

Wednesday, March 26, 2014

AFFIDAVIT OF JO-ANNE ST. GODARD

TABLE OF CONTENTS

Introduction	1
My Background and Expertise	1
The Recycling Council.....	2
RCO History	2
WDO and its Board.....	3
What did WDO approve?.....	4
CCP	4
Blue Box Funding Model after the CCP	5
Best practices	6
Annual obligation	6
CONCLUSION.....	8

INTRODUCTION

1. My name is Jo-Anne St. Godard. I am the Executive Director of the Recycling Council of Ontario. My CV is enclosed.
2. I will be a witness at this arbitration because I have been legally compelled to do so by summons. I am not retained or paid to testify by either municipalities or stewards.
3. I am neutral, as between municipalities and stewards, on the subject of Blue Box waste funding. I take no position on the amount of the 2014 Steward's Obligation.

MY BACKGROUND AND EXPERTISE

4. I have been the Executive Director of the RCO for the past 12 years and in that time I have been intimately involved in the development of stewardship and Extended Producer Responsibility (EPR) policies in Ontario and across the nation. This includes policies relating to Blue Box waste diversion.
5. In my role at RCO I have participated in the review and evaluation of regulated programs under the *Waste Diversion Act* (WDA) both as an advocacy organization as well as a Director of Waste Diversion Ontario (WDO). RCO was appointed by the Ministry of the Environment under the WDA to occupy one of the independent seats on the Board of Directors of the WDO.

THE RECYCLING COUNCIL

6. Operating since 1978, the Recycling Council of Ontario is a not for profit, membership-based organization involved in policy, education and project work around the issues of consumption, waste generation, reduction and diversion and recycling. RCO is the only environmental organization in Ontario that focuses solely on solid waste reduction including the development and expansion of EPR regulations and programs.
7. RCO is a neutral organization, often acting as a facilitator bringing together public and private sector to progress waste reduction initiatives, focusing on environmental results.
8. RCO's membership is made up of a variety of stakeholders including industry (stewards), municipalities, academics, other environmental non-governmental organizations (ENGOS) and the general public. RCO draws upon this multi-stakeholder membership to ensure its policy positions are balanced but are effective at reducing waste and its impacts.
9. RCO's revenues are derived from government, predominately the Ministry of the Environment, membership fees, corporations through sponsorship as well as program fees.

RCO History

10. The Recycling Council of Ontario (RCO), established in Toronto, Ontario in 1978, was modeled after the Recycling Council of British Columbia. The RCO was created to help Ontario's struggling recycling operators cooperatively market the newspapers, glass, and metal cans, which they were collecting from community recycling depots and door-to-door drives.
11. In the 1980s, RCO began to host conferences and seminars to discuss a wide range of recycling issues from technology and subsidies for recyclers, to government policies and public education. RCO had an active role in the development and introduction of a test Blue Box program in Kitchener, Ontario in 1981.
12. At a United Nations dinner during the 1989 "Our World" Summit on the Environment in Toronto, the United Nations Environment Program presented an Environmental Leadership award to the RCO for its contribution and leadership of the Blue Box program.
13. To support the newly adopted 3Rs regulations in Ontario (1994), RCO provided information, guidance and resources to those in the Industrial, Commercial and Institutional (IC&I) sector who were obligated under the Regulation to reduce their waste.
14. In the late 1990s, RCO was appointed by the Ontario Ministry of the Environment to lead the "Roles and Responsibilities" forum facilitating discussions between industry and municipalities, to provide the Minister recommendations on short and long-term

options to address product stewardship issues, particularly as they relate to funding initiatives for curbside recycling programs.

15. RCO's work and response to this request was the genesis of the current Blue Box and EPR policy and programs we have today. These discussions developed the 50/50 municipal / steward shared funding concept for the Blue Box and led to the adoption of Ontario's only stewardship legislation, the *Waste Diversion Act (WDA)*.
16. RCO is the only not-for-profit environmental organization directly involved in the development of stewardship programs. Today, RCO continues to play a vital role in building awareness of the issues of waste and the opportunities to eliminate it through the 3Rs. Further, we continue to:
 - a. provide information and resources to the IC&I sector,
 - b. provide the public with information and resources through various programs,
 - c. recognize best practices through our Awards program,
 - d. improve Ontario's diversion rate through the development of innovative stewardship programs.
17. RCO has and continues to be, a strong and effective advocate of waste reduction policies including EPR in Ontario and beyond. RCO is often called upon by government to provide input during waste reduction/ diversion policy and program development. RCO receives funds from the Ministry of the Environment to support program development, research and pilot programs.

WDO AND ITS BOARD

18. Under s. 4 (10) of the WDA, the Minister of the Environment was required to appoint two members of the WDO board that were not public servants. In practice, one of these two seats was always given to a representative from the Recycling Council of Ontario in recognition of the organizational key role in developing and in promoting waste diversion policy and its specific role in promoting and expanding EPR in Ontario.
19. I became a voting member of the WDO board in February 2008 and I continued to sit on that board until the WDO board was restructured in 2012. From February 2008 until 2012, I attended the majority of the meetings of the board of WDO. From 2004 until February 2008, I attended some WDO board meetings as staff, in support of RCO's then Board Member, John Jackson. If I was present, my name will be shown on the minutes.
20. Since then, I have remained actively involved in high level policy, and program development and implementation discussions on, among other things, Blue Box funding.

WHAT DID WDO APPROVE?

21. I always interpreted the funding provisions in the WDA as it related to Blue Box to mean equal 50 50 net systems cost split between municipalities and obliged stewards.
22. I do not recall any proposal to the WDO board that contemplated a different funding balance that would increase the share paid by municipalities or stewards.
23. I do not recall any discussion at the WDO board about whether we had authority to change the equal 50 50 net systems cost split between municipalities and stewards for municipal Blue Box programs. I am not presently aware of any such authority.
24. I do not recall any vote by the WDO board that we should change this cost split to increase the share to be paid annually by municipalities as compared to stewards, or if so to what or on what grounds.
25. Mr. Jackson never told me that the WDO had decided to change the equal 50 50 net systems cost split between municipalities and stewards for municipal Blue Box programs.
26. RCO supports the principles of EPR and its intent to transfer the costs and impacts of waste from taxpayers (paid to local governments) to industry that produces and sells products and packaging into Ontario's market. In that regard, RCO would have had great concern about any proposal to increase the share of actual Blue Box costs to be paid annually by municipalities.
27. I also understood that a portion of the costs associated with newspapers were paid to the municipalities through in-kind media space.

CCP

28. In the early days of the BBPP, the first Datacall reports added up to higher costs than what was expected. In fact the BBPP provided the first full cost accounting of the Blue Box programs at provincial level.
29. My understanding of the Minister's letter of December 2003, which led to the Cost Containment Plan (CCP), was that she wanted both municipalities and stewards to work hard, and to work together, to keep actual future costs down. RCO did not understand this letter to be an instruction to change the 50/50 Blue Box cost split to increase the share paid by municipalities.
30. The CCP was entirely funded with money from the E&E Fund, all of which was money that stewards owed to municipalities under s. 25(5) of the WDA. When WDO staff recommended the CCP to the WDO board, it did so with the consent of municipalities.
31. RCO did not understand the CCP to be a decision to change the 50/50 Blue Box cost split to *increase* the share of actual costs paid by municipalities. RCO voted to approve the CCP on the understanding that it would:

- a. ensure that all municipal costs reported through the Datacall were accurate and verified, and legitimately resulting from Blue Box waste diversion operations, and
 - b. provide encouragement and incentives for both municipalities and stewards to adopt "best practices" that would, over time, increase the efficiency and effectiveness of municipal Blue Box Programs, and therefore minimize future actual costs.
32. On the "best practices" issue, generally municipalities recognized that their Blue Box programs had room for improvement. A lot of work was done through the E&E and CIF monies to define best practice and provide information that informed the pay out methodology used to divide payments to municipalities.
33. Municipalities and stewards appeared to both want better tools to identify municipal programs that need to improve, and to assist and encourage such programs to improve. Municipalities were prepared to continue to use their E&E fund monies to provide these tools.
34. The CCP was going to provide these tools by:
- a. defining Blue Box best practices (through the E&E Fund);
 - b. identifying better and weaker performers among the individual municipal Blue Box programs, in terms of these best practices,
 - c. rewarding the better performers at the expense of the weaker performers, to give them a financial incentive to improve (through the payout model), and
 - d. assisting and encouraging weaker performers to improve (through the E&E Fund).
35. The payout model (MFAM) allocated the stewards' payment among individual municipalities. Managing the payout model was one of MIPC's key responsibilities under paragraph 5.4 of the BBPP.
36. Using "best practices" to target the payout model to reward individual better performers made good management sense. It was consistent with the principles that RCO supported in terms of continuous improvements. For these reasons, RCO voted for the CCP. The CCP was subsequently approved by the Minister.
37. RCO would likely not have voted for the CCP if we had been told its purpose or effect was to change the 50/50 cost split between stewards and municipalities, or to increase the financial burden of the Blue Box on municipalities.

BLUE BOX FUNDING MODEL AFTER THE CCP

38. Board members of the WDO considered ourselves responsible for approving the annual total of verified provincial Blue Box costs incurred by municipalities and the 50% share of that to be paid by stewards, as well as the fees annually charged to stewards.

39. During my time as a Director, I was active in all of the discussions that related to or affected the cost shared Blue Box Program including cost containment, Continuous Improvement Fund (CIF) and Effectiveness and Efficiency Fund (E&E).
40. I am not aware of any Minister of the Environment directing the WDO to change the 50/50 Blue Box cost split to increase the share of actual costs paid by municipalities as compared to stewards. On the contrary various Ministers directed WDO to develop a plan and make recommendations on how to increase steward's obligation beyond 50%.
41. I heard many Ministers of the Environment speak about the Blue Box program after the Cost Containment Plan (CCP) was approved. None of them ever said that the CCP had changed the 50/50 Blue Box cost split to *increase* the share paid by municipalities as compared to stewards.
42. Many Ministers expressed concern about the total cost of the Blue Box programs, and urged both municipalities and stewards to do what they could to keep the cost down. At the same time, Ministers also wanted municipalities to increase waste diversion, which often increases costs.

BEST PRACTICES

43. It was my understanding that the KPMG Report on *Operations Improvement: Blue Box Program Enhancement and Best Practices Assessment Project Report*, (KPMG Report) was intended to develop a "best practices" benchmark for the purposes of the CCP, not to change the cost split between municipalities and stewards.
44. The WDO board received, but did not formally approve or adopt, the KPMG Report, and the computer model it proposed.
45. I am not aware of the Minister of the Environment formally approving or adopting, the KPMG Report, or the computer model it proposed.
46. The WDO board did not receive detailed briefings on the precise workings of the KPMG Model. I had limited knowledge on how it worked..

ANNUAL OBLIGATION

47. As a WDO Director, I understood that there were an extensive process to review and verify the total provincial Blue Box net costs actually incurred by municipalities, as reported using the WDO Datacall. I understood that calculating the steward's obligation was derived from establishing the net systems costs of the Blue Box that considered a number of factors and a variety of variables. The calculations used to establish the stewards payments were clearly articulate in Stewardship Ontario's Blue Box Program Plan that was review and approved by WDO. Those calculation and verification process used to determine total net program costs was reviewed and agreed upon through a joint committee of stewards and municipalities called the Municipal Industry Program Committee (MIPC) which is chaired by the Executive Director of the WDO.

48. MIPC's decisions were brought to the Board for approval. MIPC recommended an amount for the annual Stewards' Obligation to the WDO Board of Directors each year and we approved it. The WDO board never challenged or changed the amount recommended by MIPC.
49. Recognizing that both stewards and municipalities were represented on MIPC, I did not question the annual costs for Blue Box that were agreed to. There did not seem to be a need for the WDO board to intervene, and neither party asked us to.
50. The concept of using best practice costs was brought to the Board, again as a methodology that was agreed to at MIPC. RCO's understanding of how this worked was consistent with the May 14, 2009 letter that SO wrote to WDO:

...Stewardship Ontario has been a strong supporter of continuous improvement through strong program management - which the Blue Box Program Plan and Cost Containment Plan were designed to support in two key ways: one, via the E&E/CIF, which helps finance technical innovations and structural changes within the system to improve performance, and two, via a "pay out" funding model that signals the kinds of behaviour that will send signals to incentivize continuous improvement by rewarding municipalities financially for implementing key management practices, and achieving superior performance....

Stewardship Ontario is seeking to restore the idea of rewarding performance, a concept which has received support from municipal staff during recent "best practice" workshops organized by Stewardship Ontario under the E&E Fund. *This approach would not impact the total amount that Stewards contribute to the operation of Ontario's blue box system in any given year, merely how that funding is allocated among municipalities.* [emphasis added]

51. WDO then wrote to AMO, copied to the Minister's Office, on June 8, 2009, saying the same thing:

"WDO has *not* adopted schemes that disallow *actual* municipal costs...The Act requires that payments to municipalities equal 50% of the total net costs but does not stipulate the method for distributing the funding. ...It is the distribution methodology... that is under discussion, *not the amount of funding to be distributed*... The WDO Board looks forward to the recommendation from MIPC on funding distribution methodology for 2010 that is consistent with the requirement in the Cost Containment Plan to fund best practices." [emphasis added]

52. Accordingly, on July 22, 2009, when I moved approval of the motion to approve the amount of the 2010 Stewards' Obligation, I did so as a routine matter, on what I believed to be an un-contentious item. The proposed amount appeared to be acceptable to all parties. It had been recommended by MIPC. None of the municipal representatives on the WDO board expressed any concern about it, either before, during or after the meeting.

53. I had no reason to believe that this resolution was intended to change the 50/50 cost split between stewards and municipalities, or to increase the financial burden of the Blue Box on municipalities.

54. For the same reasons, I voted to approve the amount proposed by MIPC on July 28, 2010 and July 20, 2011. By June 25, 2012, I was no longer a WDO board member.

CONCLUSION

55. I understand that this affidavit is sworn evidence to be offered to a legal tribunal deciding a question of great public importance. I have done my best to make this evidence as accurate and as truthful as I can. I intend to be bound by it.

WITNESS

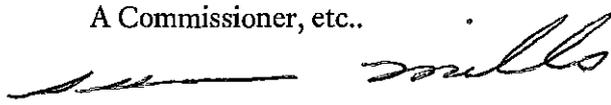
Sworn or Affirmed before me

On March ^{18th} , 2014

at the City of 70104-0

in the Province of Ontario

A Commissioner, etc..



Susan Margaret Mills, a Commissioner, etc.,
City of Toronto, for A. John Hodgins,
Barrister and Solicitor.
Expires June 14, 2015.

