

**IN THE MATTER OF
THE WALKERTON INQUIRY**

**THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
SUBMISSIONS ON STANDING**

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1. Nature of application for standing in the Walkerton Inquiry

The Ontario Public Service Employees Union, in conjunction with its directly involved members, applies for full standing for both Part I and Part II of the Walkerton Inquiry. It does so both as the trade union representing all of its members employed in the relevant services, and also as the personal representative of certain of its members who work at the Ontario Ministry of the Environment, the Ontario Clean Water Agency, and the Bruce Grey Owen Sound Health Unit (which includes the Walkerton Health Unit), in addition to other workers in the Town of Walkerton, including those at the hospital and the jail. OPSEU and its members are directly and substantially affected by both phases of the Inquiry and represent clearly ascertainable interests and perspectives which are essential to the Commissioner's mandate throughout. In particular, OPSEU and the relevant members have the following interests and perspectives to bring forward:

- As the trade union for most provincial government employees, and many public sector employees, OPSEU has a direct and substantial representative interest in protecting and enhancing the working terms and conditions and employment of its members. OPSEU is concerned with any and all aspects of the Inquiry touching on the management, restructuring, downsizing, privatization and deregulation of the provincial government and the services which it offers, and OPSEU also offers an essential perspective on those issues;
- As the trade union representative for employees particularly concerned with water quality issues (such employees being employed at the Ministry of Environment, (MoE) the Ontario Clean Water Agency (OCWA) and the Health Unit), OPSEU has a direct and substantial representative interest and an essential perspective concerning the legislation, regulations, guidelines, objectives, policies and procedures governing water delivery and monitoring systems in Ontario. Just as importantly, OPSEU brings an essential perspective on the actual workplace reality of this framework, including whether there were and are adequate resources to carry out assigned tasks, informal managerial policies that run contrary to or undercut formal policies and significant impacts on water safety caused by the politicization of issues, poor communications and poor morale;
- As the representative of the individual employees involved directly or indirectly in the events at Walkerton, there is a direct and substantial interest in protecting the reputation of those employees from any possible adverse findings or criticisms by the Inquiry, which role would include providing individual witness counsel for a significant number of the witnesses that may be called by the Inquiry; and

- As representative of the employees employed by public sector employers in the Walkerton area, there is an essential perspective to be offered on in the crisis as it occurred in Walkerton workplaces, including the hospital and jail, and in the lives of the employees concerned.

OPSEU is aware that four Ministry of Environment employees have applied for individual standing. OPSEU remains willing and prepared to represent these individuals together with all other members of OPSEU. As far as OPSEU is aware, and OPSEU has canvassed the directly affected members, all other individual OPSEU members support OPSEU's seeking standing at the Inquiry and are quite prepared to have OPSEU represent their individual interests at the Inquiry.

We have arranged our submissions along the following lines:

2. Introduction to OPSEU

- a brief description of OPSEU, its members and how it operates.

3. OPSEU: a leading voice of public employees

- a brief description of OPSEU'S participation in public policy discussions and debates with examples from the health and safety area and regarding open and accountable government.

4. International perspectives

- setting out OPSEU's unique ability to access information from around the world on water systems and public accountability.

5. The direct interest of OPSEU members in Ontario's drinking water system

- this section sets out OPSEU's and its members' interest in the Inquiry and the effect of government cutbacks on the ability of public servants to ensure safe drinking water.

6. The personal impact on remaining public servants

- this section sets out the impact of the cutbacks on certain aspects of the morale of frontline OPSEU employees.

7. Reasons to grant OPSEU standing at the Inquiry

- this section sets out why OPSEU meets the tests for standing for both Part I and Part II of the Inquiry.

2. Introduction to the Ontario Public Service Employees Union

OPSEU is a trade union with approximately 90,000 members in the Ontario Public Service (OPS), the broader public service (including funded agencies such as public health units), community colleges and the private sector. Approximately 50,000 of OPSEU's members are employed in the OPS, where government-union-employee relations are governed by the *Crown Employees Collective Bargaining Act* and the *Public Service Act*. As bargaining agent, the union has a statutory obligation to represent employees in negotiating collective agreements, enforcing rights under those agreements, as well as safeguarding the rights of its members under the *Employment Standards Act*, the *Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act*, and other employment-related statutes. The union has a statutory right to collect union dues to fund those activities as they are determined by the membership through internal political processes.

OPSEU originated in 1911 as the Civil Service Association of Ontario and for decades was the in-house voice of Ontario's government employees. In 1974, the CSAO became a modern union and grew rapidly (see OPSEU, Don't Call Me Servant, included with this application).

The union is governed by a Constitution and bylaws (see Tab 1). The Constitution establishes the annual Convention as the governing body of the Union with policy decisions between Conventions being made by an elected 21-person Executive Board. An Executive Committee of the Board, composed of nine members, meets more frequently.

The daily operational control of the Union is vested in a full-time President, and a full-time Vice-President/Treasurer. This political leadership supervises approximately 260 full-time and part-time union employees.

The union has 20 regional offices from which staff provide province-wide service (including a regional office in Owen Sound, serving Walkerton). The union's head office provides central services including a Grievance Department, a Collective Bargaining Department, a Membership Benefits Department (including Pension, LTD and WSIB), an Occupational Health and Safety sub-department, an Equity Unit, a Research Department, and a Campaigns/Communications Department. In conjunction with counsel, the Research and the Campaigns/Communications Departments have spent a significant amount of time both researching and communicating concerning the Walkerton Inquiry.

The union's staff support about 500 union locals which provide the daily workplace representation of the members. For example, in the Walkerton area, the following locals represent the following workplaces:

- Local 225 represents public servants including the front line staff at the Walkerton jail.

- Local 275 represents employees of the South Bruce Grey Health Centre including employees at the Walkerton hospital, in 2 bargaining units; paramedical and service (including Registered Practical Nurses);
- Locals 266 and 276 represents employees of the Bruce Grey Owen Sound Health Unit including technical and professional and office and clerical staff at the Walkerton Health Unit site.

Each local union elects a local president and an executive committee including a vice-president and an occupational health and safety representative. Every section of the workplace is represented by a union steward, reporting to a chief steward. Union locals meet regularly and discuss workplace issues and the representation which the union can provide in respect of those issues. These union locals also meet regularly with the local employer, either formally at Local Employee/Employer Relations Committee meetings, or on a regular informal basis.

In the OPS, the same type of meeting takes place at the Ministry level through the Ministry Employee/Employer Relations Committee (MERC). Both the MoE and the OCWA have MERCs at which the union meets regularly with the Ministry to discuss issues of concern to OPSEU represented employees.

3. OPSEU: a leading voice of public employees

“...many activities, be they concerned with the environment, tax policy, day-care or feminism can be construed as related to the larger environment in which unions must represent their members.”

Lavigne v. OPSEU [1991]
2 S.C.R. 211 at p. 338
per La Forest J. (excerpt at Tab 2)

Government policies create the environment in which public employees operate, whether they work in the OPS or in arm’s-length agencies such as public health units, hospitals, community colleges, or Children’s Aid Societies. Similarly, government policies have an impact on any public sector union’s ability to negotiate and enforce collective agreements. It is the experience of OPSEU that it is impossible, in any meaningful sense, to separate a public sector union’s role as negotiator and contract enforcer from its role as a commentator and campaigner on public policy. The demonstrable belief that the two roles are inextricably linked forms the basis of the “social unionism” to which OPSEU subscribes.

OPSEU has been an active and informed participant in public policy discussions in Ontario since the union was created in 1975. Public employees have a perspective on the delivery of public services that derives not from theory, but from direct experience and observation. During 25 years of activism, the union has often found itself in a position to comment publicly on issues that affect members, not only as workers, but as citizens. In that period, OPSEU has published literally hundreds of

briefs on a wide range of topics, from mental health care, to social assistance, to ambulance services, to post-secondary education, to correctional services (see Tab 3).

These presentations have brought forward the perspective of front-line service providers, but also the point of view of those who work deep inside government and are therefore often the first to witness changes in government regulatory behaviour – and the first to see the outcomes.

Over the years, OPSEU members have seen governments elected and governments defeated. They have witnessed the arrival and departure of many fashions in public administration. They have seen what has worked, and for whom, and they have seen what has not worked. The institutional memory and wisdom of any workplace resides substantially in its longest-serving workers. In Ontario, many of those workers are OPSEU members. OPSEU is in a position to serve as the voice of their aggregate wisdom.

This brief will now highlight two of the many areas in which OPSEU has played an active policy role:

- the need for systemic solutions to health and safety issues
- open and accountable government

3.1 Health and safety issues: The union's systemic perspective

As a trade union, OPSEU has a special involvement in the field of Occupational Health and Safety – a perspective that sheds light on issues of safety in the home and in the community. In 1978, Bill 70 granted Ontario workers the right to refuse unsafe work, the right to know about workplace hazards, and the right and obligation to serve on workplace committees that set basic safety rules. (Whether the first right can be applied to citizens concerned about the quality of water is doubtful, but a community's right to know has been front-and-centre in Walkerton from the start. Should citizens in a community also have the right to have input into safety rules in their community, as workers do in their workplace?)

In any case, pursuant to their occupational health and safety rights and obligations, unions have been responsible for years of research, analysis, and action around workplace health and safety issues. That work has resulted in a strong belief that whenever human beings are ill, injured, killed, or otherwise adversely affected as a result of a workplace hazard, the solution is never to treat just the person, but to treat the workplace as well. OPSEU's perspective is that the systemic view is key to any understanding of health and safety issues, whether on the job, in the home, or in the community.

Long experience has taught OPSEU that, in any workplace, true “isolated incidents” are few and far between. While the behaviour of specific individuals is always difficult to predict, experience shows that individual behaviours arise from the individual's workplace environment. Planning for any health and safety system must

take this into account. Health and safety protections must be designed, not for the 999 times when people and equipment work as planned, but for the one time they do not.

The Walkerton disaster may illustrate this fact in stark terms. In the words of one former OPSEU member, laid off after 20 years of public service as an OPP Constable, Ministry of Labour Inspector, Human Rights Officer, and MOE Investigator:

I've conducted too many environmental investigations to believe that this was just the fault of one man, or two men or the Town of Walkerton. By all accounts, the town employees were just people trying to do the best job they knew how.

I can't count the times I've seen the initial blame in an environmental incident placed on the unwitting worker at the end of a long chain of unfortunate decisions and actions that, in combination, set him up to push the button on the culminating event. My instincts tell me there are parallels in Walkerton (see Tab 4).

It is this type of experience and this type of instinct which OPSEU and its members would bring to the Inquiry.

3.2 Open and accountable government: a front-line perspective

Throughout its history, OPSEU has been the leading proponent of the right of public employees to use their knowledge to participate fully and freely in the public life of the province, and to advocate on behalf of public servants and other public sector workers.

In the spring of 2000, the Government quietly circulated a discussion paper stating an interest in amending the *Public Service Act* in a number of disturbing ways (see Tab 5). There was an apparent desire to reduce the independence, integrity, and accountability of the public service. There was a stated desire to set terms and conditions of employment less by regulation and more by directive. OPSEU filed detailed submissions in response (see Tab 6). The government has not yet proceeded with the legislation but may do so this fall. It remains OPSEU's concern that the proposed changes will in part undercut the ability of public servants to fulfill their obligation to provide public services in the public interest, rather than solely in accordance with the agenda of the government of the day.

OPSEU was one of the first organizations to urge the Government to call an inquiry into the Walkerton tragedy. OPSEU also urged the Government to ensure that the inquiry dealt not only with the Walkerton crisis but also dealt with water quality across the Province. [see press releases at Tab 7]

After the Inquiry was announced, OPSEU was the first to call for full protection from reprisals for all employees who might seek to participate in the Inquiry (see Tab 7). The union's advocacy was successful. In mid June, 2000, Ontario Attorney-General Jim Flaherty tabled changes to the *Public Inquiries Act* that made it illegal for any employer to take "adverse employment action" against any employee who participated in a Public Inquiry. The union's action helped to facilitate participation for thousands of Ontario workers who may bring forward important facts and viewpoints, not only to the Walkerton Inquiry, but to future Public Inquiries as well.

OPSEU was able to take action immediately after the Public Inquiry was announced because of the union's historic activism on the issue of freedom of speech for public employees. In the case of workers in the Ontario Public Service, OPSEU had advocated for changes to the *Crown Employees Collective Bargaining Act* (CECBA), including protection for "whistle-blowers," since the 1970s. Indeed, the union's advocacy was instrumental in the passage of Bill 117, *An Act to Revise the Crown Employees Collective Bargaining Act*, in 1993 (see Tab 8).

One part of Bill 117 has never been proclaimed: "Part IV: Whistleblowers' Protection." Section 28.14 of Bill 117 calls for the appointment of "a Counsel to advise employees concerning wrongdoing and to provide a means for making those allegations public." Despite persistent lobbying on the part of OPSEU, in particular throughout 1994, the Counsel has never been named. OPS employees have remained without whistle-blower protection. They did not have it at the time of the Walkerton disaster.

The process outlined in Bill 117 balanced the need for public accountability with the need for a level of confidentiality in government operations. The whistle-blowing language in Bill 117 did *not* allow employees free rein to take pot shots at their employer. Rather, it created a specific legal channel through which they could report allegations of wasteful spending, mismanagement, abuse of authority and other wrongdoing. The goal has always been to make government more open, accessible, and accountable.

The lack of a legal process and protections may result in fewer disclosures with the potential to embarrass the government, but both the government and the public may pay a price for disclosures that are delayed or released into the public realm with little or no preparation or warning. This is especially true in cases involving potential threats to public safety. Witness the many unofficial "leaks" to the media concerning water safety.

Concerning water safety specifically, OPSEU would also note that neither the *Ontario Water Resources Act*, which governs the husbanding of the province's water resources, nor the *Health Protection and Promotion Act*, under which the public health units fulfill their responsibilities, contain whistleblowing protection for those employees who have legitimate concerns about water safety that should be brought to the attention of the public.

4. International perspectives

OPSEU's membership in Public Services International (PSI) allows us to draw on an impressive body of international research and experience related precisely to the issues surrounding water service delivery in Ontario. Public Services International is an international trade union federation of over 500 public service unions in 140 countries. Established in 1907, PSI is associated with the International Labour Organization, UNESCO, ECOSOC, and UNCTAD, and has devoted considerable resources to tracking utility privatization and restructuring, with a special focus on water services. In particular, PSI studies inefficiencies involved in private-sector service delivery, private- and public-sector capital under investment, and the challenge of maintaining public accountability.

The PSI has examined what happens when water systems break down, and has detailed numerous disasters occurring in jurisdictions around the world. The federation also draws on the research of local public service unions, journalists, and academics around the globe. Companies that PSI monitors include Vivendi (formerly Générale des Eaux), Suez Lyonnaise, Aguas de Barcelona, and International Water Limited. Water services have become a multi-billion dollar industry with a handful of large multinationals competing with public administrations. The PSI also maintains impressive files on the experience of countries as diverse and varied as Australia, New Zealand, South Africa, Peru, Bolivia, Romania, Lithuania, France, the United Kingdom, Spain, the United States, and Argentina.

The Walkerton tragedy raises fundamental questions about the provision of water services. Which level of government is best suited to provide water delivery? Should water services remain publicly-funded and delivered? Can the private sector do a better job? In answering these questions, Phase II of the Inquiry will be looking at jurisdictions around the globe. It is essential that the Inquiry be able to draw upon experts from Ontario and abroad who assess the experience of municipal downloading and privatization from a range of perspectives. OPSEU would seek to bring additional perspectives to bear.

5. The direct interest of OPSEU members in Ontario's drinking water system

No group represents more individuals at the heart of Ontario's drinking water system than OPSEU. The union represents 1,090 members in the MoE and 557 members in the OCWA. No group of people is more knowledgeable about the on-the-ground reality of drinking water in Ontario. While OPSEU members play a crucial role in ensuring that Ontario's drinking water is safe, their efforts have been severely hindered by massive staffing and budget cuts. OPSEU's direct interest and perspective on water delivery is more fully detailed below.

5.1 "Health at risk if environment enforcers cut, OPSEU says"

OPSEU's activism around drinking water dates back to 1990, when the government of the day first announced plans to sever water and sewage services from the Ministry of

the Environment into a new crown corporation. OPSEU joined environmental groups – Pollution Probe, the Canadian Environmental Law Association, and the Toronto Environmental Alliance – in calling for a halt to the privatization of water service delivery in the province. The subsequent government established the Ontario Clean Water Agency (“OCWA”). OCWA was designed to operate more like a private enterprise, competing with other water and wastewater companies for service delivery contracts in Ontario.

Following the election of the current government in 1995, OPSEU was among the first to sound the alarm about the environmental consequences of cuts to the MoE and OCWA. The title of the union news release dated Sept. 19, 1995 is illustrative: “Health at risk if environment enforcers cut, OPSEU says” (see Tab 9).

A \$15 million cut to the MoE was announced July 21, 1995. The Ministry was downsized by over 650 employees in two dramatic slashes, the first in May 1996 and the second in January 1997. OPSEU was the first to publicize the extent and significance of those cuts. *Nothing Left to Cut*, a comprehensive review and analysis of the cuts to that time, was published in two editions, the first in January and the second in February 1997 (see Tab 10).

According to figures obtained by the Canadian Institute for Environmental Law and Policy (CIELAP), staffing levels at the Ministry of Environment have been reduced by 42 per cent. Layoffs have eliminated an estimated 938 staff at MoE. The current government has cut the MoE’s operating budget by 39 per cent since 1995. The May 2000 provincial budget added a further 9 per cent reduction. By April 2001, the MoE’s budget will be barely half what it was when the current government took power in June 1995.

5.2 Inside the Ministry of the Environment

The purge of staff began in MoE’s District and Regional offices when seven District offices and two sub-offices were closed in 1996 and 1997. MoE offices that remained open lost on average about 40 per cent of their staff.

District and Regional MoE staff are divided into three general categories: abatement, technical support, and investigation and enforcement.

Among the abatement staff laid off were sewage and water inspectors and Environmental Officers who did general abatement work. The Regional Inspections Units (RIU) were disbanded. These specialized teams of four or five Environmental Officers were responsible solely for the regular inspections of water and sewage plants and PCB storage facilities. Clerical staff who did necessary administrative work were laid off.

Investigations and enforcement lost virtually all of its junior investigators.

Among the technical support staff laid off were pesticide officers, environmental planners, air quality staff, well inspectors, hydrogeologists (experts in ground water), and Environmental Officers specializing in surface water.

The decimation of the Laboratory Services Branch resulted in the closure of three regional labs in London, Kingston and Thunder Bay in 1996. Staff in the Toronto lab were also cut. In all, the branch lost approximately half its staff. Among the staff laid off were laboratory technologists, water quality scientists, microbiologists, wastewater technologists, junior scientists (water), pesticides/herbicides technologists and organic air technologists.

The result of these layoffs was both predictable and predicted. Workloads skyrocketed. Crucial work stopped being done altogether.

5.3 Who does (or did) what in the Ministry of the Environment

Ontario residents get their drinking water from one of two sources: surface water (lakes and rivers) or ground water (wells). The MoE protects Ontario's drinking water primarily through the Sewage and Water Inspection Program (SWIP), the Drinking Water Surveillance Program and these approvals processes: class environmental assessment, Certificates of Approval, and permits to take water. OPSEU members play important roles in these different program areas.

Here is a sample of the OPSEU jobs involved:

Environmental Officers in abatement inspect water works as regularly as possible. They take samples of raw and treated water and also water from the distribution system (the water in the pipes going to people's homes). They do this in accordance with the Ontario Drinking Water Objectives, which have become part of the new Drinking Water Protection Regulation.

Laboratory technologists and scientists in the sole surviving MoE lab in Toronto analyze water samples. They test for:

- hardness;
- turbidity (how dirty the water is);
- inorganic materials such as nitrate, sulphate, magnesium, calcium, chlorine, and potassium;
- trace metals, including lead, arsenic, iron;
- organic materials such as pesticides and herbicides; and
- bacteria such as E. coli.

Investigations Officers follow up on field orders submitted by abatement officers who have found a water plant to be in non-compliance with the *Ontario Water Resources Act*. The Investigations Officer will visit the site,

interview the operator and the agency or municipality responsible for the water works and determine whether MoE should lay charges.

Hydrogeologists are the MoE's groundwater specialists. Where an operator proposes to use ground water, hydrogeologists review the technical documents in the class environmental assessment of a water plant (every large-scale water works has to go through a class EA). They also review technical documents in support of the Certificate of Approval, which is the permit to build the water works after the class EA has been approved. They review applications for Permits to Take Water when a user wants to take more than 50,000 litres of groundwater per day. They assess the impact on the environment and other users of groundwater in the area.

Surface water evaluators are the MoE's surface water experts. They review the technical documents in the class environmental assessment of a water works if the operator proposes to use surface water. They also review technical documents in support of the Certificate of Approval if the operator proposes to discharge the backwash from the plant's filters into surface water. They review applications for Permits to Take Water when a user wants to take more than 50,000 litres of surface water per day. They assess the impact on the environment and other users of surface water in the area.

Environmental Assessment Co-ordinators in each Region work with municipalities and their consultants through the class environmental assessment of proposed projects, such as building a water treatment plant.

Environmental planners review municipalities' official plans. They encourage municipalities to protect well-heads by discouraging uses in areas around well-heads that would cause problems. They encourage the treatment of storm water from parking lots and malls, which often contain oil and anti-freeze, so it does not go into a lake that provides drinking water without having been at least partially treated.

Drinking Water Specialists in the Drinking Water Surveillance Program gather data about municipal water supplies. DWSP monitors and evaluates the quality of drinking water at 175 municipal water supplies in Ontario.

Drinking Water Treatment Specialists in the Drinking Water, Waste Water and Watershed Standards Section provide technical advice to abatement officers, municipalities and consultants about appropriate treatment technology.

All these OPSEU members form a crucial part of the water delivery system of the province.

5.4. The Effect of Cutbacks and Lay-offs

What follows is a sample of OPSEU member concerns regarding the effect of budget cuts and lay-offs in MoE.

In 1996, the MoE cut two-thirds of the staff at the Drinking Water and Waste Water Standards section. These scientists and technicians were experts on the design and operation of water and wastewater works and the most effective ways to treat drinking water and sewage.

Prior to the cutbacks, every MoE regional office had a well inspector who inspected new wells when they were drilled. This ensured the wells were in compliance with government regulations and that the water they were producing was safe. Over half of the municipal water supply in Ontario is from ground water. Ninety per cent of farms use well water.

Under the current government, well-drillers became self-regulated. Well-drillers are still required to file a report with the Water Well Records unit in Toronto, and these records are available to the public on payment of the \$20 user fee introduced two years ago. However, there is no follow-up by Regional or District staff to verify the information and ensure that the well complies with regulations. All Regional well inspectors were laid off when self-regulation was introduced.

Staff would say this is a major concern as an unsafe well can be dug without anyone even knowing about it until a problem comes up. MoE technical support staff are only called out to inspect a well if they receive a complaint from the public.

Staff in the District and Regional offices would say that the cuts have forced them to become reactive, not proactive as they used to be. Some technical staff would say they have not taken a well water sample in the field for several years. Prior to the cuts, they would regularly test the water in communities where they knew there were potential problems so they could prevent the problems from happening.

Environmental Officers would speak of having dozens of projects on the go at one time. When the Regional Inspection Units were disbanded, EOs took on the inspection of water and sewage plants and PCB storage facilities. Environmental Officers are also responsible for inspecting landfills, hazardous waste management facilities, industrial and municipal effluent, air emissions from industry, and pesticide operators.

With the loss of clerical staff, field staff would say they spend more time doing paperwork and less time in the field. Hence the slogan going around the Ministry: "We're counting what we do, not doing what counts."

Now, abatement and technical staff would say they are discouraged from making site visits. Field staff report not being able to respond to complaints because there are too few operational vehicles!

Staff would say they are seeing spills and spill clean-up only “on paper.” One of their jobs is to recommend to Approvals Branch in Toronto whether a specific project should receive a Certificate of Approval. They would often say they cannot get to a site prior to the Certificate of Approval being issued. Technical staff speak of working from maps and their own background knowledge in order to assess the environmental impact of a proposed project because they are not allowed to travel to the site.

Environmental Officers would say they are refused basic safety equipment such as insulated overalls – equipment they need to do their jobs safely. Basic tools for fieldwork, such as maps, are also refused them.

Staff would say training is virtually non-existent. Before the cuts, the Regional Inspection Units received specialized training. They attended seminars twice a year to receive updates on policy and procedure changes. A week-long course on water treatment was available to the general abatement Environmental Officers. These training programs no longer exist. No others have taken their place. Health and safety training has been minimized.

Staff in the regional offices would say they are concerned about two former areas of responsibility that the Harris government downloaded to municipalities. Environmental planners used to review developers’ plans for subdivisions to ensure there was enough water and that it was safe. They required developers to provide technical studies proving that if they were using wells, there was an adequate supply of water and that it met the health parameters of the Ontario Drinking Water Objectives.

Environmental planners also used to review developers’ plans for septic systems in new subdivisions. They required developers to show that lot sizes were large enough for the groundwater to dilute the nitrate by the time it reached the property’s boundaries. Nitrate is a critical contaminant found in sewage.

Now, municipalities are responsible for reviewing the developers’ technical reports for a safe drinking water supply and secure septic systems. MoE staff would say there is no monitoring going on to ensure municipalities have the expertise to do this work and that it is being done properly.

5.5 Laboratory disaster

With the closure of the Regional environmental labs, the government stopped providing drinking water testing services to municipalities. Previously, the MoE had charged for the testing on a cost-recovery basis. Municipalities were forced to pay more to send their samples to private laboratories to have them analyzed.

Some municipalities complained to the government about the increased costs of drinking water testing. This led the MoE to produce two internal draft documents, in February and June of 1998, called "Proposed Revisions to the Ontario Drinking Water Objectives." One of the proposed revisions was to reduce the frequency of sampling for bacteria for municipalities with a population under 3,300. Fortunately, after much internal discussion, the ministry did not go ahead with the lowered sampling requirements. However, the extremity of the solutions proposed in the discussion papers shows the heavy weight given to cost considerations in the MoE, even where public safety was directly at issue.

Nothing makes this clearer than the fate of the MOE's Microbiology section, located in Toronto. Microbiology is the science and analysis of bacteria (such as E. coli) and viruses. In its day, the MoE microbiology section was a world leader, renowned for developing the Presence/Absence test for detecting bacteria, a test still used all over the world. But over a 10-year period starting in 1986, it was cut back from more than 33 microbiologists to three, one of whom works half-time in the chemistry section.

Ministry staff and former staff would say the privatization of drinking water testing cut the direct link that had existed between lab and abatement staff in the MoE and the operators of water works. It destroyed the ability for a speedy follow-up when the lab detected a problem. Prior to the cuts and privatization, microbiologists would phone Environmental Officers directly to let them know if there was problem with a sample and then follow up the call with a report in the mail.

Ministry staff in some regions now rely on the one remaining MoE lab in Toronto to do their testing. Lab and field staff would say the turnaround time to get results is longer now for certain types of samples, including water samples. This is attributed to the continuing degradation of working conditions and equipment at the one remaining lab.

5.6 Inside the Ontario Clean Water Agency

When news of the Walkerton disaster first came to public attention, the Ontario government called in workers from the OCWA to operate the Walkerton water treatment system. Their work helped begin the long process (definitely still ongoing) of restoring residents' confidence in their drinking water system.

What the public did not know was that the OCWA staff come from an agency that has been just as drastically affected by cost-cutting policies as the Ministry of the Environment.

OCWA is a provincial crown corporation which currently operates 429 water and wastewater works for municipalities across Ontario. OCWA was created in 1993 when the government carved off the section of MoE that directly operated water and sewage plants.

In May 1997, the current government passed Bill 107, *The Water and Sewage Services Improvement Act*, which transferred ownership of the province's water and sewer plants, owned by OCWA, to municipalities. Bill 107 also outlined the process for the sale of any water or wastewater plant, in essence opening the door to privatization should municipalities want to go that route. This forced OCWA into even fiercer competition against private sector companies seeking to increase market share through low bids on contracts to provide water and wastewater treatment.

In a series of steps, OCWA has slashed its workforce from about 1,000 OPSEU members to the current 557. The South Peel water and wastewater facilities were among the hardest hit by the layoffs. Members would recall management telling them to do the best job possible so OCWA could win the contract for Peel. After OCWA won the contract, it reduced South Peel's staff from 200 employees to 80.

South Peel's two water plants (it also has two wastewater plants) are massive operations. Lorne Park and Lakeview Water Treatment Plants produce 170 million gallons of water a day, serving one million people in Peel Region. They also run a complete distribution system with eight pumping stations and two elevated tanks.

Among their duties, staff in OCWA plants:

- test the water every few hours from different points in the treatment process and the distribution system;
- compare the results against the readings from the on-line monitoring equipment;
- ensure that pumps, valves, motors and other equipment in the plant are working properly;
- change the tanks containing disinfectant chlorine gas; and
- make repairs and respond to emergency breakdowns in the plant or in the pipes when needed.

OPSEU members would say that downsizing and layoffs have increased the workload of existing staff by three to four times in some cases.

5.7 Farming Issues

It has been argued that a potential cause of the Walkerton tragedy may be related to the growth of large beef, dairy, pig and chicken farms. The growth of these large farms and the corresponding problems of sewage disposal may be a significant issue in protecting local water sources.

OPSEU represents employees of the Ministry of Agriculture, Food and Rural Affairs, the Ontario Dairy Herd Improvement Corporation and Beef Improvement Ontario Inc. OPSEU and its members may also be able to shed some light and provide a different perspective of the interrelationship between safe water and agricultural policy.

5.8 Recent developments

In early August 2000, the government issued a new Drinking Water Protection Regulation. A main effect was to give the force of law to the former Ontario Drinking Water Objectives, which had the status of guidelines only. Undoubtedly these Objectives will serve as part of the basis for the government's contention that the problems with Ontario's drinking water are well on their way to being solved.

OPSEU asks two questions: 1) whether the regulation is adequately drafted to make drinking water safer? and 2) whether the employees and others charged with the responsibility under the regulation will actually be able to meet those responsibilities? There has been no indication that the events of Walkerton, or the many instances of non-compliance uncovered by the MoE's inspection blitz of water treatment facilities, were related to any unwillingness to follow the guidelines. It is entirely possible, therefore, that the problems lie elsewhere, specifically in a systemic lack of resources available for the provision of safe drinking water.

In a July 28 news release, the MOE advised Ontarians that as of July 21, the Ministry had completed inspections of 241 of the province's 630 water treatment plants and found deficiencies in a 131 of them (see Tab 11). The remaining plants were being inspected by the end of the year. What is the extent of the government's ability to deliver on such an inspection schedule both in a short-term crisis, and on the long-term basis needed to guarantee safe water?

It has come to the attention of OPSEU that the MoE may not have the capacity to do complete inspections of the 630 plants with the resources available, on even an emergency basis. Regional and District office staff would say they were specifically advised to save time during the blitz by not testing the water for pesticide levels. Given the health risks connected to pesticides ("Toxic soup may be choking our kids, study finds" read the banner headline in the Aug. 22 *Globe and Mail*), one can certainly question whether the MoE is starving for resources.

While the plant inspections continue, without pesticide tests, further questions must be asked: What other water safety work is being neglected in the meantime? Landfill inspections? Industrial effluent monitoring? These are questions that OPSEU members have both the knowledge and the perspective to assist in answering. Sustainability of workloads and appropriate spheres of responsibility should be issues for the Inquiry.

6. Personal impact on remaining public servants

The first hand experience of the public servants still involved in water delivery has not been pleasant. They have seen their co-workers laid off and forced into retirement, often in very large numbers. They have seen workloads skyrocket. They have seen equipment deteriorate to the point of worthlessness. They have seen basic supplies dry up. They have seen training curtailed. This has affected morale. "Since the cuts, everybody's been walking around like zombies," said Doug McDougall, an MoE

Investigations Officer in Timmins and an Executive Board Member of OPSEU. Workers are “frustrated by the fact that they can’t do the job they are supposed to do because there just aren’t the resources any more,” he said (see Tab 12).

The situation is not assisted by governmental attitudes to public servants. A frightening – but sadly typical – recent example of the Ontario government’s attitude to staff involved in environmental protection aired on CBC Radio on July 28, 2000. These are the words of Bill Murdoch, Progressive Conservative MPP for the Walkerton area:

“I think we made a big mistake there. We laid the wrong people off and I mean, I’ve said that all along, so I’m not saying something new and I think of a lot of other Members that said that, too. So the cutbacks were needed because the Ministry of Environment was way overloaded, but I think we may have cut the wrong people and we’ve been set up a little bit on this.... If the bureaucrats want to screw something up they can certainly do that, and I think in this case a lot of them did” (see Tab 13).

In the 1998/99 Annual Report of the Ombudsman of Ontario, page 4, the Ombudsman states:

As Ombudsman I witnessed the development of what I can only describe as an atmosphere of fear among public servants, where senior officials are afraid to question the wisdom of the government's approach for fear of reprisal or loss of reappointment. As a result, many of the values upon which the public service has historically relied, including the obligation to "speak truth to power" even when the truth is unwelcome, have been seriously undermined. I have also observed a not unrelated trend as some senior officials become unwilling to admit their inability to deliver adequate service. Instead they offer reassurances that despite evidence to the contrary, all is well, things are getting better, and improvement is just around the corner."

The Ombudsman gives examples that do not relate to water quality, but it is a serious issue for the Commission to investigate whether these comments apply to water safety as well. A full investigation of that issue can only take place if there is a voice for public servants present at the Inquiry.

In some cases, workers in the MoE and at the OCWA may wish to speak out about what has happened. This, combined with the new protection for whistle-blowers under the *Public Inquiries Act*, may allow them to come forward with what they know and participate wholeheartedly in the Walkerton Inquiry. In other cases, however, individuals with valuable information may remain silent, intimidated by five years’ experience with a government that has shown little respect for their work, their co-workers, or themselves. In those cases, OPSEU will be able to bring their perspective and their information to the Inquiry.

7. Reasons to grant OPSEU standing at the Inquiry

The Commission's mandate is to inquire into the following matters:

- (a) The circumstances which caused hundreds of people in the Walkerton area to become ill, and several of them to die, and
- (b) the cause of these events including the effect, if any, of government policies, procedures and practices; and
- (c) any other relevant matters that the Commission considers necessary to ensure the safety of Ontario's drinking water

in order to make such findings and recommendations as the Commission considers advisable to ensure the safety of the water supply system in Ontario.

At the July 26 and 27 hearings in Walkerton, which OPSEU counsel attended, Mr. Justice O'Connor said that the inquiry into the cause of the events would be "thorough and complete."

It is OPSEU's submission that a thorough and complete review of the cause of the Walkerton tragedy, particularly where there is specific direction to examine the effect, if any, of government policies, procedures and practices, requires providing full standing to the only entity that possesses close to the same knowledge as the government while simultaneously providing a different perspective from the government. Similarly, ensuring the safety of Ontario's drinking water must involve hearing from those who would actually do so much of the work involved.

7.1. As trade union for public sector employees

As a trade union representing public sector employees in Ontario, OPSEU has a substantial and direct interest in the work of the Inquiry in both phases as it relates to government management restructuring, downsizing, privatization and deregulation. OPSEU members are the persons charged with actually providing public services. They attempt to do so under changing government management. Their jobs are the ones altered, sometimes beyond recognition, and perhaps beyond functionality by restructuring. OPSEU employees are the ones laid off as the result of downsizing and privatization. OPSEU's members have a direct and substantial interest in the terms and conditions of employment of employees who continue as public servants or employees of quasi-public entities, such as the public health unit. Safe water can only be delivered by persons who have the ability and resources to do their job conscientiously, with the interest of the public at heart.

The Inquiry is designed to report to the government and to the public. The report can be expected to influence the extent to which public services are seen as an important element of public water safety, and also to influence how public water services run. OPSEU's members have a direct and substantial job interest in those issues.

As documented earlier in the submissions, OPSEU has a long history of providing critical and informed commentary on government policies, procedures and practices. OPSEU has a particular knowledge of the effects of systemic changes in government and their impact on public services, and a demonstrated ability to bring those issues forward in a useful way. OPSEU can be expected to contribute to the work of the Inquiry on these same issues. As an intensely interested full participant in recent developments in the public management of this province, OPSEU will bring forward an informed perspective.

The Inquiry will hear from the Government of Ontario about the workings of the public service before, during and after the crisis. Government can be expected to defend its actions. OPSEU will provide the perspective of the front-line government employees involved, speaking through a vehicle other than their employer. The work of the Inquiry will be enriched by that alternative view. It is a view that may be critical, but it will also be constructive.

7.2. As trade union representative of employees working in water delivery and monitoring.

OPSEU has a direct and substantial interest in the Inquiry's work on water delivery and monitoring. The legislation, regulations, guidelines, objectives, policies and procedures governing water delivery and monitoring systems in the province will be closely and critically scrutinized as part of the work of both phases of the Inquiry. OPSEU and its members working in water delivery and monitoring will be directly impacted in that this framework defines the members' jobs. The Inquiry will be examining the history of the last several years of restructuring and policy changes to see what role, if any, they played. OPSEU has been deeply concerned with and actively monitoring those very issues since at least the early 1990s. This informed perspective puts OPSEU in a particularly good position to suggest what changes may have contributed to the events in Walkerton. It also places the Union well to be a valuable source of what changes might be of assistance in preventing a recurrence of such events in the future. OPSEU and its members are very concerned to ensure that trust is restored in the water delivery systems of the province.

Concerning phase II of the Inquiry specifically, OPSEU members are in an excellent position to advance critically constructive commentary on the legal framework itself. Is the framework properly designed? Does privatizing, downloading and deregulation mean that front-line workers charged with the responsibility for water safety have inadequate resources to actually carry out their assigned task? Are there managerial policies that will undercut any new framework? These are crucial questions for the Inquiry on which the Union has a helpful perspective.

It is well worth noting that in the Arbour Inquiry concerning certain events at the Kingston Prison for Women, the Public Service Alliance of Canada and its Union of Solicitor-General Employees was granted standing. Madam Justice Arbour found as follows:

"Not only will [the union's] members be directly affected by any recommendations made by the Commission, but the interests, concerns, and expertise of front-line employees cannot be ignored in the formulation of fair and manageable operational procedures."

That should be true in this Inquiry also.

7.3. As trade union representative of directly involved employees

OPSEU acts as the individual representative for employees involved directly or indirectly in the events at Walkerton. These employees include the Inspectorate staff at the Walkerton public health unit, the MoE employees at the nearest regional office (Owen Sound), the OCWA employees that came to Walkerton to work on providing safe water to the people of Walkerton, and others. In particular, the actions of the Ministry of Environment and the public health unit during the events in question will be the subject of scrutiny. As such, the employees in these offices have a direct and substantial interest in protecting their reputations and ensuring that the Inquiry deals fully and fairly with the facts of their involvement. OPSEU intends to fulfil the critical role of providing individual representation for those employees.

At present, OPSEU is aware of four MoE employees who are OPSEU members that have applied for individual standing. OPSEU remains willing and prepared to represent these individuals together with all of the other members of OPSEU.

In any event, OPSEU will also be providing witness counsel to individual employees interviewed by or testifying before the Commission. In that capacity, OPSEU will be concerned with ensuring that those employees receive their full entitlement to due process and the safeguarding of their particular concerns and interests. The provision of witness counsel to a significant number of witnesses in itself produces a direct and substantial interest in the ongoing work of the Inquiry.

7.4. A trade union representative of employees employed in the Town of Walkerton

OPSEU represents members directly affected by the events in Walkerton, including most of the employees at Walkerton Jail, some employees at the hospital, as well as other employees in the town and surrounding area. One of the persons who died in the tragedy was an OPSEU member. Employees at the Walkerton Jail faced the concern of maintaining the health of inmates, and themselves while at work. Employees at the hospital faced substantial demands for their services throughout the time when the large number of sick residents of the town were being treated there. This perspective of these employees will inform the Inquiry's understanding of the impact of the disaster.

7.5 Legal submissions with respect to OPSEU's request for standing at the Walkerton Inquiry

OPSEU respectfully submits that it meets the "substantial and direct interest" test for standing contained in s. 5(1) of the *Public Inquiries Act*. Section 5(1) reads as follows:

"5(1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest."

It is respectfully submitted that the test for standing at a Public Inquiry is broader than the more traditional and restrictive standing tests applied by courts or administrative tribunals. See "A Handbook on the Conduct of Public Inquiries in Canada" (Russell J. Anthony and Alastair R. Lucas) (1985: Butterworths) p. 182. (Tab 14)

In determining whether a person or entity ought to be granted standing, Courts have looked at: the subject matter of the inquiry, the potential importance of the findings and recommendations to the entity seeking standing, the number of people potentially affected, and whether a person has vital information to give or has made the charges that the commission is inquiring into. (*Re Royal Commission on the Northern Environment* (1983) 144 D.L.R. (3d) 416 at p. 419 per Linden J. (Tab 15)

The subject matter of the inquiry is to inquire into the causes of the Walkerton water contamination including the effect of government policies, procedures and practices and to make recommendations to ensure the safety of drinking water in Ontario.

Given that OPSEU members are both subject to and often required to implement government policies, practices and procedures it is submitted that OPSEU and its members have a substantial and direct interest in this aspect of the Inquiry.

Furthermore, insofar as the Inquiry will be examining different types of water delivery systems (i.e. local, provincial, public or private), its recommendations may have a profound and direct economic effect on OPSEU and particularly on OPSEU members. It should also be noted that the potential effect on OPSEU members will be province wide.

Insofar as individual OPSEU members are questioned about their role in the Walkerton tragedy then these members and their union have a substantial and direct interest in the subject matter and possible findings of the Inquiry.

OPSEU and its members have vital information to give both in terms of the Walkerton tragedy itself and the broader issues surrounding the provisions of safe drinking water across the Province.

In addition, OPSEU played an early and active role in criticizing government policy concerning drinking water in this Province; in calling for an inquiry; in arguing that the terms of reference should be broad; and in ensuring that employees enjoyed “Whistleblower” protection if they participated in the inquiry. Therefore, OPSEU has played a role in “the charges” that forced the government to call for this Inquiry.

Finally, it is respectfully submitted that OPSEU and its members can be of great assistance to Part II of the Inquiry. Many OPSEU members have a unique combination of the technical and scientific knowledge and the hands-on experience that will be critical to ensuring that the recommendations of the Inquiry lead to practical solutions to Ontario’s water problems. Furthermore, OPSEU can draw on experts from within its membership on all facets of the problem, from agricultural policy to the effect on water quality of provincial downloading to municipalities to the experience of other countries through the PSI.

7.6 Conclusion

OPSEU and its members have a “substantial and direct” interest in and essential perspective on all aspects and phases of this Inquiry; from protecting its members who were directly involved in Walkerton to assisting in formulating recommendations which will ensure water quality and public accountability for water quality in this Province.

For all of these reasons, it is respectfully submitted that OPSEU should be granted full standing in both Phase I and II of the Inquiry.

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