

ARBITRATION TO DETERMINE
THE 2014 STEWARD OBLIGATION FOR THE BLUE BOX PROGRAM

B E T W E E N:

ASSOCIATION OF MUNICIPALITIES OF ONTARIO and THE CITY OF TORONTO

Applicants

- and -

STEWARDSHIP ONTARIO

Respondent

Affidavit of Rick D.R. Clow

Introduction	2
My Background	2
Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions	2
Our BB Program	4
Issue 2: Datacall Reporting and Verification	5
Cost of the BB Program	6
Cost Containment and Efficiency	7
Why have BB program costs gone up since 2005?	10
MIPC	12
Cost Containment Plan	12
Best Practices	13
KPMG "Best Practices"	14
WDO best practice score	15
Payout model	16
"Best Practices Funding Working Group"	17
Annual negotiations	18
Issue 3: In Kind	19
Conclusion	19
Sworn/Affirmed, April 2, 2014	20
<i>Attachment: CV</i>	<i>4 pp</i>

Introduction

1. My name is Rick Clow. I am currently employed by the Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions, as the General Manager. My CV is attached.
2. I am not neutral between the parties to this arbitration because I am employed by a municipal services board that receives Blue Box (BB) funding.

My Background

3. My academic credentials include: receiving a Bachelor of Science, 4 year – honours, from the University of Toronto, Toronto, Ontario, Specialist in Geography. I am currently on leave from Schulich School of Business, York University, Toronto, Ontario completing a Masters in Business Administration.
4. I completed the Governance Essentials program for Directors of Not-for-Profit Organizations, at the Rotman School of Management (U of T), Institute of Corporate Directors.
5. I have been directly employed in BB waste management since April 8, 1996 when I was hired by the Centre and South Hasting Recycling Board as 'Recycling Coordinator'. In 1997 this Board and the Centre and South Hastings Waste Management Board merged forming the Centre and South Hastings Waste Services Board and I assumed the position of General Manager.
6. I have managed the Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions, Blue Box program since April 8, 1996. Blue Box makes up about 65% of my work as far as my time; and about 82% of our gross budget. Eight staff members have *some* involvement in blue box.
7. I represented the Association of Municipalities on the MIPC between 2002 and 2012. I participated, on AMO's behalf, in the following committees relevant to BB funding during the following years: Between 2002 and 2012 MIPC formed a number of ad-hoc committees, relevant to BB funding, and I participated on several of these: review of GAP, assist with and review of KPMG study; review of procedures and applications to the Effectiveness and Efficiency Fund; review of Datacall data; and, review of program audits.

Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions

8. The Centre and South Hastings Waste Services Board is a municipal services board as per the Municipal Act of Ontario. The Board currently consists of nine member municipalities: The Cities of Belleville and Quinte West; the Municipalities of Centre Hastings, Marmora and Lake, and Tweed; the Townships of Madoc, Stirling-Rawdon, and Tyendinaga; and Prince Edward County.

9. The Board is defined by a written, approved and signed agreement and each member municipality has a representative on the board which meets monthly. The Board also provides contract service to other municipalities; currently the Townships of Limerick and Wollaston.
10. The population of the Board's service area is about 140,000, the household count is about 63,000. The service area covers a wide range of single family, low and high rise apartments, group homes, townhouse, condominium, rural residential, farms and seasonal units. The area is urban (in the cities, and villages) rural residential, vacation and farm. Thus the Board's program is skilfully tailored to provide service to all.
11. By joining together in a services board, the member municipalities have benefited from efficiencies and economies of scale: board wide tendering and contracting resulting in lower pricing due to a larger population and service area, owning and contracting out the operation of its own Material Recovery Facility, having a staffing complement that manages public relations, contract administration, financial and other items, being at a scale that allowed for effective provision of other services: Industrial, Commercial, Institutional, open space, event and diversion programs.
12. The Board operates via a stand alone governance body and a stand alone budget with expenditure and revenue internal - it balances its budget and is thus very aware of the amount and need for revenue and the amount and need for grants – the levy to the members is NET to cover costs.
13. The Board provides waste diversion services: blue box recycling, ICI waste diversion, hazardous waste and waste electronics diversion, and consultation on waste diversion. As a standalone entity it is a relatively complex program. The challenges faced running it are the uncertain future, and securing sufficient funding for the program needs. The program would like to expand however a firm future and full funding are required.
14. From its start, the Board has been very innovative in its services: promoting garbage bag limits, clear bags for garbage, garbage bag tags, landfill fees, etc. It has encouraged householder sorting; operating a five stream system (corrugated cardboard, paper fibres, containers, and clear and coloured glass containers). It was ahead of the curve in introducing curb side collection of non-required items such as boxboard, aerosols, empty paint cans, etc. It was already collecting and processing required materials prior to the 1994 introduction of regulations.
15. The board provided a full service and innovative program with a full blue box range of materials. Standalone budgeting and costs control allowed it to accumulate a surplus during the MOE grant period. The surplus replaced the lack of MOE grants until the BBPP funding started.
16. The Board continues to utilize and demonstrate effective and efficient operations; managing its tender and tendering for collection and processing services. Such that during the 2005 KPMG study it was selected as a model community (analogue).

Our BB Program

17. The Board started to operate a curbside collection program and operate its MRF in September 1990.
18. The Board's BB program has quality oversight and is well managed with a goal of effectiveness and efficiency.
19. The Board provides a full range of collection services via contract: weekly curbside, biweekly curbside, one side of the road only, depot and cart based to residential, multi-residential seasonal, and schools, open space and events. It owns its own MRF where a full sort is done to maximize market revenue. The Board's own staff markets materials, provides customer service, does public relations and financial control.
20. Technically the Board has zero municipal staff; it has eight staff, that are Board employees and considered public servants, that partially provide blue box program service; they do not receive OMERS as an example.
21. Collection and operation of the MRF is the major contract. Currently the contractor is HGC Management Inc., as selected by a competitive tendering process in 2013, prior to that the contractor was Waste Management Inc., as selected by a competitive tendering process. The Board has a purchasing policy and obtains three prices for almost everything it does and has other long term and short term contracts; for example: waste audits, marketing review, printing, computer services etc.
22. The MRF was constructed in 1990 representing current design thinking of the time with a capacity of about 8,000 tonnes per annum. It was quickly rendered undersized by the householder enthusiasm, program addition of: materials, collection points and member municipalities. The method of collecting and storing glass containers out of the other materials plus separating corrugated cardboard in the collection and utilizing extra shifts at the MRF helped reduce crowding.
23. In 2002 the Board increased the MRF space by adding an enclosed tipping floor and pre-processing areas for fibres and containers. It added a new baler in 2003 with over capacity and was processing about 18,000 metric per annum.
24. In 2011 the two sort lines were rebuilt. The sort lines are mechanized, but are based on manual sorting, and utilize a magnet and an aluminium separator. The MRF has 19 employees - employed by the contractor. In order to encourage householder participation via curbside sorting and to keep space and sorting requirements down, in the MRF, the Board opted for a 'two stream' sort - it costs less and produces a better material for more revenue. The paper fibres are kept separate from the containers.
25. The MRF and land cost about \$1.5 million in 1989 dollars to construct and was designed to process about 8,000 tonnes at that time. The funding was partially MOE grant and mostly a pay-in by the original members of the Board. The Board has paid the costs of the additions: office space, tipping floor, baler and shared the costs of line rebuilding with the contractor (Waste Management) and with a CIF grant.

26. The Board's MRF is not highly mechanized, but is labour intensive, and via the contracting out of the operation is kept very efficient.
27. In 2012, our BB program collected 12,680 tonnes, additional tonnes came from the ICI (industrial, commercial, institutional) program. Our last waste audit suggested a capture rate of 86%, an increase of 4% from the previous study.
28. Waste audits suggest that the average household on the Board's service area uses 2 blue boxes or more while the number of garbage bags set out has declined from 3 to 1.
29. As mentioned the Board's program was selected as a model for example by the KPMG study; it has been toured by officials of Ontario, other Canadian provinces, and by people from as far away as Cuba, England, Germany, etc. MOE has recommended our program as an example for other municipalities to study and we were included in a provincial web site, and on an MPMP web site, as a best practice.
30. The Board, in its residential curbside program accepts: corrugated cardboard, polycoat and Tetrapak, film (plastic bags), newspapers, magazines, catalogues, directories, programs, flyers, boxboard, core tubes, and office paper. Clear and coloured glass bottles, PETE and HDPE jars and bottles, tubs and lids, buckets, tin cans, aluminium cans. As a full service program these materials assist in increasing diversion from landfill and generate revenue in the market place by increasing the tonnes of material marketed.

Issue 2: Datacall Reporting and Verification

31. We report our BB costs to WDO through the annual Datacall.
32. Were your 2012 Datacall reports accurate (meaning the 2012 calendar year report, filed in April 2013?) As the Board has stand alone records and controls, our Datacall numbers are accurate. The provincial Datacall data gathering process is reviewed while ongoing, by WDO and MMIPC staff, when complete a 'proofing' review is done and annual audits are conducted.
33. The Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions has a standalone office with standalone staff. The Financial Administrator completes the Datacall with help from the Financial Assistant, the Accounting Clerk, the Scale Clerk and up to four other staff as required. The FA maintains both computerized and paper records through out the year as part of her responsibility, our files and our budget are aligned towards the Datacall for ease of reporting/checking stats.
34. How do we know that our numbers are accurate? The Board has a standalone budget and office; we maintain all records separately and operate the truck scale and keep the weigh tickets and customer records in our possession and separate from the contractor. We annually report to the MOE, conduct monthly internal reviews and have an audit by outside independent auditors annually. As we pay the contractor by weight, they have a goal of ensuring accurate weights also.

35. At the beginning of the calendar year, the FA starts to gather data and request other data from member municipalities and staff. In March and April she devotes most of her time to the Datacall. Our information is derived from files, journals and records that are available for audit – they are audited by our own financial auditors. When the Datacall is completed the General Manager reviews the information and summaries, test numbers are reviewed. The General Manager signs off. Likely the Datacall completion costs about \$6,000 - \$12,000 per annum.
36. What other scrutiny do your BB numbers get? Our data is reviewed internally and then by WDO and MIPC, once accepted it is posted on the WDO web site and is accessible to all for study.
37. The Datacall guide requires that data reported via the Datacall have a direct link to information in the reporting municipality's records (eg., G.L.). Municipalities' books are scrutinized in many different ways. Annual audit. Sign off by chief financial officer. Budget that goes to council, reports that go to council. Public scrutiny. Municipal Act. Enhanced questioning by council members about anything that leads to a tax increase. Most waste diversion departments compete with other municipal programs such as water, sewers, roads, etc.
38. Is WDO diligent in following up on your Datacall reports? YES they review and call if we or they have questions. They have identified areas that required correction - such as clerical errors - or clarification - such as an explanation for a variance from the previous year.
39. What steps do you take to make sure that all costs reported through the Datacall are costs resulting from your Blue Box program? The Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions has a standalone office with standalone staff. The Financial Administrator completes the Datacall with help; she maintains both computerized and paper records throughout the year as part of her responsibility, our files and our budget are aligned towards the Datacall (eg., 'blue box', 'hazardous waste', etc., for ease of reporting/checking stats. Our information is derived from files, journals and records that are available for audit – they are audited by our own financial auditors. Our operation and records and files are standalone and as such we know which costs are BB.
40. In 2012, were any of your entries corrected during the verification process? I believe that several minor items were the subject of a verification call.

Cost of the BB Program

41. In 2012, the BB program cost the Board approximately \$4.0 million in gross costs – including, administration, collection and processing costs through an 11 year old tender. This included adding \$100,000 to a reserve, it is a GROSS COST of \$307.69 per tonne.
42. After revenue of \$1.52 million, our net cost for 2012 was \$2.48 million. Of that, we received only \$955,000 (39%) from the payout model. The remainder, \$1.525 million, was paid by levy from the Board's municipal members.

43. Why didn't we get more? Among other things, the payout model applies a standard administration factor that is not adequate, plus from the initial 50% the "in-kind" equivalent of OCNA/CAN eg., free newspaper space, is deducted and funding to CIF is deducted – payments to the municipalities should be on straight net costs.
44. What is the impact of the shortfall? The Board levies its members on the basis of a net amount so the Board's share of the shortfall is the missing 11% in the example – so in response to lack of payment the members either make it up by levy or we cut costs – as we are a holistic waste diversion service those costs might be anywhere: so maybe the better question is: roughly over ten years we have lost up to \$3 million. What would we have done with that money? see below AND upgraded or replaced the HW/WEE depot, added events, done more in the community re containers, added staff to aid in diversion and do more to facilitate blue box recycling for example.
45. In 2012, as per above, if the Board had received a full 50% of our BB costs from the stewards, we would have received about \$300,000 more than we did. Staff would have recommended to the Board that this money be spent on: capital expenditures such as acquire a neighbouring piece of land and expand MRF operations to increase annual tonnages and efficiency; operations such as better monitoring of contractor operations to ensure proper sort during collection, thus more material and less waste/contamination and improved processing – less loss thus more revenue; and ensuring proper equipment maintenance, reducing Board costs. We would have purchased more containers for institutions and depots to increase capture. The MRF is aging and replacement repairs are important.
46. The public benefits would have been more material and more revenue; less contractor waste; less capital cost to the Board in repairing equipment.

Cost Containment and Efficiency

47. Cost Containment does not mean cost reduction; it means applying a broad range of best practices to ensure that costs are legitimate, contracted costs are competitive, and all are kept as low as possible while providing full and quality service.
48. Cost containment is very important to the Board. One interesting example is that our staff is not paid as well as usual municipal staff.
49. This Board does not like to spend money: each expenditure and program change is reviewed and weighed carefully - the goal is maximum diversion for minimum cost. As mentioned, the Board has a public visible standalone budget that reflects total cost/need as a gross cost then seeks maximum revenue and grant to reduce the net cost. We monitor the collection, processing and market the materials for maximum revenue. Thus we always practice cost containment.
50. In 2012, we did our job, which was to deliver all waste diversion services as efficiently and effectively as we could.
51. There wasn't any wastage or inefficiencies– our collection and processing was tendered out and the lowest bidder provided the service – the tender that the Board utilized was considered a "model" tender. Collection was tailored so that urban areas

received weekly while rural had depots and biweekly one side of the road only collection – compaction trucks were specified. The processing was specified to sort enough to maximize revenue while not increasing costs for frivolous sorts.

52. The Board does not like to spend money: each expenditure and program change is reviewed and weighed carefully - the goal is maximum diversion for minimum cost. As mentioned, the Board has a public visible standalone budget that reflects total cost/need as a gross cost then seeks maximum revenue and grant to reduce the net cost. We monitor the collection, processing, and market the materials for maximum revenue.
53. In the Board's operation, the BB program has about \$50,000 in annual costs for PR/communications staff and P&E materials, (note about \$1 per hhld!!!) BB training costs about \$3,000 per annum to attend a few training sessions. Compared to other municipalities this is a very low cost and is in line with the KPMG benchmark of \$1 per hhld. [we don't know how much of this comes back from the payout model as it is a lump sum without breakdowns].
54. In 2002 and 2013, our tender utilized the Knowledge Network/CIF model tender, and our own which was considered a model tender, to seek pricing for collection and processing. It was sent out to many firms and was advertised in *Daily Commercial News*. We received written responses that had competitive pricing and selected the lowest price. Internally we calculated our own estimate of pricing and also collected pricing from other sources such as other municipalities for comparison. We thought our results were thus fair, competitive and commercially reasonable.
55. In 2012, where was Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions in the cost band? The Board is in the "rural regional" group and I believe that in 2012 we were below the mean likely at the bottom of the -20% zone.
56. As mentioned previously the Board has been recognized repeatedly as a model for cost containment. By joining together in a services board the member municipalities have benefited from efficiencies and economies of scale: board wide tendering and contracting resulting in lower pricing due to a larger population and service area, owning and contracting out the operation of its own Material Recovery Facility, having a staffing complement that manages public relations, contract administration, financial and other items, material marketing, customer service and data capture and retention. Being at a scale that allowed for effective provision of other services: Industrial, Commercial, Institutional, open space, event and diversion programs. The Board operates via a stand only governance body and a stand alone budget with expenditure and revenue internal - it balances its budget and is thus very aware of the amount and need for revenue and the amount and need for grants – the levy to the members is NET to cover costs.
57. What else has Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions done to contain its costs? As mentioned previously using a model tender the Board received competitive market based pricing for collection and

processing services. It conducts monthly reviews of its status and situation and adjusts accordingly.

58. Could you have done more to contain 2012 costs? Not with the resources available. The Board drew a careful line between activities that would have short term cost increases but contain costs over the long term and short term savings of not increasing the budget and not spending on cost cutting projects. As mentioned above, if the Board had received a full 50% of our BB costs from the stewards in 2012, we would have received about \$300,000 more than we did. Staff would have recommended to the Board that this money be spent on: capital expenditures such as acquire a neighbouring piece of land and expand MRF operations to increase annual tonnages and efficiency; operations such as better monitoring of contractor operations to ensure proper sort during collection, thus more material and less waste/contamination and improved processing – less loss thus more revenue; and ensuring proper equipment maintenance, reducing Board long term capital costs. We would have purchased more containers for institutions and depots to increase capture. The MRF is aging and replacement repairs are important. The public benefits would have been more material and more revenue; less contractor waste; less capital cost to the Board in repairing equipment. The Board didn't spend this money as it is careful in its expenditures and felt that these items should have been at least partially covered by full stewardship.
59. Where do you get funds for capital upgrades and improvements? With a stand alone budget, the Board can and does incur year end surpluses from time to time due to effective management, improved revenue from material sales, reduced tonnage and thus reduced payments to the contractor. (all better than anticipated in the budget). Through direct budget line items and these surpluses, the Board elects to build a reserve for capital upgrades and improvements.
60. How hard is it to get that capital? The capital gains vary from year to year so are unpredictable, the Board could borrow but doesn't want that responsibility. The real issue has been the uncertainty of the future; for example if Stewardship Ontario were to take over full operations of the BB program there isn't any reason for the Board to invest. We would be left with Stranded assets!!!
61. The Board has other diversion programs that could use funding but the same long term question exists: a long term firm policy of SO operational and capital funding/involvement is required for the Board to feel comfortable about investing more capital dollars itself.
62. How long does it take for new capital investments to reduce your BB costs? For any municipality unless they can negotiate a cost reduction from their contractor (due to capital investments reducing costs); the result of capital investments will only be seen at the time of contract renewal – the firms bidding on a new tendered contract will reduce their price increases if they see that capital investments have been made that will result in lower costs. So the answer is new capital investments will most likely lower BB program cost increases at the next tender. This implies that change isn't a curve it is a step-wise function!!

63. What has Centre and South Hastings Waste Services Board, operating as Quinte Waste Solutions, or you, done to help other municipal programs contain their costs? The Board has provided site tours, provided free examples and assistance when requested, to other municipalities. I have, as a representative of the Board, taught at best practice courses, spoken at workshops and conferences, and addressed municipal staff, councils and gatherings such as AMO's annual conference.
64. What, if any, steps have you taken to make your BB program as efficient as possible? Again as a "model community" we were basically there. For example, how do you make sure you get competitive bids to build the MRF and operate the program efficiently. This basically is self policing; the municipality needs to have a policy/procedure of writing a good tender and of tendering, getting at least three price quotes, and internally enforce that – if you go out for tender (with good specifications) and promote the request widely and then have a range of submissions and select the lowest meeting criteria you have the most competitive bids.
65. Due to the pressures on all municipalities for funding to provide all sorts of programs, I would say that all municipalities are interested in containing costs – it helps the few dollars they have go farther towards meeting all of the demands for services.
66. The Board was ahead of the curve re BB programs prior to the 1994 change (Reg 101/94); that change likely helped as it saw more municipalities collect, process and ship more BB material to markets thus firming up the stability of the markets and values.

Why have BB program costs gone up since 2005?

67. BB costs have increased because of inflation, electricity, reductions in revenue, legitimate costs added to the datacall, and the need for investments in an aging MRF and equipment. Due to an increase in volume and units of recycling, the equipment is working more to process the same weight and revenue.
68. Since 2003, (the BBPP was approved) and since 2005 (the year whose data was used to develop the KMPG model) the Board has noticed significant changes in the materials handled: lightweighting, less aluminium (high revenue) and more low value materials. The move to 500 ml water bottles, for example, resulted in more units, more processor "throws", and more volume but as the number and lightweighting increased, the costs increased but the revenue has not.
69. The changes in packaging have had a negative impact on the cost of operating the program. We have seen increased costs in the new tender and reduced revenue. Lightweighting, less aluminium (high revenue) and more low value materials along with more thermoform PETE, less HDPE and more laminates (lower value); all of which results in more handling, more costs and less revenue. The use of the recycling symbol has resulted in more non-marketable material being forced upon the system by producers and homeowners reducing revenue and increasing costs.
70. Non-ocna/can newspapers and flyers have increased but funding has not.

71. How has the operation of the MRF changed since 2005?; due to more PETE we installed a perforator to increase shipment weights on these bales to market and keep revenue level. We have increased tin magnets and aluminium separators to gain more of these valuable materials that are declining in number. Stewards' widespread use of the recycling symbol on packaging has resulted in more non-marketable material being forced into our BB program by producers and homeowners, reducing revenue and increasing costs.
72. We have seen more thermoform PETE, more lightweighting, less aluminium and HDPE and more laminates (lower value); all of which results in more handling, more costs and less revenue.
73. We also have a major factor due to the end of an old contract. Until and including 2012, due to a long term contract, the Board was paying unusually low BB program costs. The collection and processing costs were set per tonne and only increased by 85% of inflation. With the new tender in 2013 and thus new contract starting in November 2013, the Board saw an 81% increase in net BB costs, in 2014, compared to 2013, budget.
74. Why did this happen? In 2002, the last contractor, Waste Management Inc., substantially underbid the costs. At the time, Waste Management Inc. really wanted to get our recycling contract. It was as part of their campaign to get the Richmond Landfill expanded, and part of their "green campaign" of the time. They gave us lower than market pricing for a six year contract, which we had a right to renew at the same price for another five years. As a result of that very cheap contract, we had below market collection and processing costs until 2013.
75. In the last year of the old contract, it was clear that this below market pricing would not be repeated and their maintenance of the equipment declined. As a result, after they had left, the new contractor found that one piece of equipment required major maintenance. The trucks were so worn out that they literally towed them away, dropping material on the road as they went.
76. For the new contract, the tender we did in 2013, we used a model tender and had a very good competitive process and resulted in market pricing. So the Board was brought up to legitimate market pricing and no more in 2013/14. Our costs will necessarily be much higher from now on.
77. The 2007 KPMG Report estimated the operating cost of the MRF, how did that number compare to the actual operating costs at the time? We were a model community for that report and our costs were on average with the curves or below. Now our costs are going to be much higher than that curve.
78. Does increasing the KPMG cost curve number by a percent, as a proxy for inflation, represent a fair way of calculating the costs of operating your MRF in 2012? Or now? NO. Our tendered costs then that were the basis for the study were below market; we now have "at market" costing – which due to the lowness before appears much higher. We also have an aging MRF and equipment that need more work plus the last contractor failed to properly maintain the equipment causing costs to rise.

MIPC

79. What is MIPC? The Municipal Industry Program Committee a sub-committee of WDO.
80. Who sat on it? The WDO ED chaired, and five “steward” representatives and five municipal.
81. I was a municipal representative on the municipal industrial program committee from 2002 to 2012.
82. The mandate of this committee is found in Section 5.4 of the blue box program plan. To the best of my knowledge, this list of responsibilities was never amended.
83. Under this list, MIPC had responsibility for recommending how the stewards' obligation should be divided among individual municipalities. We spent an enormous amount of time on this issue and used different ways of calculating how the money should be allocated. In the early years, we used a model called the municipal funding allocation model. Various versions of models were used/studied. Later, we simply referred to the payout model.

Cost Containment Plan

84. As a member of MIPC I participated in meetings where the need for a CCP was discussed, as driven by the Minister, and then a response was developed. I participated in discussions and document review re the development of the Cost Containment Plan. If there were other meetings, discussions, emails and telephone conversations re the CCP between members of MIPC and or WDO staff I was not party to these. Municipal MIPC did not have full staff available to conduct in depth analysis and reviews to aid the municipal MIPC members to develop responses.
85. The CCP was to be a tool that would slow and restrain future actual municipal BBPP costs by introducing and applying a broad range of best practices on both sides to ensure that costs are legitimate, contracted costs are competitive, and all are kept as low as possible while providing full and quality service. To me it was to be a guidance tool, that would over time see the acceleration of actual municipal BB costs slow down and become more level.
86. Municipalities supported the CCP. As outlined above it made sense. It would appease the stewards and gain payments for municipalities; in theory it sounded like a program that would be fully developed and be ‘meaty’ and useful.
87. Payment containment is different to cost containment to me as it implies restricting payments regardless of the costs, the reason for the costs, history, or future plans, etc. Payment containment was not mentioned or agreed to while the CCP was being developed.
88. The CCP had two major features. The major purpose was to ensure that municipal net costs incurred as reported to the Datacall were accurate, trustworthy, and verified. A small number of municipalities had filed Datacall reports that were out of line with

everyone else and which we believed contained costs that should not have been allocated to the blue box program. It was important for the credibility and sustainability of the funding partnership between municipalities and stewards that any inappropriate cost claims be identified and corrected (removed and not done again). That was a short-term problem.

89. The longer term problem was that some municipalities were paying more than they needed to for blue box waste diversion. Although a few of the municipal programs are large sophisticated operations with full-time staff, there are hundreds of smaller municipalities where a single person must manage the blue box program as well as fulfil many other legitimate municipal duties. We knew there were many opportunities to improve the efficiency and effectiveness of blue box programs if we worked together, and municipalities were and are anxious to do so.
90. The cost containment plan encouraged municipalities to, where possible, work towards best practices.
91. Did AMO understand the CCP to be a plan to change the 50/50 Blue Box cost split to increase the share paid by municipalities? I think that at the time of development of the CCP it was believed that the 50/50 split would remain but there would a noteworthy program to encourage and put in place best practices that would see cost increases level off.
92. Would you have supported the CCP if it had included payment containment, i.e. a change in how actual BB costs were split? No.

Best Practices

93. The term “best practices” gets used a lot for different things.
94. Best practices is a term commonly used by municipalities. Municipalities are familiar with the term as it is used on provincial websites that provide examples or sample of BP and exemplified via the MPMP assessment program. Best practices answers the question of what is the standard? – what are other municipalities doing? BP is a goal, a comparator, not a minimum standard.
95. To us, it means determining and then applying a method that the municipal service industry has shown can help provide maximum service (diversion in this case) for minimum cost. It can take years to move a particular municipal program towards best practices, and it may never be possible to achieve them in full, because of particular circumstances in individual municipalities.
96. When the cost containment plan was developed and approved, no one knew what best practices for blue box were. I had an opinion, as did others, but there was no reliable data to identify any particular list of best practices. We expected that it would take three years to do a proper job to identify best practices across all the blue box programs. We knew it would then take additional years to spread those best practices across the province and have them implemented as contracts came up for renewal etc.

97. As mentioned previously, the Board has been recognized repeatedly as a model for best practice implementation. By joining together in a services board, the member municipalities have benefited from efficiencies and economies of scale: board wide tendering and contracting resulting in lower pricing due to a larger population and service area, owning and contracting out the operation of its own Material Recovery Facility, having a staffing compliment that manages public relations, contract administration, financial and other items, material marketing, customer service and data capture and retention. Being at a scale that allowed for effective provision of other services: Industrial, Commercial, Institutional, open space, event and diversion programs.
98. The Board operates via a stand only governance body and a standalone budget with expenditure and revenue internal - it balances its budget and is thus very aware of the amount and need for revenue and the amount and need for grants – the levy to the members is NET to cover costs. We developed an Integrated Waste Master Plan with our member municipalities and encourage through our tools the hierarchy of waste handling.

KPMG “Best practices”

99. I was aware of and involved in the preparation of the KPMG report – extensive tours, examples and consultations were provided to KPMG – this Board was selected by KPMG as a model community for the report.
100. The purpose of the KPMG report was to identify “best practices”, as a target along the continuum. In other words, to identify municipal programs that were doing well or badly, so that the poor performers could be identified and assisted and encouraged to improve.
101. Unfortunately, the report did not produce much that was of value at least to the larger systems like ours. Every sophisticated system already knew that every well-managed program, whether in the waste area or in any other aspect of municipal government, needs a plan, measurable targets, trained staff, etc.
102. One area that the KPMG did usefully highlight, however, was the need by many of the smaller systems for assistance in negotiating better contracts with private sector waste management companies. We did a lot of work on this.
103. A knowledge network (web based) was set up, using E&E funds (part of the money owed to municipalities by stewards). This is where model contracts and instructions how to use them were posted.
104. We set up an “A team” which tracked municipalities whose waste contracts were coming up for renewal (as shown on Datacall information). Most municipal waste management contracts are multi-year contracts, for five years or more. Municipalities could not unilaterally change the terms of those contracts, and had to wait for existing contracts to expire before new ones were possible.

105. The A team tracked which municipalities' contracts were coming due, and offered assistance to help get a better contract in the next round. The A team had paid staff, paid for out of the E&E funds.
106. In addition, more experienced municipal representatives such as myself volunteered a great deal of our personal time to help other municipalities. I personally visited at least six municipalities to explain the model contracts and the reason for using them, and to offer these smaller municipalities assistance in making the transition. I always provided an outline of how the Board operated, how we achieved reasonable costs, and how the recycling system generally works – outlining areas of cost reduction and revenue generation.
107. We received a very good response. All the municipalities that I visited were eager for the information and to reduce their costs if possible.
108. It appeared to me that there was a strong appetite among municipalities of all sizes to improve their blue box programs, especially from 2004 to 2010. I thought I observed substantial and continuous improvement over those years.
109. Progress slowed down somewhat in 2010. First, less money was available from the continuous improvement fund for the new capital investments. In addition, by then the Minister of Environment had announced his intention to change to an extended producer responsibility system, where stewards would take over responsibility for processing blue box materials. It did not make sense for municipalities to continue to invest in a program that was about to be taken away from them, particularly large capital investments with a long term payback.
110. Best practices in BB have continued to develop since 2007. Aside from the KPMG report, other sources for “best practices” include Ministry of Municipal Affairs website, AMO conferences and international practices. The CIF also helps to develop and spread best practices in BB diversion.

WDO best practice score

111. The WDO Best Practice score is collected through the Datacall. I developed the original best practice scoring tool that the Datacall uses, although it has been changed somewhat since then. It definitely has its shortfalls.
112. After the KMPG study was presented, although the study/report was not accepted by the municipal side of MIPC (it was, as I recall, “received” - a very municipal term), the WDO Executive Director lamented that the KPMG best practices chart was such that it couldn't be used as a continuous measure.
113. I devised the original method that started with “tick off” boxes (yes, no, partially, etc) and then provided points per BP category and tick off box for a total BP score. The intent was to display for a municipality how successful they had been up to a point in time at implementing BP – they could then see how far along they were re the KPMG BP points and how much more they had to do.

114. This technique was subsequently used in the payout model to determine how much a municipality was be paid of their “50%” – a crude form of reward vs penalty. Here the BP score had become a weighting towards how much funding an individual municipality should get as compared with its peers. To me the score was just a means to show a municipality how far along they were re the KPMG BP points and how much more they had to do.
115. As a metric it could be better, but the extensive and expensive KPMG study hadn’t come up with anything more re measureable/noteworthy. It was crude, but we didn’t have anything better.
116. What was your 2012 Best Practice score? I think our score was close to 90%.
117. Why did you receive this score rather than 100%? We learned early on that there were some corrections needed in the definitions – one was something like expanding the multiple container question to reference blue bags and carts, another was adding clear bags to the garbage restriction questions (bag tags, etc.) Our complaint was that the questions asked something like have you implemented bag tags recently?? We had done it many years ago so we had nothing to say about “recently”.
118. The point is that continuous improvement may have an end – you can’t do much once you do not have any more garbage for example. Plus as we often instructed in the field, we really didn’t need to do any learning (training), so couldn’t really tick that box; plus I wanted to expand training to include far ranging items such as masters degrees.
119. For anything on the BP list you haven’t done, please explain why? As mentioned we’ve done it all but the list’s requirements of recently or what constitutes training are a bit restrictive and inadequate in my mind.

Payout model

120. Payout model: what are its objectives? how does it work? To distribute the stewards’ obligation to the municipalities with BB programs. Originally as the municipal funding allocation model it considered net costs and internally analysed how those costs came about – distance to market, more glass, etc., distance between BB pick up stops etc., - meant a municipality had higher costs that weren’t within its control so this formula tried to compensate for all that. So at first it was internally trying to be ‘fair’. Over time as this was hard to explain different payout models were looked at.
121. This approach slid into using the payout as a tool to encourage more efficiency and effectiveness re municipal programs and their costs - the problem was if you “penalize” costly municipalities you should reward the really low cost ones” no one wanted to pay more than 50%. So different techniques of calculating the payout was used: so much for costs, so much for the BP score, so much on a group average etc.
122. Who manages the payout model? In theory MIPC and WDO – in early years the Stewards managed it, later the municipal side had staff and managed it but the stewards still issued the cheques and letters.

123. Do you support pay for performance? The original purpose of the WDA was for stewards to pay 50% of total municipal BB program costs. Assuming some costs are truly unreasonable I supported the concept of a two pronged approach in a time limited fashion; pay some towards costs (using the 50% of provincial costs) and fund improvement and pay towards performance costs but with the eventual goal of individually paying 50% of true BB program costs.

"Best Practices Funding Working Group"

124. *Glenda Gies and SO insisted that the Minister of the Environment had decided that municipalities would only be paid to "best practices costs" by 2008. Did you ever hear any Minister of the Environment actually say this?* NO, or anyone from the Ministry of the Environment.
125. *Did you ever see any document in which the minister said this?* NO. The only thing I know of was Glenda Gies and SO's interpretation of the Minister's costs containment letter that approved the Cost Containment Plan.
126. As I recall members of the municipal side of MIPC did raise questions as to the meaning and interpretation of the Minister's letter; we also questioned the format of WDO, MIPC and WDO Board operation re how items was communicated to the Board "from" MIPC.
127. I sat on a MIPC sub-committee called the "Best Practices Funding Working Group"; it was commenced as a result of direction from the WDO Board regarding best practice funding distribution in 2009. This group was tasked with developing a program performance funding distribution method and determining differential weightings of the best practice questions and revising the questions.
128. The members of the committee included: Liz Parry, Mustan Lalani, Sherry Arcarno, and myself.
129. What did the committee do? Look at alternatives for the program performance funding distribution method: MFAM, E&E factors, hybrids, etc. Discuss paying to BP question answers, program performance, and net cost.
130. One issue that MIPC discussed was how to develop province-wide average factors that could be used to calculate "best practice costs". The Stewards goal may have been to prepare the ground for full EPR; in a way the BP costs were to establish new cost band numbers and an alternative real item/costs based alternative number to the annual real cost number; we felt that being at the table was better than not – it allowed some control and direction. We agreed with numbers and methods that Alec Scott had been able to test.
131. I was not too sure what the SO model was they developed their own numbers based on their assumptions of what were reasonable costs and operations. We basically were looking at a technique using previous years' data; the thought being that once tested the technique would be applied and would generate an alternative number to real cost, in real time. The assumptions can always be called into question;

as such the numbers were good to start a discussion when we had the annual negotiations.

Annual negotiations

132. What happened at the annual negotiations? Basically the verified annual net cost number would be reported to MIPC from the completed Datacall - there were a few issues here because often both the WDO ED and SO staff had numbers before the municipal representatives and then there was the question of ensuring completeness and accuracy from the reporting municipalities. Once MMIPC had a staffer they helped in ensuring completeness and accuracy and in reviewing the number.
133. Usually the municipalities wanted the 50% of verified costs and the Stewards would have arguments as to why the number was too high – they had trouble “selling it” to the firms required to be a part of SO. Basically the mind sets were different: a business firm attempts for full market share and lowest costs with highest pricing for maximum profit; they could not understand why they were dealing with 200 plus municipal programs, all with unique situations/issues and thus costs and revenues.
134. Why was there an annual negotiation at all? I would say that basically the Stewards were dragged/forced into the WDA as the best of the worst alternatives – there was pressure at the time to have packaging and papers be more environmentally friendly – using deposit return containers, etc – the stewards didn’t want to do deposit return (they had been trying to get out of returnable pop bottles for a while, and didn’t want the responsibility and cost of running a full deposit return system) so the argument had been that the stewards would support the blue box idea.
135. In order to get them to the table they were told they were in for only 50%. [I think that the MOE that was handling this marriage knew they couldn’t sell them on more]. The initial time was a rush – when asked what the annual costs were a quick and very rough estimate was obtained. When the first data was gathered with parameters the ‘real’ costs were found to be much more than that rough estimate - the stewards felt they had been led astray. So negotiations started due to what the stewards perceived as high and unreasonable costs and “what were we going to do about it?”
136. Why did municipalities accept less than a true 50% of actual costs? I would say we always started there but the goal was, with volunteer committee members (not paid like SO’s), to get at least some payment for the municipalities. We didn’t have the resources or time or information to calculate and develop counter arguments plus the atmosphere was always along the lines that the Minister wanted a quiet settlement.
137. The MIPC procedures weren’t explicit. The WDO ED had a strong presence. Really we should have spent time defining procedures for MIPC and MIPC-WDO and WDO Board relations. MMIPC always felt except for 2011 that we were on the defensive in these discussions.
138. In addition, in 2008 the minister stated that the existing Blue Box funding program was to be replaced with an extended producer responsibility program, in

which stewards would take over more of the funding burden, perhaps up to 100 percent, for Blue Box waste.

139. How did this announcement about moving towards extended producer responsibility affect the annual negotiations? I think that the stewards wanted to lay groundwork that would establish a lower total annual cost so that “100%” wouldn’t be a high cost for them – they wanted to have things in place, regionalization for example, that would keep costs low. The municipalities felt this meant the steward assuming operations – not just paying any cost and at that the municipalities, in my mind, stopped working towards capital improvements and program improvements.
140. Did municipalities ever agree to give up getting a true 50% of actual costs for future years, i.e. For 2012? NO I thought the goal was that we would eventually reach a true 50% of costs per individual municipality.
141. What did you think would happen to the gap between verified reported costs and the so-called “best practices costs” over time? Did you expect it to grow or to shrink? Given the natural trending and work in the municipal arena I thought the gap would diminish; as mentioned above the time to see the results with municipal investment for lower costs is at tender time. It is a step wise function not a continuous curve; with information, the imparting of wisdom and time for investments to be made and tenders to be called results would be seen every five – six years as a drop only then.
142. Did municipalities ever give up their right to a 50% equal share from stewards for future years? As I recall we only negotiated an amount for a year – we talked about determining amounts for several years but didn’t want to do that as the actual costs might vary year to year. Items such as the formula, procedures, payout techniques, CIF etc., were discussed on a longer term basis. I do not think that MMIPC ever give up 50% for future years.

Issue 3: In Kind

143. In 2012, how much newspaper advertising space was allocated to you? Did you use it all? Did you want it? Was it useful to you? I believe that we had about 60,000 lines, we used all of it, and we would prefer funds but did make use of the space: something is better than nothing – as the lineage can be used for any diversion message it was useful to us.
144. Were you allowed to report it to the Datacall? To do so might be double accounting; I believe that we cannot report the CAN/OCNA lineage.
145. How much can you reasonably use in 2014? How much has been allocated to you for 2014? We do not know yet for 2014, it maybe double – we will use it.

Conclusion

146. In my view, the amount of the 2014 Steward’s Obligation should be 50% of verified real costs as that is what the current act states.

147. This affidavit represents the principal elements of my evidence in chief. I intend to be bound by it. I understand that this 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.

WITNESS

Sworn or Affirmed before me

On April 2nd, 2014

at the City of Belleville,

in the Province of Ontario

A Commissioner, etc.

HAROLD VAN WINSSEN

Rick Clow
Rick Clow

11 JANLYN CRES. #14,
BELLEVILLE, ON. K8N 5R4
Phone (613) 849-6511
rick.clow@utoronto.ca

Rick D.R. Clow

Career Objective

Lead a major portfolio in providing benchmark results utilizing my demonstrated leadership, management, entrepreneurial and innovation skills.

Career Summary (Management)

- Lead development of strategies for the stewardship of natural areas and the cost efficient management of cultural, heritage and environmental resources; recreational, park and cultural, facilities and properties.
- Responsible for the cost effective day-to-day operation of a provincial leader in innovative resource recovery services for 12 municipalities, providing front-line customer service.
- Worked to promote economic development by facilitating the development of local value added industry.
- Substantially improved revenue and grant income for parks and recreation, and program service providers. Successfully grew tourism.
- Lead expansion and modernization of service, enhanced communication and new partnerships.
- Peer member of Provincial task forces, training and grant programs and committees.

Demonstrated Skills and Experiences

Policy Development

- Lead the development of strategies, master plans and programs for natural areas, parks, cultural and recreational facilities incorporating the conservation of natural environments and appropriate revenue generation.
- Lead the development and implementation of an Integrated Waste Master Plan.
- Devised and implemented an environmental care policy to enhance and demonstrate environmental stewardship, included waste management program and energy conservation program.
- Devised and implemented risk management and response policies.
- Integrated sound business principles into daily operations.
- Developed policies and coordinated and guided departmental direction meeting of objectives.

Financial Development/Management

- Effective grant management, development of investment policies, over see preparation of departmental budgets and financial control.
- Managed organizations, advising Boards, managed Board administration.
- Introduced programs of continuous review and implementation to improve cost efficiency in property, facility, program and service operations.
- Substantially benefited revenue through implementation of fee-for-service, entrepreneurial revenue operations and joint ventures/partnerships.
- Developed and implemented corporate management policies, business plans, and procedures.
- Lead regional and provincial liaison initiatives for business growth.
- Human resource management emphasizing a team approach and the empowerment of employees.
- Departmental direction through consensus building around action plans.

Operational Service Expertise

- Developed and managed cultural, park, open space, and recreational services and programs as senior manager for a regional provider.
- Involved multiple stakeholders in strategic planning through a variety of means.
- Successfully expanded services provided and service areas while retaining cost efficiencies.
- Hands-on experience as key contact person in a high profile capacity for public information and media relations.
- Managed operations of widespread, diverse assets; with expertise in environmental services, tourism attraction, sport and leisure facilities, and group and public activities.

Technical Expertise

- Promotion of corporate image at all levels.
- Presentations to key stakeholders including municipal councils, interest groups, potential sponsors, placing issues in the terms of the audience.
- Employer designated as a 'model' community for a best practices study.
- Oversight of customer and operational support.
- Program marketing.
- Tourism, park-open space-trail, recreational and environmental services, program planning and management expertise.
- Association management experience including member/industry event development and management.

Volunteer Service

Chair of the Recreational Parks Operations / Environmental Landscape Management Services Advisory Committee at Seneca College of Applied Arts and Technology, King Campus, (1993-present) maintaining high committee member involvement in programs, course content and campus.

Completed three terms as President of the Tourist Association of Durham Region; worked with members to market and promote all area attractions.

Chair, Vice-Chair, and Committee Chair, of an Ontario Association and member of various of its provincial taskforces and committees.

Member of various Association of Municipalities of Ontario committees and working groups.

Career History

**General Manager
Quinte Waste Solutions
(Centre and South Hastings Waste Services Board), Quinte West, Ontario**

**Operations Manager
Central Lake Ontario Conservation Authority, Oshawa, Ontario**

**Regional Planner
Ministry of Natural Resources, Richmond Hill, Ontario**

**Executive Assistant
Community Planning Association of Canada, Toronto, Ontario**

Education

**Bachelor of Science, 4 year - honours
University of Toronto, Toronto, Ontario
Specialist in Geography**

**Masters in Business Administration (in progress),
York University, Toronto, Ontario**

**Rotman School of Management (U of T),
INSTITUTE OF CORPORATE DIRECTORS,
Graduated from Governance Essentials program
for Directors of Not-for-Profit Organizations**

Rick Clow BSc – Geography – U of T.

General Manager, *Quinte Waste Solutions* - the operating name of the Centre and South Hastings Waste Services Board (www.quinterecycling.org) - a municipal services board under the municipal act, providing nine member municipalities with waste management services. Joining together in a board provides members with: economies of scale for tenders/competitive pricing, shared resources, enhanced market access and regional/common public messages.

Quinte Waste Solutions provides curbside, depot, public area and open space, and commercial recycling. It owns a material processing facility. It also provides household hazardous waste and waste electronics collection/diversion as well as administrative and analysis/consultative services.

Funding to operate these waste diversion programs comes from: levies via property taxes, revenue from the materials collected and then sold into a worldwide commodity market and funding received from Industry Funded Organizations who levy fees from product stewards (manufacturers and first importers). This is referred to as Extended Producer Responsibility (EPR). There are separate stewards for both the Blue Box program and the Municipal Hazardous and Special Waste and Electronics programs. This funding is partially based on performance and tonnages collected as reported to Waste Diversion Ontario (www.wdo.ca).

Past Chair and past vice-chair of the Association of Municipal Recycling Coordinators now known as the Municipal Waste Association.

Past Chair of the Markets, Operations and Contracts sub-committee of the AMRC-MWA.

One of five municipal members, from across the province, of the Municipal – Industry Program Committee under the Waste Diversion Act – Blue Box Program Plan – an organization that sets funding, upgrade projects, and performance levels for municipal programs across the province.

Have served as a peer reviewer, instructor, working group participant in the waste diversion industry.

Prior, **Manager of Operations, Centre Lake Ontario Conservation Authority** (www.cloca.com) - mandated to establish and undertake programs to promote the conservation, restoration, development and management of natural resources in partnership with local Municipalities and the Province. Provides outdoor recreational and educational facilities and opportunities (trails, camping, seasonal).

Chair of the Advisory Committee for the Environmental Landscape Management diploma program at Seneca College, King Campus.

Past President of the Tourist Association of Durham Region (unique natural features can be a tourist attraction, for the sake of preservation).

