Focusing Events as Instruments for Institutional Change: An Analysis of Water Sector Management in Post-Walkerton Ontario

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Introduction

In the early 2000s, Walkerton, a small town in Ontario, experienced the worst crisis in the history of water quality management in the province. The town's water system was infected with E-coli virus, which led to the death of seven people with hundreds of others falling ill. A decade later, the effects are still being felt.[1] The Walkerton tragedy led to the establishment of a commission of inquiry to determine what actually occurred and to make recommendations to prevent similar situations in the future. The commission, although attributing much of the responsibility for the tragedy to local mismanagement, also placed blame on the provincial government of the day and its distaste for regulation, which affected water inspection and reporting in the province.

Five years after the Walkerton tragedy, Ontario water was deemed to be the best in the country according to a study by the Sierra Club of Canada (the province was graded A-, an improvement from a grade of B in 2001). This was three years after the election of a new provincial government, which in its 2003 campaign, promised to fix the water problem as part of its "public safety" plan (Greenberg 2003; Mallan and Boyle 2003). In 2009, the Ontario Ministry of Environment received an excellence award from the Institute of Public Administration, Canada (IPAC) for its management of drinking water in the province since the Walkerton tragedy (IPAC 2009). How did Ontario manage to obtain this grade? What is the current state of drinking water management in Ontario? How has this event helped to change water quality management in the province?

Through the theoretical lens of focusing events, this paper aims to examine the policies of the new government, as well as the various management structures and techniques that have been adopted and implemented in order to prevent another Walkerton. Essentially, we intend to add our voices to scholars who believe that such events help set policy agendas. Furthermore, we intend to determine whether such events led to actual changes to the institutional arrangements surrounding the management of water quality in the province, or whether the current situation merely represents a political realignment of policies and procedures within the existing institutional framework.

We believe that what has been done so far in the province (including obtaining the highest mark fro the Sierra Club and an IPAC Excellence award) is the result of how the Walkerton tragedy has become a reference point for water issues not only in the province of Ontario but right across Canada. The crisis has certainly led to water issues being given priority on the political agenda of the provincial government, as exemplified even in its recent development agenda, Open Ontario (Government of Ontario 2010). Our argument is also supported by the fact that the current provincial government prides itself on implementing all the recommendations of the commission that was set up to ascertain the causes of the Walkerton tragedy and on making recommendations to avoid the reoccurrence of such tragic events.

The paper is divided into four sections. Following the introduction is a discussion on the theoretical perspective of focusing events as a means to understanding policy and institutional changes. We then review the historical development of the provincial government's role in water management. The third section looks at the new institutional

[1] May 2010 marked the 10th Anniversary of the Walkerton tragedy

arrangements surrounding water management in the province. The last section concludes the paper.

What is meant by a Focusing Event?

Much of the literature addressing how policies get made dwells on how issues get on to the agenda of government. One way of looking at this is the role of policy entrepreneurs who may use any window of opportunity to force governments to address specific issues of interest to them. In other words, policy issues or problems themselves do not automatically get on the government agenda unless they are taken up or given a push by a policy entrepreneur (Kingdon 2003). However, this push may also emerge from a dramatic event, such as a crisis or disaster, especially when there is an institutional failure. As noted by Kingdon (2003), the push of an issue on to the agenda "is sometimes provided by a focusing event like a crisis or disaster that comes along to call attention to the problem, a powerful symbol that catches on, or the personal experience of a policy maker" (94-95). The attention that a crisis or disaster gains within an entire community, therefore, leads policy makers to pay particular attention to such problems with the view of addressing the problem.

In spite of scholars using such events to explain how policy gets made, defining the term has become quite problematic. This is because what may be considered as an event that merits the attention of government may also be considered as part and parcel of normal and expected change. Birkland's (1998) definition is much more precise. For him, a focusing event is "an event that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing that possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and is known to policy makers and the public simultaneously" (54).

In some situations, however, because of ideological inclinations, governments may create an artificial crisis within a policy domain to justify a course of action already taken or to be taken. For example, in 1995, a newly appointed minister of education in Ontario was caught on tape telling senior bureaucrats of the need to 'manufacture' a crisis in the educational sector in order to justify the government's attempt to revamp the educational system according to its ideological inclination (Brennan 1995: A3). Such crisis manufacturing is often undertaken by those who perceive an unfavorable bias in the distribution of positions or resources (Cobb and Elder 2005). These actions, however, make it difficult to determine what may be described as a genuine crisis *versus* an ideologically-induced crisis. Thus, "crisis can be internally generated or it can be the result of a disaster or some other undesirable even that strains an organization's adaptive capacity" (Birkland 2006: 5). In discussing focusing events, attention is often paid to those events that are associated with institutional failures and this may ultimately lead to the creation or development of new institutions as a way of addressing the problem(s) that may have emerged from such crises or events, it must be of a large magnitude, be high visibility, have an unusual location, and finally, have a high impact with some elements of surprise.

Whereas scholars such as Kingdon (2003), Brikland (2006; 2004, 1998, 1997), and others conceive focusing events from the perspective of natural and technological disasters such earthquakes, oil spills, and dramatic events such as the September 11, 2001

terrorist attacks on New York and Washington D. C., we see a focusing event as any event marked by upheaval in the political system that eventually leads to the punctuating of the institutional equilibrium that is already in existence (Baumgartner and Jones 1993; True, Jones, Baumgartner 1999). In a nutshell, we view a focusing event as "a situation faced by an individual, group or organization which they are unable to cope with by the use of normal routine procedures and in which stress is created by sudden change' (Booth 1993: 86). This leads to the disruption of the existing institutional set up and to radical policy realignment through the creation of new set of institutions with a view to completely preventing such crises in the future. Thus, our understanding of what constitutes a focusing event is quite broader than that of many scholars who have studied policy making and policy outcomes from this perspective.

Perhaps most important from a policy change perspective, a focusing event opens a policy window by dramatically highlighting policy failures and providing opportunities for policy learning (Birkland 2004: 181). As explained by Baumgartner and Jones:

> Even a casual observer of the public agenda can easily note that public attention to social problems is anything but incremental. Rather, issues have a way of grabbing headlines and dominating the schedules of public officials when they were virtually ignored only weeks or months before. Policy action may or may not follow attention, but when it does, it will not flow incrementally…Rather, focusing events, chance occurrences, public opinion campaigns by organized interests, and speeches by public officials are seen to cause issues to shoot high onto the agenda in a short period (1993: 10).

Issues are defined differently in public discourse, and as they gain and lose salience in the public eye, existing policies are either questioned or reinforced. "Reinforcement creates obstacles to anything but modest change, but the questioning of policies at the most fundamental levels creates opportunities for dramatic reversals in policy outcomes" (True, Jones, and Baumgartner 1999: 97-98).

Once a focusing event or occurrence gets on to the policy agenda, policy makers will pay a significant amount of attention to it, which will lead to the development of new institutional arrangements to forestall the future occurrences of such problems and establish and maintain political or policy equilibrium. Hence, the understanding is that such dramatic event(s) lead to a shift in policy direction and management and ultimately the design and construction of new institutional arrangements.

For the purposes of this paper we use "institutions" and "institutional arrangements" synonymously. Both terms are applied in accordance with the definitions tendered by Elinor Ostrom, and James March and Johan Olsen. March and Olsen define institutions as, "a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations" (1998: 948). Ostrom notes further that this includes, "organizations and the rules used to structure patterns of interaction within and across organizations" (1999: 36).

The Provincial Government's Involvement in Water Management:

The history of the provincial government's involvement in the water sector dates back to the latter part of the nineteenth century (Benidickson 2000). Before this period, households relied on wells, springs, cisterns, community pumps, private water carriers, and other mechanisms to ensure the availability of potable water (Benidickson 2002).

In the mid 1850s, municipalities assumed control of water supplies after the passing of the *Baldwin Act*,[2] which facilitated the creation of water utility companies. At the same time, the Act provided an avenue for the provincial government to undertake infrastructure development without jeopardising the economic and financial solvency of the province (OSWCA 2001). In spite of this, however, most communities still had problems with their water needs, leading to widespread water-borne diseases that resulted in a number of deaths (Benidickson 1999; 2000; MoE 1990).

As these problems became acute, the provincial government became involved through the passage of the Public Health Act of 1884. The act established a Provincial Board of Health (PBH) with responsibility over water-related health issues. The PBH was mandated to collaborate with local health officials "to encourage the implementation of modern water supply and protection systems along with sewage across the province" (Public Health Act 1884). The act also required all cities, towns, and villages contemplating the establishment of a public water supply or system of sewage to first seek approval from the Board for all plans related to the system (Public Health Act 1884).

Until the middle of the twentieth century, water supply and sewage problems continued to be tackled under the PHA. As such, the provincial government did not engage in water delivery in any meaningful way, although it provided funds for the expansion of water systems, making Ontario the leading province in Canada in terms of the amount spent for communal water systems and of length of pipe laid by 1915 (MoE 1990). In spite of this financial assistance, significant improvement in drinking water was not achieved until after 1920, when the government gave the PHB full status as the Department of Health, and invested in research surrounding a number of epidemics, including typhoid, paratyphoid, and tuberculosis (MoE 1990). By the 1930s, some improvements in water supply had been made in the province.

The immediate post-war period witnessed a significant population growth in Ontario. As the population grew and spread, municipalities and individual suppliers found it difficult to meet the water needs of the populace. The expansion of services and facilities that was required during the 1940s and 1950s presented the province with problems that called for special attention; however, the provisions made under the PHA could not fully address these problems.

By the mid 1950s, the situation was approaching critical proportions. In response, the government established the Municipal Improvement Corporation to provide money at low interest rates to municipalities for water and sanitary works. Although this financial arrangement helped to improve the drinking water supply and reduce the number of typhoid-related deaths, it did not address the problem of industrial waste, which caused

[2] The *Baldwin Act* (1849) was a comprehensive municipal act that allowed for the provincial incorporation of townships, villages, and cities with a democratically elected council.

increases in bacteria levels among other pollutants in the Great Lakes, the main source of the province's drinking water (MoE 1990).

In recognition of the growing pollution problems, the government set up the Ontario Water Resource and Supply Committee in 1955 to investigate and recommend appropriate measures. In setting up the committee, the government was of the view that adequate supplies of clean, fresh water were indispensable to the well-being of the people of Ontario and to the economic development of the province, and that good management practices in the water sector were imperative (OLA 1954). The committee, in its report to the legislature, recommended setting up an independent body with powers to deal with emerging water problems. Following the recommendation, the government established the Ontario Water Resources Commission (OWRC) in 1957, a Crown corporation designed to deal with all water related issues in the province. From this period onward, the government's involvement in water delivery gradually evolved, and even expanded, until 1995, when involvement was curtailed.

The purpose of the OWRC was to assist citizens and municipalities in supplying themselves with adequate water of high quality for all their needs. It was also to protect all existing water bodies from all types of pollution. Consequently, from 1957 onwards, direct responsibility for the regulation of water, sewage, and waste disposal systems shifted from municipal and individual ownership to the OWRC, and, later in 1972, to the Ministry of the Environment. The OWRC was thus made responsible for the development, utilisation, treatment, and management of water resources, including the provision of adequate pollution control measures throughout the province. It also had powers to acquire, construct, operate, and maintain projects as well as undertake any renewals, betterments, enlargements, replacements, and extensions of them (OWRCA 1956). These substantial powers allowed the government, through the OWRC, to nationalise all water bodies in the province, and to issue licences for consumptive purposes for all but the smallest water wells.[3]

The OWRC provided a lifeline for municipalities in terms of financing for infrastructure development in the water sector. Before this period, it had come mainly from local revenue sources, such as property taxes, and borrowing from private sources (OSWCA 2000:4). Indeed, the creation of the OWRC was about encouraging the provision of water-related municipal infrastructure necessary for local economic development. Between 1960 and 1970, there was vast expansion in water infrastructure in the province because of the activities of the OWRC and other initiatives undertaken by the provincial government in relation to the water sector (d'Ombrian 2000). The most significant of these developments was the passing of the *Ontario Water Resources Act* in 1966, and a new financial system arrangement that allowed water suppliers to borrow money as well as enter into contractual arrangements with the OWRC to undertake infrastructure development in the sector. Under this financial arrangement, the OWRC entered into agreements with some municipalities to build and operate water supply and sewage facilities. In the late 1960s, the government began to subsidise the capital costs of water supply and sewage systems by providing over 75% of the capital costs for small municipalities where costs of communal water services were above the provincial

[3] Consumptive uses include water for crops, that consumed by humans or livestock, and water incorporated into manufactured products. Any person or organisation seeking to withdraw more than 50,000 litres of water over a given period had to obtain permission from the OWRC.

average. In others, it contributed between 45% and 50% of the cost (MoE 1990). Notwithstanding the benefits realised by municipalities, however, these arrangements had the effect of profoundly altering water-sector governance in the province – a large number of water and sewage projects financed by the OWRC ultimately became the property of the Crown.

In the early 1970s, the government folded the OWRC and transferred its activities to the newly created Ministry of the Environment (MoE). Sancton and Janik (2000: 15-16) have noted that "one of the effects of this move was to de-emphasise the notion that water supply was a self-financing business, for which the OWRC was merely a facilitator. Having some aspect of the water supply system under the direct control of a minister of the Crown suggested that it was more of a public service." Thus, the absorption of the responsibilities of the OWRC by the MoE also marked a turning point in the province's role in the water sector (d'Ombrain 2002).

Since 1972, the MoE has continued to have primary responsibility for regulation, enforcing legislation, and the implementation of policies that apply to the construction and operation of water systems in the province (Merritt & Gore 2001). Furthermore, the MoE, until 1996, continued to conduct routine analysis of water samples from the various municipalities at its laboratories. This had been part of the activities of the OWRC. Through the MoE's monitoring and regulatory programmes, therefore, the province demonstrated due diligence in ensuring that drinking water provided by municipal water systems was of good quality and met all health-related objectives and standards as stated in the OWRA.

In spite of the MoE's commitment to the sector, however, infrastructure lagged behind development as population and industrial growth continued in the province. Between 1972 and 1985, "the MoE, with a wide range of responsibilities beyond water and wastewater, could not maintain the technological leadership the OWRC had achieved in the water sector" (Ontario 2005:13). In 1993, as its solution to the overall infrastructure needs of province, the NDP government passed the *Capital Investment Plan* Act (CIPA). The act allowed the government, municipalities, other public bodies, and the private sector to invest in infrastructure and some capital projects including those in the water sector (CIPA 1993). Through this act, the Ontario Clean Water Agency (OCWA) was established – in effect, a replica of the OWRC – as one of three new Crown agencies dedicated to the province's infrastructure needs. The OCWA was expected to take over from the MoE all the operating and ownership responsibilities with respect to water and sewage treatment plants in the province. The government was of the view that infrastructure needs in the water sector could be met through returns on all financial investments that the agency would undertake, and this in turn would contribute to economic renewal in the province, as well as enhance protection of the environment and human health (CIPA 1993). The upshot is that the OCWA was intended to operate on a more commercial basis, while at the same time providing a means by which the government could assist municipalities with their infrastructure needs. The OCWA was thus a new approach to the way government did business.

Like the OWRC, the OCWA was expected to finance, build, and operate water and sewage facilities throughout the province and provide services and advice to communities on a cost recovery basis. At the same time, it was expected to be competitive with private-sector contractors in the marketplace, as costs incurred by the

agency in its municipal operations would be recovered through market pricing of its activities. Section 49 (1), sub-section (b) of the CIPA included "financing, building, and operating water and sewage works and services on behalf of Ontario on a cost recovery basis" (CIPA 1993).

With the establishment of the OCWA, the MoE transferred ownership and operation responsibilities for 346 water and sewage facilities, a sum of $ 410 million, and almost 1,000 operating, technical, and administrative personnel to the agency. Of the 346 water and sewage facilities, the province owned 230, and 116 were municipally owned but operated by the MoE (MoE 2000: 5). While the government saw the OCWA as a direct response to the shortfall of investment in the sector, others saw it as a means for the government to get out of the sector and an attempt to introduce private sector participation and privatisation to a product considered a 'public good' (Loë 1997; Rhode 2004).

Water Sector Reforms in Ontario, 1995-2000:

The water sector, in spite of the provincial government's attempt to involve itself in infrastructure development, continued to experience a number of chronic institutional difficulties. These are not mutually exclusive, and one triggers another. Examining the problem of water financing, for example, Fortin et al (2002: 20) noted that, "Ontario grants for water and sewage systems operating expenditures have accounted for less than 1% of water and sewage systems expenditures over the last ten years. Direct water and sewage billings have shown the largest increase over the ten years, dependence on property taxes has fallen dramatically over the same period." Obviously, the economic recession in which the province found itself during the early 1990s affected provincial transfers to municipalities. Thus, throughout this period, municipal water supply and water treatment systems simultaneously faced budget constraints and an aging infrastructure. The ripple effect of this shortfall in municipal financing was the inability of the municipalities to deal with their infrastructure needs, making it difficult for municipal water managers to operate and maintain their systems. At the same time, other provincial agencies, such as the Ministry of Health, found it difficult to effectively monitor drinking water conditions across the province.

The situation was exacerbated by population (including immigration) growth and urbanisation in Ontario. This exerted much stress on the already dilapidated water infrastructure in the province. It is estimated that the life span of a laid pipe ranges between 50 and 60 years. In Ontario, most of the pipes were laid in the 1950s and, are therefore, nearing the end of their usefulness. Replacing them requires a huge financial investment, thus, the challenge facing service deliverers was, and is, how to provide the service and its associated infrastructure at the lowest possible cost, while securing the fiscal resources to pay for it.

The institutional quandary concerned mainly the ownership and governance of the water sector: *i.*e., the question as to which level of government should have responsibility for its delivery (Ontario 2005). This dilemma further compounded the issue of accountability and responsibility. The problem of ownership and governance was not resolved when the MoE absorbed the OWRC, and was further aggravated by the

establishment of the OCWA. It was this institutional problem that the Harris government tried to address by enacting the *Better Local Government and Water and Sewage Services Improvement Acts*. Thus, the water sector, especially in the area of management, continued to be hamstrung by institutional fragmentation, with responsibilities divided among different levels of government and private ownership.

As already discussed, until the 1950s the provision of water in Ontario was the preserve of municipalities, communities, villages, and individuals. The establishment of the OWRC, the MoE, and the OCWA altered this governance structure, as these institutions enabled the provincial government to gain a foothold with respect to the ownership and management of the water sector, as opposed to simply regulating it. However, the development of a new institutional governance structure effectively created a conflict of interest for the government, as it had become the owner, financer, and operator of provincial water systems and, at the same time, regulator of the water sector. It was reckoned, therefore, that privatisation, with strict institutional separation, would enable the regulator (government) to feel much more comfortable, especially in punishing non-compliant companies and municipalities with fines and orders. The institutional realignment was to help government regulate far more vigorously than in the case of public ownership.

Attempts at resolving the problems surrounding water and sewage services in Ontario from the mid 1990s dwelt on the philosophy embedded in New Public Management (NPM) theory, which was implemented by the Conservative government after the 1995 provincial elections. Policy was focused on disengaging government from the water sector, and hinged on four key dimensions of NPM theory: deregulation, downsizing, downloading, and privatisation. Deregulation dealt with the removal of regulations that affected the involvement of the private sector in water delivery; downsizing focused on the retrenching of workers in the sector; downloading allowed the provincial government to pass responsibility for its activities in the sector on to municipalities, communities, and individuals; and privatisation focused on the sale of public institutions (including the closing down of some agencies) and assets to the private sector. These policies were given a push by a government-appointed "Who Does What Panel", which determined how best to sort out provincial and municipal roles and responsibilities in order to eliminate duplication, improve accountability, and make sure decisions were made at the most appropriate level. The goal of the realignment was to enable both the province and municipalities to find efficiencies, save money, and provide quality services to taxpayers.

In the water and sewage sector, the panel's utilities sub-committee was of the view that municipalities should be made fully responsible for the provision of water and sewage services, including ownership and financing, in order to ensure that provincial subsidies neither distorted the cost of services nor encouraged dependency on provincial transfers. The panel, therefore, called for the removal of provincial subsidies for water services delivery for municipalities in order to allow them to assume full responsibility for such services. Further, the panel suggested the transfer of ownership of all facilities under the OCWA's operation, on behalf of the provincial government, to the municipalities.

The sub-committee believed that this transfer was necessary because years of generous provincial subsidies had brought about some undesirable impacts with respect

to the way water and sewage systems were being operated. For instance, it claimed that because of the provision of such subsidies, infrastructure had been built well beyond the realistic growth needs of some communities to such an extent that on-going subsidies were necessary to maintain these systems. The sub-committee was also of the opinion that consumers were not paying the full cost of providing water and sewer services. Consequently, consumers had little incentive to conserve water resources. What is more, many municipalities, in anticipation of provincial financial assistance to cover capital costs of replacement, had neglected to build in an allowance for depreciation in their costing system, thus, perpetuating their dependency on the province. Uniform standards of service have been encouraged across the province, rather than services adapted to local circumstances. Finally, subsidies had dampened innovation and the pursuit of creative management practices, which could realize better efficiencies, and they appeared to have discouraged full private sector participation.

The government passed a wide range of legislation to change its role in the water sector. The most prominent examples were the *Savings and Restructuring Act* (Bill 26), the *Better Local Government Act* (Bill 86), and the *Municipal and the Water and Sewerage Act* (Bill 107). The government further repealed some sections of the *Environmental Protection Act*, 1990 and the *Ontario Water Resources Act*, particularly sections dealing with tort actions in municipal server plants and appeals on any certificates of approval. Bill 26 focused on employment reduction and budgetary cuts in the public service (downsizing). There was, therefore, a substantial cut to the MoE's budget in the first two years of the government, which led to a reduced capacity of the ministry to undertake its numerous functions. However, this was not the ministry's first budget cut. Indeed, between 1991 and 1995, the NDP reduced the MoE's annual budget by an estimated 30%. During the same period, the MoE's annual expenditure fell by $210 million (O'Connor 2002). The effect of this policy directive and action was a reduction in staff and activities at the ministry, including the discontinuation of water testing provided to local government by the ministry's laboratories.

Bill 86 dealt with strengthening the various municipalities so that they could take up new challenges being devolved from the provincial level (downloading). The effect of this bill with respect to the water sector was quite overwhelming. It altered part of the *Public Utilities Act* that required the assent of the electorate before the establishment of any water commission or joint public utilities commission. Furthermore, it allowed municipalities the freedom to determine the agency (be it public or private) to run such systems without recourse to municipal referenda. The act also added a liability clause that prohibited any action based on nuisance to be taken against a municipality or local board, or their councillors, members, officers, employees or agents over the escape of water or sewage.[4]

By far the most significant piece of legislation that altered the governance structure of the water sector was Bill 107, passed in December 1997. The objective of the bill was to enable the government, through the Minister for the Environment, to transfer the government's holdings in the water sector to municipalities with the aim of establishing the most efficient and effective ways to run water and sewage systems. This was essential to the government in terms of clarifying the roles of provincial and municipal governments in water and sewage services delivery, thereby improving

[4] The liability clause had previously existed under the Environmental Protection Act.

accountability and management at the municipal level. The bill was expected to alter the province's ambiguous position of being a regulator, owner, operator, and funder of water and sewage services.

Another important aspect of the bill was the government's aim to terminate the province's financial obligation to municipalities in the sector. Under the bill, the government committed itself to fulfilling a $350 million dollar provincial grant that was extended to municipalities in 1993. However, the government was to discontinue providing grants and loans, so that municipalities could access private sector financing for water and sewage infrastructure development. Ending the financial grants and loans was also a means to allow municipalities to embark upon cost recovery through full cost pricing and user fees. A follow up to this desire was that municipalities could introduce new forms of management in the sector: public-private partnerships, public-public partnerships, contracting out, or full privatisation.

With the passing of the bill, "virtually all water and wastewater systems in Ontario [were] owned and controlled by the municipality in which they [were] situated" (Ontario 2005:14). However, many municipalities chose to continue to use the OCWA for their operations (Ontario 2005). In 1998, the OCWA was referred to the Office of Privatisation for a review of its activities and to subsequently privatise its services.

As part of the water sector reforms, the government also decided to privatise provincially owned water-testing laboratories.[5] The MoE operated one central laboratory in Toronto and three major regional laboratories at Kingston, London, and Thunder Bay. These laboratories performed routine quality testing of drinking water for municipalities. The intention to privatise laboratory services had been on the previous (NDP) government's radar screen, but it was an expression of the desire to privatise a number of tests performed by MoE laboratories, rather than privatisation of the MoE laboratories themselves (MBS 1989). The Tories, however, fully embraced the idea as part of their ideological obsession with reducing the bureaucracy and saving money. Consequently, they went well beyond the original idea by closing all the MoE laboratories and encouraging municipalities to look for other alternatives for their water testing needs. This, however, was not accompanied by any serious regulation concerning how private laboratories were to operate in this new governance environment. Thus, when the policy came into effect, no system of mandatory accreditation was in place, and neither were MoE officials made responsible for the operation of the laboratories.

The Walkerton[6] Commission of Inquiry and Water Management

The consequences of such policy reforms in the water sector became manifest in the Walkerton tragedy, and have been well documented by Justice O'Connor in the report of the *Walkerton Commission of Inquiry*. The report was in two parts. Part One, released in January 2002, focused on the events in Walkerton and the causes of the tragedy. Part Two received by the Attorney General in May 2002, contained ninety-three specific

[5] The idea to privatize laboratories did not affect only the MoE and MoH but all other ministries that were part of the Ontario Analytical Laboratories Council.

[6] A lot has already been written on the Walkerton situation and we do not intend to reproduce these here. Our interest is on what the government has been doing to avert such crisis.

recommendations, divided into five main areas, to ensure the future safety of drinking water in Ontario. It is these five areas of recommendations that provide the framework for our analysis.

According to Justice O'Connor, source protection is the first barrier to the contamination of drinking water. His recommendation was that the province adopts a watershed-based planning process, headed by the MoE and relevant conservation authorities, which also involves actors at the local level. The idea was to develop an MoE approved source protection plan for all provincial watersheds that would be binding on government decisions relating to drinking water at both the provincial and municipal levels. Where necessary, certain farms would be required to develop their own protection plans, consistent with those of the MoE.

The second barrier to the contamination of drinking water concerns the need for effective standards and technology for the treatment of water and the monitoring of its quality as it makes its way from source to consumer. In this area, Justice O'Connor recommended continual updating of standards and technology based on "the most recent knowledge and experience" (O'Connor 2002: 3).

The third set of recommendations involves management of municipal water systems. Justice O'Connor noted that municipalities supply most of the province's drinking water and, as such, should be required to adopt a quality management approach to its delivery. He suggested that, as a condition of provincial approval, municipalities have accredited operating agencies and an accepted operational plan for their water systems. Moreover, he proposed mandatory training and testing for all water system operators.

Provincial oversight is the fourth area of importance in terms of drinking water safety. Here Justice O'Connor recommended that the province take a more proactive and stronger role with respect to regulation and oversight. The establishment of a government-wide drinking water policy and implementation of a *Safe Drinking Water Act* were deemed of key importance. In addition, he recommended that the MoE create two new branches: one for watershed planning, and the other for water system oversight. Provision of sufficient resources in this area was considered essential in order for the MoE to undertake its role as regulator more effectively.

The fifth and final area of recommendations involves special approaches related to small water systems and those of First Nations. With respect to small water systems, Justice O'Connor recommended that, in cases where such systems fall within the provincial sphere of regulation, the province allow variances from standards only when there is no threat to the safety of drinking water. Further, variances should never be made on the basis of cost saving. In cases where such systems fall outside the provincial sphere (e.g., campgrounds), he recommended that they either comply with provincial regulations or post notices that their water is not potable. For water supplies of First Nations, Justice O'Connor proposed making available (on request) the services and expertise of the Ontario Clean Water Agency.

It should be noted that Justice O'Connor's recommendations, by his own admission, were not groundbreaking or particularly innovative. They were simply based on common best practices found in other jurisdictions, which involved a number of simultaneous measures to reduce risks: "by placing multiple barriers aimed at preventing contaminants from reaching consumers, by adopting a cautious approach to making

decisions that affect drinking water safety, by ensuring that water providers apply sound quality management and operating systems, and by providing for effective provincial government regulation and oversight" (O'Connor 2002: 5).

A New Institutional Approach to Water Management in Ontario:

In the attempt to implement the recommendations of the Justice O'Connor report, and to forestall the future occurrence of drinking water tragedies, the government has developed, and continues to develop various management frameworks to meet the water needs of Ontarians. In this section, our intention is to examine these frameworks in order to understand what has been accomplished in the water sector.

The first attempt to implement the recommendations of the Walkerton Inquiry came in the form of legislation titled Bill 152: the Safe Drinking Water Act (SDWA), which was passed in December 2002. The SDWA is an all-encompassing piece of legislation, which brought together a number of legislative enactments and regulations. The objective was to have a single piece of legislation to help safeguard drinking water, as opposed to the fragmented legislation and regulation that existed during the pre-Walkerton era. This was in line with a specific requirement of the O'Connor commission for the protection of water sources in the province. The SDWA imposed important legal duties upon municipal (and prescribed non-municipal) drinking water systems and was to be administered and enforced by the Ministry of the Environment (MoE). Among other things, the Act (a) authorized the MOE to set drinking water quality standards, quality management standards, and other regulatory standards; (b) imposed various operational duties upon drinking water suppliers in relation to testing, reporting, treatment, and distribution of drinking water; (c) required training and certification of drinking water system operators; (d) established a system of permits, licenses and approvals for drinking water systems and laboratories performing drinking water testing; and (e) created a broad range of inspection and enforcement tools, including stringent penalties for non-compliance (Lindgren 2003).

A key aspect of this legislation involves mandatory sampling and testing of water by municipalities. The Act established the frequency of sampling and the type of testing required for different categories of drinking water systems. These requirements vary and are based on the population served by the system, and whether the water source is groundwater or surface water (MoE 2007: 14)

Another important factor addressed in the Act deals with laboratories that conduct drinking water tests – a key issue of concern in the Walkerton tragedy. To address this problem, the Act required laboratories that conduct drinking water tests to be licensed (Regulation: O. Reg. 248/03) by October 1, 2003. In addition, the Act requires owners and operating authorities of drinking water systems to use a licensed laboratory for drinking water testing. The Act provides guidelines by which water-testing laboratories can obtain their licences, and prohibits owners of drinking water systems from using water-testing services of out-of-province laboratories, unless the laboratories satisfy certain eligibility criteria.

The Act also makes it mandatory for owners and operators of water systems to report adverse test results, i.e., where contaminants in drinking water do not meet

drinking water quality standards. It imposes a duty, on both operators and laboratory owners, to report adverse test results to the Ministry of the Environment and to the local Medical Officer of Health. This was not the case before the Walkerton tragedy.

Further, the Act called for the establishment of the Office of Chief Drinking Water Inspector with a new position of Chief Inspector to oversee inspections and enforcement. The Inspector is required to submit annual reports on inspection and enforcement matters to the Legislature. Since 2004, the Inspector has consistently submitted a report indicating the state of water quality in the province in compliance with the Act. The powers of provincial inspecting officers were also broadened, allowing them to conduct water system inspections without a warrant or court order so as to determine compliance with the Act or its numerous regulations.

In 2003, there was a change of government in the province. This change, however, did not in any way alter the attempt to deal with drinking water problems or implementation of the O'Connor recommendations. If anything at all, the new government moved exceedingly fast with respect to implementing the recommendations so as to fulfil its political campaign promises.

The first initiative undertaken by the government was the establishment of the Walkerton Clean Water Centre for Excellence, which coordinates training programs in the drinking water field and promotes public education on water quality issues across Ontario. Clean water research and development projects are also part of the Centre's work (http://www.wcwc.ca/en/about/vision.asp). The centre is to provide the training and capacity needs of water operators – a critical factor in the Walkerton tragedy, which was identified in Justice O'Connor's report (2002). Since its opening, the centre has trained more than 23,000 people in water-related management issues (GoO).

In order to address the other significant issues raised in the O'Connor report, the government set up an expert panel on Water and Wastewater Strategy in 2004 to provide advice on the organization and long-term financing of Ontario's water and wastewater systems. In some respects, the work of the panel may be seen as part of the province's long-term response to the tragedy at Walkerton (Ministry of Public Infrastructure Renewal, 2005).

The panel provided a number of recommendations that focused on how the government should organize the water sector, as well as how to provide the necessary funding for improving water supply and water management. The panel's report was circulated widely across the province; however, not everyone agreed with the recommendations made. In fact, the Canadian Union of Public Employees (CUPE) condemned the panel in no uncertain terms, labelling its members as "muddle-headed, patronizing, anti-democratic, and fiscally irresponsible" (CUPE 2006:1). CUPE further described the recommendations produced by the panel as "leaky propositions" (CUPE 2006). The Canadian Environmental Law Association (CELA), a non-governmental organization interested in using and improving laws to protect the environment and conserve natural resources also condemned the report. The CELA argued that while the stated objective of the expert panel was to produce a report on how best and most economically to deliver the high standard of water quality proposed by the commission of the Walkerton Inquiry, a careful review of the recommendations of the panel revealed that they "were fundamentally at odds with Justice O'Connor's recommendations." (Nadarajah and Miller 2005: 1). The CELA expressed tremendous concern regarding the

governance model and the institutional arrangements proposed by the panel. To them, if the government accepted and implemented the proposal, it

> [w]ould significantly erode public accountability and transparency over the operations of water systems in the province. Furthermore, it would unnecessarily divert a substantial amount of the provincial government's resources and staff time to establishing new institutional structures and operations which will be largely redundant, costly and unwarranted (2).

The CELA believed that the government should rather direct its effort to abiding by its commitment to implement all the recommendations the Part Two of the Walkerton Inquiry report, which the expert panel seems to have been ignored. As a result, despite the panel and its recommendations, nothing changed.

In 2005, however, the Liberal government decided to introduce new and more comprehensive legislation to deal with the province's water problems, especially those dealing with water sources. The new Act was seen as part of the government's commitment to implement all of the recommendations of the Walkerton Inquiry, especially the twenty-two found in Part 2 of the O'Connor report, which were dedicated to protecting drinking water at its source.

The draft proposal received overwhelming support from a number of organizations, including the Ontario Chamber of Commerce, and Environmental Non-government Organizations such as Environmental Defence, Canadian Environmental Law Association, Concerned Walkerton Citizens, Canadian Federation of University Women/Ontario Council, and a host of others. Many of these organizations even called for a strengthening of the Act in some areas (CELA 2006).

The main focus of the Act is to protect existing and future sources of drinking water (MoE 2006a). As noted by the Minister of the Environment at the time, "keeping source water free of contamination is smarter, safer and more effective than cleaning up problems after the fact…this groundbreaking legislation with its emphasis on prevention is a key part of a multi-barrier approach to protecting drinking water from source to tap" (MoE 2006a).

The Act, therefore, sets out to do three main things in order to achieve its objective. It directs local communities to look at any activity that could threaten water quality and take action to reduce or remove that threat, and empowers local authorities to take preventative measures before a threat to water can develop. In short, it asks municipalities and Conservation Authorities to take action on both existing and potential future threats to water quality, and requires that the whole community is afforded an opportunity to participate in finding workable, effective solutions through full and public consultation. The province will not accept plans (i.e. those dealing with water quality) that have not been developed without full consultation with towns, farmers, industries, health officials and the general public.

Furthermore, the Act requires municipalities and conservation authorities to map the sources of municipal drinking water supply, especially the vulnerable areas that need protection, in order to prevent the supply from being depleted or contaminated. Local authorities must use a science-based approach to measure threats to water quality and quantity, and decide that a threat either needs immediate action, needs monitoring to ensure it doesn't become more serious, or can be managed over time with voluntary

action. Municipalities are to work with conservation authorities, farmers and other landowners, industry, community groups and the public to come up with workable, effective plans to address identified the threats. Plans are to be put into action through bylaw enactment, education programs, incentives, land-use planning initiatives and/or partnerships. Municipalities and conservation authorities are further required to continuously monitor and report the effectiveness of the actions taken to protect drinking water sources, and ensure they are protected in the future (MOE 2006b).

The Act also established a number of agencies including the Source Protection Authority to coordinate the efforts of all the relevant water authorities within a designated geographic area. A Source Protection Committee prepares the terms of reference, assessment report, and source protection plans; municipal authorities develop and implement source protection plans; conservation authorities help source protection committees develop source protection plans. The role of property owners, industry, business, famers, community groups and the public is also expanded with respect to the development of source protection plans (MoE 2008).

In addition to agencies, the Act called for the establishment of an Ontario Drinking Water Stewardship Program (Stewardship Program), a new financial assistance program for farmers, rural property owners, and small rural businesses, for activities that reduce threats to municipal drinking water sources (GoO 2006).

The Program thus makes it easier for landowners and small businesses to be partners in protecting their communities' environment and public health. It also recognizes the shared responsibility of all stakeholders to protect local sources of drinking water, as well as helping fund local incentives and education and outreach projects, which the government believes are all an important part of drinking water source protection.

In order to fulfil the Act's requirements, the government made available substantial funding to the various major actors in the field. For instance, it provided an initial $7 million to help farmers and small rural businesses take early action on protecting drinking water (MoE 2006a).

The government continues to focus on the water sector as noted in its Throne Speech of March 2010. Even more recently, it has declared its intention to pass other legislation such as the Water Opportunities Act (part of its Open Ontario Plan), to provide an impetus for water conservation, and the development of clean water technology.

Focusing events and Water Management in Ontario:

The Walkerton tragedy certainly fits the definition of a focusing event. Certainly, there was a good degree of political upheaval in the tragedy's aftermath, which led to a clear and significant revamping of the institutional arrangements surrounding the management of drinking water in the province. What is even more noteworthy is the fact that the issue has remained a high priority on the provincial government's policy agenda a full ten years after the event itself.

In terms of institutional change, it is important to differentiate between those changes that would have occurred irrespective of the Walkerton tragedy and those that

occurred as a result of the tragedy. In the wake of the tragedy, there have been a number of policy directives, legislative enactments and agreements relating to the protection of drinking water in the province. Hailed as key achievements by the province, they include: the Clean Water Act, designed to help communities develop and implement source protection plans for drinking water; Safeguarding and Sustaining Ontario's Water Act, which protects Great Lakes water resources by enshrining in law the bi-national Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement; renewal of the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem, aimed at cleaning and restoring the Great Lakes; addressing lead in drinking water; new rules for water taking, designed to protect watersheds that have a high level of use; investment in source protection through the commitment of approximately $120 million to municipalities and conservation authority partnerships, and farmers and small rural businesses; more rigorous inspection of drinking water systems and labs; new rules for drinking water systems by way of amendment of the Drinking Systems Regulation; amendments to the Health Systems Improvement Act, which allows for cost-effective inspection of smaller water systems by local health units; improved drinking water operator training; a new municipal drinking water license program, underpinned by a new Drinking Water Quality Management Standard; creation of an Advisory Council on Drinking Water Quality and Testing Standards; and, an increases in environmental penalties for industrial polluters (MoE 2007).

A few of the above, while undoubtedly notable, cannot be construed as constituting institutional change as a result of the tragedy at Walkerton. Safeguarding and Sustaining Ontario's Water Act, for instance, was the result of years of negotiation among the ten Great lakes states and provinces with respect to the banning of large-scale diversion or export of Basin water – first articulated in the 1987 Great Lakes Charter. The Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem is dedicated to the cleanup and restoration of the Canadian side of the Great Lakes, hence, it has some bearing on drinking water quality; however, it is an ongoing and renewable commitment that was first signed in 1971. Finally, it is debatable whether or not increasing penalties for industrial polluters could be attributed to Walkerton. Although industrial pollution is indeed a problem, the Walkerton tragedy involved E-coli bacteria, which is found in cattle, poultry and other animals. This legislation, enacted in 2005 applies more directly to chemical spills from companies in the heavy industry sector.

Notwithstanding the three examples above, there does appear to be a good deal of institutional change as a consequence of the tragedy at Walkerton, and the ensuing report by Justice O'Connor. Most of the legislation, regulatory revision and implementation, and policy trajectory in the water sector over the past ten years relates directly to concerns regarding drinking water safety. In many cases, these changes reflect the adoption of the recommendations made by Justice O'Connor. Moreover, new practices and rules are becoming entrenched by way of reinforcement through the continuous presence of drinking water safety on the provincial government's agenda.

Conclusion:

In the last ten years, the issue of water quality and management has assumed a significant dimension in the policy discourse not only in Ontario but Canada at large. This focus has been spurred on by what has become known as the Walkerton tragedy and the recommendations which emerged from the subsequent public inquiry set up to probe the causes of this tragic event (Aylesworth-Spink 2009). This has led to new forms of institutional arrangements for the management of water quality. In this paper, we attempted to explain the changes that have led to the emergence of these new institutional arrangements, specifically in the province of Ontario.

As the basis for our theoretical analysis, we argued that treating the Walkerton tragedy as a "focusing event," which is seen as any sudden, unusual, and widely known event that focuses public and political attention on a policy issue (Birkland, 1997) has, and will, continue to influence policy and institutional changes to water management across the country.

To understand how this tragedy has led to the current changes in drinking water management, we traced the history of the provincial government's involvement in the drinking water sector. We then followed it up with the changes in the government's role from 1995 to 2001. This is the period of neo-liberalism in the province under a Conservative party that had bought into the global idea of "hollowing out the state" (Prudham 2004; Snider 2003; 2004).

In our view, the Walkerton tragedy continues to act as a widely known symbol of a policy issue and has raised the prominence of issues related to drinking water quality to new heights across the country. The event, therefore, continues to provide the impetus for policy reforms, as well as new institutional arrangements that will shape present and future decisions in water management. This can be seen in various policy discussions and a number of legislative enactments across the country in the wake of Walkerton. With respect to Ontario, we noted the various changes and arrangements that have been put in place to avoid such tragedy. We also noted that issues of water quality and water management in the province have become one of the main policy issues in Premier Dalton McGuinty's Open Ontario Plan.

Thus, we contend that while many scholars of public policy espouse the focusing event theory with respect to getting matters on policy agendas, we add to the fact that without 'issue sustainability', i.e., the continuing emphasis on such events, new institutional arrangements that may emerge may not have significant influence on future policy direction. We have seen that, in the Ontario case, the Walkerton tragedy will continue to shape any future institutional arrangements in the province. That is, the tragedy will continue to be used as the reference point for drinking water management in the province and, indeed, the rest of the country.

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