

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

Table of Contents

Introduction.....	1
In response to Nigel Guilford's Affidavit.....	1
Conclusion	2

Introduction

1. My name is Michael Birett. This affidavit is further to my affidavit of April 4, 2014, and is prepared in reply to the affidavits filed by Stewardship Ontario (SO).

In response to Nigel Guilford's Affidavit

2. In Paragraph 15 of his affidavit, Mr. Guilford praised his own report (the 2007 KPMG report) as "filled with good analysis and sensible recommendations". Given the \$2.5 million cost of the project, I am not surprised that he would say so. My experience was that many of the KPMG recommendations were not sensible and not based on good analysis.
3. While many of the fundamental 'best practices' would be considered 'good' practices in most circumstances, the KPMG study and WDO failed to complete any sort of substantial analysis of the cost/benefit of province wide implementation before they were subsequently adopted by the WDO and used as a punitive measures to limit funding to non-compliant municipalities. Participating municipal volunteers would acknowledge that the study was rushed and its quality suffered as a result. The tone of the study indicates clearly that some follow-up assessment was expected to fine-tune and re-evaluate the original recommendations that were based on observation of a program after its second full year of operation. To my knowledge such follow-up never happened.
4. As noted in my previous deputation, the CIF and municipalities have had to invest substantial funds and resources in an effort to comply with these required 'best practices' without any real evidence that the benefits will outweigh the cost of implementation.
5. Many of the specific recommendations such as those KPMG made for the Regional Municipality of York (the municipality that I was working for at the time) were either already in the process of being implemented, or unsubstantiated and did not necessarily represent good choices for the Region and its local municipalities. For example:




Affidavit of Michael Birett

- a. KPMG suggested that York should implement multi-residential recycling throughout the Region. While this action would potentially increase diversion, it would do so at an extremely high cost. Multi-residential diversion is one of the highest cost diversion options because of related low participation rates and high residue levels in collected materials. Given that KPMG had highlighted that York's program costs were substantially above that of their peer group and that York already had met the Provincial diversion goal, would it not have been better to suggest the Region focus on cost cutting efforts? Instead the suggested changes would have negatively affected their efficiency calculation, increasing their E&E factor and reduced their funding received in the MFAM model.
- b. KPMG recommended that York change its marketing agreement with the contractor, operating the York MRF. At the time, the contractor, Miller Waste, received 5% of the revenue from the sale of the recovered materials to encourage them to achieve maximum value from the marketing of recovered material. To this day, there is no agreed to best practice in marketing agreements. KPMG provided no definitive recommendation nor did they offer any evidence that Miller was doing a bad job, or would do a better job under a different marketing contract and it is, in fact, likely that if the Region had placed more of the marketing 'risk' on the contractor, they would have been forced to increase their operating fee to protect against a market downturn thereby negating any benefit realized by implementing KPMG's recommendation.
- c. KPMG criticized York for not aligning the term of the MRF operating contract with the depreciation schedule of the equipment. It is common to set the term of collection contracts to the life expectancy of the trucks because the contractor typically owns the trucks and will need to depreciate them over the term of the contract. This logic does not apply to the operation of a publicly owned MRF which contains multiple types of equipment with different depreciation schedules, many as long as 15 or 20 years, and where the equipment is owned by the municipality. The shorter 5 year term (or less) that York used proved to be a better practice because it incentivized the contractor to maintain peak performance, in order to get an extension of their contract.

Conclusion

6. I understand that this affidavit is sworn evidence to be offered to an arbitrator 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.


7. *I make this Affidavit for no other or improper purpose.*  WITNESS

Sworn or Affirmed before me

On May 8th 2014

at the City of Town of New Tecumseth
in the Province of Ontario

A Commissioner, etc..


Michael Birett


Jerry William Switzer
Barrister & Solicitor