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Wednesday 27 November 2002

Journal des débats (Hansard)

Mercredi 27 novembre 2002

Standing committee on general government

Sustainable Water and Sewage Systems Act, 2002

Safe Drinking Water Act, 2002

Comité permanent des affaires gouvernementales

Loi de 2002 sur la durabilité des réseaux d'eau et d'égouts

Loi de 2002 sur la salubrité de l'eau potable

Chair: Steve Gilchrist
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 27 November 2002

Mercredi 27 novembre 2002

The committee met at 1531 in committee room 1.

SUSTAINABLE WATER AND SEWAGE SYSTEMS ACT, 2002

LOI DE 2002 SUR LA DURABILITÉ DES RÉSEAUX D'EAU ET D'ÉGOUTS

SAFE DRINKING WATER ACT, 2002

LOI DE 2002 SUR LA SALUBRITÉ DE L'EAU POTABLE

Consideration of the following bills:

Bill 175, An Act respecting the cost of water and waste water services / Projet de loi 175, Loi concernant le coût des services d'approvisionnement en eau et des services relatifs aux eaux usées;

Bill 195, An Act respecting safe drinking water / Projet de loi 195, Loi ayant trait à la salubrité de l'eau potable.

The Chair (Mr Steve Gilchrist): Good afternoon. I'll call the committee to order for the purpose of continuing our public hearings on Bill 175, An Act respecting the cost of water and waste water services, and Bill 195, An Act respecting safe drinking water.

The researcher has asked me to draw your attention to the fact that each member has a copy of the interim summary of recommendations to date for both Bill 195 and Bill 175, as well as an answer to the question posed by Mr Patten down in Ottawa. You'll find those in front of you.

CONSERVATION ONTARIO

The Chair: Our first presentation this afternoon will be from Conservation Ontario. Good afternoon and welcome to the committee. Just a reminder, we have 15 minutes for your presentation. It's up to you to divide that as you see fit between either talking to us or taking questions.

Mr Dick Hunter: Thanks for the opportunity to speak to you, the standing committee on general government, regarding Bill 195, An act respecting safe drinking water, and Bill 175, An Actct respecting the cost of water and waste water services.

I'm Dick Hunter, general manager of Conservation Ontario. These comments are presented on behalf of Ontario's 36 conservation authorities. On behalf of their municipalities, conservation authorities manage watersheds in which over 90% of the provincial population resides.

For the record, along with other presenters here today, I and two other representatives from Conservation Ontario are members on the source protection advisory committee recently announced by the Honourable Chris Stockwell, Minister of the Environment. This committee is to advise the government on implementation of Justice O'Connor's Walkerton recommendations.

I wanted to take this opportunity to acknowledge the government's steps toward protecting Ontario's drinking water since the release of the Walkerton inquiry part one and part two reports. Conservation Ontario strongly supports the commitment to implement all of the Walkerton inquiry recommendations.

First, with respect to Bill 195, the proposed Safe Drinking Water Act, Justice O'Connor cited source protection as the first barrier in a multi-barrier approach to protecting drinking water. We understand that the government plans to proceed with Justice O'Connor's source protection recommendations through amendments to the Environmental Protection Act and related planning legislation.

Conservation Ontario is concerned, however, that source protection and watershed planning are not acknowledged in the proposed components of a Safe Drinking Water Act. We believe this is essential. We recommend that a statement of legislative intent be included in Bill 195 that refers to the multiple-barrier approach to protecting drinking water supplies in Ontario, with specific reference to source protection as the first critical barrier.

Moving on to Bill 175, the proposed Sustainable Water and Sewage Systems Act, Conservation Ontario continues to be concerned that watershed management is not identified as an eligible cost of full cost accounting for water and waste water services. Conservation Ontario supports the concept of full cost accounting, but it must include more than just the pipes and plants. As already stated, watershed-based source protection is the first barrier of a multiple-barrier system to prevent contamination of drinking water supplies. This first crucial barrier in the delivery of safe drinking water must be recognized in Bill 175 and potentially funded, in part, through municipal water and waste water rates.

It is clear that new mechanisms for stable funding of source protection, as envisaged by Justice O'Connor, are

required. Municipal water and waste water rates charged to consumers is one vehicle for funding source protection. Conservation Ontario remains committed to exploring other user fee mechanisms, so that there is equity in how all users of water pay for its protection.

At the same time, we recognize that in terms of equality there must be funding mechanisms to ensure that sufficient financial resources are available in those more sparsely populated areas of the province where local rates will be incapable of supporting the task at hand. Viable alternative funding mechanisms need to be further explored, and we anticipate that the source protection advisory committee will have a role to play in this regard.

However, Conservation Ontario sees Bill 175, the proposed Sustainable Water and Sewage Systems Act, as an immediate opportunity to enshrine in legislation watershed management as an eligible component of full cost accounting for water and waste water services. Through regulation, the source protection list of eligible watershed planning and management activities can be specified.

This is an opportunity for the provincial government to clearly indicate that it supports full cost accounting of the delivery of clean, safe water and that it places an appropriate value on that most precious resource—water.

Currently, at least five conservation authorities—Toronto region, Credit Valley, Lake Simcoe region, Grand River and South Nation—receive funding from municipal water and waste water rates for a range of watershed management activities and infrastructure related to source protection. For example, watershed management activities might include rural water quality programs and, as described to you by the South Nation authority at your Ottawa hearing, the total phosphorous management program that they've implemented in that watershed.

In addition, full cost accounting must include the cost of watershed infrastructure that provides the source of water supply or in fact improves waste water assimilative capacity of the receiving stream, including that infrastructure that is operated by conservation authorities on behalf of one or several municipalities. Individual conservation authorities have given and will give you examples of this situation at your other scheduled hearings.

Funding relationships that currently exist between some conservation authorities and their municipalities recognize the important and valuable link between watershed management and the most efficient and effective delivery of water/waste water services to the public. It recognizes that the cost of drinking water treatment and waste water assimilation will be reduced by and is heavily dependent on maintaining good quality, abundant source water.

Other jurisdictions also recognize this connection. One example that comes to mind is New York City, which has made a significant investment in upstream source protection in the Hudson River Valley as one way to save millions—in fact, actually, I believe it's billions—of dollars in downstream treatment.

Based on Conservation Ontario's submission to the Walkerton inquiry in March 2001, we are talking about a relatively minor incremental cost in per household costs of water. The submission estimates current delivery of watershed management for protecting drinking water supplies is approximately five cents per household per day and further estimates an additional four cents per household per day would be required to ramp up for adequate source protection efforts.

Recent consumer research suggests there is strong public support for the consumer incurring some additional costs to ensure safe drinking water in Ontario. According to a June 2002 Environics poll, 59% said they would find it very reasonable to be charged five cents more per day to ensure the safety of sources of drinking water and another 24% would find it somewhat reasonable. The respondents understood that the additional charge would not pay for improving or expanding water and sewage treatment facilities, but was devoted in fact to source protection.

The conservation authorities in this province feel strongly that the province and its member municipalities must not lose a valuable opportunity to utilize a valid and relevant beneficiary pay option for delivery of source protection. Exclusion of watershed management will ultimately undermine municipalities' abilities to finance source protection efforts in protecting drinking water supplies.

Conservation Ontario is not suggesting that this is the only source of funding, nor that it will work everywhere right now. We simply want to ensure that this opportunity is not lost and that the door remains open while other viable approaches are also explored.

On behalf of Conservation Ontario, we recommend that Bill 175 explicitly state that activities and infrastructure related to watershed-based source protection are eligible costs of delivering safe drinking water and that subsections 3(4) and 4(4) be amended accordingly.

The Chair: Thank you very much. That accords us two minutes per caucus for questions. As always, we'll start the rotation with the official opposition, Mr Colle.

Mr Mike Colle (Eglinton-Lawrence): Thank you for your presentation, Mr Hunter. Just in terms of where source protection starts, as you know, in Ontario the extraction of water for bottling purposes is permissible with a permit. There's no charge given. Would you consider that as part of where we should start our source protection?

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Mr Hunter: In terms of the charge for use of water?

Mr Colle: A charge or prohibition of that extraction in watersheds that are sensitive to that extraction potential.

Mr Hunter: Certainly it has to be all-encompassing, and bottled-water users, where in fact it doesn't draw down and doesn't have a negative effect on other users and water supplies, should be charged along with other users for that water, and we're into that in terms of some water budget work that's being done now. But the amount of water that comes into a system and the amount

of water that comes out tells us that in some areas we may in fact be overextended. Therefore, considerations, whether its bottled water or golf courses or other issues, are going to have to be considered in terms of potential reductions to put things back in balance. I don't know if that answers your question.

Mr Colle: Basically you would concur that that's part of our whole need to protect water at source?

Mr Hunter: Yes.

Mr Colle: One other thing: I know the conservation budgets were dramatically cut, in 1997 I think. Have those cuts in operating budgets been restored?

Mr Hunter: The budgets in some conservation authorities have returned, but through other sources of funding and through fees and other revenues. So a number of them have seen their revenues come back up or, in fact, the revenues that allow the expenditures of the authorities. Some of the smaller and medium-sized authorities are still probably at a reduced level from what they were.

Ms Marilyn Churley (Toronto-Danforth): Thank you for all the good work you do. I'm pleased you are here to give this presentation today. I just wanted to tell you, first of all, that I support your amendment that source protection should be part of full cost recovery. But that leads me to a concern I have; that is, full cost recovery is easy for us, sitting around the table, to talk about, but when it comes to real people paying the bills, as we're finding out with hydro, it can be a big issue, especially in smaller municipalities.

I have two questions—I have to be quick, I know. Would you support other levels of government having to come in as partners and paying for capital infrastructure costs to bring systems up to date, up to standard?

Secondly, I want to ask if you have any concerns about Bill 175 in terms of a clause in there that many of us interpret as allowing the government to step in and privatize a system. You know that a full cost recovery plan has to be brought forward by the municipality. If the government doesn't like it, they can impose their own solution. Of course, I'm concerned that might happen more and more. Given the difficulties—that's why the two bills converge here—of meeting the new standards and the cost that could be involved to the municipalities, privatization might seep in the back door that way. Do you have any concerns about that?

Mr Hunter: Just on the first point, in terms of our submission to Justice O'Connor, we indicated there needed to be a range of sources of funding in terms of actually bringing this solution together on a number of fronts. So while we've stressed user fees, certainly all levels of government need to be participants and players in that.

With respect to your second question, the conservation authority hasn't really adopted an official position relative to specific concerns or issues around privatization of systems. We're mainly focused in terms of the source protection side and how that gets funded and paid for. It's probably beyond our mandate in terms of that particular issue.

Ms Churley: Is my time up?

The Chair: Thirty seconds.

Ms Churley: I appreciate that, but it's something that I think needs to be of concern to all of us. I know it's outside your mandate, but you might want to make a look at that implication.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): I want to talk about full cost recovery. When you mention full cost recovery, I think the public is somewhat confused, because if you get a bill, whether it's public utilities or water management for the municipality, somebody's got to pay for it. In other words, it costs so much to produce a litre or a thousand litres of water. Whether you get it on a bill or the municipality picks it up through their general levy, full cost recovery is there. There's a cost associated with treating water. Am I right or am I wrong?

Mr Hunter: I would agree with you. It's all part of the full cost.

Mr Beaubien: So, basically, when you're talking about full cost recovery, you're trying to bring transparency into the system. In other words, you want to more or less stress or point out to people how much it costs to produce potable water by associating so many cents per thousand litres or whatever the charge is.

Mr Hunter: I think it's accounting for the full cost and for them to be aware of that. The other part that I think will really come into play more significantly in the future will be the conservation of water. By properly valuing it and putting a value on it, folks are going to have to seriously look at the amount they use, what they use it for and how that affects the overall balance.

Mr Beaubien: I sometimes get confused—we talk about for-profit and not-for-profit. Cost recovery as opposed to what? Whatever you do, whether it's a building or water, there's always a cost associated with a product we produce. We can brand it for-profit or not-for-profit or full cost recovery or whatever, but somebody has to pay the freight, and at the end of the day that's the taxpayer or the consumer.

Mr Hunter: That's correct.

Mr Beaubien: In your opinion, what should people of Ontario pay on a daily basis? I mean, if I told people 15 years ago that you would pay a buck for a bottle of water today, they would probably have told me I was not very stable. How much should the average household pay for water or a daily basis—$1, $2? What is a fair charge?

Mr Hunter: I don't have that figure at the tip of my tongue. I could go back and see if we put that in the submission. I just don't have that figure right here that I could throw out.

From a layman's standpoint, and looking at that to some degree, I guess I look at how we value water and how much we pay for it as compared to, say, a day of cable TV or some other less essential service—and probably that's not an inappropriate equation. If you're prepared to pay $1 a day for cable TV, certainly a dollar or two a day per family is not out of order, I wouldn't think.

I know there have been some estimates previously brought into play, during the O'Connor inquiry, that another $365 a year would go a long way, even toward the infrastructure side, on water and waste water treatment, and that's what I was trying to get across with the four cents per day. A relatively insignificant increase can go a long way in terms of actual protection of the water at source.

The Chair: Thank you for coming before us this afternoon.

ONTARIO WATER WORKS ASSOCIATION
ONTARIO MUNICIPAL WATER ASSOCIATION

The Chair: Our next presentation will be from the Ontario Water Works Association and the Ontario Municipal Water Association. Welcome to the committee. If I could get you to introduce yourselves for purposes of Hansard, I'd be grateful.

Mr Rod Holme: I will introduce the group, if that's OK.

The Chair: That's fine.

Mr Holme: I'd like to start by thanking you for allowing us to speak. The Ontario Water Works Association and the Ontario Municipal Water Association are appearing before you jointly in overall support of Bill 175 and Bill 195.

My name is Rod Holme. I am chair of the special executive committee of both our associations. Next to me is Sharon Crosby, who is president of the Ontario Municipal Water Association. Tim Lotimer is chair of the Ontario Water Works Association, and Joe Castrilli is counsel to both our associations.

Our associations are representatives of the full range of professionals involved in the provision of drinking water in this province. The Ontario Water Works Association is a non-profit scientific and educational association made up of over 1,100 members. The Ontario Municipal Water Association represents over 160 water authorities supplying drinking water to over seven million residents of Ontario. Their historic focus has been legislative, regulatory and policy matters in conjunction with the delivery of safe drinking water in the province.

Both our organizations were parties to part two of the Walkerton inquiry, and since the end of the inquiry we have participated in, and prepared extensive submissions on, the post-Walkerton legislative and regulatory activities of the government surrounding safe drinking water. Most recently, Mr Lotimer, the chair of the Ontario Water Works Association, was appointed to the provincial government's new watershed-based source protection advisory committee.

We strongly support improved measures to ensure safe drinking water. We congratulate the provincial government on the introduction of Bills 175 and 195 in the Legislature and their referral to this standing committee. We also support the province's recent announcement that it is moving forward on source water protection initiatives. We have studied both bills very closely and wish to offer constructive suggestions for their improvement.

We have provided to the standing committee pre-filed written material. Both organizations urge the standing committee to examine our recommendations with a view to introducing amendments to address the matters raised. We'd now like to, in the following comments, constitute key issues the standing committee should have regard to in considering both bills.

Ms Sharon Crosby: Under Bill 175, the revolving loan fund: the full cost recovery measures of Bill 175 do not address the transitional and possibly long-term financial difficulties some, particularly small, drinking water providers may experience in meeting increasingly strict regulatory requirements. Commissioner O'Connor recognized this problem as well. The OWWA and the OMWA urge the standing committee to adopt our recommendations for the establishment of such a loan regime in Bill 175. We acknowledge the existence of the province's new Ontario Municipal Economic Infrastructure Financing Authority, but we are concerned that it may not be a substitute for the loan regime we propose dedicated solely to drinking water.

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The scope of full cost recovery: the government should consider whether and, if so, to what extent an allowance for protection of watersheds and wellheads will be addressed in the full cost recovery provisions of Bill 175. Alternatively, the government should consider how to address these matters in the near future in other drinking water legislative initiatives.

Maximizing municipal revenue sources: OWWA and OMWA recommend that revenue source options be kept as broad as possible and that subsection 9(4) should be amended to remove the enabling authority to identify in regulation sources of revenue that a municipality cannot include in a cost-recovery plan.

Removal of provincial authority to cap rate increases: the province should not retain the authority to impose restrictions on the maximum amounts water rates may increase for particular customer classes as currently authorized in subsection 9(5) of Bill 175. If the province restricts the revenue of municipalities in this manner, it may compromise the ability of municipalities to achieve compliance with Bill 195.

Mr Tim Lotimer: As a result of our detailed review, we've made recommendations for amendments to Bill 195. The full list of these recommendations is contained in our pre-filed material on Bill 195. However, there are several we believe to be worthy of mention today.

(1) Require development of drinking water policy: Commissioner O'Connor recommended in the inquiry's part two report that the provincial government develop a comprehensive source-to-tap drinking water policy covering all elements of drinking water. That's in recommendation 65 as the "necessary first step in achieving safe drinking water." The province should clarify the status of the commissioner's recommendation

in the context of Bill 195 or other drinking water legislation to come.

(2) Government guidance to water authorities: many of the measures in Bill 195 require prior action by the provincial government. These tasks are important in light of the standard of care established in Bill 195. In the view of the Ontario Water Works Association and the Ontario Municipal Water Association, the commissioner's recommendations that set out the tasks to be performed by the provincial government should be included as duties in Bill 195.

(3) Scope of advisory council mandate: we recommend that the mandate of the advisory council originally identified by the ministry in their components document this summer, as modified by the list of recommendations of our two associations, specifically be identified in section 4 of Bill 195.

(4) Ordering municipalities to provide drinking water services or alternative water supplies to users of private systems: as set out more fully in our pre-filed material on Bill 195, these provisions should either be removed or amended to ensure that the costs of such actions are shared with the province or that municipalities are able to recoup the full cost of rendering such assistance.

In conclusion, Bills 175 and 195 are the foundation for the development of a sound regime of drinking water protection in Ontario. Adoption of the amendments proposed by our organizations for both bills would further advance the goal of the delivery of safe drinking water to the Ontario public.

We will be pleased to answer any questions from members of the standing committee.

The Chair: Thank you very much. We have about two minutes per caucus—a strict two minutes this time. We'll start with Ms Churley.

Ms Churley: Mr Chair, you'll be pleased to know that I have to make an urgent phone call in about two minutes.

I appreciate the fact that these are very complex issues to cover in such a short time. We can't even begin to get at some of the issues, but I appreciate your longer submission as well. There are some good recommendations for amendments there.

I just wanted to ask you to elaborate a little more on what your view is of full cost recovery and what role so-called senior levels of government should play in that, particularly around the infrastructure capital cost. As you know, when the government brought in new regulations, they had to extend the deadline for some municipalities to meet the new requirements because they didn't have the resources to do it, and that's always a concern.

Mr Holme: Our approach principally is that the same rules should apply to everybody. Capital costs ultimately have to be paid by consumers or taxpayers in one way, shape or form, but the municipalities should not be restricted in the sources of revenue they have available to them in meeting those capital costs. That's one of the recommendations we've made on Bill 175, that it not restrict those sources of revenue, so that municipalities can do that.

In small systems, one of our major principles is that we want to see loans in favour of grants, but we recognize that in the case of the very small and remote systems there may need to be special case considerations, as Justice O'Connor recommended.

Mr Garfield Dunlop (Simcoe North): A quick question because you are professional engineers. I'm curious about the specific engineering degrees and courses the society might ask for when it comes to qualifications to deal with some of these water treatment facilities. I know engineering is very broad based, but can you explain a little more about that?

Mr Holme: Fair enough. We are not all professional engineers and our associations represent a full range of professionals involved. We use the word "professionals" in the broad term, in terms of dealing with operators, chemists, laboratory people, and management people as well—the full range. I think each one of those requires its individual qualifications. I know the Ontario Society of Professional Engineers will be appearing this afternoon and I believe they will have some specific comment on that area.

Mr Dunlop: On the specifics of each—

Mr Holme: Yes. We have some specific recommendations on training, but we recommend that the training be very broad. There's been a lot of emphasis on training of operators and certification of operators. We believe there should be training available for the full range of professionals, including the politicians who are in charge of the systems.

Mr Dunlop: Politicians?

Ms Crosby: Yes.

Mr Dunlop: That would be interesting.

Mr Holme: Yes, supported by the Ontario Municipal Water Association.

Mr Dunlop: Maybe we'll get into that a little later.

Mr Colle: The one intriguing part of your recommendations is number 5, the removal of provincial authority to cap rate increases.

As you know, with the hydro situation now the government has capped hydro per kilowatt hour at 4.3. I guess your submission is that if the provincial government has this power, they should therefore have to reciprocate in terms of what they force municipalities to do, because with the provincial government intervening to cap, they won't be able to essentially pay for potential investments in water service provision.

Mr Holme: Essentially, yes. We saw the danger in one part of the legislation requiring things to be done without the opportunity for municipalities to charge the rates to recover that. We also want to emphasize, because it was one of our recommendations in Bill 175, that water rates are not the only source of revenue. That was another recommendation, that municipalities have that flexibility to use a number of revenue streams in addition to the water rate itself.

Mr Colle: Can you give me an example? All they have basically is property taxes. What else could they really use?

Mr Holme: There are a number of different charges they could apply. Development charges are a very well-established way of charging for new facilities. Individual municipalities, different users—large users may have different requirements. A municipality could make arrangements directly with a particular user. We are talking here more than just individual residential users. There are commercial users, industrial users in any community that have different needs, special needs. The municipality needs to have the flexibility to be able to create charges that cover the service that's offered and the benefit to that user.

The Chair: Thank you for coming before us here this afternoon. We appreciate your comments.

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ONTARIO SOCIETY OF PROFESSIONAL ENGINEERS

The Chair: The next presentation will be from the Ontario Society of Professional Engineers. Good afternoon, and welcome to the committee.

Mr Alex Gill: Mr Chair, committee members, ladies and gentlemen, I would like to thank you on behalf of the province's 66,000 professional engineers for this opportunity to share with you our beliefs on Bill 175.

My name is Alex Gill and I am the director of public affairs of the Ontario Society of Professional Engineers. Joining me today is Robert Goodings, a licensed professional engineer with considerable experience in the design of waterworks. Bob has spent more than 50 years planning, designing and overseeing the implementation of water and waste water systems across Ontario. He spent 10 years leading one of Canada's most prominent consulting engineering firms, serving as president and chairman of Gore and Storrie Ltd, now known as CH2M Hill. Bob also served as chair of the Ontario Water Works Association and has been named an honorary life member of the American Water Works Association for his many contributions to the field. He still contributes to Ontario's water association in his role of conducting and publishing on their behalf the survey of water rates and operations benchmarking, which covers the supply systems that serve five million people in Ontario. He is the past chair of the society's board of directors and is currently the chair of our safe water task force.

As the advocacy organization for Ontario's licensed professional engineers, the Ontario Society of Professional Engineers is very concerned with making drinking water safer for our fellow citizens. Under the Professional Engineers Act, the first responsibility of licensed professional engineers is not to their clients or employers but to public safety. The 66,000 members of the profession take this responsibility very seriously and our presence here today reflects their commitment.

The duty of engineers to the public and their unique involvement in the planning, design, construction and operation of Ontario water and waste water systems has led the society to testify and make written submissions to part two of the Walkerton inquiry hearings. At the close of the hearings, we struck a safe water task force made up of some of Ontario's top waterworks experts. Over the past year, we have been working closely with the Ontario government to offer our profession's expertise in the practical implementation of the inquiry's recommendations.

Today, we will be providing feedback primarily on Bill 175. Our views on Bill 195 are a matter of public record and have been provided in writing on a previous occasion to the Ministry of the Environment. We have appended our written submission to the material we provided today. We will take questions at the end of our presentation on our views on both pieces of legislation.

As licensed professional engineers, members of the society are concerned with practical and responsible implementation of scientific principles. We strongly support both bills because we believe they will make Ontario's drinking water safer and the operation of our water and waste water systems more efficient and more accountable.

First of all, we commend the hard work done by the minister and MOE staff on both bills. They encapsulate a large portion of the Walkerton inquiry recommendations and we believe the government is moving in the right direction for all Ontarians.

I would now like to turn to my colleague, Bob Goodings, who will summarize our practical advice with respect to Bill 175.

Mr Robert Goodings: As Alex said, we are strongly in favour of Bill 175. We believe it contains long-overdue measures to make Ontario's drinking water and waste water systems safer and more sustainable.

I have many years of experience in the waterworks business and I have seen all manner of practice in how these systems are operated—some good, some bad and some unbelievable. Bill 175's overall impact will be to standardize how these systems are run and shift the decisions that are now made about them from the realm of the political to the realm of the practical. We applaud this shift in focus.

We believe Ontario's drinking water systems should move toward full cost recovery for a simple reason: safety and reliability should be the chief focus of how these systems are run.

We believe the main purpose of Bill 175 is to ensure that Ontario's municipal water and sewage systems generate sufficient revenue to recover the long-term operating and capital costs required for safe water and sewage operations. The bill requires a comprehensive system inventory and condition assessment and the development of a cost recovery and asset management plan. If enacted as proposed, we believe this government is taking a leadership role. It is telling municipalities and system operators that these systems must be operated in a

businesslike manner, and our fellow citizens deserve no less.

Over the past several decades, Ontario's hundreds of water and waste water systems have been funded through a combination of user rate income, development levies, subsidies from general municipal revenues, and grants and loans from other levels of government. We have also seen instances where revenues from water rates, particularly in the case of more mature systems, are used to subsidize other municipal operations.

When water system revenues truly reflect the costs of operating safe and sustainable systems, operators can focus on the relevant concerns: safety, accountability and long-term sustainability. If, for example, the operators of a water system find that they need to invest in new technology to make their system more reliable, this can be discussed on its merits and properly funded by the users of the system. It should not escalate to a lengthy debate about who can pay and how much, at the expense of safety.

We believe that grants from the province do not serve the long-term interests of water users. Grants often discourage engineering innovation, particularly in smaller systems. They often mask long-term problems with viability and safety. Grant money often flows to the systems that do not follow best practices in the industry. The systems built with grants are often built to meet the extent of the funding, not to meet the specific needs of the community, which may at times be more modest.

We concur with the Walkerton inquiry findings that exceptional circumstances may require the province to provide short-term grants or low-interest loans. We urge the province to consider the impact that such measures have and offer such assistance only where absolutely necessary.

I would now like to turn your attention to the important role that engineers play in water supply and waste water systems.

Our main recommendation to government and to this committee is that every water and waste water system operator in Ontario should be required to name a licensed professional engineer of record. This engineer can be either an employee of the system operator or an engineering consultant who has an ongoing relationship with them. The heart of this bill is the need for ongoing programs of comprehensive systems inventories, condition assessments and the development and oversight of cost recovery and asset management plans. This is, in my view, clearly engineering. We think that placing this requirement in legislation and subsequent regulations is necessary in order to make the provisions of both Bill 175 and Bill 195 work on a practical level.

In order for the reporting process envisioned in both bills to function properly, the information submitted to the ministry has to be reliable and in a format that can assist the province in their overview of each municipality's systems.

Unfortunately, many system operators simply do not have the expertise to prepare reports of the quality required by ministry staff. We recommend naming a licensed professional engineer of record to take responsibility for the preparation of the operational plans and the infrastructure reports and to contribute to financial planning to meet the requirements of the two bills.

There are already numerous precedents in other Ontario regulations that require licensed professional engineers to sign off on reports and other documents to ensure public safety. Structural drawings, for example, must be sealed by a licensed professional engineer, who takes responsibility for their safety. The workers' protection act requires engineers to certify the safety of form work, trenches and temporary structures in construction. Ontario water regulation 459 requires licensed professional engineers to review operating systems every three years. We see the requirement that system operators name a licensed professional engineer of record as a logical extension of these precedents.

We know that some operators of smaller systems are concerned not only with their reporting requirements but with the ability of their customers to afford higher rates. A licensed professional engineer of record will be able to help these operators in meeting both their reporting requirements and advising them on how they can maintain reasonable water rates while meeting provincial quality standards.

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We strongly agree with the ministry and with other stakeholders that water quality is not negotiable. Ontario residents should be able to rely on a safe supply of drinking water at their taps. But from an engineering standpoint, water quality is only one of the components of what makes the price of water. The other component is the level of service.

A rural municipality, for example, may not require a water system that has the capacity to support a large industrial customer with full firefighting capabilities. We believe that the ministry should focus attention on clauses in the acts and regulations that ensure these water quality standards are met. But we feel strongly that these acts and regulations must allow local ratepayers, advised by their professional engineer of record, to determine their level of service. This should allow them to pursue innovative engineering options to meet water quality standards and keep the costs within their ability to pay.

I would like to offer a final comment on the issue of water rates in many communities. For years, water rates have been set by considering what a few customers on the bottom of the income scale can afford and then using that determination across the system. The water supply industry has, for years, called these rates "lifeline rates." While the intent is noble, the practical outcome has been to starve systems of needed investments, potentially compromising safety and undermining the financial viability of the systems that are the cornerstones of our communities.

In a study I conducted on water rates for the Ontario Water Works Association, I found that only a handful of systems would be challenged by raising their rates. In the

case of many of these systems, their base rates were below real cost, often in the range of $30 per month per household for both water supply and wastewater systems. Even in these examples, a $20-per-household-per-month increase in rates would allow the system operator to invest hundreds of thousands of dollars each year on infrastructure.

We just have a few additional pieces of information about Bill 175 before we answer any questions you might have.

Our safe water task force has identified a potential problem with a lack of public consultation on local financial plans and infrastructure reports. The bill makes no mention of whether system operators will have to hold public consultations with their customers before submitting reports to the ministry. We would suggest that unless this is made a requirement, the ministry may be subject to appeals from local stakeholders with concerns about the plans and the reports. This could gridlock the approval process, so we would urge the ministry to consider this possibility.

Finally, we believe that the government must rebuild engineering expertise on its staff in order to meet its new commitments. We were heartened by the government's commitment with its 2002 budget to expand technical knowledge within the bureaucracy. While we believe it is essential to have licensed professional engineers of record working with system operators, we also believe their role can only be more effective if their counterparts in the various ministries speak the same language and have the same level of engineering expertise.

Alex, I'll leave it to you.

Mr Gill: In conclusion, we'd just like to thank the committee members for their time today. We're reiterating our support of both Bill 175 and Bill 195. Our members, 66,000 professional engineers across the province, look forward to making additional contributions, both in the regulatory process and in the new roles they may have in duties prescribed in the acts and the subsequent regulations.

We would now be willing to take any questions.

The Chair: Thank you, but unfortunately you've engineered your presentation in such a way that you have used your full 15 minutes. Thank you, though, for your very detailed presentation before us here today.

RON ROBINSON LTD

The Chair: Our next presentation will be from Ron Robison Ltd. Good afternoon, and welcome to the committee.

Mr Ron Robinson: Good afternoon, Mr Chairman and members of the committee. Just to let you know, you're actually paying $1.50 for a small bottle of water. That's $3 a litre, which is four times what we're paying for gasoline.

My name is Ron Robinson. I have a construction company that performs heavy civil works such as excavation, sewer and water main, roads, parking lots, construction for municipalities, industrial, commercial and institutional clients as well as private developers. We've been in business for over 44 years and currently employ 95 people.

Our service area is primarily the municipality of Durham, which includes Pickering, Ajax, Whitby, Oshawa, Clarington, Scugog, Uxbridge and Brock township. We also service extended areas to the north and east, including the city of Kawartha Lakes, Gary's hometown of Peterborough, Port Hope and Cobourg.

As mentioned, our company is actively involved in both the construction and rehabilitation of water and sewage systems on both a planned and emergency basis, backing up municipalities. I am very supportive of Bill 175 and believe that it is long overdue.

This legislation is necessary to ensure that Ontario's water and sewage systems are financially and environmentally sustainable. In addition, the bill is important for public health and the general health of our society.

Currently we are faced with a significant water and sewage infrastructure deficit that we must begin to address. Our business has experienced an increased number of events that have drawn me here today to express my concerns. For example, when we flush and chlorinate our water mains, we are required to draw in domestic treated water from the existing water pipes. On hot days in the summer, such as the days when our beaches are posted closed, we find that the treated water entering our system from the municipal source is of a quality below the criteria for which we are testing the new mains.

We also work on combined sewers, where both the sanitary and storm sewers combine into one pipe, thereby necessitating the costly and needless treatment of storm water. Worse, when a storm does occur, treatment systems can overload as a result of increased volumes of storm water combined with the normal sewage flows and results in the bypassing of the treatment process and the dumping into our environment, ie, adjacent lakes and rivers.

We are also experiencing significant encrustation or build-up on the interior lining of the existing water mains. As you may see, that restricts the flow. As well, numerous water services have become pitted and are leaking as a result of corrosive soil. To visualize this, I have attached to my written presentation a cover page that vividly portrays the net result of the examples I have described. We, as taxpayers and consumers, are presently paying to treat water at the source, but how much of it is getting to the consumer and how much is being wasted?

Similarly, in our aging sanitary sewer systems, pipes are deteriorating with age, cracks occur and sewage intended for the treatment plant exfiltrates from the pipe through the openings and into our environment. This is especially critical if it's in the vicinity of a water source such as a municipal or private well.

What is the solution? I believe that mandated full-cost pricing and accounting legislation is a significant part of the solution to upgrade our clean water infrastructure while protecting public health and the environment. It is

also a means to stabilize the business cycle and planning for all parties involved. As a result, I wish to commend the government for having the resolve to finally move toward implementing this policy.

Unfortunately, sewer and water mains are taken for granted. They're buried underground, and do not garner the electoral vote when a municipal politician up for re-election weighs the merits of replacing an aging and deteriorating sewer or water main on a particular street, perhaps not in his riding, versus a new arena, library or park—the old adage "Out of sight, out of mind."

Given such, I emphasize the importance of the corresponding legislation that requires municipalities to have dedicated reserve accounts. Also important, but not presently included in the legislation and should be considered, are the inclusion of mandatory full-cost pricing; a specified compliance date with an allowable and reasonable phase-in period and transitional funding, where required, through the existing OSTAR and Green Municipal Infrastructure Program; and, a requirement that usage be metered to promote conservation as well as the principle of user-pay.

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As a reminder, additional support for Bill 175 is found from someone much wiser than I. Justice O'Connor's report on Walkerton says, "In my opinion, if passed into law, the act will address many of the important issues that I discuss in this section. The requirements for a full cost report and cost recovery plan, as generally expressed in the proposed act, are in my view appropriate."

In closing, I would like to express my sincere appreciation for allowing me to address my views, and will attempt to knowledgeably answer any questions you should have. Thank you.

The Chair: Thank you very much. That affords us just over two minutes for questions. This time we'll start with the government caucus.

Mr Beaubien: Thank you very much for your presentation. I'm starting to age myself, so when you said, "The requirements for a full cost report and cost recovery plan, as generally expressed"—I think Justice O'Connor mentioned that—I fully agree that we should look at full cost recovery. However, having said that, I think in your presentation you mentioned that we are currently faced with a significant water and sewage infrastructure deficit that must begin to be addressed when we look at combined sewers, storm and sanitary sewers, leaking water lines. There are many municipalities in the province of Ontario; you're quite right that "out of sight, out of mind" seems to be the order of the day. So consequently, the infrastructure—namely, the water and sewers—has not been upgraded or maintained over the past 20, 30, 40 years in some cases; in some cases even longer.

When we talk about full cost recovery for a municipality that still has combined sewers and old infrastructure water lines, how is this municipality ever to reach full cost recovery? How are they going to do it? There's only so much—maybe it's a buck 50 for a bottle of water, but I don't know what the water and sewage rate would be in the community. If they forgot about dealing with their infrastructure for the past 30, 40 years, how are we going to resolve the problem overnight?

Mr Robinson: I think there are municipalities presently that have implemented policies, such as the region of Durham where I'm from. They've started that procedure and they're getting there. It's going to happen over five to eight years; the standard has to be set that they have to get there. We can't allow leakage into our environment. You can't trade that off.

Mr Beaubien: But where are they going to find the money? I look at my own municipality. We've got the third-oldest water treatment plant in Ontario. It was built in 1896, but it's been well-maintained. It's been upgraded and so has the infrastructure. So it's not a financial burden to the municipality, because we've been on full cost recovery with water and sewer for the past 20 years.

Mr Robinson: I would disagree. You're paying for that because you're having breakages. We're going in and doing those repairs. If you track those costs versus the cost of replacing it, you can get there. You'd be surprised.

Mr Colle: Just to continue with what Mr Beaubien was saying, I think every municipality in Ontario is different. The challenges are different. Look at the city of Kingston, for instance, with its limestone foundations that cause constant breaks in their water mains etc. Should there be anything in this legislation to possibly take into account a northern situation or a place like Kingston or an older municipality where there are peculiar circumstances? Should that be taken into account, or is there anything in the legislation to take care of those demanding local municipal issues?

Mr Robinson: In the full cost pricing there is a financial dollar value for replacing sewers. If the life-cycle is 25 years that the municipality establishes, you're going to set aside a certain amount of money to replace those sewers. Again, you have this five-year, maybe eight-year transitional period to start reserving the money for that. But they can get there. For certain municipalities that can't afford it, yes, I believe there's going to have to be some transitional funding to get them up to the standard. Certain municipalities are there now, but the rest of them may need some help to get there.

Mr Colle: So one size can't fit all. That's what I'm trying to get at. In other words, the one-size approach is not going to work for everybody.

Mr Robinson: The one-size standard that they have to get to, yes. The time frame that may be allowed for them to get there may vary.

Ms Churley: Thank you for your presentation. I like your graphic. That really tells it like it is in terms of wastage and the need to conserve.

Garfield is going to hear this once again, but I have been down in the sewers—I have. People joke about it here, but I'm happy to take you down in the sewers with me. In fact, I've made a recommendation that this com-

mittee actually suit-up and go down and see for ourselves what these sewers look like. It really is quite amazing, quite shocking when you get down there and see. Most people, including politicians—I think I'm an exception—don't really have any idea what kind of bad shape they're in. You and several others have come, and some people have brought in pipes to show us, but we do need to go and take a look.

I just want to make the comment that there are a lot of questions around full cost recovery and what it means and how different levels of government should be involved in that. I just want to point out that I think we need to take a very good look at how to divide the funding and what's fair funding.

One of the things that Justice O'Connor pointed out—there are many things, and we all cherry-pick to some extent. In light of what he called the restructuring, for instance, by this government—we call it downloading social services costs—he said that is adding even more burdens onto the municipalities, and the government needs to review that. I think we need to have a really good look at what municipalities are now paying for and perhaps restructure some of those social services costs up again.

Mr Robinson: Yes, but you can't allow a different standard for a little town like Bobcaygeon, near Peterborough, to have leakage into their environment and Toronto or Burlington to have a different standard.

Ms Churley: Yes, I agree.

Mr Robinson: It's got to be the same.

Ms Churley: It's got to be the same standard. We have to make sure everybody has safe water to drink and therefore it's important that all three levels of government sort out—there should be full cost recovery but there needs to be capital funding to get these systems up to standard.

The Chair: Thank you. We appreciate you coming before us here this afternoon.

ONTARIO CONCRETE PIPE ASSOCIATION

The Chair: Our next presentation will be from the Ontario Concrete Pipe Association. Good afternoon. Welcome to the committee.

Mr Paul Smeltzer: Good afternoon, Mr Chair and members of the committee. My name is Paul Smeltzer. I'm the executive director of the Ontario Concrete Pipe Association. In addition, I'm a professional engineer registered in Ontario, with more than 22 years of experience in Ontario's infrastructure industry.

The Ontario Concrete Pipe Association is an industry association which represents precast concrete drainage product manufacturers in Ontario, and we are pleased to have this opportunity to present our views on Bill 175, the Sustainable Water and Sewage Systems Act.

The Ontario Concrete Pipe Association was incorporated in 1957 and, as a non-profit industry association, is composed of producers of concrete pipe, maintenance holes, box culverts, box sewers and precast concrete specialty products. Our products are used by the public and private sectors in transportation, water and sewer and major infrastructure projects. We have five producer-members here in Ontario, representing more than 95% of the precast concrete drainage product industry.

Our producer members operate facilities from Windsor to Ottawa to Sudbury. In addition, we have a number of supplier members which provide goods and services to our producer members and they are located throughout Canada and in the United States.

Our members directly employ approximately 750 men and women in high-skilled industrial manufacturing jobs. The supplier industries employ approximately 3,500 additional workers.

Collectively, we represent almost 50 years of participation in the growth of Ontario's economy by providing high quality materials used in the building of safe, long-term infrastructure across this province. Thus we have a keen interest in the state of the infrastructure in Ontario and in Canada.

The OCPA has a long history of working with industry, government and research organizations such as the NRC and Ontario's universities to improve the quality and performance of precast concrete pipe products used in our infrastructure, and to develop appropriate legislation and standards for the industry. Our producers have made significant investments in Ontario and are the best pipe producers in North America.

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As significant players in the provision of underground infrastructure, we are committed to the maintenance, replacement and expansion of the province's vast network of water and waste water systems. We are therefore very supportive of Bill 175, because we believe the financial sustainability of the infrastructure is at stake and the people of Ontario need to know that government is prepared to show leadership in maintaining a plentiful, healthy water supply and modern waste water treatment. Ontario cannot afford another Walkerton.

This legislation, as well as the Safe Drinking Water Act, the Nutrient Management Act and the impending watershed management and groundwater protection legislation, are important tools required to ensure Ontario's water and waste water systems are financially sustainable, good for public health and environmentally friendly. Currently, we are faced with a critical need to invest in our water and waste water infrastructure. Therefore, affordability is an issue.

The association, and I personally, believe that the province is moving in the right direction relative to our underground infrastructure. This is important, as over the past several years we have seen our infrastructure deficit in Ontario increase to the point where there is a backlog of needs of some $1 billion. Reports published by the National Water and Wastewater Benchmarking Initiative, which represents more than 80% of Canada's population, states that the reinvestment rate for waste water systems is 0.6% per year, and the reinvestment rate for water systems is 0.7%. This reinvestment rate translates into a

service life that we need to have for those pipe systems of 140 years for water and waste water. Even concrete pipe can't do that. This, at a time when Canada has among the lowest water rates in the world and is the second-highest water user per capita in the world.

Prior to my joining the OCPA, I was an engineer with the region of Niagara in the environmental services division, with responsibility for water and waste water. Annually, during my budget presentation, I would report on the comparison of water and waste water costs to other household utilities. Without fail, water would be the lowest-cost utility, and waste water would be the third-lowest-cost utility. Even with increases in water and waste water rates of, as I've heard reported, $2 to $6 per month, the water and waste water systems are affordable. Fully funding these systems simply takes a public will to make it so.

Consistent with Justice O'Connor's recommendation, we are proponents of full-cost accounting, full-cost pricing and user-pay principles. We believe it is the only way to secure the much-needed monies for replacement or upgraded infrastructure and to protect public health and the environment. We want to commend the government for moving to implement this policy. User-pay will ensure consumers are aware of the value of water and waste water services and will make them accountable for their habits. We support these aspects of Bill 175 and are particularly pleased that there's a section in the legislation that requires municipalities to have dedicated reserve funds.

My association is aware that the Ontario Sewer and Watermain Construction Association has made suggestions for strengthening the bill, and we support these. However, I'm not going to present those here today. I have a couple of issues I would like to raise and then I will be done.

Our association is concerned about the promulgation of regulations and the definitions in the proposed act. We believe the legislation could be strengthened if more direction was given in the legislation and less reliance was placed on regulations. In addition, more guidance should be provided for municipalities on full cost services and the cost recovery plan by expanding on their definitions and leaving less interpretation by municipalities.

We believe the components of these plans should be exactly the same for every service provider in Ontario. This will help to ensure a level playing field. Consumers will know what they're paying for and municipalities across the province will use identical costing methodologies. As a service provider, municipalities will be able to compare the management of their systems with other operators and ultimately gravitate toward the best practices for water and waste water. The implementation of best practices will improve the service providers' ability to serve their customers in an efficient and economical manner.

Organizations such as the Ontario Centre for Best Practices and the National Guide for Sustainable Municipal Infrastructure currently exist for the purpose of developing and distributing best practices, and will be invaluable in getting that message out. By requiring all municipalities to adhere to the same accounting methods, the consumers will win.

Mr Chairman, those are my comments. In summary, we wish to reiterate our support for Bill 175, the Sustainable Water and Sewage Systems Act, and urge the committee and the Legislature to consider our suggestions for amendments. The direction proposed is the right one for our time. Thank you again.

The Chair: Thank you very much. That leaves us two and a half minutes per caucus.

Mr Colle: Mr Smeltzer, with your municipal experience, I just want to ask you, what precludes a municipality from setting up a dedicated reserve fund and then tapping into it when there's a shortfall in revenues and they want to keep taxes down? Does the legislation stop municipalities from dipping into the dedicated fund?

Mr Smeltzer: If you read the legislation word for word, yes, it would. But treasurers are incredibly creative.

Mr Colle: I've seen it happen many times.

Mr Smeltzer: They are able to skip around it; I've seen it happen as well, Mr Colle. That happens, and I think one of the things we'd like to see in the regulations is that better definitions be given for what all the costs are or what all the items are related to water and waste water services, and that treasurers not be given that kind of latitude.

Mr Colle: The other thing I want to ask about, another trick I've seen, let's say a manoeuvre that treasurers use at budget time, is that they will raise water rates to basically mask a rate increase for taxes. But the rate increase in water never goes to water infrastructure; it goes to pay for something else or to keep taxes down. Have you seen anything in this legislation that would preclude that from happening?

Mr Smeltzer: Nothing in the legislation. Hopefully the regulations will handle those things.

Mr Colle: I'll be looking for that. Thank you.

Ms Churley: Thank you for your presentation. Can you provide more details, in this short time, on wanting more detail in the bill, as opposed to being left to regulations?

The minister was in Ottawa with us for a while and several deputants made that point. He argued ferociously that that couldn't be done in advance because the municipal systems are so different that it would be impossible to put within this bill all of the rules, that it would have to be worked out later, I guess piece by piece, taking into account different municipalities' situations. I'm not necessarily supporting his argument; I just want to know what your view is on what should be more clear in here.

Mr Smeltzer: I would agree that there are items that need to be included in the legislation, from our perspective. I would revolve those around the definitions of full cost pricing, full cost accounting, and identify all of the components that are required within those two items

and actually go through and work with municipalities and understand what each one of those is and what the costs are and then include that in the legislation.

Ms Churley: So you would suggest, instead of rushing to get this passed in this session, which is going to be over relatively soon, doing more work on the bill and—

Mr Smeltzer: No. It has to be passed now.

Ms Churley: Right now? Because what you're suggesting would have to be done very quickly, over the next week or two.

Mr Smeltzer: But that information exists.

Ms Churley: So you think it can be done very quickly?

Mr Smeltzer: Yes, I do.

Ms Churley: OK, thanks.

Mr Dunlop: Thank you very much for your presentation. It's really interesting in these hearings to see the sewer and water guys get out, because I guess—

Mr Smeltzer: I'm a sewer guy; I'm not a water guy.

Mr Dunlop: There are a lot of water guys here too.

Mr Smeltzer: I haven't been in the same sewer as Ms Churley, though.

Mr Dunlop: Obviously you have a great deal of interest in this and you've had a great representation across the province in both the sewer and water. I'm sure when you see the next deputation, the Association of Municipalities of Ontario—they'll deal with those creative treasurers, when we get to those.

I just wanted a quick question, though. The technology that's used in concrete piping today—obviously things have changes over the years. Can you give us a little bit of background on some of the changes you've seen and how the quality has been upgraded?

Mr Smeltzer: The major change we've seen over the last, say, 30 years is in our jointing systems. Concrete pipe that's been in the ground for 50, 60, 70 or 80 years will leak sometimes. What has really occurred is that gasket technology and the way concrete pipe is put together is a lot better now, and we don't see that kind of infiltration. That's really due to the manufacturing processes used now—a lot more robotics; the tolerances are a lot lower than they used to be. Just as every other industry has improved how they do things, so have we. Those are the biggest changes we've seen in the last, say, 30 years.

Mr Dunlop: Mainly in the coupling, how they join together.

Mr Smeltzer: Yes.

The Chair: Thank you. We appreciate your coming before us here this afternoon.

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: Our next presentation will be from the Association of Municipalities of Ontario. Welcome back to the committee.

Mr Ken Boshcoff: Thank you, Steve. Good afternoon. I'm Mayor Ken Boshcoff, from the city of Thunder Bay. I'm also President of the Association of Municipalities of Ontario. With me is Nicola Crawhall, who is our senior policy adviser, with specific expertise in water and related matters.

Thank you, Mr Chairman, for the opportunity to share our comments and concerns on what we believe are two of the most significant pieces of legislation for the municipal sector in recent years. Your committee has a daunting task to understand the long-term implications of Bills 175 and 195, and I hope that my comments today will assist you in your work.

AMO is here representing its membership, almost all of Ontario's 447 municipalities.

As your committee considers these two pieces of legislation together—and I think it is important to consider them together—remember that there remain pieces of this overall provincial plan for drinking water that have not yet been revealed by the government. This puts you—and us—at a distinct disadvantage. We still don't know what the government's financing strategy for water and sewage works looks like. This essential part of the plan has been delegated to SuperBuild to develop, and so far with little consultation with stakeholders such as AMO.

So our first request to the provincial government is this: before passing these two pieces of legislation, provide municipalities and the public at large with the full plan, including the province's financing strategy and future plans to reorganize the water sector. Only then will we be in a position to comment in a truly informed and comprehensive manner.

The business of water delivery is not segregated; it is holistic. So we are disappointed that we are dealing with only a few pieces of the puzzle. But given that we don't have all the information, I will focus my comments on the first piece of legislation at hand; that is, the Safe Drinking Water Act. There are many small changes that are needed that AMO will submit in writing prior to clause-by-clause review. Today, I will focus on the big issues.

The first is the way this piece of legislation changes the relationship between the Ministry of the Environment, municipalities and private water system owners. As you may know, with regulation 459, the drinking water protection regulation, costs and requirements increased dramatically for both public and private systems, particularly smaller ones. These changes have had the effect of scaring off private water system owners. It has caused them to abandon their systems and has prompted an explosion of well drilling in Ontario by individual households to avoid the regulatory requirements.

This piece of legislation handles this dilemma in two ways. First, under section 49, the legislation would require municipalities to provide consent to all existing and new private water systems. The consent would be based on the financial liability the private system poses to the municipality in the event that the system fails or the own-

er walks away. The legislation allows municipalities to require a financial assurance agreement from the water system owner to protect the municipality from footing the bill in these instances.

We have two principle concerns with the consent and financial assurance requirements as they are proposed in this legislation.

First, there is little guidance on which to base the municipal consent. We expect that when municipalities refuse to provide a consent to a private system owner or a developer, that municipality could be taken to court, particularly if the proponent is willing to sign a financial assurance agreement, but the municipality still does not want to assume any liability risk. It is unclear why municipalities are to be put in such an awkward position.

Our second concern is around the municipal financial assurance agreement. It could result in 447 municipalities developing their own financial agreements—a patchwork of competing financial assurance regimes throughout Ontario. This is clearly not desirable from a municipal point of view and we suspect from a developer's point of view. We believe there are other ways to provide financial assurance, for example, through a centralized provincial regime or through a private company, like other types of insurance.

Individually, municipally run financial assurance schemes are administratively onerous, needing a letter of credit every year for each system. This is not an efficient way to proceed. A more streamlined, centralized process is required.

There also seems to be a lack of consistency among the various requirements under the Municipal Act, the building code and the plumbing code with respect to municipal approvals for sewage and water systems. We need these various pieces of legislation to be consistent so that municipalities, the province and private citizens are clear on what is required of them.

The financial assurance consent provision appears to be a simplistic solution to a very complicated problem, one that has not been thoroughly thought through and one that will prove problematic.

The second part to this issue of private systems management is contained in a series of sections in the act that must be considered together: sections 106, 109 and 110. It goes like this:

Under section 106, if there is an emergency situation involving either a public or private water system that poses an immediate health and safety risk, the MOE may negotiate with the Ontario Clean Water Agency or another agency to take over the system. This is a negotiated agreement, with full payment to the interim operator.

Under section 109, the MOE may appoint an interim operating agency in the event that a municipal system or a private system has failed to meet the regulatory requirements or has been abandoned. Again, in this situation, the agreement between the MOE and the interim operator is negotiated and full costs will be paid to the interim operating agency.

Then there is section 110, which for some inexplicable reason allows the MOE to order, rather than negotiate, an agreement with a municipality to take over abandoned or substandard private systems. The Ministry of the Environment can also order a transfer of operations permanently, not for an interim period, and to provide no guarantee that municipalities will be repaid for their services.

Something just doesn't seem right here. Why is a private operator or the government, through the Ontario Clean Water Agency, treated as a service provider worthy of negotiated agreement and payment, and the municipal operator, paid for by the taxpayer, is seen as the one to be ordered to take over a situation that was not of its making and then expected to cover the costs that can't be recovered, presumably through a subsidy from the property tax base? There is something patently unfair about this proposed model.

It is not just unfair, it also throws a wrench into the works for Bill 175 requirements, where the municipalities are required to do long-range asset management planning. How does a municipality do that when, at any time, the MOE may order them to take over an expensive, derelict private system within their boundaries which eats up their capital and operational dollars? Remember, some of these private systems include campgrounds and mobile home parks. This means that private businesses under this proposal would be subsidized by municipal property taxpayers.

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It should be pointed out that these proposed sections were not recommended by Justice O'Connor.

I ask you to please ask the MOE to clean this whole approach up so that municipalities are not left as the default operator of thousands of private systems. I can almost guarantee you that if legislation says in black and white that an owner only has to walk away from a private system to get the province to order the municipality to take it over, that is exactly what they will do, over and over again, across Ontario. That is not a desirable outcome.

Municipalities want to help, we want to be part of the solution, but we want to be a partner with the private owner and the province, we want to be able to negotiate the terms of the transfer and we want to have our costs—the taxpayers costs—covered.

We also have concerns about the standard-of-care provision under section 19 of the act. The talk among municipally elected representatives is one of serious concern as to whether they should seek re-election due to the potential personal liability that this section introduces. The government must clarify and carefully communicate the implications of this new legal standard to ensure that good people are not discouraged from running for office.

We have many other comments on Bill 195, but given the limited time, I am going to move on to Bill 175.

I want to state at the outset that AMO is in favour of moving to full cost recovery and so, in principle, we are

in favour of the types of principles that Bill 175 is meant to enshrine. Many municipalities have already moved or are in the process of moving to long-range asset management planning. But the municipal sector has a fundamental disagreement with the process that would be established by Bill 175. It sets up provincial micromanagement and it is absolutely unnecessary and must be removed.

I am referring to the authority in the legislation under sections 9 and 13 for the minister to approve municipal water rates, and if he doesn't like how much they have gone up, to cap them. In terms of ministerial approval of rates, we simply believe that as owners and operators of public water and sewage systems, this is our responsibility. It has been for decades and we are best placed to understand the costs that are incurred in delivering these services. We have no objection to the minister reviewing or auditing our financial plans on a selective basis, but to require provincial review and approval of every municipality's water and sewage financial plans and rates is simply overly bureaucratic and unnecessary.

If the intention is to create a water and sewage equivalent of the Ontario Energy Board and the legislation allows for this by permitting the minister to delegate his authority to a third party, then we should know this up front. Again, we are not given the full picture here, and we need that full picture to understand the government's real intentions.

In terms of capping, the municipal sector is all too familiar with the provincial government's tendency to cap rates when they become politically unpopular, but capping doesn't solve the problem. It hides it and it creates a deficit in a full cost recovery regime. If rates go up too high, it is a signal that an alternative way of paying for the water system or an alternative way of delivering water is needed. Even if the provincial government offers to pay the difference in the short term, we know that in the longer term the municipalities will be picking up the bill. So AMO has asked the minister, and asks this committee, to get rid of the capping authority in Bill 175.

Those are my comments for today. Thank you again for the opportunity to share AMO's concerns with you. I would be happy to answer any questions from committee members.

The Chair: That affords us time only for one caucus. I'll give two minutes to Ms Churley.

Ms Churley: Thank you very much for your presentation, and I certainly would like to discuss some of this at a later date because there is no time now.

You bring up some concerns that I've expressed throughout the hearings. The one I want to focus on in particular, however, is the one about the concern around the—it's our view the sewer and water sustainability bill would allow the government to step in if it doesn't like—not only cap—the municipality's plan and tell you what to do with the system; in fact, privatize it or whatever. At the same time, even if a system is arm's length or privatized, the elected official is still accountable and liable. Is that your concern?

Mr Boshcoff: Very much so. Members of the committee, there is no doubt that the talk at all of the regional municipal conferences, whether they're sponsored by the Association of Municipalities of Ontario, subgroups or others, is that municipal elected representatives are very nervous about the implication of where they may end up standing and what kind of liability may result upon them on a personal basis because of this standard of care. They understand the need for a higher standard of care, but I think at this stage there's no doubt that municipal elected representatives need to have that item clarified as to where they will stand and who will be there to stand for them. I hope that answers that.

Ms Churley: I guess if—

The Chair: Ms Churley, we're well over time.

Mr John Gerretsen (Kingston and the Islands): On a point of order, Mr Chair: This is the only organization that speaks for all municipalities in Ontario. You've allowed, from watching this in my office, all the other organizations an equal amount of time, but should the only organization that really speaks for every municipality that exists in Ontario not be given a little bit more time so we can ask them some questions? Or should they bring in all their various sections, such as OSUM and ROMA etc, in order to give full airing to the municipal viewpoint? I'm just asking for your kind consideration.

The Chair: They have now gone two minutes over the allotted 15 minutes, so they have received two minutes more consideration than any other group speaking today. To answer the second part of your question, it is totally legitimate that if they wanted ROMA and any other group of municipalities to make a presentation, they too would have been accorded another 15 minutes according to the rules set by all three parties before we extended invitations for groups to speak.

Thank you very much for your presentation here today. If you have any supplementary comments, the clerk would be pleased to receive them and distribute them to all the members of the committee.

Mr James J. Bradley (St Catharines): What are you afraid of?

Mr Gerretsen: What are you afraid of?

The Chair: Gentlemen, order.

Interjections.

The Chair: Order.

Mr Boshcoff: Chair Gilchrist, I thank you for that. I hope you do understand that we are trying to work with the government. It would actually be quite simple for us to line up all the regional organizations and take up a considerable length of time because the north may have specific interests. We're trying to fine-tune this in the interests of your committee's work.

The Chair: We appreciate that, but if there are other issues, we need to hear about them. Mind-reading isn't a

skill you bring to government. Thank you for coming before us today.

Mr Beaubien: I'll seek unanimous consent that we sit after six o'clock for an extra half hour so that we can hear from him.

The Chair: You'll be sitting without a chair because I have another commitment.

Mr Beaubien: We have a Vice-Chair.

The Chair: I think it would be more appropriate to again extend Mr Boshcoff and his colleagues the invitation: if there are other unique issues for any one or more municipalities, feel free to send those notes to the clerk. She will make sure we all receive copies immediately.

Mr Boshcoff: Thank you for your time. We will be doing that, as our working groups have been working very strenuously at trying to clarify this and again come up with a solution that is good for everyone.

1700

ONTARIO FEDERATION OF AGRICULTURE

The Chair: Our next presentation will be from the Ontario Federation of Agriculture, a group that also represents a few individuals in the province, Mr Gerretsen. Oh, Mr Gerretsen has left us.

Good afternoon, and welcome to the committee.

Mr Ron Bonnett: Good afternoon. My name is Ron Bonnett, as of yesterday, president of the Ontario Federation of Agriculture

Mr Beaubien: Congratulations.

Mr Bonnett: For those of you who don't know, we represent approximately 40,000 farm families across the province. Just a few comments at the start about some of the background on some of the issues that we have been working on with respect to water and water quality. With our farm partners and the Ontario Farm Environmental Coalition, we were involved fairly extensively with the Walkerton hearings. We sat through those and we have basically recognized and actually implemented a number of initiatives with respect to Walkerton. In fact, some of those initiatives were put in place long before: examples such as the environmental farm plan, a series of best management practices publications, as well as a rural water testing program that we have available to our members. We also are implementing and putting in place a well upgrading and decommissioning program funded with the Healthy Futures money. I believe about $700,000 has been spent on that program to date to try and avoid contamination of the aquifer.

We are also involved with research projects to better understand just how nutrients travel through the soil and also how pathogens that may be shed by farm animals migrate through the soil and to better understand the life cycle.

We're well aware that close attention must be paid to land management and any impacts that might have on the environment and we're working very closely with the Ontario Ministry of Agriculture and Food and the Ontario Ministry of the Environment with respect to nutrient management planning at the farm level.

We believe farmers have an important role in what has become known as source protection and can assure the committee that farmers will take this responsibility very seriously. But we would like to emphasize that Justice O'Connor's multi-barrier approach to drinking water safety, when describing a municipal water supply, also calls for an appropriate level of treatment and maintenance of a distribution system.

I would also like to comment that we will be making presentations. I have been asked to sit on the advisory committee on watershed-based source protection and we're going to be participating in making some of our concerns and initiatives known at that level.

Basically, there are two issues and concerns we'd like to raise with respect to Bill 195. The way it's focused, it doesn't really apply to those members of ours who rely on private wells or on wells that maybe service fewer than four homes. We note that the bill has a section on municipal drinking water systems, but also a section on regulated, non-municipal drinking water systems, a category that we assume applies to rural schools, hospitals, nursing homes, restaurants etc.

Perhaps the intent is not to regulate private wells serving fewer than five families. However, if that is the case, the purpose statement will have to be modified since the way it is now worded—"To recognize that the people of Ontario are entitled to expect their drinking water to be safe"—would capture virtually every tap in the province, which would include private wells.

The OFA, along with other farm organizations, is encouraging private well owners to take water testing seriously and has established a recommended protocol that would have well owners test for bacteria three times a year, metals and minerals every two years, and pesticides, gasoline and solvents every five years.

It is noteworthy that since the Walkerton tragedy, the Ministry of Health and the health unit bacteria testing program for private wells has had a participation increase of approximately 800%. Our concern is that Bill 195's prohibition on contaminants may actually discourage rural residents from having their water tested for fear of the consequences associated with a test result that does not meet the standards. We want to make sure that there is still voluntary compliance with the testing.

The Ontario Federation of Agriculture believes the government of Ontario should recognize that a more reasonable approach to ensuring safe drinking water from wells servicing fewer than five homes is through building awareness with private well owners about the importance of protecting their water and providing some level of financial assistance to enable this group to regularly test water and undertake well improvements if necessary. On a practical level, this is far more achievable than trying to regulate the hundreds of thousands of private wells found in the countryside. A less rigorous approach for private well owners is justified, given that the drinking water systems used are less complex and quite easily managed

if the well owners are serious about delivering safe drinking water to their families.

The second concern is that some rural municipalities may attempt to recover the cost of upgrading a municipal water system through property taxes levied on rural residents who may not directly benefit from that service. This would be basically unfair, in our perception, because the cost incurred by a rural resident to secure, pump and maintain a private well system is a cost they bear themselves. If, through their taxes, they ended up having to cover the cost of other people's well systems or municipal systems, it would basically create an element of unfairness.

We would like some kind of assurance that municipalities that are required to upgrade drinking water systems are also required to cover upgrading costs with tax revenues generated by those who access municipal drinking water and are not passing those costs on to someone else.

The federation supports the government of Ontario's commitment to safe drinking water but encourages it to use a less regulatory, more stewardship-based approach when dealing with private wells serving fewer than five homes. The whole concept becomes almost a carrot-and-stick approach. We believe you could get much better compliance and much better results with a few carrots than with a regulatory type of approach.

Basically, that concludes our comments. If you have any questions, the expert is here beside me. Dave Armitage is our water and nutrient management specialist. So if I can't answer, he sure can.

The Chair: Thank you very much. This time we'll start with the government. There will be about two minutes per caucus.

Mr Norm Miller (Parry Sound-Muskoka): I was interested in your comments to do with property taxes, people on their own systems being used to subsidize municipal systems. In some of the submissions we've had come before us where there has been a lot of talk about funding, one of the thoughts that crossed my mind, whether it be provincial funding going into municipal systems, is whether it's fair. If you're already paying the full cost of your own water system because you're on your own well or your own septic system and nobody's helping you out in any financial way whatsoever, should you be contributing to municipal systems that are trying to bring their systems up to date? Maybe you can comment on that.

Mr Bonnett: Actually, from personal experience, I live in a municipality that has a municipal water system. I know that some of those costs have been transferred to general ratepayers, and there has been a lot of friction in the community because of that. Sometimes, when they can't recover the full cost in what they feel are reasonable rates, some of the costs get transferred over and just become part of the general mill rate. I think that's the thing we want to try to avoid. The people using the system should actually be paying for it. The farm community is feeling, "We look after our own systems and pay the costs of those. We shouldn't also have to pay the cost of a parallel system."

It's actually interesting: in my case, I have municipal water to my own residence, and I would prefer to use it rather than my own system, because I have sat down and done the calculation of what it costs me to maintain my pump and the well, and it's just as cheap to purchase from the municipal system.

Mr Miller: I was also interested in your point about fear of testing or fear of taking the test results in for owners of private systems. As I understand, Justice O'Connor's recommendations were that the private systems not covered by regulation 459 should be covered by the current regulation, 501. But you lost me on why somebody would be nervous about taking in their own private results, I guess out of fear of adverse results.

Mr Bonnett: Maybe you'd want to comment.

Mr David Armitage: I think that just goes to the uncertainty of whether there would be serious consequences associated with a positive test for contaminants and whether they may be compelled to immediately remedy the problem. There may also be some concern that there may be an assumption—and we feel it would be an erroneous assumption—that a private household well that is somehow subject to contamination may interfere with a nearby municipal well system, which I don't think would likely happen, given the pumping rate and the cone of influence and those types of things. But that's what we're really concerned with. So the homeowner may feel that to avoid getting into that situation, they would simply not test. We would rather encourage them to continue to test and deal with any adverse result as it comes. Again, I think the concern is that there may be a regulation that if you get an adverse result reported to government, some action is taken.

Mr Bonnett: In a simple situation, a person with a livestock operation, for instance, would likely have the same well feeding their house. If, under regulation, they were forced to shut down that well, they would be in a crisis situation to find enough water for their operation.

1710

The Chair: Mr Bradley?

Mr Bradley: Are there any existing provincial programs—you made reference to some province programs already—that could use some additional funding that would assist the rural community in meeting the obligations that are inherent in either Bill 175 or Bill 195? Are there any existing programs which you think could be enhanced in terms of more funding that would be of assistance to you in meeting those obligations?

Mr Bonnett: I think it would be a fair comment to say that what we've found with the healthy futures program is that there has been a certain amount of uptake on the upgrading of the existing wells, but we haven't had as much uptake with respect to the plugging of old, abandoned wells. I think it becomes the whole issue that even though there is 64% funding from the provincial government to assist with the plugging of old wells, it's still a cost barrier to somebody to plug that old well; they

see the immediate value of making sure the well they're using is plugged and properly kept and sealed and all that, but there isn't that same direct association. So possibly a program designed to clear up abandoned wells would have a higher level of funding than for upgrading.

One of the other issues that has come up too is that a number of people have dug shallow wells. Under the program, they can rehabilitate that well. Possibly the best advice they could be given is to close that well and drill a new well, but the program design is such that it will repair the old dug well, which may still be subject to surface infiltration, but it won't pay for replacing that well with a drilled well.

I guess the other thing would be our water-testing program. I believe the base fee is $100.

Mr Armitage: The base fee is $100, but if you were to follow the protocol that Ron outlined, it would probably be about $500 every other year, and that's without any subsidy. For a homeowner to incur that cost for testing is quite onerous. In the interest of safe drinking water, that probably could be assisted.

Mr Bradley: Good suggestions. Thanks.

The Chair: Ms Churley?

Ms Churley: Actually, I was going to ask the same questions about funding. Thank you very much for your presentation.

The Chair: We appreciate your coming before the committee.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: Our next presentation will be from the Canadian Environmental Law Association. Good afternoon. Welcome to the committee.

Mr Richard Lindgren: Good afternoon, Mr Chair. My name is Richard Lindgren. I'm a staff lawyer with the Canadian Environmental Law Association. I'll be speaking to Bill 195. I'm accompanied by Theresa McClenaghan. She's also a staff lawyer at CELA, and she'll be speaking to Bill 175.

I should also indicate for the record that I have filed with the clerk an 80-page critique of the Safe Drinking Water Act. That brief contains some 29 detailed recommendations for amendments to the bill. Obviously I won't have time to speak to them today, but I encourage you to read them at your leisure.

I'd like to start off by thanking the committee for this chance to appear and to speak to the Safe Drinking Water Act. As you may know, CELA has advocated the passage of the Safe Drinking Water Act for over 20 years. When we represented the Walkerton residents at the Walkerton inquiry, again we very strongly urged the passage of a Safe Drinking Water Act. That is why we were very pleased to see Commissioner O'Connor recommend the passage of that act in Ontario. We're also pleased to see the government's commitment to the full implementation of all of Commissioner O'Connor's recommendations, including those related to the Safe Drinking Water Act. That's the good news.

The bad news is the act itself is deficient, as drafted. We say that for several reasons. The first is that the act, as drafted, will not necessarily prevent the recurrence of a Walkerton tragedy. The act as drafted does not give effect to many key recommendations coming out of the Walkerton reports. The bill as drafted does not represent the best or toughest drinking water legislation in the world, as some people have claimed.

Let me give you a few examples to illustrate those concerns. First of all, there is nothing in the proposed act that would prevent the Ministry of the Environment from approving a drinking water source that was risky or vulnerable to contamination, a source like well 5 at Walkerton. You'll recall that was the well that was shallow, vulnerable to contamination, and the one that served as the entry point for contamination of the Walkerton system. There's nothing in this bill that would prevent the ministry from approving that well again today, which is surprising and shocking. That's an issue that needs to be fixed in the bill. More to the point, there's nothing in the bill that would require or empower the Ministry of the Environment to impose meaningful source protection measures to deal with risky wells like well 5. That's a significant issue that needs to be addressed.

Another example is this: there's nothing in the Safe Drinking Water Act, as drafted, that makes it mandatory for the ministry to issue a binding and enforceable order whenever an inspection detects a serious operational deficiency in a drinking water system. I've looked long and hard at the act. The only thing I can come up with is section 99, which says if a ministry inspection finds a deficiency, the ministry has to do a follow-up inspection within a year, and that's it. Well, that's great, but it's far more important, in our view, for a finding of deficiency to be followed immediately by the issuance of an order—again, an order that's binding and enforceable. Simply having one inspection follow another inspection does not protect drinking water; it does not protect drinking water consumers.

It appears to us that section 99 simply entrenches the very inspection problem that occurred in Walkerton. You'll recall that in Walkerton, ministry inspection after ministry inspection found serious problems with the system, yet the ministry chose to deal with those problems by way of correspondence—not an order; not a mandatory direction. You'll recall that Commissioner O'Connor found the ministry's approach was a mistake. He found that the failure to issue an order in those circumstances helped cause or contribute to the Walkerton tragedy. There's nothing in this bill, as drafted, that changes any of that. There is still excessive ministry discretion as to whether, when or if an order gets issued. That needs to be fixed.

There are lots of other things that are missing from the Safe Drinking Water Act as drafted, including things recommended by Commissioner O'Connor. For example,

Commissioner O'Connor says the precautionary principle needs to be used as the basis for setting drinking water standards. This bill, as drafted, doesn't do that. It doesn't even use the words "precautionary principle." That is a significant omission.

Commissioner O'Connor says the ministry should establish a procedure that would allow citizens to require—not just request, but require—investigations by the investigations and enforcement branch of the Ministry of the Environment. Nothing in this bill establishes that procedure. At most, all I could find was a provision that says the minister might pass a regulation dealing with this in the future. Again, that's excessive discretion and it's certainly no guarantee that Commissioner O'Connor's recommendation will be implemented adequately or at all.

1720

Before I leave Commissioner O'Connor's recommendations, I'd also point out he recommended that as the first critical step to doing anything, the ministry should develop a comprehensive source-to-tap drinking water policy. That's not mentioned in the bill. The bill doesn't impose any mandatory duty on the minister to develop that critical policy. Again, there's a disconnect between the recommendations of Commissioner O'Connor and what we actually see in the bill before us today.

Finally, before I leave this one, I'd be remiss if I didn't remark upon the claim that this is the strongest and best drinking water legislation in the world. That claim is simply without any merit whatsoever. If you want to look at a tough drinking water law, look south of the border. Look at the federal Safe Drinking Water Act that the United States has had since 1974. It's got lots of good tools in it that are not found in this bill. The US legislation has some very good source protection measures; the Ontario bill does not. The US legislation has very good community right-to-know provisions; this bill does not. The US legislation includes a citizen suit with respect to civil enforcement of the legislation; the Ontario bill does not. I invite you to read the US legislation if you want to look at a good drinking water bill.

Where does that leave us at the end of the day? CELA is recommending that passage of the Safe Drinking Water Act be deferred until the spring of 2003 at the latest. We do not want an open-ended deferral; we want to see expeditious action. But we also say it's going to take time to develop, implement and incorporate the many amendments that are going to be necessary to make the Safe Drinking Water Act. I'm particularly referring to the source protection initiatives that are now being developed by the source protection advisory committee. We're a member of it and, quite frankly, those pieces of the puzzle have to be in place before this legislation gets finalized and proclaimed into force.

I close on this remark. I mentioned at the beginning that we've waited over 20 years for the Safe Drinking Water Act. We're prepared to wait a couple of more months if it means the bill is going to be truly effective, truly enforceable and truly will integrate source protection.

With that, I'm going to pass it over to my colleague, who will speak to Bill 175.

Ms Theresa McClenaghan: With respect to Bill 175, the Sustainable Sewer and Water Systems Act, CELA agrees with the premise of Bill 175, which requires that all regulated entities charge for the full cost of their water systems. However, CELA's fundamental concern with that bill is that it very narrowly defines "full cost." The definition, if you read it, speaks to extracting, treatment and distributing. It's a pipes-and-pumps definition and does not appear to extend to source protection, including aquifer and watershed protection. It's also unclear whether conservation and retrofit costs could be included.

Where water sources are already degraded, the definition does not appear to extend to restoration and rehabilitation costs. Also doubtful is water quality and quantity monitoring costs upstream of the wellhead or intake source, as well as post-distribution monitoring, such as for health indicators in the population.

Too narrow a definition will act contrary to the objectives of watershed-based source protection planning, restoration, rehabilitation and adequate monitoring. This is because the act provides that the regulations will specify sources of revenue that a regulated entity is or is not permitted to include in its full-cost financing plan.

Municipalities who wish to include source protection and watershed protection costs, restoration costs or monitoring costs might find they're expressly forbidden from charging for these costs. We don't know because we don't know what's in the regulations. Portions of the watershed source protection planning costs will be real obligations of the municipalities once the government enacts that legislation pursuant to Justice O'Connor's recommendations. The definition of "full-cost recovery," in our submission, needs to be broad enough to cover these new responsibilities.

Identical concerns arise with respect to the narrow definition of the full cost of providing waste water services, which I deal with in the Bill 175 brief we've provided to you in writing.

The second point I'd like to address is that municipal water prices for most municipalities in Ontario today are very low. C.N. Watson did a paper for CELA at the Walkerton inquiry and noted that the cost per year per household is less expensive than cable television and much less expensive than bottled water. By C.N. Watson's calculations, the standard $1.25 cost of a bottle of spring water purchases 3,200 glasses of municipal water at the median price in Ontario. This means that for most of the people in Ontario, there is plenty of capacity to raise rates and other water-related charges a reasonable amount so as to charge full costs that include a portion of source protection costs. However, there are two exceptions to this statement: one is for people in poverty; the other is for some small systems.

With respect to the people in poverty, recommendation 5 in our Bill 175 brief is that the province

encourage and develop guidelines for municipalities to protect disadvantaged residents from prohibitive water rate increases.

With respect to small systems, Justice O'Connor noted that there are many options available to small systems in order to make their systems more viable with existing tools today. However, Justice O'Connor noted that many already approved systems may still then be unable to meet the standards at a reasonable cost. He recommended these situations be dealt with as the need arises on a subsidy basis, "rather than cause a departure from the high standards of drinking water safety that Ontario residents expect." CELA's recommendation 6 in the Bill 175 brief speaks to this recommendation.

There are sources of funding for water systems already available in Ontario. In addition to the existing sources of the rate base, user fees, like hook-up charges, development charges, extensions to non-serviced areas and other mechanisms listed by C.N. Watson in their paper for CELA, CELA submits that there are important additional sources of funding for water systems that must be pursued in Ontario.

An important issue in developing the watershed-based source protection framework will be the allocation of costs of that framework. CELA submits that some of the costs ought to be allocated across the sectors that affect the source: water takers, the sectors that impact the quality of sources, including agriculture industry, development and others. Bill 175 should be amended to provide that a portion of the costs of watershed-based source protection framework are allocated across these sectors, and that some of those funds go back to municipalities for watershed-based source protection planning. An approach like that was taken in France, where a water agency levies a water charge on withdrawals and discharges at the level of each of six large river basins. Those are used to subsidize community investments to improve water resources and to treat effluents or improve operation of treatment plants.

Our written submissions provide further detail in this respect. In our opinion, even a small levy per unit will provide sufficient funds to provide for full cost and source protection in Ontario.

Finally, CELA recommends that Bill 175, which in our opinion is not urgently needed in Ontario because of the existing variety of mechanisms that already exist for municipalities, should be deferred in order to be integrated with a source protection planning framework that the government is in the process of developing right now. That source protection framework will be critical, and both source protection and overall system financing and management must be integrated. We don't want to see a situation where yet one more piece of legislation has to be revisited, as we already have to do with the Nutrient Management Act, in order to integrate that framework.

Those are our submissions, Mr Chair. Thank you.

The Chair: Thank you very much. It gives us time for one relatively brief question. This time the rotation would take us to Mr Beaubien.

Mr Beaubien: Just a quick comment. The presenters mentioned that they've been advocating for the passage of the Safe Drinking Water Act for 20 years. I'm personally a realist, not a perfectionist.

You mentioned about tough water laws south of the border. I wonder why they want to basically come up here and buy our water.

In one of your recommendations you mentioned strengthening accreditation, licensing and training requirements under the act. I totally agree with you that we can have all the criteria in place and all the engineers, the people who will do the testing. But if we have irresponsible people recording illegal results, we're still going to have the same results and there isn't a bloody law in the world that will stop that from happening.

1730

Mr Lindgren: I will respond briefly to that. That's why we need good, effective inspection, monitoring and enforcement, to make sure that the rules are complied with by irresponsible operators.

Mr Beaubien: You manage risk; you don't eliminate risk, sir.

Mr Lindgren: You put in place mandatory inspection and enforcement to minimize those risks.

Mr Beaubien: That's right. That's what I'm saying. You manage risks; you won't eliminate them all.

The Chair: Thank you very much. That exhausts our 15 minutes, but we appreciate you coming forward with a very detailed presentation today.

CUPE ONTARIO

The Chair: Our next presentation will be from CUPE Ontario. Welcome to the committee.

Mr Brian O'Keefe: My name is Brian O'Keefe. I'm the secretary-treasurer of CUPE Ontario. To my left is Shelly Gordon, who is a national research representative with CUPE.

We have a very strong interest in the issues around these two bills. CUPE represents 200,000 workers across this province. We have in excess of 60,000 members who work in the municipal sector and many of them work in the water and waste water treatment areas. We have a very strong interest in the delivery of high-quality, affordable public services, services that are accountable to elected municipal politicians.

We were shocked, like everybody else, around what happened at Walkerton. The submission that we gave around the Walkerton issue, we did in conjunction with CELA and OPSEU. We used a framework to try and determine what was the best, appropriate water system for Ontario, particularly in relation to the issue of ownership and control. We used a framework analysis consisting of five elements: security of supply, quality, environmental protection, public accountability and involvement, and full and fair pricing of water.

That analysis, using that framework, very clearly demonstrated for us that the most appropriate form of ownership and control for water systems in the province

of Ontario is in the public sector. All the research that we've done since then backs that up, and also the response we made to Judge O'Connor's report.

If I may deal with the two specific pieces of legislation, I'll start with Bill 175. This is the bill that we have most problems with, much more so than Bill 195.

It seems that there's a tone of panic these days in any public discussion about maintenance, repair and replacement of water and sewage infrastructure. The sort of figures that we've been hearing around this issue is that the liability out there is somewhere within the vicinity of $25 billion to $40 billion. This is a huge amount of money that's required for investment in water infrastructure. It clearly has arisen because of neglect in this area over many years, particularly in the 1990s, with cutbacks in municipal structure and downloading. Everything has been postponed, so we have a massive build-up that has to be addressed right now.

It's really regrettable that the Ontario Sustainable Water and Sewage Systems Act is contributing to the ongoing downloading to the municipal sector, a sector which has taken a heavy hit in recent years. This is just going to add to the huge pressures on municipalities to come up with the funds to deal with this huge infrastructure deficit.

On the issue of downloading, Judge O'Connor was very clear. He stated that it shouldn't be an added burden on municipalities, and he urged the province to ensure that would not happen. Quite clearly, with this particular piece of legislation, massive downloading is continuing to occur, and that is very regrettable.

Bill 175 explicitly allows the involvement of private companies in water and waste water extraction, treatment, delivery and recovery. The overall effect, perhaps even the intent, of the Sustainable Water and Sewage Systems Act will be to encourage municipalities into the arms of private water and sewer corporations and private financiers, chasing doubtful promises of increased efficiency and lower costs.

Bill 175 dovetails precisely with plans prepared by the SuperBuild Corp for private involvement in water and waste water systems and financing, with the reporting requirements in the Public Sector Accountability Act, with the new Municipal Act, and with new municipal financing initiatives, and helps set the stage for the privatization of Ontario's water and waste water systems.

If the private sector is able to gain a foothold in water and waste water operations in Ontario, the provisions of NAFTA and GATS will come into play. We do not know their exact impact yet, but we predict that these trade agreements can potentially and seriously erode municipal control over essential services. Once we go down that road with these international trade agreements, it's game over. If our water treatment plants go to the private sector, that's where they're going to stay, with the sort of international trade agreements we have at this particular point in time.

Water and waste water systems were brought into the public sphere in Ontario at the beginning of the 20th century because water is a necessity of life, and clean, safe water and effective waste water treatment are foundations of public health. If the government of Ontario is serious about ensuring safe water for the citizens of Ontario, they must ensure that municipalities have the funds to keep their water and waste water systems in good repair and ensure that they are in the public domain, where quality and safety are the overriding goals of the service.

I want to talk a little bit about the whole issue of user fees. We understand there is merit in appropriate costing of water, but there are other issues involved in this as well.

As a union, CUPE is opposed to the introduction of user fees for a critical public service under the auspices of full cost pricing. Water is a necessity of life. The Sustainable Water and Sewage Systems Act makes no attempt to ensure there will be universal access to adequate safe, clean water in Ontario, regardless of income or geographical location.

We've got some interesting information that we received very recently around events that are taking place in other parts of the world, particularly in South Africa. South Africa has commercialized its water system and introduced full cost pricing. At this point in time, there have been 10 million water cuts arising from that. This has had a horrendous effect on people with low incomes and vulnerable people. That is our major concern here around the issue of full cost recovery.

CUPE understands that water rates need to increase significantly in most municipalities in Ontario to begin to cover the cost of delivering and treating water and waste water. It is completely irresponsible for the Ontario government to introduce full cost pricing without explicitly planning to assist municipalities and individuals who cannot afford the new financial plans and the new water rates. Justice O'Connor warned that rising water rates should not become a significant burden on low-income families and that the province and municipalities should ensure that they did not.

Will the government of Ontario cause water rates to rise out of control by creating chaos in water and waste water systems as they have in the energy sector and then deal with increased water rates as they dealt with increased electricity rates? If that is allowed to happen, I think we're in a crisis situation for the future.

1740

I'd like to make some comments on Bill 195. We have problems with this particular piece of legislation, but not to the extent we do with Bill 175. Many of the attempts here to bring serious standards and licensing into the water system are, I think, laudable. However, there are other issues here that are of concern to us, and because of the deficiencies I'm about to outline, this is a flawed piece of legislation as well.

The government has to put real resources into ensuring the safety of Ontario's water, and not half or quarter measures. I don't have to reiterate the fact that the budget of the Ministry of the Environment was cut by 50% and what is being put back into it at this point in time is a

pittance. Justice O'Connor estimated the cost of implementing his recommendations at somewhere between $99 million and $288 million, but that is only for increased monitoring, inspecting and testing in the system.

The Ontario Safe Drinking Water Act is neutral about privatization. The fact that it's neutral on this issue is a real concern for us. It explicitly allows the minister to appoint private organizations to accredit, license, audit and monitor water systems. CUPE very clearly does not believe that privatization of the administrative functions of the system intended to oversee the enforcement of safety standards can be effective for the water of the people of Ontario.

As with Bill 175, we see the Ontario Safe Drinking Water Act as part of a series of this government's legislative initiatives and other programs. Both water bills impose new costs on already strained municipalities without offering any new funds to meet new requirements. Both allow private operations and financing.

I want to address a few concerns about the training and certification of operators. This is an area that is of great concern to us. As I pointed out to you earlier, a lot of our members work in the system. Justice O'Connor made several recommendations concerning training and certification. We are in favour of upgrading the system where there is proper certification and proper training, but we have some concerns here as well.

CUPE is in favour of ensuring that all operators in the system are well qualified and properly trained to carry out their roles in delivering such a critical public service. However, Judge O'Connor recommended that training courses be tailored to meet the needs of the operators and that efforts should be made to ensure that the examination process accommodates any study or exam writing difficulties that long-standing employees may have. Officials in the Ministry of the Environment, and even Minister Stockwell during a speech in the House, have offered us positive signs that appropriate training and testing will be designed to ensure that existing operators are not disqualified for the wrong reasons. We look forward to a consultation with the ministry staff dealing with these issues, and that's going to happen next week.

I want to make two other points, which are really important for us: (1) retraining and certification for grandparented operators must be at the province's or employer's expense and on the province's or employer's time; and (2) there must be employment and income protection for those grandparented operators who are not successful in becoming certified under the new regulations. Employers must offer suitable redeployment and income protection, or bridging to pensions.

In summary, both these pieces of legislation are lacking in many ways, particularly around the issue of public ownership and around the issue of forcing municipalities to shoulder the burden. Municipalities are being asked to meet requirements around full cost recovery plans, but all the funding responsibilities are resting on the municipalities' shoulders, and that is regrettable. Full cost pricing also must not be introduced but a plan to ensure that the cost will not deprive any citizen of Ontario an adequate, reliable, clean, safe supply of water.

Two final points. The first one is that we want to express our support for the recommendations from CELA and other environmental groups for source protection of water. That is something that is sadly lacking in Bill 195. Finally, we concur with other groups that have called for the deferral of Bill 175.

The Chair: Thank you very much. I actually let you go a little over time, but we appreciate you coming before the committee this afternoon.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Chair: The final presentation this afternoon is from the Canadian Institute for Environmental Law and Policy.

Ms Christine Elwell: Good afternoon. Thank you very much for having me at this late hour. I'll very much try to keep it short.

My name is Christine Elwell. I'm the senior legal and policy analyst for the Canadian Institute for Environmental Law and Policy, an environmental research organization established in 1970. We have provided these submissions to you and I just wanted to say at the top how much we appreciate the work the committee has put into crafting these bills. We particularly want to acknowledge the recommendation to have the Minister of the Environment manage Bill 175 instead of the Minister of Municipal Affairs, and we thank you for the recognition on that.

However, we must emphasize our two chief concerns with these bills. In particular, we are very concerned that not enough attention has been given to the fact that, with a combination of Bills 175 and 195, the government actually acquires the power to permit or approve the transfer of local municipal water systems to the private sector.

Currently, 80% of all municipalities run their water systems within the public sector. To have the private sector owning the water resource, the water system and the water services and having delegated authority to in fact extract the water from the source is, in our view, contrary to the recommendations of the Walkerton inquiry and Justice O'Connor, who rests every recommendation on continual municipal ownership of the water system. These two bills are a departure from that.

Moreover, our research indicates that public expectations or preferences are that the water system remain within the public sector. Indeed, if these bills were to pass, it is our view that there would be a breach of the public trust, a breach of a concept that dates back, I was very interested to find out, to the Roman period, to the 6th century. We knew that if you allow the sovereign to take control of exhaustible natural resources, this puts civil society at a drastic risk.

We've seen the concept of public trust developed in Britain over navigable water and public access to them further developed in American jurisprudence, which now extends public trust to environmental protection and ecological function. We've seen elements of the public trust in our own Canadian heritage. The Constitution Act of 1867, I was so pleased to discover, in section 109, gave the provinces jurisdiction over exhaustible natural resources, but "subject to any trust and any interest therein." We see later a statutory recognition of this in the Ontario Environmental Bill of Rights. Both the preamble and the purpose section speak in terms of trust language, that the people of Ontario are there to enjoy these resources, that the government is there as the trustee to ensure their continuation. We see direct procedural guarantees in the bill to be able to enforce these rights. So, in our view, there is a public trust doctrine.

1750

We are asking that this committee defer the bills and seek a legal opinion from the Attorney General of Ontario, who is the guardian of the public trust—their own language—the sole and top legal adviser to government on matters of a legislative nature, and seek an opinion whether or not there's a public commons to the water resources. Following American doctrine, it also means the actual access to the resource. Some argue, "Oh, if there's a trust, it's only about the actual waters." But if you think about it, what you also need is the means to use that resource; the access to it needs to be guaranteed.

Unfortunately, in your bills—maybe you didn't think about it, I'm not sure. But a reading of your bills in that light would allow the private sector to not only own and operate the water systems but have direct authority to extract the water, and at a certain point it's no longer a public resource, it becomes a vested, acquired right by multinational water companies.

I'd also like to say, if we go down that road, we will have NAFTA and investor-state challenges. Once you change the nature of a public monopoly, NAFTA, chapter 15, says that new monopoly with private partnerships with the private sector, even if it's still a monopoly, must operate under commercial consideration alone. So if we want to have the best laboratories, the best training, the best standards, presumably this would run afoul of NAFTA commercial considerations alone. NAFTA, chapter 11, ensures the effective enforcement of these rights. You know about NAFTA, chapter 11. We've had at least 23 cases in the 10-year history of NAFTA, specifically about overturning government legislation on environmental protection or public health.

So these are risks that are real, and we're also asking the Attorney General to give us an opinion not only whether or not water and the actual access to it but also whether NAFTA and other trade obligations would be triggered should the bills proceed.

Just an update: I was very interested to discover in the Canadian Press a story of the press conference this morning that a spokesperson for your Attorney General, David Young, indicated that their office is only prepared to give legal advice to the cabinet, that they are not prepared to offer advice to your legislative committee. I feel your pain. I think you should try to muster up enough of your own personal resources or whatever legislative or good-office resources you may have to obtain a legal opinion on the authority to be able to transfer water to the private sector.

I'll close because I really want to get your questions. The point is, recall that in July of this year the Ontario Supreme Court struck down the authority to sell off Hydro One. The Electricity Act did not provide clear legislative authority for the government to put an IPO to sell off Hydro One. The government had to go back and change its legislation. What a kerfuffle. Let's avoid this. Let's get an opinion now. Let's clear the decks. Let's have a real public debate. Frankly, it's just not out there. People don't realize what's in these bills. They think the government is faithfully implementing Walkerton when clearly it's not the case.

I think we need a real public debate on the risks and consequences going down this road. Surely public expectations are there to continue with a public water system. You only need to think about last week at city council in Toronto, where there is overwhelming public opposition to going down the road to a private sector water system. Eighty-six per cent of residents in Toronto disapprove and council turned it down. I haven't seen any Ontario polling, but I suggest the public expects the system to remain within the public sector and it would be good government and wise for you not only to get the legal opinion but to have a real public debate. We support CELA's recommendations and support a deferral to spring of 2003.

The Chair: Thank you very much. That will afford us time for one fairly quick question from each caucus, starting with Mr Gerretsen.

Mr Gerretsen: I'll put it to you very bluntly: the argument is going to be, "Well, you know, this is better than what we had before. If the government insists on passing it, that's just all there is to it." I've heard enough in just the last three or four presentations that I'm starting to have some very serious doubts. I think that all of the organizations ought to be complimented on what they're doing. But how would you respond to that, when the general public is under the impression that something is being done about the water situation, and even with these flawed acts, we'll be in a better position than we were before?

Ms Elwell: With great respect, sir, I would say, no, it's better not to be hasty. It's better to take a prudent course. If there is a public trust, once legislation extinguishes it, it's gone. You don't get to claim it back again. This is a critical moment. It would be wise and prudent to get an opinion first before you go down that road.

The people of Ontario are patient and kind-hearted people. They'll know that you're moving forward, you're going ahead with source protection plans. Bravo. That's

what Justice O'Connor said to do first. Do that part first. So I don't think you would face any wrath of the public to take your time and do a good job.

Ms Churley: Thank you, Ms Elwell. I don't know the law as well as you do, but I share your passion about this issue. The concern you raised about the privatization of the system is one that I've raised and in fact is why my caucus voted against, particularly, the sewer and water bill.

I went down to city hall, by the way, and all those who were supporting the board being set up said, "Don't worry. You're being alarmist," and "This isn't really going to privatization." But what I noticed is that there were a lot of private sector lobbyists down at city hall during that whole time, and that's when I realized it really was about privatization. That's why we have to take this very seriously.

I don't expect that the government's going to agree to have the Attorney General look at it. I'm wondering if you might suggest some amendments, because that's the approach I want to take: amend those offending pieces right out of the legislation.

Ms Elwell: I think amendments to 195—to define "owner" to only be municipal water systems; don't allow "owner" to include any regulated entity; tighten up the language in 47 about transferring, not the ownership.

Basically, it's on a scale: the closer you can keep it to a public system, the better to avoid the trade and privatization concerns. So I think you could start with that. I'd scrap 175 and start again.

Mr Beaubien: I have a quick question. First of all, thank you very much for your presentation. Like Ms Churley, I'm not a lawyer. Although the comments you made about the Roman Empire—my colleague said that's when I was born.

One thing that I would like to stress here is that the government is concerned about potable water and good-quality water. There is no doubt that we talked about the private-public sector. I think I'm more concerned with the quality of water that people are drinking, because if we remember what happened in Walkerton, it was a publicly owned system run by the municipality. So if we get into that debate, tragedies can occur whether it's public or private. I think the thing we have to concentrate on is that those two bills are trying to make sure that we have safe, potable water for all the residents in the province of Ontario.

Ms Elwell: I hear you. What you're saying is that if you have good, tight standards, it doesn't matter who's running the system—more or less. My response back: first of all, in Walkerton what you had was a situation with a public utility commission, one step removed from a truly public system accountable to council. You had commissioners who were appointed. There was less public accountability than, say, in the city of Toronto situation, where you have a department of water that's directly accountable to council. So I would use Walkerton as an example of where privatization can take us.

Mr Beaubien: Our public utilities in my community have elected officials. They're directly elected.

Ms Elwell: Well, then, bravo. I take that qualification. But let me say why, if you have just good standards, that's not enough. That's because NAFTA chapter 11 allows for private sector—you know, it's not going to be Ontario companies that can take advantage of NAFTA. It's going to be foreign companies that use NAFTA chapter 11. They can say, "Your standards are an expropriation of my profit expectations." Barry Appleton just made $8.4 million last week with S.D. Myers on PCBs. This is real life happening out here.

These disputes aren't going to happen in a public court where you can test the evidence and the media can cover it. It's behind closed doors. I can give you countless examples of this. So you see, it's not just a question of "as long as the standards are OK," because those standards can be disputed by foreign investors.

The Chair: Thank you very much. We appreciate you closing off our proceedings here this afternoon.

With that, the committee stands adjourned until Monday, likely at 10 o'clock, in Walkerton.

The committee adjourned at 1801.

Continued from overleaf

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