

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 Michael Birett

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Introduction

1. My name is Michael Birett. I am an Association of Municipalities of Ontario (AMO) contract employee and have been the Managing Director of the Blue Box (BB) Continuous Improvement Fund from July 3rd, 2012 to the present.
2. In my capacity as the CIF Director I must endeavour to be objectively critical of the performance of both parties in the matter of program operations and respective roles and responsibilities.
3. In submitting this deputation, I have used the terms ‘stewards’ and ‘municipalities’ loosely to include their respective representatives (e.g., Stewardship Ontario (SO), AMO, Toronto) and affiliates (i.e., advocacy groups).

Background and experience

4. I have over 23 year of experience in the waste management industry spanning the fields of landfill operations, waste diversion operations, waste diversion program and policy development and facility operations.
5. I was involved in the design and operation of Waterloo and York's municipal BB programs between 1991 and 2008. My CV is attached, as is a list of the waste management/ waste diversion initiatives, studies and reports that I was involved in or directly responsible for completing.

The CIF

6. The CIF's role is to work with Ontario municipalities and industry to improve BB waste diversion through new technologies, best practices and advisory and educational services.
7. On our website, <http://cif.wdo.ca/about/index.htm>, the CIF describes itself as "a catalyst for change which fulfills its mandate by providing funding, technical support and training for municipalities. CIF staff actively engage stakeholders in identifying and developing best practices and technological and market based solutions to challenges associated with the operation of Ontario's Blue Box programs."
8. The CIF Board of Directors includes, amongst others, representation from AMO, the City of Toronto, SO, and WDO.
9. The purpose and goal of the CIF, as stated in the original 3 Year Strategic Plan (Dec 2007) is to:
 - a. provide funding to municipalities in support of projects and programs that increase cost-effectiveness, increase diversion of Blue Box (BB) materials and/or increase the performance of Ontario's residential BB recycling programs. Through projects funded by the CIF, the Fund seeks to maximize the efficiency of both individual municipal recycling programs as well as the system as a whole.
 - b. identify and apply 'best practices' and preferred approaches within and across municipalities as well as to help foster and support innovation throughout the system. The CIF will also play a key role in helping to establish, measure and share benchmarks and best practices across the entire province to ensure that all municipalities have access to the information and resources necessary to maximize the performance of their local "blue box" recycling program, and to take advantage of scale efficiencies or other opportunities that might exist across multiple municipalities or regions.
10. In simplistic terms, its mandate is to improve the effectiveness and efficiency of the Ontario BB program. Over the past six years, the CIF has provided financial and technical assistance to assist both municipalities and stewards in fulfilling their Cost Containment Plan (CCP) obligations and in addressing priority concerns of all the partners.
11. The CIF was set up by an agreement dated October 17, 2007 between SO, Waste Diversion Ontario (WDO), AMO, and the City of Toronto. This agreement had a three-

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year term after implementation of the CIF and has since expired. A subsequent agreement was signed by the parties on July 28th, 2010 which further defined the CIF as the successor of the Effectiveness and Efficiency Fund and set out the process by which the original October 17, 2007 agreement would be implemented and supported by the parties. This agreement was intended to remain valid until Dec 31st, 2011.

12. On July 20th, 2011, these initial agreements were replaced by a new agreement, which was scheduled to expire December 31, 2013. On December 11th, 2013, the parties agreed to extend the expiry date of the 2011 agreement to December 31, 2014. The CIF is now operating under the authority of the July 20, 2011 agreement as extended.

CIF Funds Received

13. The CIF is funded by municipalities through the allocation of a portion of the funds paid by stewards in the annual Stewards Obligation as required by the WDA.
14. Each year, representatives of municipalities and stewards have agreed on what portion of that year's steward obligation to municipalities will be paid by municipalities into the CIF. In addition, \$1,112,947 in unspent funds was transferred to the CIF from the predecessor fund, the Effectiveness and Efficiency Fund when the E&E Fund was closed out.
15. The amount paid into the CIF has varied. The 2007 agreement stipulated that 20 percent of the steward obligation each year, after the in-kind deduction, should be paid by municipalities into the CIF and this approach was used to fund the CIF in 2008 to 2010 inclusive. In 2011 the parties agreed to reduce funding to 10% of the steward obligation after the in-kind deduction.
16. For 2012, the CIF received a flat rate of \$4,450,757 representing approximately 5%. For 2013, the CIF was provided with \$4.62 million (5%) in additional funds.

CIF Grants Given

17. All CIF grants are directed at helping to achieve program related objectives as determined collaboratively by the stakeholders.
18. Most grants go to municipal BB programs, to help improve program performance including identifying and encouraging the adoption of best practices, including the questionable "best practices" identified by the 2007 KPMG report and in the subsequently adopted by WDO.
19. Some funds have been used to help SO address its obligations under the CCP such as market development and address issues of concern to its members
20. Grants were approved to municipalities or industry through protocols approved by MIPC and the CIF Committee as noted in the annual CIF Operations Plan. All projects greater than \$50,000 were approved by either the CIF Project Committee or CIF Committee which included voting members from Stewardship Ontario, the City of Toronto and AMO. I was responsible for all funding approvals less than \$50,000.

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21. As of December 2013, the CIF has committed over \$44.6M to 529 projects, and has committed an additional \$5.425M in its budget to support new projects in 2014. Municipalities transferred \$3.45M of CIF funds to the payout model in 2013 to offset the unexpected increase in the in-kind deduction.
22. The CIF has been very effective in helping municipal BB programs contain costs and increase effectiveness as documented in our recent report, 2008-2013 CIF Review (May 2013).
23. Funding requests to the CIF exceed budget allocations year over year. (e.g., 2013 REOI provided \$12.025M in funding and received \$15.5M in requests related to projects with a total value of over \$29M. Additional funds, if available, could, in principle, expedite municipal efforts to adopt best practices and optimize BB programs.

How much diversion?

24. Municipalities have been under constant pressure from stewards, residents and the Province to increase BB diversion. In the early 1990's, the Minister set a lofty goal of 50% by 2000 without a real appreciation of the cost implications.
25. On December 22, 2003, Minister Dombrowsky informed WDO that she had approved the Blue Box Program Plan (BBPP). In her letter, the Minister also requested that WDO propose "new measures or enhancements to existing measures that will allow the Blue Box system to divert at least 60 per cent of Blue Box wastes by 2008". Since that time, municipalities have reported that they continue to be pushed to divert more material.
26. It is fair to say that within the industry, it is understood that expanding the BB programs in Ontario to capture additional material (i.e., both improved capture of existing materials and addition of new materials) increases the overall system cost. Despite this fact, there is competing pressure from the same stakeholders to contain and/or reduce system costs.

Municipal efficiency

27. Ontario enjoys one of the highest BB diversion rates in North America and captures one of the broadest spectrums of materials while having one of the lowest normalized operating costs. Municipal BB programs have a right to be proud of this success, and of their continuing efforts to improve. I am regularly queried and/or asked to speak about Ontario's successful BB program at conferences across Canada and the US.
28. The majority of municipalities across Ontario are under significant budgetary pressures and, as a consequence, are, generally, very concerned about the efficiency of their BB programs. Regular oversubscription of the CIF Request for Expression of Interest (REOI) process and high levels of participation in CIF led training events is a good indication of their interest and willingness to improve their programs.
29. Although there is always room for further improvement, it is my impression that over the past ten years, BB programs have improved in efficiency faster than any other area of municipal operations.

Cost bands

30. Why do costs vary so much within cost bands? Variability within the cost bands can be a function of several factors, including:
- a. The unique nature of municipalities and their programs makes accurate comparison, within 9 basic groupings, difficult. Programs like Toronto or Thunder Bay are fundamentally different from their cost band.
 - b. Point in time contract costs. Many municipal contracts run for 7 or more years. During that period a municipality's cost band may reflect cost increases that are artificially held in check by the terms of their contract making them appear to be more efficient. When their contract is retendered, this aberration is typically corrected.
 - c. Programs may not capitalize equipment and report costs in a consistent manner.
 - d. Variability in the basket of BB materials collected by a given municipality can also cause significant program cost differences. Some programs could reduce costs by ceasing diversion of high cost materials but would face significant stakeholder opposition.
31. Many of the program cost drivers are outside the control of the municipality to correct. While some municipalities are more efficient than others, generally the higher cost programs face legitimate challenges that prevent them from being cost competitive.

Best Practices

32. Best practices are not "one size fits all". They do not always save money.
33. Municipalities have invested significant funds and resources to adopt even questionable "best practices" such as those produced by the 2007 KPMG study. As of May 2013, the CIF had provided over \$1.9 million in grants to assist 102 municipalities with the development of recycling plans and an additional \$276,000 in funding commitments to assist 80 small and rural municipalities to develop communications plans in accordance with the requirements of the WDO prescribed best practices. Participating municipalities committed an additional \$2.1 million towards these initiatives. These efforts and others, resulted in overall WDO "best practice" scores more than doubling between 2008 and 2012 for reporting municipalities. For details, see our 2008-2013 CIF Review report (May 2013), available on our website.
34. Municipalities who are not at 100% compliance with the WDO prescribed BP's have typically made informed business decisions to not conform with these practices because they have determined that the cost of implementation exceeds the net benefit. BPs are rarely universal in nature. For many programs, 100% WDO "BP" compliance is inappropriate or impractical (e.g., contracting out collection services).

Why have BB costs gone up?

35. There are several factors that are driving up reported BB costs, including:

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- a. Improved reporting. It should be recognized that program costs were grossly underestimated in the first year of the program. In subsequent years municipal staff was confused by an unnecessarily complicated datacall process and received inadequate training resulting in many under-reporting their actual costs. Efforts by all parties to simplify the process and familiarize municipal staff with eligible costs is gradually improving the datacall accuracy and municipalities are being more inclusive in their cost reporting which is driving reported costs up.
- b. Inflation. If the program were to remain entirely static, costs would still increase by at least inflation. Certain BB operations are also particularly exposed to labour and fuel cost escalation which is not properly reflected in standard Consumer Price Index calculations, the usual measure of inflation.
- c. Program growth. Even if unit costs to operate the program remained static, the overall program cost would increase in close correlation with population growth, given the high level of accessibility. Over the duration of the program, dozens of additional municipalities have begun reporting to the datacall, thereby increasing overall reported costs. They have typically been remote rural municipalities and First Nation communities with inherently higher operating costs which further exacerbate the issue.
- d. Program expansion. Through the efforts and at the request of various steward lobbying groups, municipalities and the CIF have expanded Ontario's BB program to include additional materials ranging from tetrapaks, spiral wound containers, laminated paper products, EPS, film, 3-7 plastics, thermoforms, aerosols and more. In many cases, the addition of these materials has had significant capital and operating impacts both on a unit operating cost basis and overall cost basis.
- e. Packaging design changes. Stewards have been active in redesigning packaging to, amongst other things, reduce shipping costs, extend shelf life, reduce product damage in transit and appeal to consumer demands. This can reduce steward costs, but has had several significant cost impacts on BB programs:
 - i. Lightweighting of packaging streams means more of the same containers must be collected in order to divert the same weight of material thereby increasing the unit cost to collect and process a tonne of material. Similarly, the move to single use and single serving containers also increases unit operating costs because, again, more containers need to be collected and processed to achieve the same weight as their predecessor 'bulk' or reusable container.
 - ii. Replacement of traditional materials such as glass containers, which are inexpensive to process, with expensive to process materials, such as film pouches, also increases system costs. It negatively impacts the long term operating costs of the system because changing the material mix forces municipalities and their contractors to retool their processing lines, makes the system infrastructure prematurely obsolete and forces operators to prematurely write off capital investments.

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- iii. Lack of standardization of resins and adhesives used in various packaging designs and the introduction of multi-laminate containers have had serious repercussions on processing costs through contamination of traditional material streams.
 - f. Changes in commodity prices for recovered materials, which affect BB program revenues in any given year.
 - g. Municipal procurement and contract management processes. Municipalities contract out the majority of their services. The calibre of municipal procurement and contract management efforts varies across the Province and while municipalities are working to standardize and improve core competencies, it is an area still being improved upon.
 - h. Community priorities. In the same way that stewards prioritize issues like transportation efficiency over recyclability in designing their packaging, municipalities also consider other factors beyond cost reduction in designing and operating their programs. For example, decisions to protect local jobs can sometimes interfere with potential efficiencies that might be achieved through contracting out or rationalizing services.
 - i. Lack of core competency. In smaller municipalities, staff sometimes lacks the knowledge and resources to deliver high calibre services such as professional communications materials. This can negatively impact program performance and drive up system costs.
36. Although most Blue Box program costs are calculated per tonne, weight can be a very inaccurate way of comparing the impact of individual waste classes on Blue Box costs. Lighter and more complex materials, such as plastic and laminate packaging cost significantly more to collect and process than simple heavy waste such as newspapers.
37. Even the plastic packaging that existed in 2003 is now generally more expensive to handle. Plastic water bottles, for example, have been lightweighted, meaning that it takes more of bottles to yield a tonne of recovered plastic and the stream has been complicated with the introduction of multilaminates and new packaging such as thermoform PET clamshells.
38. In addition, some of the new materials, such as compostable plastics, or laminated paper products are very difficult and expensive to separate from other BB materials in existing material recycling facilities. If they are not successfully separated, they act as contaminants, dramatically reducing the value of the recovered materials from that facility or are lost as residue resulting in additional costs (i.e., paying a premium to collect and process as recyclable only to pay to dispose of it as residue).
39. Many stewards are aware that their packaging design choices are affecting the recyclability of their packaging and their representatives are aware that their member's packaging choices are having a major impact on Blue Box operating costs. This has been discussed at numerous meetings in my presence.

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40. Stewards have consistently argued that packaging design is driven by many factors beyond just the recyclability of the packaging and redesigning packaging to reduce the associated cost of recycling is impractical, if not impossible. This leaves municipalities to develop 'end of pipe' solutions (i.e., through the purchase of new equipment or facility/process redesign necessary to adequately process the new packaging).
41. The continuous evolution of the paper and packaging stream necessitates constant retooling and redesign of the collection and processing infrastructure resulting in a significant increase in system costs. The CIF has used the funds provided by municipalities to invest heavily in upgrading municipal processing and transfer infrastructure but it should be recognized that the CIF typically only pays approximately 43% of total project costs with the balance being provided by individual municipalities.

Cost split

42. I have often heard Ministers of the Environment speak about the Blue Box program. I do not recall ever hearing any of them say that municipalities should receive less than 50% of actual Blue Box costs.

Conclusion

43. I understand that this affidavit is sworn evidence to be offered to a legal tribunal deciding a question of 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 04, 2014
at the City of Waterloo
in the Province of Ontario

