

The Devolution of Local Water Management Lessons from Ontario and Canada

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I. Introduction

The paper examines the Canadian experience with devolution of local water management to local agencies by senior levels of government. It draws on Canadian experience with devolution in a number of fields related to public safety, including drinking water, the conclusions of Part I of the judicial inquiry into the Walkerton water tragedy, tabled in January 2002,¹ and research conducted for Part II of the Inquiry.²

The paper takes a multi-barrier approach to the protection of local water supplies and systems, considering the implications of devolution for both source water protection and the operation of local water systems. It outlines a series of general criteria for evaluation of service delivery arrangements by governments, drawing on literature and experience from Canada, the United States, United Kingdom, New Zealand and Australia, focussing on issues of performance, and governance, accountability, and democratic values.

A number of examples of devolution of water related-responsibilities to local agencies in Ontario and elsewhere are examined relative to these criteria and the findings of the Walkerton Inquiry. On the basis of this analysis key factors and considerations for the design of future systems are identified.

The paper concludes that these delegations, in general, have been poorly designed and executed, and that public safety and health have been placed at risk as a result. On the basis of this experience, a series of lessons are drawn for consideration in the design of delegations of local water management to local governments and agencies in the future, both in Canada and elsewhere in the world.

II. Local Water Protection: A Multi-Barrier Approach

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Many commentators in Canada and elsewhere have emphasized the importance of multi-barrier approaches to the protection of local water quality. These stress the protection of source waters, as well as the safe operation of local water systems. The functions that comprise a multi-barrier drinking water protection system with respect to municipal and private communal drinking water systems have been defined to include the following elements:³

- The protection of sources of drinking water. This includes source water quantity and quality, and would encompass the regulation of water takings, and the protection of wellheads, groundwater recharge areas, headwaters, and aquifers.⁴
- The setting and regular review and updating of policies, standards and regulations related to drinking water. This includes standards for the quality of drinking water, and the construction, operation and maintenance of waterworks and drinking water distribution systems.
- The licensing and approval of the design, construction and operation of waterworks and drinking water distribution systems.
- The testing of drinking water quality, or the oversight of testing conducted by drinking water system operators or third parties.
- The conduct of inspections of waterworks and water distribution systems.
- The investigation of potential violations of standards or regulations for drinking water quality or water system operations.
- The carrying out of enforcement actions, ranging from requests for voluntary abatement, to administrative orders and the conduct of prosecutions.
- Systems for responses to public complaints regarding water system operations and/or drinking water quality.
- Systems for responding to incidents involving adverse drinking water quality.
- Public reporting of drinking water quality and the compliance of waterworks and systems with prescribed standards.⁵
- The delivery of technical assistance and training and education to drinking water system operators.
- The conduct of research on threats to drinking water quality and supply, and drinking water protection and treatment technologies and systems.
- Oversight and backstopping structures, including the distribution critical information to multiple locations, to ensure that failures of individual actors do not result in serious system failures.

These features are considered essential elements of local water management systems for the purposes of this paper.

III. Evaluative Criteria for the Assessment of Service Delivery

Around the world, governments have been exploring alternatives to delivering public services through traditionally structured ministries and departments. These approaches, sometimes referred to as “alternative service delivery” or “New

Public Management” (NPM)⁶ have taken many different forms. These have included the establishment of partnerships with non-governmental parties in the delivery of services, the devolution of functions to other levels of government, outside agencies or regulated entities themselves, and the creation of self-management systems under which the regulation of a particular economic sector occurs through an organization made up of representatives of the sector

The adoption of these models by governments has not been without controversy. Serious questions have been raised regarding the outcomes seen with these approaches, the reductions in accountability with respect to the use of governmental powers and funds that are seen to be implicit in their design,⁷ and the loss of critical oversight and backstopping structures as a result of their adoption. The poorly designed devolution of responsibility for the testing of drinking water quality from the provincial government to system operators was identified, for example, by the Judicial Inquiry into the Walkerton Tragedy as a major factor in the May 2000 disaster.⁸

In the context of these debates, this paper identifies a series of criteria for evaluating proposals for the use of non-traditional service delivery options in the protection of local water systems, including the devolution of responsibilities for regulation of these systems to system operators. The criteria are established on the basis of the review of the general academic literature and governmental policy statements regarding alternative service delivery arrangements, and more specific commentaries on the application of ASD models to environmental protection, particularly drinking water protection. The latter included examples from Canada, the United States, the United Kingdom, New Zealand and Australia.

The criteria are grouped into two general categories: performance; and governance, accountability and democratic values.

1. Performance

Five main criteria were developed to assess the performance of service delivery models for local water management:⁹

1. *Ability of the model to undertake the required functions, defined in terms of:*
 - The degree to which the service delivery agent can be provided with a mandate and authority sufficient to carry out its assigned functions, particularly in terms of jurisdictional considerations;¹⁰
 - The degree to which the model provides for the service delivery agent with the technical and policy capacity to carry out assigned functions;¹¹ and

- The adequacy and security of the funding base provided by to the delivery agent for the carrying out of assigned functions.¹²

2. *The performance of the model*

- The ability of the model to maintain or improve service in achieving required outcomes.¹³
- The record of the model in terms of level and effectiveness of enforcement activities and compliance rates.¹⁴
- The consistency of protection provided by the model in terms of geographic regions, income groups or economic sectors.¹⁵
- The degree to which the arrangement provides for information flow to facilitate assessments of performance by governments and the public.¹⁶

3. *Ability of the model to deal with the need for interministerial or intergovernmental coordination of policies and activities.*

Fragmentation of program development and delivery is often identified as a significant risk with alternative service delivery arrangements, as elements of these activities are moved outside of the core structures and coordination mechanisms of delegating governments.¹⁷ The need for effective coordination of policy development and implementation has been identified as being particularly important in protecting drinking water sources, as responsibility for this function is often spread among several agencies and levels of government.¹⁸

4. *The ability of the model to provide for policy learning on the basis of operational experience.*

The separation of policy-making and policy-implementation functions is often a major feature of alternative service delivery arrangements, with operational functions being transferred to outside agencies or other levels of government. This is based on the assumption that policy and administrative functions can be separated, and more efficient, non-traditional mechanisms can be used for program delivery (“rowing”) while delegating governments retain responsibility for policy development and direction (“steering”). The intention is to provide better public services at lower cost while maintaining democratic control and accountability over the content of public policy.¹⁹

However, many commentators have challenged assumptions about the degree to which policy and administrative functions can be clearly separated.²⁰ In addition, significant risks have been identified with the practice of “de-coupling” policy development from its operational delivery. The separation of policy development from program delivery may limit opportunities for the modification of policy on the basis of operational experience.²¹ This is seen as a particularly serious problem where policy advisors need detailed knowledge of operational issues to supply good policy advice.²² The ability of government to implement new policies may also be limited without the operational capacity to translate policy into action.

5. *Cost-Effectiveness*

Reduced costs and improved efficiency are frequently cited as major goals of alternative service delivery arrangements.²³ The need to protect local water supplies at reasonable cost is recognized as an important factor in the consideration of delivery options for the purposes of this study.

2. Governance, Accountability and Democratic Values

Governance

6. *A Clear Assignment of Responsibility for Functions, Reporting Relationships and Accountability Mechanisms*

A clear assignment of responsibilities is essential to provide authority to act, and accountability for outcomes.^{24,25} Clear reporting relationships need to be established, and mechanisms created so that corrective action can be taken and enforced by delegating governments in the event of inadequate performance by service delivery agents.

7. *Potential for Conflict of Interest*

Potential conflicts of interest have been highlighted as a significant risk in alternative service arrangements,²⁶ particularly under self-management and devolution models.

8. *Independence vs. Political Control*

Many observers highlight the importance of ministerial involvement and control where coercive state powers or complicated objectives are

involved,²⁷ or where confidentiality, security, equity, and procedural justice considerations are at play.²⁸

On the other hand, the independence provided to an agency outside of the normal departmental or ministry structure has the potential to minimize political interference in decision making and to emphasize organizational and managerial autonomy and flexibility.²⁹ For these reasons, arm's-length agencies have been traditionally used for functions such as the protection or apportionment of public goods, the granting of funds, provision of independent advice, or the operation of programs in a commercial environment.³⁰

Accountability

9. Governmental Oversight and Backstopping Mechanisms

These include requirements that service delivery agents provide information on a regular basis to delegating government agencies regarding their activities and outcomes in their areas of responsibilities. These mechanisms are essential to the capacity of delegating governments to assess the performance of the entities to which they have delegated responsibilities, and identify the need to corrective action. Implicit in this criteria is the capacity of delegating government agencies to understand and analyse the information provided to them, and to formulate and implement measures to address shortcomings,³¹ including the ability to withdraw delegations and re-assume delegated functions themselves.

10. Independent Oversight Mechanisms

These are defined in terms of the structures put in place to control and oversee the exercise of power by the state and its agents, and to ensure that authoritative and coercive powers of the state are not abused or misused.³² The loss of these types of mechanisms has been highlighted as a major concern in alternative service delivery arrangements. With alternative delivery arrangements, functions may be transferred to private actors or other levels of government to which these control and oversight mechanisms do not apply, or explicit exemptions may be provided to the alternative service providers.³³ Oversight mechanisms include:

- provision for independent audits of operations, including evaluations of performance (value for money) and public reporting of findings;

- systems for the resolution of complaints, including provisions for their independent investigation and resolution, through such mechanisms as legislative ombudsmen;
- the applicability of freedom of information and protection of privacy legislation;
- the applicability of legislative requirements that considerations such as environmental sustainability or sustainable development be taken into account in decision making, and mechanisms for the independent review of performance in light of these requirements, such as Environmental Commissioners;³⁴
- requirements for the registration of lobbyists interacting with the service delivery agent;³⁵

11. *Public Oversight Mechanisms*

Over the past few years there has been growing acceptance of the importance of the provision of information on system performance and outcomes directly to the public, permitting the formulation of assessments of system performance and needs outside of government.³⁶

12. *Legal Accountability*

In addition to the foregoing oversight and control mechanisms, government agencies are also subject to a range of formal, judicially enforceable statutory and common law mechanisms. These rules have developed, in some cases over centuries, to ensure the just and fair administration of laws, policies and programs by government, and for dispute resolution in accordance with the principles of natural justice. As such they also represent important restraints on the arbitrary use of power by the state. However, important questions arise regarding the status of these rights where governmental functions are moved out of direct delivery structures, particularly to private sector actors, to whom they have not traditionally been understood to apply.³⁷

For the purposes of this study, legal accountability issues with respect to ASD options are assessed in terms of the following dimensions:

- Public law principles, which generally concern relations between the state and the individual, addressed by administrative law protections, including statutory protections³⁸ regarding decisions, and the applicability of rights of appeal, fairness and natural justice in decision-making.

- The potential liability of service delivery agents, and of the government relying upon them to deliver services, particularly with respect to regulatory negligence; and
- The status of prosecutions undertaken by an entity as being on behalf of the state or as private prosecutions, and the applicability of Attorney-General's directives to the conduct of prosecutions by the entity.³⁹

11. *Facilitation of policy discourse and dialogue*

Public debate and input into the formulation and implementation of public policy is an important feature of democratic societies. Different service delivery arrangements may limit, discourage, or even prevent open discussion and debate on matters of public interest.

Alternative service delivery arrangements may also place particular interests in positions of power to influence policy formulation and implementation relative to other stakeholders or even governments themselves.⁴⁰

Summary of Evaluative Criteria

Performance	Governance/Accountability/ Democratic Values
<p>1. Ability to Undertake Required Functions</p> <ul style="list-style-type: none"> • Mandate and authority • Technical and policy capacity • Funding base <p>2. Performance</p> <ul style="list-style-type: none"> • Outcomes • Enforcement Record • Consistency of Protection • Information Flow <p>3. Interministerial and Intergovernmental Coordination Capacity</p> <p>4. Capacity for policy learning on the basis of operational experience</p> <p>5. Cost-Effectiveness</p>	<p>Governance</p> <ol style="list-style-type: none"> 1. Clear Assignment of Responsibility Reporting Relationships, and Accountability Mechanisms 2. Potential for Conflict of Interest 3. Independence vs. Political Control <p>Accountability and Oversight</p> <ol style="list-style-type: none"> 4. Governmental Oversight and Backstopping Mechanisms 5. Independent Oversight Mechanisms <ul style="list-style-type: none"> • Audit • Freedom of information • Ombudsman • Lobbyist Registration • Environmental Commissioner 6. Public Reporting 7. Legal Accountability <ul style="list-style-type: none"> • Administrative Law Protections • Liability • Prosecutions <p>Democratic Values</p> <ol style="list-style-type: none"> 8. Facilitation of policy discourse and dialogue.

VI. Models of the Devolution of Local Water Management

For the purposes of this study, four alternatives to direct service delivery for local water management by a ministry of a senior level of government were examined for the purposes of this study. These were:

- De facto devolution to local governments and system operators (Ontario 1995-2000);
- Formal devolution, either to:
 - local governments; or
 - system operators; and
- industry self-management.

For each alternative, a definition is provided; examples of the use of the model from Canada, the United States and other jurisdictions are identified; and ways in which the model might be applied to the case of drinking water protection are described.

1. *De Facto* Devolution to System Operators

Definition

Regulation of local water systems provided by an agency of a senior level of government. Regulation occurs in context of significant budgetary reductions, reductions in capacity of senior government agency, and agenda of de-regulation.

Example

Drinking water protection arrangements in Ontario between 1996 and 2000, as described in the report of Part I of the Walkerton Inquiry.

Key Features of the Model

Structure and Functions

- Senior level of government sets policies, standards and regulations related to drinking water, including system design and operation and drinking water quality.
- Senior level of government approves construction and operation of waterworks and systems, and certification of system operators.
- Senior level of government has responsibility for inspection of waterworks and systems, investigation of potential violations of standards or regulations, and carries out enforcement actions.

- In practice, inspections rarely occur (once per four years),⁴¹ a “voluntary” approach to compliance/abatement is followed when violations are identified. Administrative orders or prosecutions rarely employed against system operators.⁴²
- Non-regulatory functions of senior level of government with respect to local water management are terminated or privatized. This may include training and technical assistance and support to system operators, and activities such as laboratory services for routine testing of drinking water quality.
- Failsafe and backstopping mechanisms, such as the reporting of adverse findings of water quality by testing agencies to points of contact other than the system operator (e.g. relevant offices of senior government regulating agency, and local health departments and Medical Officers of Health) are removed either as a *de-facto* result of privatization of aspects of the system,⁴³ or as deliberate policy decisions to eliminate “red tape” or duplication and overlap.⁴⁴
- No regular public reporting mechanisms re: drinking water quality
- Responsibility for source water protection is shared among multiple agencies (e.g. in Ontario Ministries of Environment, Natural Resources, Municipal Affairs and Housing, Agriculture, Food and Rural Affairs, Northern Development and Mines, and local agencies (see local water management paper), although coordination structures and clear policy mandates regarding water management are missing.

Funding

- Senior government functions are funded through general tax revenues, although cost recovery has been introduced for some approval functions.
- Senior government capital and operating cost assistance to local system operators terminated.
- System operations, including capital costs, funded through water charges and local tax base.

2. Formal Devolution to Local Governments or System Operators

Definition

Senior Level of Government transfers major aspects of responsibility for regulating local water systems to local governments or system operators themselves.

Examples

In the case of Ontario devolution of regulatory functions in Ontario has taken a number of different forms. In the case of the Ministry of Natural Resources, certain regulatory functions such as inspection, compliance monitoring and reporting have been devolved to the regulated firms and industries. This

model has been followed in such areas as forestry, aggregates, petroleum resources, commercial fisheries, fur and baitfish.⁴⁵

The government of Ontario has also devolved certain regulatory functions to other levels of government. Responsibility for the approval and inspection of septic systems was transferred from the Ministry of the Environment to municipal governments by the *Services Improvement Act, 1997*, which came into force in April 1998.⁴⁶ Prior to this, Conservation Authorities and Public Health Units had carried out these responsibilities in some areas, under contract with the Ministry of the Environment.⁴⁷

Environmental protection responsibilities have been devolved extensively to local agencies in a number of other jurisdictions, notably New Zealand and the Scandinavian countries. In the case of New Zealand, the national Ministry of the Environment is limited to an advisory and monitoring role, with implementation and enforcement of national legislation and policies being the responsibility of local and regional councils.⁴⁸

Key Features of the Model

Option 1: Self-Inspection by System Operators (MNR Natural Resources Sector Model)

Structure and Functions

- Senior level of government would retain responsibility for setting policies and for standards and regulations, approvals, investigation and enforcement actions.
- Municipalities and private communal system owners would be responsible for inspecting their own waterworks and water distribution systems for compliance with senior government requirements, and reporting results to senior level of government. Regular senior government ministry inspections of facilities would cease.
- Senior level of government would nominally oversee and monitor inspection and reporting by municipalities and private owners.
- Source water protection responsibilities would be unchanged, and continue to be shared between Ministry of the Environment and other Ministries.⁴⁹

Funding

- System operators would fund inspection and reporting functions via property taxes, water bills or membership fees or levies (in case of private systems).
- Senior Government functions related to approvals, investigations and enforcement, policy and standard setting, and technical assistance and training could be funded through a combination of cost recovery (for approvals and training and technical assistance) and general revenues.

Option 2: Devolution of Responsibility for Regulation of Private Communal Water Systems to Local Governments (Ontario Septic Systems Model)

Structure and Functions

- Senior level of government would retain responsibility for setting policies and for standards and regulations.
- Senior level of government retains responsibility for approval and inspection of municipally operated water systems.
- Approval and compliance inspection responsibilities for small private communal water systems⁵⁰ and private wells and sewage (e.g. septic) systems, devolved to local government agencies (e.g. municipal building inspection and health departments).
- Under current Ontario model for septic systems, no senior government support or oversight to local agencies is provided. (e.g. no technical assistance or training for local inspectors, no requirements that local agencies conducting approvals and inspections report on activities to senior levels of government).

Funding

- Approvals and inspections by local government agencies funded through cost recovery or local property taxes.
- Senior Government functions related to policy and standard setting funded through general revenues.

3. Delegated Administrative Authority/Self-Management

Definition

- Government delegates authority for administering specified legislation, regulations and standards (e.g., approvals, inspection and enforcement) to a non-profit corporation with a majority of its directors being representative of the regulated sector (e.g., in the case of drinking water, municipalities and private communal system owners), and a minority being Ministerial appointees.⁵¹
- Staff of the corporation are not civil servants.
- In some cases, standards and policy development have been delegated to the corporation, subject to Ministerial or Cabinet approval.
- The corporation is self-financing through the recovery of fees for service.

Examples

Delegated Administrative Authority/Industry self-management model has been employed extensively by both the Ontario and Alberta governments since the early 1990s. In Ontario prominent examples include the Technical

Standards and Safety Authority, responsible for the public safety regulation of elevating devices, amusement rides, boilers and pressure vessels, and underground storage tanks for fuels,⁵² and the Electrical Standards Authority, which regulates the safety of electrical equipment and installations.⁵³

In Alberta, delegated administrative organizations (DAOs) have been created to regulate such things as petroleum storage tanks,⁵⁴ boilers⁵⁵ and amusement rides.

Key Features of the Model

Structure and Functions

- Authority would approve waterworks and systems.
- Authority would conduct inspections and investigations and carry out enforcement actions.
- Authority would oversee drinking water testing by operators or third parties.
- Authority would report on drinking water quality (in combination with system operators under Drinking Water Regulation) and system compliance with provincial standards.
- Authority would provide mechanisms to respond to complaints about drinking water quality and adverse drinking water incidents.
- Authority could have responsibility for development of standards for system construction, operation and maintenance, subject to government approval, as is the case *de facto* with TSSA and *de jure* with ESA.⁵⁶
- Government would retain responsibility for development and approval of drinking water standards, and overall drinking water policies.
- Government would need to oversee and monitor authority performance,⁵⁷ and would require retained capacity to do so.
- Source water protection responsibilities would be unchanged, and continue to be shared between Ministry of the Environment and other Ministries.⁵⁸

Funding

- As for existing DAA/DAO models, approvals, inspection, training and technical assistance functions would be funded on a cost-recovery basis.
- General revenues would be required for government policy, oversight and monitoring functions.

V. Assessment of Models Against Criteria

In the following tables each of the four models for drinking water protection is assessed against the evaluative criteria outlined in section 3. In the first group of tables, the models are evaluated against performance criteria, and in the second group, they are assessed against criteria for governance, accountability and democratic values.

The evaluative commentaries are based on documented current practice and experience with the use of models in Ontario or other jurisdictions, including the findings of Part I of the Walkerton Inquiry, and independent evaluations of examples of the models in practice undertaken by Auditors-General, legislative ombudsmen, academics, and non-governmental organizations as cited.

**Local Water Management Service Delivery Options
Evaluation Tables**

Model	Ability to Undertake Function	Performance and Outcomes	Interagency Issue Capacity and Policy Learning Capacity	Cost-Effectiveness
<p>De facto Devolution</p> <p>Example:</p> <p>Ontario Ministry of the Environment, September 1996 – August 2000</p>	<p>Authority/Scope of Mandate: Strong legislative authority re: water works approvals and regulation. Significant gaps in existing authority and role regarding source protection⁵⁹ (e.g., agricultural waste exemptions from EPA,⁶⁰ reduced role in land use planning post-Bill 20⁶¹).</p> <p>Policy/Technical Capacity: Strongest among existing agencies, but significant gaps have emerge post-1995 as a result of budgetary reductions in areas of policy and standards development, monitoring and inspection, and non-regulatory support functions.⁶² Decision to terminate routine drinking water testing and leave system operators to make arrangements with private laboratories driven by budgetary considerations.⁶³</p> <p>Funding Security: Key weakness is vulnerability of budget as demonstrated by impact of post 1995 budget reductions.⁶⁴</p>	<p>Outcomes: Significant failures regarding drinking water protection (e.g., Walkerton), major gaps re: small sources,⁶⁵ and oversight role generally.⁶⁶</p> <p>Consistency of Protection: Some evidence re: regional variations in protection, staff allocations not in accordance with regional needs.⁶⁷</p> <p>Enforcement: Historically not strong re: drinking water.⁶⁸ Collapse of inspection and enforcement effort post-1995 documented by Provincial Auditor in 2000 Report⁶⁹ and focus on voluntary abatement highlighted by Walkerton Inquiry.⁷⁰</p> <p>Information Flow: Information flow fell off post- 1995 as a result of reduced inspections. Major gaps in information management systems identified by Walkerton Inquiry. Approval, inspection records on water systems not in accessible or useable forms.⁷¹ Key information (e.g. inspection reports) not shared with key actors (e.g. water system operating authorities and owners, local Medical Officers of Health).⁷²</p>	<p>Interagency Capacity: As full Ministry, Ministry is present on Cabinet committees and consulted routinely in government policy development processes. Capacity to affect horizontal issues limited by restricted role in land-use planning⁷³ and changes to Environmental Assessment Process.⁷⁴</p> <p>Policy Learning Capacity: Operational and policy functions present within Ministry. Opportunities for policy learning on basis of available operational experience. However, in practice fall off in inspections of local water systems post-1995 resulted in very limited information flow regarding local water systems.</p>	<p>Reductions in costs were major driver of decisions reduce oversight and support functions with respect to local water management.</p>

Overall Assessment	Key weaknesses are lack of adequate source protection mandate, lack of clear institutional focal point on drinking water, and vulnerability of budget.	Significant gaps re: drinking water quality	Institutional capacity for both horizontal policy coordination and policy learning on basis of operational experience.	Current funding levels below what is required to carry out function. Other models transfer costs elsewhere but do not reduce them directly.
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Model	Governance	Accountability and Oversight	Democratic Values
<p>De facto Devolution</p> <p>Example:</p> <p>Ontario Ministry of the Environment, September 1996 – August 2000</p>	<p>Assignment of Responsibility and Reporting Relationships: Clear responsibility re: regulation of drinking water providers on part of Ministry via OWRA. Responsibility re: source water protection divided among several agencies (MoE, MNR, MMAH, OMAFRA, MNM, MTO).</p> <p>Very Clear reporting/accountability structure. Minister of the Environment responsible for regulation of drinking water providers. Answerable to Legislature and ultimately the electorate. Opportunities for legislative oversight of Ministry activities via Committees and estimates,⁷⁵ although legislature and public not informed of risks to human health and the environment associated with 1995 budgetary decisions.⁷⁶</p> <p>Conflict of Interest: Transfer of drinking water operations to OCWA partially addressed issue. Ministry no longer operates sewer and water systems itself.⁷⁷</p> <p>Independence vs. Political Control: Very strong Ministerial control.</p>	<p>Independent Oversight Mechanisms: Provincial Auditor, Environmental Commissioner/EBR, Freedom of Information, Ombudsman, Integrity Commissioner apply. Auditor and Environmental Commissioner have reported on local water management issues.</p> <p>Public Reporting: Public reporting on drinking water quality and local system performance absent until adoption of post-Walkerton drinking water protection regulation.⁷⁸</p> <p>Legal Accountability: <i>Charter</i>, all admin law protections apply, potentially liable for regulatory negligence, although limited by Bill 57 provisions, prosecutions are public and subject to Attorney-General's Directives.</p>	<p>Facilitates Policy Discourse: <i>Environmental Bill of Rights</i> requires public notice and comment re: policy, regulations, legislation, and approvals. Public notice mechanisms have been eroded through adoption of exemptions from approval requirements,⁷⁹ devolution of functions to other agencies (e.g. devolution of regulation of septic systems to local governments).</p> <p>Dissolution of all Advisory Committees in 1995⁸⁰ reduced opportunities for informed discourse re: policy needs and initiatives.</p> <p>Absence of public information regarding drinking and source water quality and system performance a significant barrier to policy discourse.</p>
<p>Overall Assessment</p>	<p>Key weakness is weak and diffused mandates regarding source protection.</p>	<p>Clear and extensive accountability framework, although public reporting on water quality and water system performance lacking until post-Walkerton.</p>	<p>General duty to treat all stakeholders equally, although there has been erosion of public consultation requirements and drift back towards close relationships with certain economic sectors in recent years (e.g., REVA)</p>

Model	Ability to Undertake Function	Performance and Outcomes	Interagency Issue Capacity and Policy Learning Capacity	Cost-Effectiveness
<p>Devolution Option 1 – Self Inspection by System Operators.</p> <p>Examples:</p> <p>Ontario Natural Resources Industries</p>	<p>Authority/Scope of Mandate: Typically very narrow and not designed to address horizontal and cross-agency issues, such as source water protection. Focus is on self-inspection and reporting.</p> <p>Policy/Technical Capacity: Significant gaps in local agency capacity (policy and technical) identified in New Zealand.⁸¹</p> <p>Funding Security: Uncertain. Assignment of adequate resources likely a function of the level of ongoing oversight provided by senior levels of government.</p>	<p>Outcomes: Concerns re: effectiveness of self-monitoring for forestry raised by Provincial Auditor in Ontario.⁸²</p> <p>Difficulties in assessing outcomes in NZ due to lack of information flow to Ministry of the Environment.⁸³</p> <p>Consistency of Protection: Significant potential for variation as a function of local will and resources.</p> <p>Enforcement: Relies on information reported by regulated entities regarding their own operations. Significant problems identified in Ontario MNR case.</p> <p>Information Flow: Evidence of significant problems. Inadequate information flow for assessment in New Zealand,⁸⁴ MNR self-monitoring arrangements.⁸⁵</p>	<p>Interagency Capacity: Very limited. In Ontario examples, delivery agencies are not part of provincial government.</p> <p>Policy Learning Capacity: Very limited, as operations and field knowledge and observations arising from inspections are de-coupled from policy and oversight functions retained by senior governments.</p>	<p>Reduced costs to regulatory agencies, but significant loss of direct knowledge of what is happening in the field.</p> <p>Inspection costs transferred in theory to delegated industries or municipalities rather than eliminated; long-term environmental costs of devolution are a result of less effective enforcement may increase.</p> <p>Requires significant senior government oversight and backstopping capacity to ensure effectiveness.</p>
<p>Overall Assessment</p>	<p>Significant weaknesses re: jurisdiction and scope of mandate, especially re: source water protection, capacity, funding base.</p>	<p>Evidence of problems with performance of delegated agencies, although data for assessment often lacking</p>	<p>Little or no capacity for horizontal policy coordination with senior levels of government; significant potential problems associated with de-coupling policy and operations.</p>	<p>Transfers revenue raising and costs to delivery agents; may require increased costs for oversight and monitoring by delegating agencies, eliminating supposed advantage of cost saving.</p>

Model	Governance	Accountability and Oversight	Democratic Values
<p>Devolution Option 1 – Self Inspection by System Operators.</p> <p>Examples:</p> <p>Ontario Natural Resources Industries</p>	<p>Assignment of Responsibility and Reporting Relationships: Typically clearly defined and limited to inspections for compliance reporting.</p> <p>Conflict of Interest: Significant potential for conflicts when industry and operators self-monitor and self-report.</p> <p>Independence and Political Control: Significant loss of political/government control, transfer to agents in potential conflict of interest situations.</p>	<p>Government Oversight and Backstopping Mechanisms. Inspection reports provided to delegating government. Concerns re: timeliness of information and capacity to use for enforcement purposes.</p> <p>In Ontario experience, no capacity to withdraw self-monitoring regime if performance inadequate unless backstopping capacity maintained by Ministry</p> <p>Independent Oversight Mechanisms: Provincial audit authority does not apply to agents carrying out functions, although oversight activities by province can be audited.⁸⁶</p> <p>Status of reports under Freedom of Information legislation uncertain.⁸⁷</p> <p>Public Reporting: Public reporting on outcomes limited.</p> <p>Legal Accountability: Uncertain.⁸⁸ Issues of timeliness of reporting of violations have arisen with MNR arrangements.⁸⁹</p>	<p>Facilitates Policy Discourse: No; places regulated entities carrying out functions in significant power position vis a vis all other stakeholders. Also places self-inspecting facilities in position of having information not held by government or other stakeholders.</p>
<p>Overall Assessment</p>	<p>Significant potential for conflict of interest.</p>	<p>Uncertainties re: applicability of oversight mechanisms. Capacity of delegating government to withdraw delegation in event of non-performance limited by level of backstopping capacity maintained.</p>	<p>Places regulated entities in significant power position relative to other stakeholders and government.</p>

Model	Ability to Undertake Function	Performance and Outcomes	Interagency Issue Capacity and Policy Learning Capacity	Cost-Effectiveness
<p>Devolution Option 2: <i>Devolution of Responsibility for Regulation of Private Communal Water Systems to Local Governments</i></p> <p>Examples: Ontario Septic Systems</p>	<p>Authority/Scope of Mandate: Typically very narrow and not designed to address horizontal and cross-agency issues, such as source water protection.</p> <p>Policy/Technical Capacity: Significant gaps in local agency capacity (policy and technical) identified in New Zealand.⁹⁰</p> <p>Concerns over capacity re: municipal regulation of septic systems in Ontario, especially health and environmental expertise vs. building code aspects.⁹¹</p> <p>Technical and policy support by senior government almost totally lacking in Ontario septic case.</p> <p>Funding Security: Uncertain. Assignment of adequate resources by local government likely a function of the level of ongoing oversight and support provided by senior governments.</p>	<p>Outcomes: Concerns re: septic systems regulation in Ontario raised by health units, OPSEU regarding lack of technical capacity in local agencies carrying out function.⁹²</p> <p>Difficulties in assessing outcomes in NZ due to lack of information flow to Ministry of the Environment.⁹³</p> <p>Consistency of Protection: Significant potential for variation as a function of local will and resources.</p> <p>Enforcement: Levels of enforcement activity to audit results of local government approval and inspection activities typically limited by resource limitations within delegating agencies.⁹⁴</p> <p>Information Flow: Evidence of significant problems. Inadequate information flow for assessment in New Zealand,⁹⁵ and with Ontario septic systems.⁹⁶</p>	<p>Interagency Capacity: Very limited. In Ontario examples, delivery agencies are not part of provincial government.</p> <p>Policy Learning Capacity: Very limited, as operations and field knowledge and observations by approving and inspection agencies are decoupled from policy and oversight functions retained by senior level of government.</p>	<p>Reduced costs to senior government agencies, but significant loss of direct knowledge of what is happening in the field.</p> <p>Inspection costs transferred in theory to municipalities rather than eliminated; long-term environmental costs of devolution, as a result of less effective oversight and monitoring may increase.</p> <p>Requires significant Senior government oversight and backstopping capacity to ensure effectiveness.</p>
<p>Overall Assessment</p>	<p>Significant weaknesses re: jurisdiction and scope of mandate, especially re: source water protection, capacity, funding base.</p>	<p>Evidence of problems with performance of delegated agencies, although data for assessment often lacking</p>	<p>Little or no capacity for horizontal policy coordination with senior levels of government; significant potential problems associated with de-coupling policy and</p>	<p>Transfers revenue raising and costs to delivery agents; may require increased costs for oversight and monitoring by delegating agencies, eliminating supposed</p>

			operations.	advantage of cost saving.
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Model	Governance	Accountability	Democratic Values
<p>Devolution Option 2:</p> <p><i>Devolution of Responsibility for Regulation of Private Communal Water Systems to Local Governments</i></p>	<p>Assignment of Responsibility and Reporting Relationships: Typically clearly defined and limited mandate.</p> <p>Conflict of Interest: Potential for conflicts limited, as local governments would be approving and inspecting activities of third parties.</p> <p>Independence vs Political Control: Significant loss of control by senior level of government.</p>	<p>Government Oversight and Backstopping Mechanisms: With Ontario septics no requirements for local governments to report to delegating governments on activities or performance.</p> <p>No capacity by senior level of government to withdraw delegation if performance inadequate unless backstopping capacity maintained.</p> <p>Independent Oversight Mechanisms: Provincial audit authority does not apply to agents carrying out functions, although oversight activities by province can be audited.⁹⁷</p> <p>Inspection reports would be covered by Municipal Freedom of Information legislation where it is in place.⁹⁸</p> <p>Public Reporting: No public reporting on activities or performance by province or delegated local agencies.</p> <p>Legal Accountability: <i>Charter</i>, all admin law protections apply, potentially liable for regulatory negligence as bodies carrying out approvals and inspections are government agencies.</p>	<p>Facilitates Policy Discourse: EBR notice and comment provisions do not apply to approvals being granted by local governments.</p> <p>Lack of reporting on delegated government activities to senior governments and public make policy discourse difficult. Fragmentation of decision-making at local level makes identification of problems and need for changes to legislative/policy framework provided by senior levels of government difficult.</p>
Overall Assessment	Concern re: ability of delegating government to hold delegated government to account for performance in absence of ability to withdraw delegation	Oversight by senior government totally lacking in Ontario septics case, no provisions for public reporting on system performance.	Provides little opportunity for public discourse in absence of information about activities, performance and outcomes achieved by local agencies.

Model	Ability to Undertake Function	Performance and Outcomes	Interagency Issue Capacity and Policy Learning Capacity	Cost-Effectiveness
<p>Self-Management/ Delegated Administrative Authority (DAA)</p> <p>Examples:</p> <p>Technical Standards and Safety Authority (TSSA)</p> <p>Electrical Safety Authority (ESA)</p> <p>Petroleum Tank Management Association of Alberta (PTMAA)</p> <p>Alberta Boiler Safety Association (ABSA)</p>	<p>Authority/Scope of Mandate: Operations and policy split, with authority having operational mandate only. Source water protection issues unlikely to be addressed through DAA.</p> <p>Policy/Technical Capacity: Technical capacity high, policy capacity also present in Ontario Agencies. Partially function of agency scale. (Some Alberta DAOs may be too small to have adequate technical/policy capacity).⁹⁹</p> <p>Funding Security: Self-funding through fees for inspections and approvals. Funding security a major rationale for Ontario DAAs.¹⁰⁰</p>	<p>Outcomes: Limited assessments to date. Available data indicate no significant change from pre-delegation period (TSSA shows steady improvement but trend pre-dates delegation in 1997).¹⁰¹ Alberta boiler inspection backlog worsened after delegation to ABSA.¹⁰²</p> <p>Consistency of Protection: No evidence to date of regional or sectoral variations, although fragmentation of functions among different, small DAOs in Alberta raises possibility. TSSA has multiple sectoral coverage on Board, which may limit degree to which any given sector may be favoured.</p> <p>Enforcement: Limited records to date. Indication of "softer" initial approach by TSSA.¹⁰³</p> <p>Information Flow: Fairly strong with TSSA, although capacity of overseeing agencies to assess and oversee limited.¹⁰⁴</p> <p>Significant problems identified with Alberta DAOs by Auditor¹⁰⁵ improved by 1997-98 but still gaps.¹⁰⁶</p>	<p>Interagency Capacity: Very limited relative to Ministry. Relies on Ministry and Minister to represent interests and concerns in interministerial and Cabinet processes</p> <p>Policy Learning Capacity: Limited by policy and operations split underlying model. DAA is operations, MCBS is policy</p>	<p>Marginal loss of efficiency in case of TSSA. Had to recreate administrative services previously provided by government ministry (finance, personnel, legal). Additional revenues have gone to these purposes.¹⁰⁷</p> <p>Requires significant provincial oversight and backstopping capacity to ensure protection.¹⁰⁸</p> <p>Transfer of drinking water functions to DAA would weaken overall capacity of delegating agency.</p>
<p>Overall Assessment</p>	<p>Strength of model is secure funding base for activities, but</p>	<p>No evidence of improved performance. Performance has</p>	<p>Very limited capacity for horizontal policy coordination</p>	<p>Marginal decrease in efficiency due to need to</p>

Model	Ability to Undertake Function	Performance and Outcomes	Interagency Issue Capacity and Policy Learning Capacity	Cost-Effectiveness
	is limited to functions for which cost-recovery is possible (e.g., approvals, inspections)	remained largely as it was pre-delegation.	and experience-based policy learning, due to de-coupling policy from operations (with some exceptions).	provide for separate administrative infrastructure. Potentially significant costs in provision of adequate oversight by government.

Model	Governance	Accountability and Oversight	Democratic Values
<p>Self-Management/ Delegated Administrative Authority</p> <p>Examples:</p> <p>Technical Standards and Safety Authority</p> <p>Electrical Safety Authority</p> <p>Alberta Petroleum Tank Management Board</p> <p>Alberta Boiler Safety Association.</p>	<p>Assignment of Responsibility and Accountability Mechanisms: Scope of mandate clear, policy direction and policy/operations split less certain. Significant uncertainty re: accountability of Minister, Board and CEO for outcomes. No mechanisms for Minister to remove industry-appointed directors, no link between directors and electorate.</p> <p>Conflict of Interest: High potential, given role of regulated industries on Boards of Directors.</p> <p>Independence vs Political Control: High level of independence, particularly in absence of clear legislative or policy direction in founding documents.</p>	<p>Government Oversight and Backstopping Mechanisms: Government oversight mechanisms typically include requirements for business plans and annual reports in delegation agreements.¹⁰⁹ Significant questions about capacity of delegating governments to assess/manage information provided.</p> <p>No ability for delegating government to withdraw delegation if performance inadequate unless backstopping capacity maintained.</p> <p>Independent Oversight Mechanisms: Audit, Freedom of Information, Lobbyist Registration Ombudsman not applicable under Ontario models. EBR applicable by special arrangement (TSSA).</p> <p>Public Reporting: Some public information provided in annual reports, although public access to information is limited, as regulating agencies are private bodies.</p> <p>Legal Accountability:¹¹⁰ Significant uncertainties.</p> <p>Administrative law protections uncertain; although recent jurisprudence (<i>Comité, Elbridge</i> cases) suggest <i>Charter</i> protections will apply.</p> <p>Status re: regulatory negligence uncertain, may not have policy defence.</p> <p>Status of prosecutions in TSSA major</p>	<p>Facilitates Policy Discourse: Role of industry on board puts it in unique position to influence authority direction. Reinforces ties between regulator and regulated entities.</p>

		issue. Crown Policy Manual not applicable.	
Overall Assessment	Significant conflict of interest concerns.	<p>Significant gaps in accountability framework.</p> <p>Concern re: ability of delegating government to hold authority to account for performance in absence of capacity to withdraw delegation and re-assume functions itself.</p>	Places regulated sectors in unique position to influence policy and operations.

V. Conclusions and Lessons for the Future

Walkerton disaster and subsequent inquiry have revealed important lessons about relationships between senior and local governments regarding local water system management. Inquiry has provided an opportunity to investigate not only the drinking water safety arrangements in Ontario as of May 2000, but also a number of other models under which senior levels of government have delegated key functions to local agencies or regulated entities themselves.

On the basis of the work of the Inquiry, and previous assessments of various delegation arrangements by Provincial Auditors, Environmental Commissioners, members of the academic community and non-governmental organizations, four delegation models employed in Ontario were assessed against criteria of performance, and governance, accountability and democratic values.

The key findings with respect to these models are summarized in the following table:

Model	Performance	Governance and Accountability	Comments
<i>De Facto Devolution</i>	<p>Significant failures (e.g., Walkerton). Vulnerability of funding base drove decisions to reduce inspections/oversight of local system operators, and to terminate key support structures, such as laboratory services.</p> <p>Significant gaps in information management systems also a factor in failures.</p>	<p>Extensive accountability framework, although lack of public reporting was a significant gap.</p> <p>Absence of external advisory structure weakened capacity to identify emerging problems/threats.</p>	<p>Drinking water protection regulation as addressed gaps re: testing and notification, public reporting on drinking water quality.</p> <p>Significant gaps remain regarding source water protection, Ministry inspection and oversight capacity, information systems, training requirements for system operators, financial assistance for system capital upgrades.</p>
Formal Devolution <i>Option 1 – Self Inspection by System Operators.</i>	<p>Available evaluations of performance suggest possible weaknesses, although information available for assessment limited. Little capacity for horizontal policy coordination; policy and operations de-coupling problems; costs may increase due to need for significant senior government oversight functions.</p>	<p>Significant potential for conflict of interest.</p> <p>Applicability of oversight mechanisms unclear.</p> <p>Places regulated entities carrying out monitoring and reporting functions in very strong power position, relative to other stakeholders.</p>	<p>Not appropriate model for municipal drinking water regulation due to conflict of interest issues, performance problems.</p>
Formal Devolution <i>Option 2 -</i>	<p>Available information suggests significant capacity problems with</p>	<p>No effective oversight structure established by senior government re:</p>	<p>Devolution to local governments may be viable approach for private</p>

Model	Performance	Governance and Accountability	Comments
<i>Devolution of Responsibility for Regulation of Private Communal Water Systems to Local Governments</i>	<p>existing delegation of regulation of septic systems. Required provincial support structures (training, policy guidance, and financial support) not provided.</p> <p>Little capacity for horizontal policy coordination; policy and operations de-coupling problems; costs may increase due to need for significant senior government oversight functions.</p>	<p>performance of agencies to whom function is delegated. No reporting framework on activities or outcomes, no public reporting, no backstopping capacity at senior government level.</p>	<p>communal water systems, private wells, as well as septic systems, with appropriate (engineering, health and environmental) training for inspectors and senior government support and oversight mechanisms (not currently in place re: septic systems).</p>
Delegated Administrative Authority	<p>Strength of model is security of funding base for certain functions (removed from governmental budgeting process).</p> <p>No evidence of improved outcomes. Marginal loss of efficiency, which is likely to be increased if adequate senior government oversight provided.</p> <p>Capacity for interagency coordination very limited, significant potential policy and operations de-coupling problems.</p>	<p>Conflict of interest issues significant.</p> <p>Accountability of Minister, board, CEO unclear.</p> <p>Control and oversight mechanisms generally not applicable.</p> <p>Status re: legal accountability issues uncertain.</p> <p>Places regulated sectors in unique position to influence policy and operations.</p>	<p>De-coupling issues, weak interagency coordination capacity, conflict of interest, accountability gaps make model inappropriate for drinking water protection functions.</p> <p>Accountability gaps need to be addressed before further use made of the model.</p>

Significant weaknesses are identified with each of the models. The government of Ontario's *de facto* devolution of the regulation of local water systems to system owners and operators after 1995 in many ways provides a case study in poorly designed and implemented delegation. The result was a major public health disaster. In the Ontario case, the province withdrew all of its non-regulatory support mechanisms to local system operators, such as financial assistance, operator training, and laboratory services, while at the same time dramatically reducing its inspection activities. The impacts of the withdrawal of non-regulatory supports, particularly laboratory services, on the flow of critical information, specifically the results analyses of drinking water quality to key actors, such as local health officials, were not assessed prior to their termination. When provincial and local officials identified resulting gaps in the information flow, steps were not taken to correct the situation, due to concerns over costs, and

governmental policy directions not to adopt new regulatory requirements, particularly with respect to the gathering and reporting of information.

The Ontario government's devolution of responsibility for the regulation of septic systems to municipal governments provides a second example of the poorly designed delegation of water management functions to local agencies. In this case, responsibilities were devolved with no effort to assess the capacity of local government agencies to assume the functions in question, no mechanisms were established to provide training or technical assistance to local officials to whom responsibilities were delegated, and no reporting, oversight or backstopping structures were established by the province with respect to the delegated activities of local agencies. Major gaps have subsequently been identified in the capacity of local agency inspectors to conduct adequate inspections of septic systems, particularly with respect to their health and environmental aspects. The model also results in the separation of provincial-level policy-making functions from the operational experience gained through inspections, and makes no provision for the transfer of this knowledge into the policy process.

Ontario's compliance self-inspection model, whereby regulated entities conduct inspections on their own compliance with regulatory requirements and report the results to regulating agencies, has not been subject to a detailed assessment to date. The model has been widely applied to the province's natural resources industries, including forestry, gravel pits and quarries, oil and gas, commercial fisheries, baitfish and fur. However, preliminary reviews by the province's Environmental Commissioner and Auditor have raised concerns over the effectiveness of this model, and there appear to be significant problems related to conflict of interest, and public reporting and access to information. As with the delegation of inspections of septic systems, the model may result in significant losses of inputs of operational experience and knowledge gained through field inspection activities into the provincial-level policy process.

The delegated administrative authority model has been adopted by Ontario and Alberta with respect to the public safety regulation of a wide range of industries, such as underground storage tanks, elevators, amusement rides, and boilers and pressure vessels. Under this model, non-for-profit corporations whose boards of directors are dominated by representatives from the regulated industries carry out regulatory functions, such as approvals, inspections and enforcement actions. The model has been subject to a number of detailed assessments. These have raised concerns regarding the conflicts of interest inherent in the design of the authorities, the resulting outcomes, the lack of adequate backstopping and oversight capacity on the part of the delegating governments, and in Ontario, the loss of independent oversight mechanisms, such as the Provincial Auditor, and Freedom of Information legislation, relative to the situation prior to delegation, and the separation of policy and operational functions through the model.

Lessons for the Future

A number of core lessons are clear from the Walkerton Tragedy and the experiences with these other forms of devolution of public safety regulation. First, delegations cannot be carried out in an unplanned manner. Assessments of the technical, policy and financial capacity of other levels of government and entities to which functions are to be delegated to undertake those functions have to be made before delegation occurs. Structures need to be established to provide initial and ongoing training, as well as technical and financial support, where such needs are identified, from the outset.

Secondly, a clear framework of responsibilities needs to be established. Senior government functions cannot simply be abandoned to local agencies or regulated entities themselves, with no transitional framework or guidance, as was done with drinking water testing services in Ontario in 1996. Careful assessments of the impact of such changes on the generation, availability, quality and distribution of critical information need to be undertaken, and measures put in place to address any gaps that may arise.

Third, delegations must avoid conflicts of interest, where regulated entities are explicitly or de facto left to assess and report on their own performance and compliance, or put into dominant positions in the policy development process by virtue of the information that they hold relative to delegating governments and other stakeholders.

Fourth, appropriate accountability, reporting, oversight, and backstopping systems need to be established and maintained by delegating governments. Frameworks for regular reporting on activities and outcomes to delegating governments need to be established, including reporting of key information to multiple locations. This would include ensuring such things as system inspection reports and water quality tests are reported to senior governments and local health authorities as well as system operators and owners. Delegating governments need to retain the capacity to assess performance of entities to which functions are delegated, conduct such assessments on an ongoing basis, and be in a position to withdraw delegations and assume delegated functions themselves if necessary. The creation of Information systems on regulated entities, which are accessible to all key actors, are an important tool in this context.

Information, authority and capacity for independent assessments of the performance of delegated entities, and the oversight of those entities by delegating governments, must also be provided. This includes ensuring that jurisdiction is provided to legislative officers such as auditor-generals to review and report publicly on system performance, and that independent expert advisory committees are created and adequately resourced to review performance and identify emerging issues and needs on an ongoing basis. The provision of

information on system performance and outcomes directly to the public provides further important backstopping mechanism to ensure that local problems are identified and addressed quickly.

Fifth, the question of the desirability of severing operational functions such as approvals and inspections from policy and standards development activities needs to be considered carefully. Where such divisions occur as a result of delegations of operational functions to entities outside of senior government agencies charged with policy development, particular attention must be paid to information flows and the establishment of mechanisms to feed operational experience and knowledge into policy and standards development activities.

Sixth, it is clear that certain functions cannot be effectively carried out by local agencies in the absence of a clear policy framework and the implementation of supporting legislation and regulatory, planning and fiscal policies by senior levels of government. The protection of the quality and quantity of source waters is highlighted as an area where such coordination and leadership by senior governments is essential.

Seventh, the cost effectiveness of delegations can be open to serious question when the costs to delegating governments of providing adequate oversight and backstopping capacity are taken into consideration.

In sum, these considerations suggest that delegations of responsibility for local water management to local governments or system operators themselves needs to be approached with great caution. Careful examinations of capacity need to be undertaken and appropriate support, oversight, accountability and backstopping structures put in place before such delegations occur. The Walkerton tragedy provides a powerful demonstration of the possible consequences of failure to establish such frameworks from the outset.

Endnotes

¹ The Hon.D.R. O'Connor, Report of the Walkerton Inquiry: Part One (Toronto: Queen's Printer for Ontario, January 2002)

² In particular, M.Winfield and H.Benevides, Drinking Water Protection in Ontario: A Comparison of Direct and Alternative Delivery Models (Toronto: Walkerton Inquiry, June 2001).

³ Adapted from R. Lindgren, Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act: Volume III (Toronto: Concerned Walkerton Citizens and Canadian Environmental Law Association, May 15, 2001), Table 1, pp 109-110; and Australian Productivity Commission, Arrangements for Drinking Water Standards (Canberra: AusInfo, 2000).

⁴ Source protection is identified as a key function by the British Columbia Auditor General (Protecting Drinking Water Sources (Victoria: March 1999). See also Office of the Provincial Auditor (Ontario) 1996 Annual Report, pp.121-124, 1998 Annual Report p.273; Environmental Commissioner of Ontario, 1995 Annual Report, p.57, 1997 Annual Report, p.68.

⁵ As partially addressed via Ontario Regulation 459/00

⁶ On "new public management" generally see M. Charih and A. Daniels eds., New Public Management and Public Administration in Canada (Ottawa: Institute of Public Administration in Canada, 1997).

⁷ See generally N. D'Ombrain "Alternative Service Delivery." See also M. Charih and L. Rouillard "The New Public Management," in M. Charih and A. Daniels, eds., New Public Management and Public Administration in Canada (Ottawa: Institute of Public Administration of Canada 1997); Richard Mulgan, "Comparing Accountability in the Public and Private Sectors," Australian Journal of Public Administration Vol. 59, No. 1, March 2000; Office of the Auditor General of Canada, November 1999 Report, Chapter 23, esp. para 23.15, 23.89.

⁸ The Hon.D.R. O'Connor, Report of the Walkerton Inquiry: Part One (Toronto: Queen's Printer for Ontario, January 2002), esp. Chapters 9 and 10.

⁹ On evaluation models see C. Politt, "How do we know how good public services are?" in Peters and Savoie, Governance in the Twenty-First Century, especially p. 138.

¹⁰ Australian Productivity Commission, Arrangements for Setting Drinking Water Standards, Attachment 1A.

¹¹ This question has arisen in particular with respect to delegation of responsibility for implementation of environmental protection measures to local agencies in New Zealand. See "Review of Governance Models in Environmental Management," (Ottawa: Stratos Inc, 2000), p. 9, See also, Australian Productivity Commission, Arrangements for Setting Drinking Water Standards (Canberra: AusInfo, April 2000) Chapter D5.

¹² This is identified as a crucial weakness in the existing direct delivery model in Ontario. See N .D'Ombrain, "Machinery of Government for Safe Drinking Water." (Toronto: Walkerton Inquiry Issue Paper, March 2001), para. 451.

¹³ C. Politt, "Justification by Works or by Faith: Evaluating the New Public Management," Evaluation, Vol.1(2), 1995, p.148, Management Board Secretariat, A Guide to Preparing a Business Case for ASD (Toronto: Queen's Printer, 1997), p.20.

¹⁴ Australian Productivity Commission, Arrangements for Drinking Water Standards, Attachment A1.

¹⁵ This criteria addresses equity/equality issues often overlooked in assessments of new public management models. See Politt, "Justification by works or by Faith," p.149.

¹⁶ On problems in this area in New Zealand see Stratos, Inc., "Review of Governance Models in Environmental Management" (prepared for Executive Resource Group, December 2000), p. 3. See also Mulgan, "Accountability" p.567; Auditor General of Canada, November 1999 Report, Chapter 23, para 23.91 – 23.96.

¹⁷ See, for example, Thomas, "Change, Governance and Public Management: Alternative Service Delivery and Information Technology" in D.Zussman and G.Sears Change, Governance and Public Management (Ottawa: KPMG and Public Policy Forum, 2000), p. 67; Boston, "Organizing for Service Delivery," pp.306-307.

¹⁸ See, for example, Auditor General of British Columbia, Protecting Drinking Water Sources (Victoria 1998/99), esp. chapter 2; See also D'Ombrain, "Machinery of Government for Safe Drinking Water," para 232, 453.

¹⁹ For the classic statement of this approach see D. Osborne and T. Gabler, Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector (New York: Plume Books, 1993).

²⁰ See, for example, D. Beetham, Bureaucracy (Minneapolis, University of Minnesota Press, 1996), p.94, H. Mintzberg and J. Jorgensen, "Emergent Strategy for Public Policy," Canadian Public Administration 1987, Vol. 30, No.2.

²¹ See for example, Thomas, "Change, Governance and Public Management," pp.67 and 75.

²² Boston, "Organizing for Service Delivery," pp. 296-297.

²³ Management Board Secretariat, Alternative Service Delivery Framework, September 1999 Revision, p.7; Politt, "Justification by Works or by Faith," p.138; Australian Productivity Commission, Arrangements for Setting Drinking Water Standards, Attachment 1A.

²⁴ Australian Productivity Commission, Arrangements for Setting Drinking Water Standards, Attachment 1A, D'Ombrain, "Machinery of Government for Safe Drinking Water," para 368.

²⁵ Management Board Secretariat, Guide to Preparing Business Case for Alternative Service Delivery, (Toronto: Queen's Printer, 1997) pp. 9-10; H. Bakvis, "Pressure Groups and the New Public Management," Charih and Daniels eds., New Public Management and Public Administration in Canada, p. 298 (describes NAVCanada as "the embedding of the interests of the user groups in a self-managed entity sanctioned by the state."); M. Winfield, D. Whorley and S. Kaufman, The New Public Management Comes to Ontario: A Study of the Technical Standards and Safety Authority (Toronto: CIELAP, 2000), esp. chapter III; D'Ombrain, "Machinery of Government for Safe Drinking Water," para 369.

²⁶ D'Ombrain, "Alternative Service Delivery," p.96.

²⁷ Boston, "Organizing for Service Delivery," pp.296-297.

²⁸ Boston, "Organizing for Service Delivery," pp.290-292.

²⁹ D'Ombrain, "Alternative Service Delivery," p.102.

³⁰ On the importance of the oversight capacity of delegating agencies see David Whorley, "The Andersen-Comsoc Affair: Partnerships and the Public Interest," CANADIAN PUBLIC ADMINISTRATION vol. 33 no. 3 (Fall 2001)

³¹ Aucouin and Heintzman, "Dialectics of Accountability for Performance," p.260.

³² Office of the Auditor General, November 1999 Report, Chapter 23, para 23.87 – 23.115.

³³ See, for example, The Environmental Bill of Rights, Ch.28, S.O. 1993. See also R.S.C., c. A-17 An Act respecting the Office of the Auditor General of Canada and sustainable development monitoring and reporting 1995, c. 43.

³⁴ See, for example, the Ontario Lobbyist Registration Act, 1998.

³⁵ See, for example, OECD Environment Directorate, Presentation and Dissemination of PRTR Data: Practices and Experiences/Getting the Words and Numbers Out (Paris: OECD January 2001) (ENV/JM/Mono(2991)17).

³⁶ See generally Winfield, Whorley and Kaufman, The New Public Management Comes to Ontario, especially chapter VI.

³⁷ In the case of Ontario the relevant legislation includes the Statutory Powers Procedure Act, RSO 1990, c.S-22 and The Judicial Review Procedure Act, RSO 1990, c.J-1.

³⁸ See Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, pp.61-65.

³⁹ Bakvis, "Pressure Groups and New Public Management," p.298.

⁴⁰ Walkerton Inquiry Report: Part I, pg.314.

⁴¹ Walkerton Inquiry Report: Part I, pp.324-332.

⁴² In the case of Ontario, requirements for reporting of adverse drinking water test results to the Ministry of the Environment and local health units were included in the Ontario Drinking Water Objectives. These requirements were effectively binding when testing services were provided by Ministry of the Environment and Health Laboratories, (compliance with government policies being a condition of employment of public servants). However when testing services were privatized, the Objectives, as non-legal documents provided no legal duty to laboratory operator to report

adverse results to anyone other than system operators. Indeed, the standards of practice for private laboratories with respect to client confidentiality forbade such disclosures. A regulation requiring disclosure to regulatory agencies, local health authorities and the public was adopted in Ontario in August 2000, following the Walkerton disaster. See Walkerton Inquiry Report: Part I, Chapter 10.

⁴⁴ In the case of Walkerton, efforts by Ministry of the Environment and Ministry of Health officials to adopt a notification regulation regarding adverse test results following the 1996 privatization of drinking water testing services were unsuccessful in the context of the Ontario government's strongly held policies against 'red tape,' particularly with respect to reporting requirements. See Walkerton Inquiry Report: Part I, Chapter 10.

⁴⁵ See M. Winfield and G. Jenish, Ontario's Environment and the 'Common Sense Revolution': A Four Year Report (Toronto: CIELAP, September 1999), Part IV. See also Appendix 3.

⁴⁶ S.O. 1997, c.30. See Schedule B, "Amendments to the *Building Code Act, 1992*, the *Environmental Protection Act* and the *Ontario Water Resources Act*. See also Appendix 2.

⁴⁷ See "Status Report of the Transportation and Utilities Sub-Panel" (Letter to the Hon. Al Leach, Minister of Municipal Affairs, from David Crombie, Chair, Who Does What Panel, and William F. Bell, Chair, Transportation and Utilities Sub-panel, August 14, 1996).

⁴⁸ See Stratos Inc., "Review of Governance Models in Environmental Management" (prepared for Executive Resource Group, December 2000), pp.19-20.

⁴⁹ MBS indicates agency model not appropriate for functions requiring interagency policy coordination; see MBS, ASD Framework, p.26.

⁵⁰ The Ministry of the Environment estimates there to be approximately 4,500 non-municipally owned, operated or administered communal water works in Ontario. MoE, Proposal for Alternative Service Delivery – Communal Water Works: A Monitored Self-Managed Approach (November 1997) p.7.

⁵¹ MBS ASD Framework p.24.

⁵² See Winfield, Whorley and Kaufman, The New Public Management Comes to Ontario, Castrilli, "Review of Selected Canadian Agencies" pp.14-17.

⁵³ See Appendix 4.

⁵⁴ See Winfield, Whorley and Kaufman, The New Public Management Comes to Ontario, pp.8-12, Castrilli, "Review of Selected Canadian Agencies, pp. 10-11.

⁵⁵ Winfield, Whorley and Kaufman, The New Public Management Comes to Ontario, pp.12-15; Auditor-General of Alberta, 1996-97 Annual Report – Labour Chapter, Auditor-General of Alberta, 1997-98 Annual Report – Labour Chapter.

⁵⁶ Re TSSA see Winfield, Whorley and Kaufman, The New Public Management Comes to Ontario, pp 32-34. Re: ESA, see Appendix 4 and Administrative Agreement between Her Majesty the Queen in Right of Ontario and Electrical Safety Authority, dated March 1999. Note that these arrangements are contrary to the MBS Alternative Service Delivery Framework, p.13.

⁵⁷ See Comments of the Auditor General of Alberta, 1996-97 Annual Report – Labour.

⁵⁸ MBS indicates agency model not appropriate for functions requiring interagency policy coordination, MSB, ASD Framework, p.26.

⁵⁹ D'Ombrain, "Machinery of Government," para 232.

⁶⁰ See, for example, ss.6(2), 13(2), 14(2), 15(2).

⁶¹ Winfield and Jenish, Four Year Report, pp.2-37 – 2-38.

⁶² Executive Resource Group, Managing the Environment: A Review of Best Practices (Toronto: Ministry of the Environment, January 2001, p.200; D'Ombrain, "Machinery of Government for Safe Drinking Water," para 251.

⁶³ Walkerton Inquiry Report: Part I, pp.374-380.

⁶⁴ D'Ombrain, "Machinery of Government," para 451

⁶⁵ Ministry of the Environment, Proposal for Alternative Service Delivery – Communal Water Works: A Monitored Self-Managed Approach, November 1997, pp. 8-9.

⁶⁶ Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money, (October 2000) Chapter 3.06.

⁶⁷ OPSEU, "Renewing the Ministry of the Environment.

- ⁶⁸ Inquiry Document 287 Tab 1 (Bob Shaw).
- ⁶⁹ Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money (October 2000), pg.118-119.
- ⁷⁰ Walkerton Inquiry Report: Part 1, pp.323-335.
- ⁷¹ Walkerton Inquiry Report: Part 1, pp.347-349.
- ⁷² Walkerton Inquiry Report: Part 1, pg.323.
- ⁷³ Winfield and Jenish, Four Year Report, pp.2-37 – 2-38.
- ⁷⁴ Winfield and Jenish, Four Year Report, pp.2-10 – 2-11.
- ⁷⁵ J.R. Mitchell, S. Southerland, "Relations between Politicians and Public Servants," in Charih and Daniels, New Public Management and Public Administration in Canada, p. 184.
- ⁷⁶ Walkerton Inquiry Report: Part 1: pp.409-410.
- ⁷⁷ D'Ombrain, "Machinery of Government," pp.85-86.
- ⁷⁸ Ontario Regulation 459/00.
- ⁷⁹ Winfield and Jenish, A Four Year Report, pp.2-1 – 2-8
- ⁸⁰ Winfield and Jenish, A Four Year Report, pp. 2-17 – 2-18
- ⁸¹ Stratos, "Review of Governance Models," p. 9.
- ⁸² Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money (October 2000) Chapter 3.13.
- ⁸³ Stratos, "Review of Governance Models," p. 3.
- ⁸⁴ Stratos, "Review of Governance Models," p. 3.
- ⁸⁵ See Appendix 3.
- ⁸⁶ See, for example, Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money, MNR Forest Management Program Chapter (3.13).
- ⁸⁷ See Appendices 2 and 3.
- ⁸⁸ See Appendices 2 and 3.
- ⁸⁹ ECO, 1998 Annual Report, pp. 187-188.
- ⁹⁰ Stratos, "Review of Governance Models," p. 9.
- ⁹¹ See OPSEU, "Renewing the Ministry of the Environment," p. 62) and comments of George Pasut, Medical Officer of Health, Simcoe County, May 24 Walkerton Inquiry Part II Expert Meeting (p. 30 section 2.3.1, third bullet of "Detailed Notes from Expert Meeting").
- ⁹² See Appendix 2.
- ⁹³ Stratos, "Review of Governance Models," p. 3.
- ⁹⁴ Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money, p. 231.
- ⁹⁵ Stratos, "Review of Governance Models," p. 3.
- ⁹⁶ M.Middlesteadt, "Pollution plagues tony cottage lakes," The Globe and Mail, May 9, 2001, citing report by Ontario Boating Forum.
- ⁹⁷ See, for example, Office of the Provincial Auditor (Ontario), Special Report on Accountability and Value for Money, MNR Forest Management Program Chapter (3.13).
- ⁹⁸ See Appendices 2 and 3.
- ⁹⁹ PTMAA has budget of less than \$1million/yr and staff of less than ten. See Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, p. 11.
- ¹⁰⁰ Winfield, Whorley and Kaufman, New Public Management Comes to Ontario pp. 48-49.
- ¹⁰¹ Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, Appendix II.
- ¹⁰² Alberta Auditor-General 1996-97, 1997-98 Annual Reports, Labour Chapter.
- ¹⁰³ Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, pp. 62, 64-65.
- ¹⁰⁴ As of July 2000, MCCR had a total of five staff assigned to over see five DAAs (TSSA, ESA, Motor Vehicle Industry Council, Real Estate Council of Ontario, and Travel Industry Council of Ontario), the Ontario Home Warranty Program, and the Funeral Services Board. See Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, p. 34
- ¹⁰⁵ Auditor-General of Alberta 1996-97 Annual Report, p. 2 of 6.
- ¹⁰⁶ Auditor General of Alberta, 1997-98 Annual Report – Labour Chapter.
- ¹⁰⁷ Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, p. 86.
- ¹⁰⁸ Auditor-General of Alberta 1996-97 Annual Report – Labour Chapter
- ¹⁰⁹ See, for example, the TSSA/MCCR Administration Agreement, ss.4 and 5.

¹¹⁰ See generally Winfield, Whorley and Kaufman, New Public Management Comes to Ontario, Chapter VI.