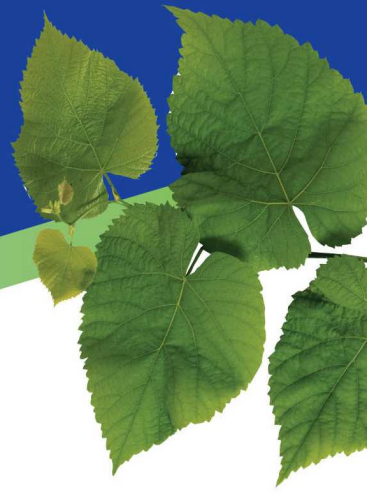


Rebuilding Strong *Communities*



Canadian Union of Public Employees

Submission to

**Ontario Ministry of Public Infrastructure Renewal
Expert Panel on
Long-Term Water and Wastewater
Infrastructure
Investment and Financing Strategy**

CUPE National Research Branch

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Introduction

The Canadian Union of Public Employees (CUPE) welcomes this opportunity to contribute to the deliberations of the Expert Panel on Ontario's Long-Term Water and Wastewater Infrastructure Investment and Financing Strategy.

CUPE brings experience and expertise to the discussion of long-term planning for water systems in several ways. Our union represents most municipal employees in Canada and in Ontario, and thereby represents most of the men and women who work in our water and wastewater systems. We represent their pride in delivering safe, clean water to the public and their interests as working people. CUPE as a whole – our members in all sectors – has made a commitment to defend public water systems through research, consultation and community organizing. We are part of community-based water watch coalitions across the country campaigning for high-quality public water systems. CUPE is also part of a global labour and environmental network promoting water as a basic human right. CUPE not only defends public water but also promotes the protection of our water sources, conservation, democratic governance and adequate long-term funding.

We are sorry that we were not able to arrange to meet with Mr. Swain or the other members in person and would welcome the opportunity to do that whenever it might be useful to the Panel.

Over the past 3 years CUPE has prepared a number of briefs and commissioned a number of studies which will be useful to the Panel's deliberations. These have been delivered to Premier McGuinty and Minister Caplan, and will be delivered to the Expert Panel as well. We won't use this submission to repeat all of the arguments that we made in those previous ones, but we will summarize our main points and point out the most relevant parts of those documents for the work of the Expert Panel. We will update the information that we have provided. We will also provide the panel with international references which counter the pretty picture painted by multi-national water companies of their global "success". The Panel has published a list of some "leading questions" that it would like to discuss and we will address a few of those.

Summary

Clean, safe and affordable water is essential to human health and well-being. It is a basic human right for people across Canada and around the world. We've been very lucky in Ontario. We've had plenty of fresh water and most of it has been safe.

Ontario water systems were built with taxpayer money. Almost all of Ontario's municipal water and wastewater systems remain under public control, owned by municipalities and operated directly by their staff, most of whom are represented by CUPE. They belong to the people, not to for-profit corporations.

Over the past several years we have seen increased efforts by private multinationals to break into the Canadian 'market'. There is not, however, any noteworthy movement to private ownership or operation of water or wastewater systems in North America and there are mixed experiences around the world.

Ontario's municipalities face challenges in financing needed infrastructure maintenance, upgrading, replacement and expansion. Much of Ontario's "stock" of infrastructure is at the end of its life cycle. The previous provincial government downloaded responsibility for water and wastewater to the municipal level, but not the funding required to keep the system running and growing. Grants and loans from higher levels of government were reduced at the same time that public debt came to be seen as public enemy number one. But there is no need for panic. We don't need to give away control over precious resources and threaten public health in order to fund water and wastewater infrastructure. There are prudent, rational public solutions to the challenges.

We are pleased to see that the current government of Ontario, led by Premier McGuinty, has taken a number of steps in the direction which we have recommended. We recommended that the province establish a finance authority to pool municipal debt and issue bonds, and the province has established the Ontario Strategic Infrastructure Financing Authority (OSIFA) and infrastructure renewal bonds. The governments of Ontario and Canada have recently announced the Canada-Ontario Municipal Rural Infrastructure Fund which will assist small municipalities in meeting their water and wastewater infrastructure needs.

We are pleased to see that the Expert Panel's mandate is to make recommendations within the framework of a publicly owned water system. But we do not accept the premise that publicly owned constitutes "public", as this government has advanced in discussions of hospital financing. Public operation

and maintenance is equally critical. We are also pleased to see that the Panel's overriding objective is safe, clean drinking water for all Ontarians. We support the objective of establishing a long-term water and wastewater investment and financing strategy that will ensure future public health, protection of the environment and be financially sustainable. We support the move to life-cycle financing, as recommended by the O'Connor report.

We submit that publicly funded, delivered and operated water systems are the only way to assure high-quality, accessible and accountable water services for all. Private financing results in compromised public regulation and control over accountability and transparency, pricing, and other regulations impacting drinking water quality, labour force issues, and quality of life in communities.

In this brief we address the following topics:

- The background to our current challenges in financing water and wastewater infrastructure;
- Recent developments in private sector participation in water and wastewater systems;
- The problems with private sector financing;
- Public financing options
- Issues in governance and a longer-term water strategy for Ontario, including:
 - Full-cost pricing, user fees and life-cycle planning
 - Governance and accountability
 - Conservation, efficiency and innovation
 - Trade and regulation
 - The Ontario Clean Water Agency and labour transition issues

CUPE Background Documents

As mentioned earlier, CUPE has prepared a number of submissions in the past two and one half years that we believe will be useful to the work of the Panel.

CUPE, jointly with Canadian Environmental Law Association (CELA) and the Ontario Public Service Employees Union (OPSEU), prepared a submission for Part Two of Justice O'Connor's Walkerton Inquiry in 2002 precisely on the topic of management and financing Ontario's water systems.¹ Additional studies were prepared as background for that submission, including "Financial Management of Municipal Water Systems in Ontario" by C.N. Watson and Associates Ltd.

CUPE Ontario prepared a submission for the Minister of Public Infrastructure Renewal's broader consultation on infrastructure financing earlier this year.² Since then we have submitted an additional analysis by the economist Hugh McKenzie.³

Nationally, CUPE has recently released "[A CUPE Backgrounder on Urban Infrastructure](#)" as part of our Rebuilding Strong Communities campaign.⁴

All of these documents expand on the arguments that we will make in this brief and provide additional explanations and background information. Rather than reiterate all of them, we have attached them and pointed out which sections are most relevant to our discussions in this brief.

Over the past few years CUPE has also submitted briefs to a number of municipalities across the country addressing specific privatization issues being raised in those communities. These are listed in the appended CUPE Water Wastewater Bibliography and are available through our Research Department or our web site (www.cupe.ca).

¹ Canadian Environmental Law Association, Canadian Union of Public Employees, Ontario Public Service Employees' Union. Water Services in Ontario: For the public, By the Public – A Submission to Phase 2 of the Walkerton Inquiry. Toronto. June 22, 2001.

² Canadian Union of Public Employees, Ontario Division. Re-Building Strong Communities With Public Infrastructure - A Submission To The Ontario Ministry Of Public Infrastructure Renewal In Response To The Discussion Paper On Infrastructure Financing And Procurement – "Building A Better Tomorrow – Investing In Ontario's Infrastructure To Deliver Real, Positive Change". Toronto. April 2004.

³ Mackenzie, Hugh. Avoiding the P3 Cost Spiral: Options for Rebuilding Ontario's Public Infrastructure. Toronto. Hugh Mackenzie and Associates. September 2004.

⁴ Canadian Union of Public Employees, Research Branch. A CUPE Backgrounder on Urban Infrastructure. Ottawa. May 2004. <http://communities.cupe.ca/www.rscbackground/10363>

Background on Financing Water and Wastewater Infrastructure

THE WAY WE WERE COLUMN

The Toronto Sun
Mon 05 April 2004, Page 12
BY MIKE FILEY

DISPOSAL of our city's garbage is really not a new problem. Nor is the concern about clean drinking water. In fact, both were covered in a scathing editorial that appeared some time ago in a local newspaper.

"It is really astonishing how the officials can allow the horrible nuisance which now appears on the face of Toronto Bay. All the filth of the town -- dead horses, dogs, cats, manure, etc. heaped up together on the ice to drop down in a few days into the water which is used by almost all of the inhabitants on the Bay shore. The people are obliged to use this Bay water however rotten. Instead, therefore, of corrupting the present bad situation we think the authorities ought rather to adopt measures to supply the citizens from the pure fountain that springs from the Spadina and Davenport hill."

And when did this item appear? On this very day ... 1832!!

Clean, safe and affordable water is essential to human health and well-being. It is a basic human right for people across Canada and around the world. We've been very lucky in Ontario. We've had plenty of fresh water and most of it has been safe.

Ontario's water and wastewater systems were built with taxes, one of the first major municipal public services and one of the underpinnings of our public health system. The history of these systems should remind the Panel that it is not capriciousness that has resulted in certain services being in the public domain. Governments provide services, not because of some economic mistake or some historical fluke, but because those services are necessary to ensure a certain quality of life in our communities. Services were brought into the public domain in order to meet basic human needs, to protect public health and safety, and to advance other significant social policy objectives because the private sector would not or could not do so. They became public services because the private sector couldn't or wouldn't deliver the service at a high enough quality to all who needed it at a price they could afford. It is misguided to simply assume that the private sector now can and will meet basic human needs and protect public health and safety.

Everyone agrees that growth and maintenance of public infrastructure has lagged in the past years and that we are faced with a problem that requires dramatically increased investment in the short term and a plan for the long term. The Expert Panel has received information about the short and long term requirements for investment in Ontario's water and wastewater infrastructure that we will not repeat.

Public capital investment has not kept pace with economic growth or population increase. A Statistics Canada study highlights the relative decline of provincial and federal government shares and the increased shares and responsibility of municipalities for infrastructure across the country. In 2002, local government accounted for more than 50% of total public infrastructure, compared to 40.8% for the provincial government and a mere 6.8% for the federal government. The provincial government's share has declined from more than 51% in 1979.⁵

The share of GDP invested in public infrastructure declined over that same period.

In Ontario the entire responsibility for water and wastewater systems now rests with the municipal level of government. Ontario's municipalities face challenges in financing needed infrastructure maintenance, upgrading to meet new and more stringent water quality regulations, infrastructure replacement and population expansion. Much of Ontario's "stock" of infrastructure was built in the first half of the 20th century and is at the end of its life cycle. The previous provincial government downloaded responsibility for water and wastewater to the municipal level, but not the funding required to keep the system running and growing. Grants and loans from higher levels of government were reduced at the same time that public debt came to be seen as public enemy number one.

Hugh Mackenzie traces the history of public capital spending in Ontario:

"Contrary to the impression created by the current debate, however, that decline is not a phenomenon of the 1990s. Our collective commitment to public infrastructure has been in steady decline since at least the mid-1970s.

That is not to say that the cuts in the 1990s did not have an impact, but those cuts did not initiate the downward trend; they reinforced it."⁶

But there is no need for panic.

⁵ Statistics Canada. Public Infrastructure and the Performance of the Canadian Economy, 1961 – 2000, a summary of 2 research papers. www.statcan.ca/Daily/English/031112/d031112a.htm

⁶ Mackenzie, op cit. P.i.

“It is also not true to suggest that the levels of investment needed to rebuild our capital stock are unaffordable. There is ample evidence in our relatively recent history that we have the fiscal capacity to support the levels of investment needed to rebuild our capital stock. Our capital needs have not outstripped our ability to pay for them.”

Many discussions of the need for investment in infrastructure imply, or state openly, that “government” can’t afford to make the investments, but that the “private sector” has money and is happy to help out by investing in infrastructure. This distinction tries to conceal the truth that almost all infrastructure financing will be borrowed, on the private market, and the public will pay through their taxes. The only difference is whether the public institution does the borrowing or the private company – because that makes a big difference in the cost of repaying the loans. We will explore these issues in more detail below.

Multinational water companies use this rationale all over the world to set themselves up in business. They are using the same arguments to try to break into the Canadian market.

We don’t need to give away control over precious resources and threaten public health in order to fund water and wastewater infrastructure. There are prudent, rational public solutions to the challenges.

Recent Developments in Private Water Services

We believe that the Expert Panel will generally be presented with only the rosy side of the picture of the private water and wastewater industry. We want to take this opportunity to draw your attention to several important and recent instances in Canada and around the world in which private water systems have been turned down by municipalities and other levels of government. We also want to point out significant problems with private water services that may not have been brought to your attention by others.

There is no inexorable movement to private ownership or operation of water or wastewater systems in North America and there are mixed experiences around the world.

Canadian Cities Keep it Public

Hamilton has become Canada's most famous (or infamous) example of water and wastewater treatment privatization with disastrous consequences. Phillips United Water Corporation (PUWC) was awarded an untendered bid in 1994 in return for its promises of local economic development, new jobs and cost savings. What the community got instead was a workforce slashed in half within 18 months, a spill of 180 million litres of raw sewage into the harbour and the flooding of almost 200 homes. The company refused to accept any liability for the damage and the municipality was forced to pick up the tab. A legal settlement of claims between the private operator and the municipality several years later has been kept secret. In nine years five different companies held the contract to manage Hamilton's water – four of them foreign, two of them bankrupt, one of them Enron. When the contract came up for renewal in 2004 neither City Council nor the public was given complete financial accounting of the costs and profits shared by the municipality and corporation over the course of the contract. No performance report was made to Council in the 4 years prior to the end of the contract.

The story of Hamilton's eventual decision to bring water and wastewater treatment back into direct municipal operation is instructive. Council was presented with a staff report in January 2004 that compared two possible courses of action – tendering another 10-year contract (with a 5 year extension) or bringing the service back in house (called the municipal model). Council chose to pursue the private option and instructed staff to issue an RFP and to draft a new contract that would overcome some of the public problems of the previous agreement. The three issues that had come under closest public scrutiny were liability in the case of another spill, liability insurance carried by the

operator, and the private operator's requirement to pay for system maintenance and upkeep. The private operators and the City agreed that the municipality would take back responsibility for approximately \$11 million annually for electricity costs and sewage sludge disposal. Both issues represented potential problems for the private operator. Electricity costs are expected to rise as privatization of generation progresses over the next 10 years. Sewage sludge is likely to become a problem as the province moves on water source protection.

Given the experience with the contract and a public sector comparator, the City anticipated bids between \$13 and \$16 million annually. American Water, the only proponent to submit a final bid, presented a bid for \$39 million – three times the expected operating costs. They explained that they could deliver the service for \$13 million, including paying for electricity and sludge disposal, if the City would take over all liability and maintenance expenses.

“[Robin] McLean [a U.S. vice-president of American Water] said that the extra \$26 million was largely a premium for added risk the city wanted private operators to assume in the proposed new contract.”⁷

P3 proponents often point to the transfer of “risk” to the private sector as a key reason to pursue those kinds of arrangements. It is very illuminating to know that the private contractor was prepared to charge at least 200% over and above operating costs in order to assume additional risk. The information about allocation of risks (who has what liability) and the amount the private proponent is charging as a “premium” for their portion of the risk should be public in every private contract bid.

The City of Hamilton turned down American Water's high bid and disqualified the lower one. The City is resuming direct municipal service. The biggest RFP for private water/wastewater services on the continent in 2004 ended up back in the public hands.

Several of Canada's large municipalities have considered contracting out or privatizing some part of their water and wastewater system since the Regional Municipality of Hamilton-Wentworth entered into a P3 contract with Philips Utilities in 1994. Most major cities have decided to keep their water operations and facilities public.

Last year, Winnipeg City Council chose to proceed with a new publicly owned and operated water treatment plant, rather than involving private corporations in service provision.⁸

⁷ McGuinness, Eric. “City prepares to take back water, sewer operations”. Hamilton Spectator, September 14, 2004. P. A1

⁸ Canadian Union of Public Employees, “P3 alert”, July 2003, <http://cupe.ca/www/summer2003/5635>

Halifax awarded a contract for harbour cleanup and sewage treatment to Suez in the fall of 2002, but backed out of the contract in 2003 when the French multinational refused to take responsibility for meeting environmental standards. The mayor admitted that cancelling the P3 deal would save millions of dollars on the project.

U.S. Filter, a subsidiary of the French corporation Veolia, owns and operates Moncton's sewage treatment plant. The company made an unsolicited bid to take over the whole system and the mayor was tempted by the prospect of taking a 20-year upgrading program off the City's books. A consultant hired to evaluate the options reported back in 2003 that Moncton can implement a 20-year upgrading program more economically itself than through the proposed P3 arrangement over that same period.

Late in 2002 Toronto City Council turned down a proposal for transferring its water and wastewater system to an arms-length board.

In 2000 the Greater Vancouver Regional District decided against a P3 arrangement for the operation of a new water filtration plant. Council was concerned that privatization of the service would open it up to international trade agreements.

Saint John, New Brunswick chose the public route. So did Kamloops in British Columbia in 2001.

These examples demonstrate that it cannot be assumed that contracting out operations is the best municipal option. Each municipality has to weigh the supposed advantages of private operations against the advantages of public operation. Major Canadian municipalities are coming to the conclusion that public service delivery is better.

Jurisdictions Prohibit Privatization of Water Systems

The government of Québec adopted a comprehensive water policy in 2002 which recognized full access to water to meet essential needs as a fundamental right and which explicitly kept water management in the public realm:

“In Québec, water services management is a public function. All Quebecers have a right to be served by adequate infrastructures for the provision, treatment, distribution and purification of water. It is therefore essential that these infrastructures remain in the public domain, along with the management of water services.”⁹

⁹ Environment Québec. Water. Our Life. Our Future. Québec Water Policy. Highlights. Québec. 2002. Ministère de l'Environnement's Web site at: <http://www.menv.gouv.qc.ca>.

This year the provincial government has passed a new law encouraging the use of P3s in infrastructure and set up a new P3 office, but has excluded water from this policy. P3s in water delivery or infrastructure will not be pursued because of the risks associated with introducing private operation to water treatment. Jean-Marc Fournier, Quebec's Minister of Sports Recreation and Leisure, recently announced that his government plans to invest \$15 billion over the next 15 years in water and wastewater infrastructure.¹⁰

Uruguay and the Netherlands, literally worlds apart, have both recently passed laws making water privatization illegal.

In a referendum last month, Uruguayans overwhelmingly approved a constitutional amendment which says that access to "piped water and sanitation are fundamental human rights, and that social considerations take priority over economic considerations in water policies."¹¹ The amendment says:

"The public service of sewerage and the public service of water supplying for the human consumption, will be served exclusively and directly by state legal persons ..."¹²

The law in the Netherlands, passed by the lower house in 2003 and the upper house in September 2004, will come into effect upon royal assent. It too prohibits both the ownership and the delivery of drinking water by any other than public or 100% publicly-owned entities.¹³

Problems around the world

The biggest growth areas for all of the large multi-national water companies in the past decade have been in the developing world – Latin America, Africa and South East Asia. In far too many countries around the world there is insufficient access to potable water and inadequate sewage systems for public health and safety. There, governments do not have the tax base to build water and wastewater infrastructure. The International Monetary Fund and the World Bank made funding for the development of infrastructure contingent on encouraging and allowing private investment. These practices have not been without controversy. Private companies are in business to make money. Having foreign (usually European) multinationals making money selling water – a necessity of

¹⁰ Speech by Jean-Marc Fournier, Quebec's Minister of Sports Recreation and Leisure, at the Canadian Council of Public Private Partnerships conference, Toronto, November 23, 2004.

¹¹ Hall, David, Emanuele Lobina and Robin de la Motte. Making Water Privatization Illegal: -New Laws in Netherlands and Uruguay. London. Public Services International Research Unit. December 2004. P. 2.

¹² Ibid. P. 7.

¹³ Ibid. P. 3.

life – to people too poor to buy it has led to a number of conflicts. It has also turned out not to be as profitable as the big operators had hoped.

David Hall of the Public Services International Research Unit (PSIRU) presented a paper to the 2003 World Water Forum in Kyoto reporting on a change in this trend. The big companies are withdrawing from the developing world because the returns on investment are too low or even non-existent. He examines the very recent experiences of Suez, Vivendi (now Veolia), Saur and RWE (American Water in Ontario) in places as diverse as Turkey, Peru, Estonia, Manila and Morocco. He explains that these giant private firms are now looking in two new directions: a) focusing on expanding markets in North America and Europe; and b) seeking to reduce risks and guarantee profits in governments contracts.¹⁴

We see that both of these trends are true in Ontario.

Proponents of various private and P3 arrangements for water systems will often point to the United States to convince Canadians that this can all work very well. But there are problems in the U.S. as well.

Atlanta ended its contract with United Water, a subsidiary of Suez, in 2003, after four years of private operation proved that the company was not keeping its promises. It was the biggest water contract in the U.S.

New Orleans spent five years analyzing whether or not it would be advantageous to privatize its water/wastewater system and decided in early 2004 that it could save more through its own innovations and initiatives if it retained public control. The big companies spent millions promoting their side of the story in both cities.

Some American cities, like Stockton Illinois and Lexington Kentucky, have had to spend millions fighting these same big water companies. The public and politicians in those cities, dissatisfied with private operators, want to bring water back into the public domain but have ended up in expensive, protracted court and public relations battles as the multi-nationals try to prevent such a move. American Water spent over \$6 million on public relations and legal fees fighting against public buy-outs of its subsidiaries in Chatanooga and Peoria Illinois - just two cities.¹⁵

As in Canada and around the world, the participation of the private sector in water systems in the U.S.A. is often problematic.

¹⁴ Hall, David. Water Multinationals – No longer business as usual. Public Services International Research Unit, University of Greenwich. March 2003.

¹⁵ Public Citizen. Reclaiming Public Assets: From Private to Public Ownership of Waterworks. Washington. 2002.

One of the most significant features of the international water industry is rapid corporate concentration over the past decade. The industry is now a global oligopoly with only six major firms in limited competition with each other: Suez (United Water), Veolia (formerly Vivendi), RWE – AG (American Water), Bechtel, United Utilities and Saur. Only about 4 of these firms have any significant presence in North America and are likely to be active in the Canadian market.

The Problems with Private Financing

Faced with a need for large capital expenditure for water and wastewater infrastructure in a period of declining transfers from senior levels of government and the revenue restrictions of the residential tax base, municipal politicians have been very open to suggestions that private financing might solve their problems. The Expert Panel is expected to evaluate those options as well.

Given the mandate of keeping the assets public, we presume that the private financing to be considered by the Panel will be various forms of public-private partnerships or P3s.

There is a growing body of evidence and analysis that P3s are not financially advantageous and that they entail other problems inconsistent with public control and accountability.

We need to clear up questions of language at this point. Proponents of public-private partnerships and privatization of public services have developed the specious contention that only outright ownership of assets is privatization and that the nature of the service deliverer – whether private or public sector – does not determine whether the service is public or private. The current Liberal government has tried to pass this fiction on to the public with its claim that it cancelled the Tory deal for P3 hospitals – claiming that the hospitals will be publicly owned, even though the financial arrangement is the almost identical to the lease-back arrangement set up by the former Tory government and services integral to health care will be provided by private, for-profit operators in the hospitals. CUPE does not accept this false distinction.

CUPE presented detailed arguments against private infrastructure financing on several earlier occasions – in our submission to Phase 2 of the O'Connor inquiry, in a submission to the Minister of Public Infrastructure Renewal earlier this year, in our Background on Urban Infrastructure and in a report by economist Hugh Mackenzie. Each of these reports is appended to this brief.¹⁶

In summary, the problems with private financing and P3s are:

- Private financing is more expensive than public financing.
- Service provided through private operations has profit as its prime motivation and will inevitably be poorer and less flexible than publicly delivered service.
- Public transparency and accountability are reduced.

These points are elaborated on and further substantiating information is presented in the background documents attached to this brief.

¹⁶ See CUPE Background Documents above.

Hugh Mackenzie expands on the point that P3's don't bring new money to infrastructure projects and cost the public more in the long run.

“A closer look at the economics of P3s shows that P3s are not in fact a way of attracting private capital to public infrastructure investment that would not otherwise be available. Private capital has always been used to finance infrastructure investment, through the bond markets. The P3 is an extremely expensive substitute for conventional bond market financing – a substitute whose only benefit to governments is the role they play in spreading the costs of infrastructure out over a longer period of time than the budget cycle in which it is built.”¹⁷

The Canadian Water Network, a federally funded network of Centres of Excellence, arrived at a similar conclusion through its research. In summarizing their studies on the impact of introducing privatization in the UK and France, the CWN states: “Our research shows that there was no demonstrable evidence that complete privatization resulted in lower prices. In fact... consumers paid higher prices because of privatization... the experience of these countries was similar to the privatization of local hydro utilities in the Province of Ontario, where costs increased significantly due to a private sector tenet of maximizing shareholder value.”¹⁸

We reiterate the recommendations CUPE made to the O'Connor inquiry in 2001:

Municipalities are more stable and secure than even the largest water corporations. To avoid the disruptions that result from corporate failure and corporate takeovers in the global economy, municipalities should maintain public operation of water and wastewater services.

*Projects involving water and wastewater infrastructure should limit private sector participation to the designing and building of the system, the traditional role that they have played. Financing, leasing, operation, maintenance and management of such projects should be left in public hands so as to limit costs to the public as well as optimize public control and accountability.*¹⁹

Justice O'Connor stressed the importance of transparency and accountability.

¹⁷ Mackenzie, op cit. P.ii.

¹⁸ Canadian Water Network. Building a Better Tomorrow: Investing in Ontario's Infrastructure to Deliver Real, Positive Change - Submission on Infrastructure Financing in Ontario. Toronto, 2004. P. 6.

¹⁹ Canadian Union of Public Employees. Keeping Water Services Public: Towards Greater Accountability and Safety” Submission to the Walkerton Inquiry Public Hearing no. 7 & 8: Management of Water Providers and Laboratories. Toronto. September 25, 2001

“My recommendations are intended to improve both transparency and accountability in the water supply system. Public confidence will be fostered by ensuring that members of the public have access to current information about the different components of the system, about the quality of the water, and about decisions that affect water safety. Public confidence will also be raised by ensuring that those who make decisions about drinking water safety are accountable for the consequences of those decisions.”²⁰

Keeping water and wastewater operations public ensures direct accountability to locally elected leaders and to the public. We urge you to consider the views expressed here.

²⁰ O'Connor, Honourable Dennis R. Report of the Walkerton Inquiry – A Strategy For Safe Drinking Water. Toronto. May 2002. P. 6

Public Financing Options

The good news for Ontario is that there are cost-effective alternatives to P3s that protect the public interest. But there is no magic bullet. Other than contributions from reserves and current revenue, infrastructure construction and refurbishment will be funded through debt financing. The question is how to arrange debt financing that maximizes benefits and services to the public and minimizes costs. Public financing can meet those objectives and private financing cannot.

Despite debt hysteria, the ratio of debt to GDP is low and falling at the federal and provincial levels. Debt charges in Ontario for municipalities in Ontario were at 3.5 percent of revenues in 2001, well below provincial guidelines. Municipal debt charges have declined over the past 10 years. Grants from upper levels of government to municipalities have declined over the same period.²¹ Both the provincial government and municipal governments have the ability and the “room” for significantly more borrowing to finance infrastructure.

There are some innovative variations as well as straightforward, tried-and-true government borrowing. We have detailed a number of options in our background documents:

- Low interest loans.
- Public bonds - infrastructure bonds, tax-exempt bonds.
- Pooling municipal debt and establishing municipal financing authorities such as OSIFA.
- Subsidies to municipalities from high levels of government, such as the COMRIF program.
- Crown corporations to channel public investments in infrastructure.
- Public interest companies.

Public-Public Partnerships

An excellent approach for small municipalities to take to create efficiencies and cost-savings is entering into **public-public partnerships** with other municipalities. These will enjoy the advantages of public financing, will maintain clear public accountability, will have public service objectives as their primary motivation and can overcome some of the financial problems faced by smaller municipalities (or even large ones) undertaking the upgrading and management of water systems on their own. Even purchasing cooperatives and sharing of resources could reduce costs while maintaining municipal control over operations.

²¹ Ibid.

The provincial government should continue to encourage this type of cooperation.

CUPE, CELA and OPSEU included this approach in our recommendations to the O'Connor inquiry:

Where possible, municipalities improve service quality and efficiency by working together through regional or county government or through other municipal co-operative arrangements. Co-operative arrangements should be the responsibility of elected municipal officials so as to facilitate municipal control and public accountability.²²

We find that this approach works well around the world as well as in Canada. A report to the World Water Forum in Kyoto in 2003 presented a number of examples of public-public partnerships (called PUPs) from North East Europe.²³ The list of positive outcomes is quite instructive for our discussion of long-term infrastructure financing in Ontario.

“The cases observed show that restructuring water operations by introducing sound management while retaining public ownership and management has a number of advantages in respect of PSP [private sector participation]: a) it is less costly and easier to introduce; b) all the efficiencies achieved translate entirely into savings for consumers, investments on infrastructure and environmental improvements and no resources are diverted elsewhere from the local water system; c) there are no conflicts between public interest objectives in terms of system development and profit-seeking considerations; d) responsibility for management and strategic guidance of operations is clearly allocated and not dispersed between a variety of public and private actors; e) risk management is optimised and performance risk, currency risk and political risk are minimised; f) local control is retained through democratic structures.”²⁴

We urge the Expert Panel to recommend steps to encourage and support the development of public-public partnerships as a viable alternative to privatization.

Pension investment in infrastructure

Pension funds have been, could be and should be a major source of capital for publicly owned and controlled infrastructure. Unfortunately both OMERS, the

²² CELA et al. Op cit.

²³ Hall, David and Emanuele Lobina. International Solidarity in Water – Public-Public Partnerships in North East Europe. Public Services International Research Unit, University of Greenwich. March 2003.

²⁴ Ibid. P.3.

pension plan for over half of CUPE's members in Ontario, and the Canada Pension Plan Investment Board have been promoting P3s in infrastructure.

CUPE commissioned economist Monica Townsen to examine the role of pension funds in infrastructure financing. Much of her analysis is available in the attached document, [CUPE Backgrounder on Urban Infrastructure](#).

Pension funds must start to channel their infrastructure investments through public investment vehicles.

Issues in Governance and a Long-Term Water Strategy for Ontario

Full-cost Pricing, User Fees and Life-Cycle Planning

For a number of reasons, Ontario municipalities have generally not charged water and sewage rates high enough to cover both operating and capital costs of the system. Costs not covered by fees were covered out of general taxes and other municipal revenue sources. A number of large municipalities, such as Toronto and Hamilton, have already started to move toward longer-term planning and are increasing user fees substantially each year for a number of years to arrive at a rate which will meet system requirements.

Under the Sustainable Water and Sewage Systems Act 2002 municipalities will be required to move toward full-cost pricing. This raises the question of equitable access to water.

All people must have access to water in order to survive and this must be reflected in any new pricing structure. It may be appropriate to continue to knowingly and deliberately subsidize water rates from general revenues to some extent because: a) water is a necessity of life; and b) the different distributive effects of user fees and taxes.

Consultant Enid Slack, points out that public services are subsidized precisely because of their social value.

“Where a good or service exhibits externalities, pricing at the marginal cost may not be appropriate. Externalities are benefits or costs of services that are not priced and may therefore not be taken into account by the user. When society puts a high value on these positive externalities, then below-cost provision or subsidies are warranted. The most important general public concern with user fees is that they have adverse distributional effects: low-income families cannot afford to pay user fees and will either not use the services or will have to reduce their consumption of other services.”²⁵

The more costs that are covered by taxes, the lower the burden on the poorest in the population.

Eau Secours in Quebec insists that, because social inequality is structural, one cannot make things equal through user fees like water metering. In their view, it will still be those who don't have three bathrooms, or swimming pools, or wash

²⁵ Slack, Enid. “Alternative Methods of Public Financing of Infrastructure in Canada. Unpublished paper prepared for CUPE. Toronto. June 2003.

their big cars or water their big lawns who will be most impacted by user fees. Eau Secours believes that, although it's not a perfect solution, a special tax for water should be included within property taxes, reflecting the general conclusion that people with bigger houses use more water²⁶

The next best option is “block rates” – a system in which an initial quantity reflecting basic water needs is charged at only nominal rates and water used over that amount is charged at higher rates. This is of assistance to the poorer members of the population if it is true that high-income earners use more water. A single rich person will benefit more than a large, poor family. This system may encourage conservation, but we need to ensure that it does not discourage public health. Around the world poor populations have turned to unsafe water when they cannot afford the rates charged by private water operations.

Ontario municipalities have been slowly introducing water meters into their communities. We need to avoid the debacle that occurred in the U.K. with water privatization and people having their water cut off when they couldn't pay. Pre-paid meters created a hazard to public health.

“No one could have accused the Conservative government of breaking its promise to bring back Victorian values. When, in 1992, it permitted private water companies to install pre-paid meters in Birmingham, the people who couldn't afford to flush their toilets started defecating into pots, which they then emptied out of the windows of their tower blocks. It made one quite nostalgic.

The meters were ruled illegal in 1998, on the grounds that they deprived the poor of their most important resource.”

George Monbiot. Why is Britain using its aid money to persuade South Africa to privatise its public services? The Guardian 19th October 2004.

Justice O'Connor recognized that while household water prices will need to rise to pay for the costs of water services, this can be implemented while keeping the cost affordable for the vast majority of municipalities and their residents. He was clear that rising water rates should not become a significant burden on low-income families and individuals and that “... provincial and municipal governments should ensure that this does not occur by whatever means they consider appropriate.”²⁷

For municipalities that are pursuing a full-cost recovery strategy, we recommend the following:

²⁶ CUPE. Backgrounder on Urban Infrastructure. Op cit. P. 13.

²⁷ O,Connor. Op cit.

- The amount of water required to meet people’s basic daily needs would ideally be provided at no cost, or on a block rate basis where basic needs are met for the lowest possible cost.
- Where increases in water rates occur, these increases should be implemented in a gradual manner and not in a way that causes hardship to lower income people.
- Smaller and more isolated communities are not in a position to recover the costs of operation and infrastructure from water charges without causing undue hardship on lower income people. First Nations communities certainly are a case in point. Such communities need to be provided with special financial assistance from other levels of government.²⁸

CUPE supports the move toward the implementation of life cycle costing as a means of planning for future infrastructure upgrades and maintenance. This method minimizes the chances of being faced with unanticipated crises. This involves estimating the long-term expenditures needed to maintain, operate and renew infrastructures. Once such a system is put in place, along with a method of raising the necessary revenues, it is less likely to result in municipalities facing a shortfall of revenues and that municipalities will be tempted by the offers of financing from private sector corporations.

The experience in England shows there is no guarantee that privately-owned or operated water systems will make the long-term investments needed to maintain and upgrade the system and plan for the future – even if these costs are included in the pricing structure. For example the British water regulator, OFWAT, allows the water companies to include predicted capital expenditures in justifying its water rates. But OFWAT discovered that the companies were routinely overestimating how much they would actually put back into the system and using the shortfall in expenditures to increase profits.²⁹

One of the reasons that Pekin, Illinois, decided to buy back its water system from the private company was this failure to make the proper investment in the system. Despite increased water rates, the system reportedly remained in poor condition.”³⁰

A 1995 study compared the costs of water provision between Swedish and U.K. cities of comparable size. On average, the municipally-owned Swedish water systems had operating costs that were just under half the operating costs of the privately-owned U.K. systems. The capital maintenance costs for the municipally-owned systems were only 20 per cent of the costs of the privately-owned systems.³¹

28 CUPE. “CUPE Statement: Public Water for All”. Kyoto, March 2003.

29 Lobina, Emanuele and Hall, David. UK Water Privatisation – A Briefing. Public Services International Research Unit, University of Greenwich. 2001. Pp. 10 & 11.

³⁰ Canadian Union of Public Employees, Keeping water services public. 2001

³¹ Lobina & Hall. 2001. Op. Cit. P.16

Governance and Accountability

In Walkerton, Ontario and North Battleford, Saskatchewan, the quality of drinking water was put at risk by provincial funding cuts and inadequate regulation.

Accountability and public transparency are definitely the most important criteria to use in evaluating which governance option will best serve the population of Ontario. Without accountability and transparency the public will not be able to assure services meet other criteria – high quality, environmental responsibility, efficient and effective operations and innovation and flexibility.

Those who provide water services must be accountable to the public, particularly in regard to issues affecting the availability, quality and safety of water. Municipal government is the most open and transparent level of government. By law, almost all decisions taken by municipal government are subject to public scrutiny. Every detail of publicly delivered service can be examined by the public and by elected officials. Any change in a publicly delivered service must go through the public process of committees, public input and council. This not only allows the public to be informed about decisions affecting them, but also allows municipal politicians to hear directly from the public about what they want and how proposed changes might impact them. It's a critical feature of the democratic process. Citizens must have access to decision-making bodies, and have the right to appeal decisions regarding water prices, water quality, infrastructure renewal and water conservation.

Private corporations are not accountable to the public, or even their “customers”, but first and foremost to their shareholders. Two public administration professors at the University of Southern California reviewed more than 45 studies on the privatization of public utilities. They concluded that private companies work better in competitive environments, but their performance diminishes in services such as water, which is a natural monopoly. One of their conclusions is that public accountability is a problem for private utility operators because “they are accountable to shareholders, whose interest is in maximizing profit and who likely do not live in the communities served”.³²

Private companies normally operate in an atmosphere where access to information is restricted. Gaining access to reports and other documents can be a major struggle for a citizen – or even elected politicians. Hamilton is an excellent case in point. It took CUPE and Professor Loxley at the University of Manitoba over a year to obtain even a partial copy of the initial contract between the Regional Municipality of Hamilton Wentworth and Phillips through a freedom

³² Morgan , Stephen and Jeffrey Chapman. “Issues Surrounding the Privatization of Public Water Service. Quoted in a report by the Association of California Water Agencies”, 1996

of information request. In 2004 a Hamilton Councillor was charged over \$2,000 for the FOI he was forced to file to see the expenses for capital repairs that had been paid by the City rather than the private contractor over the 10 years. The experience in Hamilton illustrates the decline in accountability, public input and access to information under a public-private partnership.

Transparency and accountability are the keystones of local democracy and public control. The public wants to be able to call their Councillors and hold them directly accountable for the odour and safety of the drinking water and for the price of water.

The Expert Panel will be considering whether or not there are advantages to transferring water management to boards or commissions that are publicly owned but “arms length” from municipal government. CUPE opposed such a transfer when it was considered by the City of Toronto in 2002. At the same time, CUPE represents members in various public utility commissions across the country. The deciding factors about these types of arrangements must continue to be democratic control, transparency, accountability and primary objectives. Prior to legislative changes by the Tory government in the 1990’s, public utility commissioners were elected and accountable. Utility boards are now appointed by various levels of government and generally have fewer elected politicians as members than non-elected appointees. Decision-making and information are much less open and accessible to the public than municipal government is. Moving public services out to such boards is also accompanied by the intention to “corporatize” the operations – having them operate as if profit is the motive, rather than public service.

Under current legislative arrangements, publicly-owned but “arms length” boards and conditions do not satisfy the need for democratic, transparent and accountable management of water systems.

Conservation, Efficiency and Innovation

Public ownership and operation is critical for conservation, innovation and the integration of systems planning at all levels.

Even in Ontario we are likely to face decreased fresh water supplies and new challenges to public health within the next 25 years. Environment Canada predicts that Lake Ontario will be 1.3 meters lower by 2030, affecting both our water quality and quantity. There are concerns about new “super-bugs”, bacteria resistant to antibiotics, in our water supply in the near future. Water conservation becomes more crucial as global warming advances.

Many municipalities have rejected privatization because it fragments the system and leads to problems with operation and planning. The goals of the municipality or the appropriate department cannot easily be implemented with a private sector

corporation providing part of the service and such fragmentation is bound to result in tensions around the municipality's goals or the methods of achieving them.³³

Trans-national water firms tend not to be involved in the water conservation field. It would contradict the profit motive. The more water they treat or deliver, the more money they make.

In 1996, York Region placed responsibility for developing its long-range water supply plan in the hands of a consortium called Consumers Utilities (Enbridge, formerly Consumers Gas, and NWW Canada, a subsidiary of the British water company, North West Water). The first plan presented to York Region reflected the tendency of water companies to look for the major engineering solution, which is often environmentally disruptive. The consortium proposed to build a pipeline from Georgian Bay to supply water and then discharge sewage through another pipe into Lake Ontario.

After considerable public opposition, York Region rejected the plan. Natural Resources Canada criticized the proposal because it rejected environmentally preferable local solutions such as use of groundwater supplies. York Region later developed a long-range plan itself that placed far more emphasis on water conservation and rejected the "big pipe" solution.³⁴

A major argument presented privatizing water operations is that private companies be more efficient and will, as a result, save money for water consumers. However, on closer inspection, these savings are countered in a number of ways: by hidden costs to the municipality, by high profit levels to the corporations and by reductions in service and personnel that jeopardize water quality and safety.

C. N. Watson and Associates analyzed the operating costs of several water systems in Ontario to determine where private companies might be more efficient. They looked at expenditures for personnel, chemicals, energy, services and overhead, maintenance, capital/debt/reserves, profit and income tax. They concluded that private operators had no distinct advantage over the public sector. Publicly operated utilities were entirely capable of achieving the same efficiencies as private ones, but private utilities had the added costs of taxes and profits, items that normally add between 10 per cent and 15 per cent to the operating costs.³⁵

The UK experience shows how efficiencies that may be introduced are negated (from the consumers' perspective) by profit taking. Lobina and Hall analyzed the

³³ Hall 2001, Op cit.

³⁴ CELA et al, op cit.

³⁵ C.N. Watson and Associates Ltd.. Financial Management of Municipal Water Systems in Ontario. Toronto. 2001

revenues and expenditure reporting of UK companies and concluded, through an examination of the three main components of customers' bills in the United Kingdom, that almost all of the increase in customers' bills after the water system was privatized was the result of operating profits taken by the private companies.³⁶

In public-private partnerships, the body that provides the funding for improved efficiencies in the system may not gain financially from the resulting savings. For example, in Hamilton-Wentworth, the region has paid to upgrade and automate many of the operations that resulted in savings and increased efficiencies. However, the private operator is "able to claim the profits from running an upgraded system, for which the taxpayers have paid".³⁷

The hidden costs to municipalities associated with P3s, such as the costs of legal counsel, contract supervision and monitoring, also negate any efficiencies and cost savings.

It is dogmatic to suggest that the private sector is inherently more efficient than the public sector. It may be that a private company will contract to deliver a service for less, but they inevitably do not perform all of the functions performed by the public sector – such as functions related to dealing with public complaints and public relations. The private sector has no monopoly on expertise. In Ontario, in fact, the preponderance of experience and innovation in water services rests with municipal and crown employees. A city or regional department certainly has the same opportunity to implement new technology as a private operator. In fact, the City's lower borrowing rates make it more economical for the City to capitalize on investment in new technology.

A contract with a private service deliverer will be less flexible than a directly delivered service. For instance, it is easier to change the practice of a municipal organization to implement new environmental clean-up programs or water standards than to renegotiate a large service contract at mid-term.

Trade and Regulation

Justice O'Connor issued a note of caution to municipalities considering entering into an agreement with a private sector water services provider, one specifically pertaining to the operating agreement between the municipality and the private corporation. He urges that municipalities be fully apprised of the legal implications in terms of future liability, financial responsibilities, information disclosure, dispute resolution and enforcement, including the investments provisions of the NAFTA and other trade agreements.³⁸

³⁶ Lobina & Hall. 2001. Op cit. P. 10.

³⁷ Anderson & Loxley. Op cit. P. 11.

³⁸ CUPE Summary of Walkerton Inquiry Report part II, July 2002, <http://cupe.ca/ww/Environment/4648>

There are very serious unanswered questions about the impacts of trade agreements such as the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS) on the ability of governments to place restrictions on the trading and movement of water if private sector participation is allowed in water operations.

There are important reasons to be concerned, according to Steven Shrybman, an expert in trade law. By entering into P3 arrangements, governments and other public agencies expose public services and public authorities to tremendous risk from corporate rights enshrined in international trade agreements. The investor rights contained in NAFTA and GATS take precedence over local government decision-making.

In a legal opinion written when the Greater Vancouver Regional District was considering building a P3 water filtration plant in Seymour, Shrybman wrote:

“If concluded, the interest of a private partner to a contract to design, build and operate the Seymour project would be an *investment* according to the NAFTA definition. Conversely, a law, regulation, procedure, requirement or practice of the Greater Vancouver Regional District (GVRD) or another Canadian government that might affect that contract would be a *measure* under NAFTA and accordingly subject to the broad disciplines of that regime.”³⁹

Shrybman’s legal opinion demonstrates that the ability to end a P3 contract or prevent a change in owners are threatened by NAFTA and GATS rules that protect investors’ rights, as is right to insist on local purchasing requirements or other local economic benefits. Even environmental and public health measures such as safe drinking water standards can be threatened by exposing them to trade challenges and foreign investor claims if more stringent measures are required over time.

He argues that whatever claim to exemption from trade rules water services might now enjoy under the GATS would be compromised by entering into a private sector partnership to deliver services. “In this regard”, he concluded, “the risks are substantially greater for a contract that involves the operation, rather than simply the design and construction, of a water treatment plant”.⁴⁰

39 Shrybman, Steven. “A Legal Opinion Concerning the Potential Impact of International Trade Disciplines on Proposals to Establish a Public-Private Partnership to Design, Build and Operate a Water Filtration Plant in the Seymour Reservoir.” Prepared for the Canadian Union of Public Employees. Toronto. 2001.

⁴⁰ Ibid.

We have asked the government of Ontario to make public the legal opinions that they have received concerning the impact of international trade agreements on public control over the electricity system as private companies are encouraged to build new generating plants in the province and they have not. We do not know if they have asked for and received an opinion about private sector participation in the water system, but would recommend that they be required to do so.

Trade and investment agreements should not be allowed to interfere with the ability of elected governments to make environmentally sustainable economic investments or to procure goods and services however they see fit. As long as this remains the case, the best strategy for the public sector to retain control over quality and access is through public financing and investment.

Ontario Clean Water Agency and Labour Transition Issues

In agreement with Justice O'Connor, CUPE's position is that OCWA should be retained as an operational agency of the province, providing assistance to small municipalities and communities such as First Nations communities, and that OCWA be available to step in and assist if another water emergency occurs.

Any change in OCWA's role should ensure fair treatment of any affected employees. They should be assured of full successor rights.

As recommended by Justice O'Connor, new certification and training requirements for water operators have been established in regulation and are in the process of being implemented. The Ministry of the Environment promises that parallel regulations will be established for wastewater operators in the future.

CUPE members who work in water operations and municipal water system managers say that the labour shortage in the field is going to get worse before it gets better.⁴¹ It is already extremely difficult for small systems to find and keep operators. Small municipalities are worried about releasing their operators to go and take the required training courses because there isn't anybody to cover absences (a role that OCWA could assist with). The impact of the new regulations on experienced operators hasn't been felt yet but will be by the various deadlines in May 2005 and May 2006. Many who are close to retirement may choose to retire rather than put themselves through the new education requirements and tests. Others who are not that old may choose to change fields instead. Operators are saying that they could transfer to a number of different municipal jobs that pay the same as water operators, but without the training and education requirements and without the worry about liability. They

⁴¹ This information was gathered at meetings between CUPE staff, CUPE members, municipal managers and Ministry of Environment staff in Toronto in 2003.

warn that there are plenty of community college programs that qualify people for jobs that pay the same as water operator jobs, so why not take those instead.

Qualifications and job functions are increasing for water operators. Municipalities may have to increase pay for these positions in order to keep people in the field.

If any water operations are transferred from existing operators – municipalities or OCWA – to new ones such as utilities or private operators, the people doing the actual work will have to be almost entirely the same ones. There is not an available pool of qualified unemployed water operators. Any transfer that entails a reduction in the terms and conditions of employment will simply drive operators from the field.

The Expert Panel should consider the effect of labour transition issues in any recommendations for water infrastructure and systems management.

Conclusion

The Expert Panel on Long-Term Water and Wastewater Infrastructure Financing Strategy has been asked by the Government of Ontario to provide advice on all aspects of organization, governance, investment, financing and pricing related to Ontario's water and wastewater systems.

Throughout this brief we have argued that public financing, governance and operation of Ontario's water and wastewater systems is the only way to meet the government's overarching policy goal of ensuring clean, safe drinking water is provided to all Ontarians. Public financing, governance and service delivery provides the means of ensuring that our water systems are financially sustainable, that water is affordable and that we have the control to implement achievable, practical solutions. Ensuring access to water and high water quality, adopting new technologies, accessing expertise, preventing fragmentation, increasing efficiency, planning for adequate and fair financing, enhancing public accountability and involvement, and keeping water and wastewater services in Canadian hands are all reasons why public financing and control is a more responsible choice than private in the provision of water and wastewater services.

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