

SEARCH WARRANT

APPENDIX H (II)

Search Warrant

(Public Inquiries Act, R.S.O. 1990, c. P. 41, as amended, Form 3)

TO: Inspector Craig Hannaford, Royal Canadian Mounted Police, Constable Marc Bolduc, Mr. Don Glinz, Mr. Wayne Scott, Ms. Juli Abouchar, and Ms. Rachel Young, and to such peace officers as they call upon to assist them:

WHEREAS it appears on the oath of Inspector Craig Hannaford of the City of Burlington in the Province of Ontario, a person appointed by a Commission of Inquiry to make an investigation under s.17 of the *Public Inquiries Act*, that there are reasonable grounds for believing that certain things, to wit:

See Appendix "A"

Are relevant to the subject-matter of the Commission of Inquiry issued pursuant to Order-in-Council 1170/2000 and known as the Commission of the Walkerton Inquiry and are in a certain building, receptacle or place, to wit:

The 4th Floor, Whitney Block, 99 Wellesley Street West,
Toronto, Ontario, M7A 1A1

(hereinafter called the "Premises");

AND WHEREAS it appears that a warrant to search for the said things should issue, notwithstanding the provisions of subsections 168(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended, s. 27 of the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18, as amended, and the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended;

This is, therefore, to authorize and require you between the hours of 9:00 a.m. and 6:00 p.m. to enter into the said Premises on each of the following dates: January 16, 17, 18, and 19, 2001, and to search for the said things, subject to the

conditions set out in Appendix “B”, and to bring them before the Honourable Dennis R. O’Connor, the Commissioner conducting the said Inquiry.

GIVEN UNDER MY HAND this 12 day of January, 2001, at the Town of Milton, Ontario.

The Honourable Mr. Justice Bruce Durno
Superior Court of Justice

Appendix “A”—Items to Be Searched For

Definitions

“Document” refers to any memorandum, data, analysis, report, minutes, briefing material, submission, correspondence, record or any other note or communication in writing, and specifically including any electronic communications including e-mail both internal, and that which has been sent to or received from external sources, in relation to the matters listed below.

“Government” means the Government of Ontario, unless otherwise specified.

Documents

Documents, including all copies identified as to source and where relevant, indicating the author of marginalia, which are relevant to the following matters:

1. All documents constituting communications between Management Board and the MOE, any other Ministry, any of the Central Agencies, OCWA, and any other agency, board or commission, with respect to any of the matters giving rise to the Inquiry up to the present time, and continuing.
2. All documents relating to Management Board and government analysis of the transfer, devolution, or discontinuation of provincial responsibility, funding or support for sewer and water infrastructure to municipalities, together with all funding allocations thereto, and all documents relating to exemptions from environmental laws, regulations and guidelines, and all documents relating to the *Water and Sewage Services Improvements Act, 1997*, the *Municipal Water and Sewage Transfer Act, 1997*, and *The Environmental Approvals Improvement Act, 1997* including for all of the above:
 - (a) draft and final Cabinet submissions, Management Board submissions, Policies and Priorities Board submissions, and minutes and documents related thereto, including Management Board minutes;
 - (b) instructions, directions and documents from Management Board or the Central Agencies to MOE or the Ministry of Municipal Affairs and Housing related thereto;

- (c) documents prepared for, submitted to or received from Who Does What Committees and the Red Tape Commissions or Committees related thereto, including minutes of sectoral tables;
 - (d) business cases prepared by MOE and the Ministry of Municipal Affairs and Housing; and
 - (e) budget, risk assessment and implementation strategy documents including monitoring and evaluation, performance measures and documents related thereto.
3. All documents relating to the termination of the provision of drinking water testing services by the MOE and the MOH to municipalities, including all Management Board or Central Agency instructions, directions and analysis, all documents relating to a review of the availability, capability, capacity and costs of private sector testing and consultation with the MOH, MOE, Medical Officers of Health, District Health Councils, Local Boards of Health and municipalities relating to same, and including:
- (a) draft and final Cabinet submissions, Management Board submissions, Policies and Priorities Board submissions, and minutes and documents related thereto;
 - (b) instructions, directions and documents from Management Board or the Central Agencies to MOE or the MOH related thereto;
 - (c) documents prepared for, submitted to or received from Who Does What Committees and the Red Tape Commissions or Committees related thereto, including minutes of sectoral tables;
 - (d) business cases prepared by MOE and the MOH; and
 - (e) risk assessment and implementation strategy documents including monitoring and evaluation, performance measures and documents related thereto.
4. All documents from Management Board to any Central Agency or Ministry including the Ministry of Agriculture, Food and Rural Affairs (“OMAFRA”), or from any Ministry or Central Agency to Management

Board relating to the *Farming and Food Production Protection Act, 1998*, intensive agricultural operations in rural Ontario, Best Management Practices, the July, 2000 proposed standards for agricultural operations in Ontario, or the effect of agricultural operations on drinking water, and including:

- (a) draft and final Cabinet Board submissions, Management Board submissions, Policies and Priorities Board submissions, and minutes and documents related thereto;
 - (b) instructions, directions and documents from Management Board and the Central Agencies to OMAFRA related thereto;
 - (c) documents prepared for, submitted to or received from Who Does What Committees and the Red Tape Commissions or Committees related thereto, including minutes of sectoral tables;
 - (d) business cases prepared by OMAFRA; and
 - (e) risk assessment and implementation strategy documents including monitoring and evaluation, performance measures and documents related thereto.
5. All documents relating to the withdrawal of MOE or MOH resources from drinking water labs and drinking water related matters, testing, audit and monitoring programs including documents relating to alternate service delivery strategies, risk assessment, implementation strategies, monitoring and evaluation, both prospective and actual, and instructions, directions and documents from Management Board or the Central Agencies to MOE or MOH related thereto.
6. Budgetary, human resource and program reductions: For each year, the operating budget and capital budget allocated to the MOE, together with staffing levels, all Management Board analysis related thereto, including background documents and documents prior to and subsequent to any such budgetary, human resource and program reductions assessing the anticipated or actual impact of those reductions, including estimates and draft estimates provided by or to Management Board or to the Central Agencies or designates of Central Agencies dealing with program or expenditure reduction, and instructions from Management Board or the

Central Agencies to MOE related thereto and all minutes related thereto, including sectoral documents.

7. A description of all devolution, partnership, franchising and privatization activities developed through the Who Does What process as it impacted on the Town of Walkerton and the PUC, including the amalgamation of municipalities.

Appendix “B”

Conditions Attaching to the Issuance and Execution of This Search Warrant

1. This search warrant shall not be executed in a manner that interferes with any ongoing criminal investigation or proceedings.
2. When this search warrant is executed, a copy of it shall be provided to the person apparently in charge of the premises.
3. To the extent that original documents rather than photocopies or electronic copies are seized pursuant to this search warrant, the original documents shall be photocopied at the expense of the Commission of the Walkerton Inquiry and, as soon as is reasonably practicable, the originals shall be returned to the premises in the same condition as they had been in at the time of the seizure.

Procedures to Be Followed Where Privilege Claimed

1 (1) Definitions – In this appendix,

“Attorney General” means the Attorney General of Ontario or counsel acting on his behalf;

“custodian” means a person in whose custody a package is placed pursuant to subsection (2);

“Commissioner” means the Commissioner of the Walkerton Inquiry and includes counsel acting on his behalf;

“document” means any paper or other material on which there is recorded anything that is capable of being read or understood by a person, computer system or other device;

“Government of Ontario” includes all ministries, Cabinet office, the Premier’s Office, and all agencies, boards and commissions of the Government of the Province of Ontario;

“judge” means a judge of the Superior Court of Justice for the Province of Ontario;

“officer” means a peace officer engaged in execution of this search warrant;

“privilege” means solicitor-client privilege, cabinet privilege or public interest immunity

2. **Examination or seizure of certain documents where search warrant privilege claimed** – Where an officer acting under the authority of this search warrant is about to examine, copy or seize a document in the possession of the Government of Ontario and privilege is claimed in respect of that document, the officer shall, without examining or making copies of this document,

- (a) seize the document and place it in a package and suitably seal and identify the package; and
- (b) place the package in the custody of the Commissioner.

3. **Application to judge** – Where a document has been seized and placed in custody under section (2), the Commissioner or the Attorney General may

- (a) within sixty days from the day the document was so placed in custody apply, on two days notice of motion to all other persons entitled to make application to a judge for an order
 - (i) appointing a place and a day, not later than twenty-one days after the date of the order, for the determination of the question whether the document should be disclosed, and

- (ii) requiring the custodian to produce the document to the judge at that time and place;
 - (b) serve a copy of the order on all other persons entitled to make application and on the custodian within six days of the date on which it was made; and
 - (c) if he has proceeded as authorized by paragraph (b), apply, at the appointed time and place, for an order determining the question.
4. **Disposition of application** – On an application under paragraph (3)(c), the judge
- (a) may, if the judge considers it necessary to determine the question whether the document should be disclosed, inspect the document;
 - (b) where the judge is of the opinion that it would materially assist him in deciding whether or not the document is privileged, may allow the Commissioner to inspect the document;
 - (c) shall allow the Commissioner and the Attorney General to make representations; and
 - (d) shall determine the question summarily and,
 - (i) if he is of the opinion that the document should not be disclosed, ensure that it is repackaged and resealed and order the custodian to return the document to the Government of Ontario, or
 - (ii) if he is of the opinion that the document should be disclosed, order the custodian to deliver the document to the officer who seized the document or some other person designated by the Commissioner, subject to such restrictions or conditions as the judge deems appropriate;
- and shall, at the same time, deliver concise reasons for the determination in which the nature of the document is described without divulging the details thereof.

5. **Privilege continues** – Where the judge determines pursuant to paragraph (4)(d) that a privilege exists in respect of a document, whether or not he has, pursuant to paragraph (4)(b), allowed the Commissioner to inspect the document, the document remains privileged and inadmissible as evidence unless the Government of Ontario consents to its admission in evidence or the privilege is otherwise lost.
6. **Order to custodian to deliver** – where a document has been seized and placed in custody under section (2) and a judge, on the application of the Commissioner, is satisfied that no application has been made under paragraph (3)(a) or that following such an application no further application has been made under paragraph (3)(c), the judge shall order the custodian to deliver the document to the officer who seized the document or to some other person designated by the Commissioner.
7. **Application to another judge** – Where the judge to whom an application has been made under paragraph (3)(c) cannot act or continue to act under this section for any reason, subsequent applications under that paragraph may be made to another judge.
8. **Prohibition** – No officer shall examine, make copies of or seize any document without affording a reasonable opportunity for a claim of privilege to be made under subsection (2).
9. **Authority to make copies** – At any time while a document is in the custody of a custodian under this section, a judge may, on an *ex parte* application of a person claiming a privilege under this appendix, authorize that person to examine the document or make a copy of it in the presence of the custodian or the judge, but any such authorization shall contain provisions to ensure that the document is repackaged and that the package is resealed without alteration or damage.
10. **Hearing in private** – An application under paragraph (3)(c) shall be heard in private.

