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Second Inquiry report affirms OPSEU's message: Learn from Walkerton -- rebuild our public services

Justice O'Connor's second report from the Walkerton Inquiry is a win for Ontario's citizens and the environment.

It builds on the work of the Part I report, released in January, and the two reports together count as a victory for our union. They affirm our main message of the past year: that it's time to learn from the tragedy of Walkerton and rebuild our public services.

In the Part II report, released May 23, Justice O'Connor clearly places responsibility for the regulation and oversight of drinking water with the provincial government.

O'Connor's 588-page report makes 93 recommendations. A major one for OPSEU members is the recommendation that the Ministry of the Environment (MOE) take the lead provincial role in the protection of all aspects of providing safe drinking water, from source to tap. O'Connor recommends that the MOE work in conjunction with other ministries, the Ontario Clean Water Agency, conservation authorities and other government agencies to take a much more active role in source protection, standards development, drinking water treatment and operational monitoring.

With this recommendation, O'Connor provides a strong rebuttal to internal government exercises, such as the Gibbons report, which envision off-loading much of the MOE's functions and responsibilities to outside agencies and the private sector.

Justice O'Connor said that the provincial government must be adequately resourced, with both staff and money, so it can fulfill its non-transferable obligation to safeguard Ontario's drinking water.

His recommendations adopt many of the ideas and recommendations made by OPSEU in our submissions to the Inquiry.

The overarching recommendation in our May, 1, 2001, submission to the Inquiry, Renewing the Ministry of the Environment, was: "Ministry staff repeatedly observed that no agency, body or ministry other than the Ministry of the Environment is better situated to lead and take ultimate responsibility for the protection of Ontario's water resources now and in the future. This Ministry role is the overarching requirement for a water management regime that protects the intrinsic value of clean water as a natural resource and preserves the public interest in safe and clean drinking water."

O'Connor thanks provincial government staff

The participation of our members was key to the union's involvement in Part II of the Inquiry. A project team of members acted as a steering committee, guiding and directing

our research. Members from across the province contributed to the research by participating in the union's workshops. The union submitted 12 reports to the Inquiry, containing more than 100 recommendations. We participated directly in many days of hearings before Justice O'Connor. Members gave presentations to O'Connor on their areas of expertise. Members also participated in the public town hall meetings held throughout the province.

O'Connor made a particular point of thanking the provincial government staff who appeared before him.

I would like to thank the parties with standing in Part 2. Without their participation, this Inquiry could not have reached its objective. Many of the parties dedicated tremendous resources of their own to assisting the Inquiry and produced work of a depth, quality, and relevance greater than I could have hoped for. For that I am deeply thankful.

Although I do not wish to single out particular parties here, there was one special subclass of the parties who deserve mention. The provincial government staff who attended and participated in our expert meetings and public hearings have my sincere thanks.

Part II Report, p. 516

O'Connor was sufficiently impressed by the input of OPSEU members that he made a specific recommendation about how the MOE should continue to consult during the implementation of his report.

Although I do not consider it to be part of my mandate to dictate to government who within a ministry should be consulted, I support OPSEU's recommendation that consultation should include front-line staff. From my experience in this Inquiry, I can state that I found the perspective of front-line staff, as represented by OPSEU ... to be helpful in advancing my understanding of the issues. Ontario Public Service Employees Union, 2001, "Submissions concerning recommendations about provincial government operations and resources (Public Hearings 2 and 3)," Walkerton Inquiry Submission, pp. 20-22.

Part II Report, p. 402

The Commissioner's willingness to accept and adopt OPSEU's recommendations was fuelled in part by the union's extensive participation in Part I of the Inquiry. Part I investigated the causes of the events in Walkerton. OPSEU provided a great deal of input, evidence, witnesses and funded counsel to ensure that proper attention was paid to the systemic failure of management and the negative impact of the common sense revolution. The union's participation in Part I and Part II paid off. Many thanks to all of those involved.

Overview of the report's recommendations:

The report's recommendations fall into five categories, as summarized in the report's executive summary, pages 3 and 4:

Source Protection:

The province is to adopt a watershed based planning process, led by the Ministry of the Environment and by Conservation Authorities, to develop a source protection plan for each watershed in the province. Those plans would be approved by the MOE and would be binding on municipal government decisions that directly affect drinking water safety. Farms would be required to meet minimum standards and to develop water protection plans that are consistent with the watershed plans.

Standards & Technology:

Ontario's standards and technology relating to treating drinking water and monitoring its quality should be continually updated and the processes for doing so should be open and transparent. The Ministry of the Environment should be a leader in this process.

Municipal Water Providers:

All municipal water providers should be required to adopt a quality management approach for their water systems including accreditation and an approved operational plan. The Ontario Clean Water Agency should continue to play an important role: operating small systems, being available to fill in for non-viable systems and providing emergency remediation.

Provincial Oversight:

The provincial government must maintain its responsibility for regulating and overseeing Ontario's drinking water. The Ministry of the Environment should play the lead role in ensuring that drinking water regulations are strictly enforced. Sufficient resources, financial and human, must be provided in order to allow the carrying out of this role. Recommendations for adequate resources to ensure inspections, computer tracking and training should be implemented.

Government told to fulfill its responsibilities

The Part II report makes a number of general policy statements. There is a clear statement that:

... government is responsible for ensuring public health and safety. This means that public regulation of private actors whose conduct could put individual or community safety at risk is a primary function of government. Even in cases in which the regulatory function is devolved, for example, to an industry association, the ultimate accountability of public officials for the protection of health and safety remains.

Part II Report, p. 324

The report considers how public safety can best be protected and concludes it is not through contracting out, or privatization, known in government-speak as alternative service delivery.

... given the public importance of a safe drinking water system, safety can best be ensured when the government is directly involved in regulation and oversight. Allowing the industry to regulate itself could involve conflicts that might have a negative impact on safety...I believe that the onus should be placed on those who propose a form of alternative service delivery to establish that it will enhance safety (and not merely promote efficiency), before such a change is accepted.

Part II Report, p. 69

The Part II Report also finds that government must finance its programs adequately, so that it can fulfill its responsibility.

... where health is concerned, budgets should not be cut at random, leaving those responsible to “make do” with what they have. The government should decide what programs to offer and what the content of such programs should be. Once this decision has been made, the government should provide adequate resources.

Part II Report, p. 438

Public servants must be respected.

OPSEU, with particular reference to the MOE, argued that at the root of the morale problem is the fact that the public service has lost some of its sense of purpose ... It is perhaps obvious to note that good morale is important to an effective public service and that poor morale can hamper the government’s oversight function. The provincial government should become proactive with respect to morale and should take steps to improve it.

Part II Report, p. 466

The MOE must be well-resourced

In addition to making strong general statements about the importance of government, O’Connor calls for the MOE to take on a clear, leadership role. It is to be responsible for ensuring Ontario’s drinking water is safe.

... the government must clearly and unequivocally identify the MOE as the lead ministry and must give it the mandate to develop policy beyond its present regulatory and operational reach. As I have noted in Chapter 4, this includes a mandate to influence issues that have traditionally been within the purview of OMAFRA, MMAH, and MNR. The MOE also requires adequate resources to carry out this mandate.

Part II Report, p. 401

The need for resources is stated repeatedly.

I think there is merit to the suggestions that the MOE needs more resources to fulfill its mandate, more scientific and technical expertise, better environmental monitoring, and an improved information management system.

Part II Report, p. 67

A number of the recommendations I make in this report will involve expenditures to ensure that the MOE is able to fully and effectively carry out its oversight role. It will be essential for the Province to provide sufficient resources, financial and otherwise, to implement these recommendations.

Part II Report, p. 397

Report says that OCWA “offers an important alternative”

The Part II report identifies a continuing and important role for the Ontario Clean Water Agency (OCWA):

...to operate water systems under contract with the municipal owner. OCWA offers an important alternative to other external operating agencies, especially for small or remote municipalities that have limited options to operate their own water systems or to pursue regionalization. Also, OCWA is a useful vehicle for the provincial government in circumstances where it finds it necessary to mandate the restructuring of “non-viable” municipal systems or to respond to emergency situations, as in the case of Walkerton. For these reasons, I see OCWA continuing to play an important role in the province’s water industry.

Part II Report, p. 295

Report contains a number of important recommendations

The following is a list of some of the most important recommendations, taken from pages 18 to 32 of the report.

Source Protection (Chapter 4)

Recommendation 1

Drinking water sources should be protected by developing watershedbased source protection plans. Source protection plans should be required for all watersheds in Ontario.

Recommendation 3

Draft source protection plans should be reviewed by the Ministry of the Environment and subject to ministry approval.

Recommendation 7

The provincial government should ensure that sufficient funds are available to complete the planning and adoption of source protection plans.

Recommendation 12

Where necessary, the Ministry of the Environment should establish minimum regulatory requirements for agricultural activities that generate impacts on drinking water sources.

Standards (Chapter 5)**Recommendation 18**

In setting drinking water quality standards, the objective should be such that, if the standards are met, a reasonable and informed person would feel safe drinking the water.

Recommendation 19

Standards setting should be based on a precautionary approach, particularly with respect to contaminants whose effects on human health are unknown.

Recommendation 24

The provincial government should continue to be the government responsible for setting legally binding drinking water quality standards.

Treatment (Chapter 6)**Recommendation 33**

The Ministry of the Environment should be adequately resourced to support a water sciences and standards function in relation to drinking water.

Laboratories (Chapter 9)**Recommendation 41**

The provincial government should phase in the mandatory accreditation of laboratories for all testing parameters, and all drinking water testing should be performed only by accredited facilities.

Recommendation 42

The Ministry of the Environment should licence and periodically inspect, as required, environmental laboratories that offer drinking water testing; as with water treatment operations, continuing accreditation should be a condition of licence.

The Role of Municipal Government (Chapter 10)**Recommendation 50**

The role of the Ontario Clean Water Agency in offering operational services to municipalities should be maintained. The provincial government should clarify the Ontario Clean Water Agency's status and mandate. In particular, OCWA should be:

- an arm's-length agency with an independent, qualified board responsible for choosing the chief executive; and
- available to provide standby emergency capabilities.

Recommendation 51

The provincial government should require all owners of municipal water systems, as condition of their licence (see Recommendation 71), to have an accredited operating agency, whether internal or external to the municipality.

Recommendation 53

The Ministry of the Environment should initiate the development of a drinking water quality management standard for Ontario. Municipalities, the water industry, and other relevant stakeholders should be actively recruited to take part in the development of the standard. The water industry is recognized as an essential participant in this initiative.

Recommendation 54

The Ministry of the Environment's Drinking Water Branch (see Recommendation 69) should have the responsibility for recognizing the drinking water quality management standard that will apply in Ontario and for ensuring that accreditation is properly implemented.

Recommendation 57

Operational plans should be approved and reviewed as part of the Ministry of the Environment approvals and inspections programs.

Training of Individual Operators (Chapter 12)

Recommendation 59

The Ministry of the Environment should continue to require the mandatory certification of persons who perform operational work in water treatment and distribution facilities. Education, examination, and experience are essential components of ensuring competence.

Recommendation 60

The Ministry of the Environment should require water system operators who currently hold certificates obtained through the grandparenting process to become certified through examination within two years, and it should require operators to be recertified periodically.

Recommendation 62

The Ministry of the Environment should develop a comprehensive training curriculum for operators and should consolidate the current annual training requirement in Ontario Regulation 435/93 and the proposed requirement of ministry-approved training into a single, integrated program approved by the Ministry of the Environment.

Provincial Government (Chapter 13)**Recommendation 65**

The provincial government should develop a comprehensive “source to tap” drinking water policy covering all elements of the provision of drinking water, from source protection to standards development, treatment, distribution, and emergency response.

Recommendation 66

The Ministry of the Environment should be the lead ministry responsible for developing and implementing the “source to tap” Drinking Water Policy.

Recommendation 69

The provincial government should create a Drinking Water Branch within the Ministry of the Environment to be responsible for overseeing the drinking water treatment and distribution system.

Recommendation 70

The provincial government should create a Watershed Management Branch within the Ministry of the Environment to be responsible for oversight of watershed-based source protection plans and, if implemented, watershed management plans.

Recommendation 75

The Ministry of the Environment should increase its commitment to strict enforcement of all regulations and provisions related to the safety of drinking water.

Recommendation 78

The provincial government should ensure that programs relating to the safety of drinking water are adequately funded.

Recommendation 79

The Ministry of the Environment should create an Integrated Divisional System which provides central electronic access to information:

- relevant to source protection;
- relevant to each drinking water system in Ontario (including a description of the system, trend analyses, water quality, and systems data);
- required by the Drinking Water Branch (including for approvals and

inspections); and
• required by local Boards of Health.

Recommendation 80

The Drinking Water Branch should prepare an annual “State of Ontario’s Drinking Water Report,” which should be tabled in the Legislature.

Next step: Making sure the government implements the recommendations

With the Part II Report, the Walkerton Inquiry has made a series of recommendations that reaffirm the role of the public service and in particular, the MOE and OCWA. OPSEU needs to play an active role to ensure that the government lives up to its reluctant promise to implement those recommendations.

Implementation or lack of it should be tracked and any shortcomings should be made an issue in the upcoming election. The Conservatives must prove that they have learned the lessons of Walkerton.

The union’s members on the MOE’s Ministry Employees Relations Committee (MERC) and our project team will investigate working with the Canadian Environmental Law Association (CELA), the Liberals and the NDP to ensure the government complies with the Walkerton Inquiry reports. CELA represents Concerned Walkerton Citizens.

There is a great deal more to do. If you would like to help, please contact Tom Parkin, OPSEU Research Officer, at (416) 443-8888.

Original authorized by Leah Casselman, president