessary capacity, culture and



transparency, would provide a central impetus to the MOE for moving forward in the right direction.

**Recommendation #10:**

- **That a Safe Drinking Water Act be passed as a central part of the overarching water policy.**

**Recommendation #11:**

- **That the entity referred to in the Safe Drinking Water Act as responsible for government implementation be the Ministry of the Environment and in particular the Director or Assistant Deputy Minister of the Water Branch.**

**Recommendation 12: Government Assistance in the Development of the Recommendations**

110. OPSEU reiterates its position that the current capacity of the Ministry of the Environment, and indeed the government, to positively contribute to the work of the Walkerton Inquiry has not been fully engaged. The government should be required to assist the Commissioner of the Walkerton Inquiry in the finalization of his recommendations by tabling a process for the development of the drinking water policy, and organizational plans for a Water Branch and a revitalized Ontario Clean Water Agency. These plans should be tabled prior to the completion of the mandate of the Inquiry so that they can be reviewed and commented on by all parties.

111. This is a tight time frame, but meeting that time frame will reflect an awareness of the urgency of the task. In the event that the plans cannot be completed within the current mandate of the Inquiry, then that mandate should be extended, in that respect only, so as to permit receipt of and comment on the plans.

**Recommendation #12:**

- **That the government of Ontario assist the Commissioner of the Walkerton Inquiry in the finalization of his recommendations by being required to table organizational plans for development of the water policy, the Water Branch and the changed Ontario Clean**

**Water Agency within the mandate of the Inquiry and that these plans be discussed at a further Part II hearing of this Inquiry.**