SUBMISSION TO PART II OF THE WALKERTON INQUIRY

BY THE
CANADIAN COUNCIL OF INDEPENDENT LABORATORIES

June 20, 2001

SUBMISSION
TO PART II OF THE WALKERTON INQUIRY
BY THE
CANADIAN COUNCIL OF INDEPENDENT LABORATORIES

INTRODUCTION

The Canadian Council of Independent Laboratories (CCIL) is a professional association of independent consulting, inspection and testing firms that fosters high standards, ethical business practices and technical excellence among its members and the industries they serve. CCIL members are committed to protecting the public through: education; adhering to a code of ethics; encouraging good performance and reliability; and providing fair fees and cost-effective service. Through active participation with provincial, national and international standards bodies, the CCIL is at the forefront of technical knowledge and accreditation.

Established in 1993, the CCIL is made up of three strong divisions: Geotechnical and Construction Materials; Conformity Assessment; and Environmental Analytical. The Environmental Analytical Division is the foremost organization representing the interests of the private sector environmental testing laboratories and their associated businesses in Canada with representation from coast to coast. Division membership includes small, medium and large commercial environmental testing laboratories, as well as their affiliated suppliers. In sum, the member companies account for upwards of three-quarters of the Canadian environmental testing industry's revenues.

Fifteen of the 19 member companies of CCIL's Environmental Analytical Division have operations in Ontario (Appendix I). In fact, all but one of these have headquarters in Ontario.

IMPORTANT EXPANDING ROLE FOR INDEPENDENT PRIVATE LABORATORIES IN ONTARIO

A number of observers have linked the Walkerton tragedy to the Ontario government's decision to: close the Ministry of Environment' (MoE) regional labs; downsize the central lab in Toronto; and rely on private laboratories to do routine testing of drinking water for municipalities. Some of the supporters of this view go on to recommend that the provincial government get back into the water testing business and others go further in proposing that private labs be excluded from water testing.

However, the facts suggest otherwise, as this Submission will demonstrate. In this regard, we commend to you as well the strong submissions made to the Inquiry's Town

Hall Meetings by CCIL member company Lakefield Research in Peterborough, Ontario on April 10, 2001 and by our member company Near North Laboratories on May 1, 2001 in North Bay.

Supporting CCIL's position, as well, is the independent report to the Inquiry, *Laboratory Overview*, by Dr. Jane Pagel. She notes the "highly positive relationship" between MoE and private laboratories and the "flexibility and agility" of private laboratories to respond quickly. In her view the role of public laboratories "does not include provision of routine testing".

The strong position of the Canadian Council of Independent Laboratories has been and continues to be that:

- Accredited private labs are an essential component of best practices in drinking water quality management systems
- High volume routine water tests should be done in independent, accredited labs, rather than government labs.
- In order for accredited private labs to properly carry out their mandate, it is essential that their municipal and consultant customers clearly identify to the laboratories those samples subject to Ontario Drinking Water Standards (ODWS) reporting.

The government moved to require accreditation of drinking water testing labs when it adopted Ontario Regulation 459/00 in August, 2000. This transition took place quickly and well. It could have happened just as seamlessly in 1994 when CCIL's predecessor organization, the International Association of Environmental Testing Laboratories (IAETL) Canada, began advocating actively for such mandatory accreditation, as counsel for the Walkerton Inquiry have acknowledged.

CCIL MEMBERS ARE CONCERNED ABOUT THE ISSUES

CCIL's membership has a vital interest in the outcome of the Commission's work from a professional and economic perspective. Our environmental members are active and concerned participants in the scientific and environmental communities with knowledge and experience related to many of the issues before the Commission. And most important, CCIL members are active participants in the communities where they live, work and do business and they are concerned about the health and safety of those communities and their neighbours in the rest of Ontario and Canada.

CCIL MEMBERS HAVE KNOWLEDGE AND EXPERTISE ON THE ISSUES

As noted above, CCIL represents independent consulting, testing and inspection companies across Canada involved in Conformity Assessment/ Building Sciences,

Geotechnical/ Construction Materials and Environmental Analytical, which includes drinking water testing. CCIL members are experts whose independent professional advice is relied upon by governments and private sector businesses to assure public health and safety.

CCIL and our member firms share a commitment to protect the public through education, adhering to a code of ethics, and encouraging good performance and reliability among members. First on CCIL's Code of Ethics is a requirement that its members "act in the public interest at all times".

This commitment is analogous to an auditor's obligation to protect shareholder interests. The well being of an independent laboratory depends on the reliability of the tests it performs and its continuing professional credibility.

CCIL members have a broad base of international environmental testing experience and a familiarity with other countries' regulatory systems. Some CCIL members are active in the US market and meet rigorous EPA standards. Others are leading the way in environmental testing in countries including Argentina, Brazil, Chile, China, Indonesia, Mexico, Romania, Slovakia, Thailand, Turkey and Vietnam.

WHAT WE HAVE TO SAY

Water testing labs, government or private, should be accredited/certified for each of the parameters that they test.

> 7(3) If analysis of a water sample for a parameter is required by subsection (1), the owner of the system shall ensure that the analysis is carried out by an accredited laboratory for that parameter.
> Regulation 459/00, August 2000

The benefits of laboratory accreditation are internationally recognized. Our counterpart organization in the US has called this "the age of laboratory accreditation in nearly all parts of the world. " ACIL White Paper, *Accreditation of Food Testing Laboratories*, May 20, 1999 [www.acil.org].

At the international level, the International Laboratory Accreditation Cooperation (ILAC) [http://www.ilac.org/] has members from over 50 countries in North and South America, Europe, the Middle East and Asia. It also works with a number of major international and regional organizations in its effort to establish international accreditation standards. The Standards Council of Canada is Canada's ILAC representative. CCIL also has representation on ILAC through its membership on the Union Internationale des Laboratoires Independants (UILI).

The main drivers of this international effort are international trade and regulatory concerns about public health and safety.

In the end, laboratory accreditation is about competence and confidence.

The ACIL White Paper on *Accreditation* summarizes the benefits and limitations of accreditation:

> An accreditation process that complies with the relevant standards provides a number of benefits. As has been noted, it affords some confidence to the user of the testing laboratory's services that it is dealing with a competent organization. Accreditation also benefits the laboratory by providing an objective, third-party analysis of its operations. Invariably, no matter how high the quality of the firm, improvement is possible, and a top-notch assessor will point out where those improvements can be made. Further, once accreditation is an established reality in a given area of testing, it raises the bar and establishes the performance standard for the laboratories in that field.
>
> Of course, accreditation has limitations. It cannot guarantee the accuracy of all test data from the laboratories that are accredited – no matter how excellent and thorough the accreditation program. Most important, accreditation requires an educated consumer, who asks not only "Is your firm accredited?" but goes on to inquire, "By whom is your firm accredited and what is the scope/field of testing for which it is accredited?" No laboratory is qualified or accredited in every field.

Finally, after urgent consultation in the aftermath of the Walkerton tragedy, that included representations from CCIL, in August 2000, the Government of Ontario adopted a regulation requiring municipal water tests to be performed by accredited labs.

Quality of high volume routine testing by independent, accredited labs is at least as high as for government labs

In March of this year, CCIL partnered with the Standards Council of Canada and the Canadian Association of Environmental Analytical Laboratories in a Submission to Part II of the Walkerton Inquiry, *Accreditation of Laboratories in Canada with a Focus on Drinking Water Testing Laboratories*. This submission provided empirical evidence that accredited environmental analytical laboratories "produce more consistent and competent results than non-accredited ones". According to Dr. Rick Wilson, Executive Director of CAEAL, it is also that Association's observation that accredited private laboratories are equally competent and provide the same high quality results as their public sector counterparts. Clearly, both are measured against the same ISO 17025 Quality Standard. The same finding emerged from a study in the United States in the

1990's conducted by the International Association of Environmental Testing Laboratories, using a large body of laboratory data compiled by the US Environmental Protection Agency. For purposes of the Walkerton Inquiry, the appropriate conclusion is that the outsourcing of routine laboratory testing work to accredited private sector laboratories does not in any way put public safety at risk.

It is important to add that member companies of CCIL were instrumental in the establishment of CAEAL in 1989 and have been active in its governance since. Half of the Directors of CAEAL are from independent private labs. Moreover, in the range of three quarters of CAEAL's revenues come from the private sector. The private lab sector has endorsed and participated in the CAEAL Program from the beginning. In contrast, most municipal labs did not seek accreditation until very recently. For example, in 1995, around the time that MoE outsourced the testing of drinking water, no municipal labs in Ontario were accredited. This grew to only three by 1999, just before the Walkerton tragedy, but now, post Walkerton, nine municipal labs in Ontario are accredited by CAEAL.

The US system relies on certified independent labs to monitor drinking water quality

> Differences between provinces are not the only thing standing in the way of better drinking water protection and treatment in Canada. Overall, Canada's drinking water protection is not as strong as that of the United States.
>
> Sierra Legal Defence Fund, *Waterproof, Canada's Drinking Water Report Card,* January 2001

The US is widely acknowledged to have one of the highest standards for its drinking water system. It is governed under the Safe Drinking Water Act (SDWA) enacted in 1974 and amended in 1986 and 1996.

Under the SDWA, the EPA sets national limits on approximately 90 contaminant levels in drinking water to ensure that the water is safe for human consumption. These limits are known as Maximum Contaminant Levels (MCL). For some regulations EPA establishes treatment techniques (TT) in lieu of a MCL to prevent unacceptable levels of contamination in the finished water.

The EPA also regulates the frequency of monitoring, the analytical method to be used and the protocol for reporting results to the state or EPA. The EPA requires public water systems to notify the public when they have violated any of the regulations.

Independent private labs perform most of the drinking water tests in the US. Laboratories analyzing drinking water compliance samples must be certified by the

pertinent State. Certified laboratories must analyze performance evaluation samples, use approved methods and undergo periodic on-site audits.

In addition to the legally enforceable standards for the approximately 90 contaminants governed by the National Primary Drinking Water Regulations, there are 15 contaminants covered by the National Secondary Drinking Water Regulations. These amount to guidelines for water systems, however States may decide to make them enforceable.

Finally, the 1996 amendments to the SWDA required the EPA to put in place a program for monitoring unregulated contaminants. The EPA program requires analytical assessments on 12 contaminants and screening surveys for and additional 16.

In addition to State certification, the EPA requires laboratories to use only approved analytical methods for compliance monitoring. The EPA is considering adopting a performance-based measurement system into the drinking water regulatory programs to improve analytical methods for compliance monitoring while potentially reducing costs.

Member laboratories of CCIL require their clients to clearly identify those water samples subject to ODWS reporting.

In order to properly carry out their mandate, it is essential that the municipal and consultant customers clearly identify to the laboratories those samples subject to ODWS reporting. The majority of samples most labs receive are not drinking water, others that are from municipalities may be raw water, exploratory or developmental in nature. Reporting exceedences is time consuming and costly and can cause undue alarm when the samples are not from the distribution system. In addition, client confidentiality is an essential quality component of 17025 and a business necessity. Private labs have developed chain of custody forms with check boxes requiring the customer to indicate whether or not the sample is subject to ODWS notification. We are working diligently to educate our customers in their use and will continue to do so.

CCIL encourages MoE to work closer and better with the Ministry of Health in the regulation of drinking water testing in Ontario.

CCIL strongly supports the position put forward to the Inquiry by our member company, Lakefield Research, on April 10, 2001 in Peterborough, Ontario concerning the relationship between MoE and the Ministry of Health. These two government departments currently do not seem to work well together. They do not seem to share data easily or to consult with each other with regard to new regulations. In our view, working in close partnership CCIL, the MoE and MoH should act as the “engine”

driving improvements in water treatment, sampling and analytical technologies. They also have an important responsibility together to better educate the public.

A key point is that currently health lab accreditation is not consistent with that in the environmental laboratory sector. CAEAL/ SCC have no mandate to accredit health laboratories. In fact, the performance based testing of health laboratories is not an open process. This should be addressed in a timely way.

Government labs have a legitimate, but different, role to play than independent private labs.

> Thus, despite the reduced confidence in government and large public institutions, it is still expected that governments will exhibit leadership and will set and enforce standards, while the private sector and local municipalities are expected to be involved in implementation.
>
> The Water We Drink: Examining the Quality of Ontario's Drinking Water, *Pollution Probe, September 1999*

In CCIL's view, there are appropriate, but significantly different roles, for public and private labs in a drinking water management system to attain the highest standard of public safety. Dr. Pagel's paper supports this distinction.

For example, accredited private labs provide utility operators and the public with results that are at least as sound and reliable as those provided by government labs at a lower cost due to a greater disposition to invest in new and improved technology. Scarce public resources should be used for more strategic purposes in environmental and drinking water management.

Government-owned or contracted labs should have the capability to perform non-routine tests and to provide scientific advice in support of standard setting and regulation, among other things:

- The government needs its own, independent, reliable sources of scientific advice to inform the increasingly complicated array of issues that it faces in managing the environment at a strategic level.
- It needs access to basic research, and advice in increasingly complicated, multi stakeholder consultative and regulation making processes.
- The government has a high-level monitoring role. For example, it needs to be able to ensure that the protocols employed by private labs are consistent with the province's water quality objectives. This critical overview role would be a conflict for any organization actually providing routine day-to day-tests in the marketplace.

It is in the public interest to build a strong, reliable, independent, scientific capability in Ontario. Private investment in physical, human and management resources in the ability to do routine, high volume water tests complements the ability to provide a wide range of other environmental and scientific testing services to individuals, communities and businesses both at home and abroad

Independent private labs help the Ontario government to achieve a number of other public policy objectives

A strong independent private lab capacity headquartered in Ontario serves the province well in many important ways. Consider:

- Many Ontario independent private labs compete globally, requiring them to contribute to and keep up with international technological and regulatory developments. In so doing:
    i) International activities facilitate technology transfer, both ways
    ii) Canadian independent labs meet tough EPA standards and certification requirements of the States in which they operate.

- The profits from these international activities contribute to Ontario economic prosperity.

- Independent private labs help to ensure a diversified set of suppliers.

- They contribute to innovation and technology transfer.

- They provide needed capability to meet emerging demands for environmental services. Government should be encouraging the growth of a critical mass of independent testing labs to serve the increasing testing needs of other sectors of the economy, especially those that developing their own responsible care and environmental programs designed to exceed minimum regulatory standards.

- They provide high quality, reliable, cost-effective services.

Building this capacity is undermined when government labs compete in business sectors that private labs are best equipped to perform.

Independent private labs are particularly valuable in times of fiscal constraint

If government agencies are involved in the same businesses as private sector service providers, when faced with government budgetary constraints, they have a tendency to cut back on crucial non-market functions and focus on revenue making activities often where private sector capability exists. Consider that recent Government of Ontario

constraint programs have given Ministries credit, or offsets, for "non-tax revenue" initiatives, or user charges.

Governments will inevitably engage in constraints. But it is important to note that when governments constraints reduce its capacity to provide services, the net effect of the restraint is cushioned to the extent the private sector is able to absorb the skilled staff and apply its own resources to respond to the issues.

Conflict between role as regulator and service provider

> The MOEE not only had the role of provider of water and sewage services in the province, but also the role of regulator of these services. This led to a perception of conflict of interest by water industry representatives and by the municipalities themselves. As a result of this, and due to other problems, the Ontario government decided to create a water and sewage corporation whose responsibilities would be the provision of services, while the regulatory (water quality standards) aspect would remain in the hands of the MOEE.
>
> This quote is from Liana Moraru-de Loë, *Privatising Water Supply and Sewage Treatment Services in Ontario,* Water Resource Management News and Information, March 1997

One clear role of government is that of regulator and standard setter. But even this is evolving.

Managing the Environment: A Review of Best Practices provides a current Ontario-perspective on trends in environmental management. The report outlines shift from the traditional regulatory role towards a strategic approach to managing the environment. [p3]. Key aspects of the strategic approach to environmental management include:

- Promotion of continuous improvement in outcomes and accountability
- More comprehensive flexible regulatory and non-regulatory compliance tools and incentives to go beyond minimum compliance, and
- Shared responsibility with the regulatory community, NGOs, the public and the scientific / technical community. The report notes:

> As understanding of the complexity of environmental challenges continues to grow, there is a recognition that *governments alone* do not have the resources to do it all, nor is it the most effective approach. [emphasis added p6]

In this context, one of the best practices identified in the report is:

> Delegating responsibility (not necessarily accountability) for some activities to other partners of levels in the system, including . . . allowing the regulated community – within clear accountability and verification requirements – to undertake its own routine monitoring and reporting, including self certification and third party audits. [p6 – 7]

Don't confuse the issues of private sector participation in water and wastewater treatment facilities with the issues associated with private sector participation in testing for monitoring and quality surveillance purposes.

As noted earlier in this document, a number of observers have linked the closure of MoE's regional labs and the downsizing of the central lab to the events in Walkerton. In some cases this has been characterized as a "privatization" of the government's water testing capability.

Strictly speaking, the closing of MoE's regional labs was not a privatization, in the sense that an entity owned by the government was sold to the private sector. In fact, the Commission has heard from Dr. Palmateer that the government resisted selling the facilities of the London Regional lab to a private corporation started by a group of its former employees.

Nonetheless, the "privatization" of the labs has been used as a platform to make the broader case against the privatization of water treatment facilities. This case is made even though the Walkerton facility was, and still is, in municipal government hands.

CCIL members are concerned about being "sideswiped" by these arguments. This is not to say that there were not transitional issues associated with the closing of the MoE regional labs. For example, CCIL took the position that testing should be performed by accredited labs. This issue and a number of others have been recognized and dealt with in Ontario Regulation 459/00 dated August 26, 2000.

The arguments against a private role in water treatment can be summarized as follows:

- Profit is not used for investment
- Conservation is usually ignored
- Privatization does not mean better regulation
- Privatization does not mean competition
- The public remains at financial risk
- Broader policy issues are ignored
- The public does not support privatization

See for example *A Sustainable Water Strategy For Ontario*, Paul McCulloch and Paul Muldoon, Canadian Environmental Law Association, March 1999

There are strong responses that can be made to each of these points. But the fundamental observation is that these arguments focus on the issues of ownership of the water treatment and distribution system, not on its various subcontractors or service providers. It is an important distinction.

Governments have, in the past, and will continue in the future to make use of a variety of private service providers in support of core functions. Rigorous procedures have been established to ensure competitive tendering for these services to ensure fairness to service providers and to ensure the public that governments are getting high quality, cost competitive services.

The case for the competitive sourcing option has even been made by supporters of public ownership of water treatment facilities. For example, a paper by the Director of the Public Service International Research unit, a research organization with Public Service International, an international federation of public service unions makes this point:

> A public sector water undertaking can choose between carrying out work itself or inviting tenders from a number of different construction companies or suppliers of goods and services. The decision can be made on the basis of what is best short and long-term for the service. More work may be subject to competitive tender under a public undertaking than if it is privatized. Stockholm Vatten for example buys 50% of its output from private, specialist contractors and suppliers, all of which is subject to competitive tendering.

The Public Sector Water Undertaking - a necessary option, David Hall, Senior Research Fellow, PSIRU, School of Computing and Mathematical Sciences, University of Greenwich, February 2001] There are many positive examples of the privatization of water treatment. It is the model in Europe and is becoming so in the US.

The more critical issue from our perspective is whether there is an inherent benefit in using public labs for routine water testing. Clearly, as we have shown, there is not. In fact, the opposite is true.

CONCLUSION

It is in the public interest to build, maintain and grow a private sector testing capability, that efficiently delivers routine tests, innovates and encourages more individual and business consumers to use its services (in a soundly regulated environment) which will contribute to awareness and achievement of environmental objectives. Working closely with governments, CCIL has been in the forefront in this regard for more than a decade, both in Ontario and across Canada.

As set out in this submission, our best direct advice to the Walkerton Inquiry is that:

- Water testing labs, government or private, should be accredited/certified for each of the parameters that they test.
- Quality of high volume routine testing by independent, accredited labs is at least as high as for government labs.
- All Ontario laboratories which test drinking water, whether CCIL members or not, should follow CCIL policy which requires laboratory clients to clearly identify those water samples subject to ODWS reporting.
- Government labs have a legitimate, but different, role to play than independent private labs.
- MoE should work closer and better with the MoH in the regulation of drinking water testing in Ontario. The inconsistency between current health lab accreditation and the highly regarded CAEAL/ SCC accreditation regime in the environmental laboratory sector should be addressed in a timely way.
- Independent private labs help the Ontario government to achieve a number of other public policy objectives.
- Independent private labs are particularly valuable in times of fiscal constraint

Our final strong position is on the importance of partnership between CCIL, our member companies and government. We have worked very closely with the MoE (Laboratory Services Branch) for more than a decade. Communication between the Branch and our members has been open, effective and timely. In CCIL's view this partnership is a model of how best government and the private sector can work together. We will continue to build on it as we move forward in the best public interest of all Ontarians.

Appendix I

CCIL Environmental Division

MEMBER LAB	CONTACT	ADDRESS	TEL:	FAX:
Accurassay Laboratories	George Duncan	3 Industrial Drive, Kirkland Lake P2N 3J1	705-567-3361	705-568-8368
Accutest Laboratories Ltd.	Peter Haulena	146 Colonade Road, Unit 8, Nepean, K2E 7Y3	613-727-5692	613-727-5222
AMEC Earth & Env.	Suman Punani	160 Traders Blvd., Unit 4, Mississauga L4Z 3K7	905-890-0785	905-890-1141
ALS	Rob Deverall	1988 Triumph Street, Vancouver V5L 1K7	604-253-4188	604-253-6700
AXYS Analytical Services	Coreen Hamilton	2045 Mills Road, P.O. Box 2219, Sidney, B.C. V8L 3S8	250-656-0881	250-656-4511
Becquerel Laboratories	Steven Simpson	6790 Kitmat Road, Unit 4, Mississauga L5N 5L9	905-826-3080	905-826-4151
Buchanan Laboratories	Randy Buchanan	138 Gibson Street, Fredericton, N.B. E3B 4Z9	506-450-4463	506-451-7658
CRA Analytical Services	Wayne Smith	651 Colby Drive, Waterloo, N2V 1C2	519-884-0510	519-725-1158
Entech Laboratories	Mickey Misra	6820 Kitimat Road, Mississauga, Ont. L5M 5N3	905-821-1112	905-821-2095
Enviro-Test Laboratories	Don Laberge	1313 - 44th Avenue N.E. Calgary T2E 6L5	403-291-9897	403-291-0298
Lakefield Research	Russ Calow	185 Concession Street, Box 430, Lakefield K0L 2H0	705-652-2000	705-652-6441
Lex Scientific	Michael Hoffbauer	1 Quebec Street, Suite 204, Guelph, Ont. H1H 2T3	519-824-7082	519-824-5784
Maxxam Analytics Inc.	Andrew Masters	9331 48th Street, Edmonton T6B 2R4	780-465-9877	780-466-3332
Near North Laboratories	Mike Puccini	191 Booth Road, North Bay, Ont. P1A 4K2	705-497-0550	705-497-0549
Norwest Laboratories	Jean Crépin	9938 - 67 Avenue, Edmonton T6E 0P5	780-438-5522	780-434-8586
Philip Analytical Services	Barry Loescher	5555 North Service Road, Burlington L7L 5H7	905-332-8777	905-332-9169
Seprotech Systems Inc.	Michael Ziebell	2378 Holly Lane, Ottawa K1V 7P1	613-523-1641	613-731-0851
Testmark Laboratories	Mark Charbonneau	22 Brady Street, Sudbury, Ont. P3E 6E1	705-669-0123	705-669-1414
Wellington Laboratories	Brock Chittim	398 Laird Road, R.R. 6, Guelph, N1G 3X7	519-822-2436	519-822-2849

June 2001