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Canadian Union of Public Employees, Local
416 110 Laird Dr, East York, ON
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**RE: BRADFORD PROPOSAL FOR TORONTO WATER SERVICES – REVIEW
AND COMMENTARY**

1. You asked us to provide commentary on Mr. Bradford’s proposal (the “**Bradford Proposal**”) to change how water and wastewater services are delivered in Toronto.
2. In particular you asked for comments on:
 - a. how much control the City of Toronto would be giving up to the Ontario Government if it uses a public water and wastewater corporation (“**WWC**”) structure permitted under *Water and Wastewater Public Corporations Act* (Ontario) “**WWPCA**”) to deliver water and wastewater services;
 - b. under a WWC arrangement, who has the power to set the rates for provision of water and wastewater services for residents of Toronto;
 - c. under a WWC arrangement, does the Ontario Government have the power to determine the amount of borrowing a WWC may undertake;
 - d. would the City of Toronto still collect development charges; and
 - e. what are the other implications of using a WWC to deliver water and wastewater services?

SUMMARY OF COMMENTS

3. The Bradford Proposal lacks important detail, but appears to propose moving Water Toronto and all water and wastewater infrastructure assets to a new business corporation (a “WWC”) formed under the Waste and Wastewater Public Corporations Act (Ontario) (the “WWPCA”). The WWPCA is recent Ontario legislation permitting the creation of business corporations to deliver water services to residents of Ontario.
4. If a municipality creates a WWC, it risks giving up significant control over the way water and wastewater services are governed, owned and delivered, including control over the rates charged by the corporation for providing services to residents. The Minister of Municipal Affairs and Housing has extensive powers to regulate and determine the ownership of a WWC, the board of directors, the terms of its financing, the rates it can charge, and conditions on contracts it enters.
5. These extensive Ministerial powers also include the power to determine how much debt a WWC can incur, and the terms of payment of that debt (subject to, of course, what lenders are willing to lend).
6. These powers also include the power to determine what rates, fees and charges can be made by the WWC.
7. The Bradford Proposal does not say whether a Bradford mayoralty will cease charging development charges related to water and wastewater, or provide any other details on how a WWC would be financed, how much it would borrow, what the expected costs of borrowing would be, or how that compares to the current financial statements of Water Toronto. It only states that the WWC would borrow for future capital expenditures and lower current water fees by 25% without sufficient detail to complete a comparative analysis.
8. The Bradford Proposal states that a WWC would be owned 100% by Toronto taxpayers and a bylaw would permanently ban private investment. This is misleading. City Council can pass a bylaw, but does not have the power to change or over-ride the Ministerial powers to intervene in WWCs. If the Minister decided to change the ownership or control of a WWC, they would have the power to do so. Further, new city councils or new provincial governments can always change the WWPCA to expressly permit private investment. That is what happened in the electricity distribution sector.
9. Delivering public services through a business corporations like a WWC has the effect of reducing accountability to elected municipal councillors and ultimately to residents and ratepayers. Appointees to a WWC board of directors have a primary duty to make revenues and profits for the WWC itself, and not to disregard that duty in favour of council interests or resident interests. This is known as “corporatization” of public

services and many commentators regard it as the first step in a privatization in service delivery.

10. If full or partial privatization is the result, then there are further implications for the municipal control over water and wastewater services, including the potential for private investors to seek trade remedies when they dislike regulations passed by a municipal council to deliver those services, forcing them to “pay to regulate”.

BACKGROUND

11. The Bradford Proposal for the delivery of water and wastewater services contains the following elements:

- a. The City of Toronto transfers its water and wastewater assets and liabilities into a “publicly owned utility, always 100% owned by Toronto taxpayers, with private investment permanently barred by bylaw.”¹ This appears to be a reference to a WWC under the WWPCA, although it is not specifically named.
- b. “[Water] rates are set by an independent board, not politicians”.² No such board currently exists. The details of which board and who appoints the board members are not provided.
- c. The City of Toronto will set a policy of not paying interest on debt of the WWC of more than 4 cents per dollar of revenue. The details of how the policy is set and enforced are not provided.³
- d. The City of Toronto will cause a 25% reduction on the first \$1,500 of fees payable to the City in respect of water and wastewater services.⁴

12. Toronto’s water and wastewater delivery services are provided through a division of the City of Toronto called Toronto Water.

13. Water utility fees are currently determined through a rate-supported, user-pay model. Toronto City Council sets the rates annually through the operating and capital budget process, usually adopting interim rates effective January 1 and finalizing them during the budget process.⁵

¹ Brad Bradford Campaign, Press Release, available online: <https://bradford26.ca/news/its-your-money-brad-bradford-mayor-toronto-is-giving-it-back>.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ See: <https://www.toronto.ca/services-payments/property-taxes-utilities/utility-bill/water-rates-fees/>.

14. These fees are generally set on a cost-recovery basis intended to support Toronto Water's operating costs, capital renewal, infrastructure investment, and work relating to storm impacts and system resilience. The program is intended to be financially self-sufficient on a pay-as-you-go basis, without relying on property-tax funding or borrowing for its core funding model. That is, expected capital costs for renewal, upkeep and improvements of the water and wastewater infrastructure are funded by saving in advance to make the improvements when they become needed.
15. The three broad categories of Water Toronto budgeting for current and future capital expenditures are "state of good repair" (49% of a 10-year budget plan), "service improvement and growth" (47%) and "health, safety and legislated requirements" (4%).⁶
16. The Bradford Campaign Press Release states that the current method for setting water and wastewater fees has generated revenues about \$400 million over the current operating costs of the services delivered, which have accumulated into reserves of about \$2 billion, which are funds earmarked for capital costs such as fixing or improving water and wastewater infrastructure.⁷
17. The campaign proposal appears to suggest that instead of saving to fund future capital costs, the City of Toronto should create a way to borrow the money to pay for future capital costs.
18. The Bradford Proposal does not say whether the existing capital reserve funds would be transferred to the WWC or retained by the City of Toronto.

DISCUSSION AND ANALYSIS

A. The Ontario Government Has Significant Powers to Control WWCs

19. The City of Toronto can establish a WWC and transfer assets and liabilities to it, own the shares of a WWC, and appoint members to its board of directors.
20. However, by doing this, the City of Toronto risks losing control of different aspects of the governance and financing of the WWC if the Ontario Government chooses to intervene. There are no guarantees of municipal control over a WWC.
21. The Minister may make regulations governing WWCs, including regulations for:

⁶ See <https://www.toronto.ca/legdocs/mmis/2026/bu/bgrd/backgroundfile-261241.pdf>; <https://www.toronto.ca/wp-content/uploads/2026/03/9568-2026-Public-Book-TW-V1.pdf>.

⁷ Brad Bradford Campaign, Press Release, September 28, 2026, available online: <https://bradford26.ca/news/its-your-money-brad-bradford-mayor-toronto-is-giving-it-back>.

- a. imposing requirements, conditions, restrictions and limitations on WWCs and their shareholders, directors and officers;
 - b. governing the election, nomination, appointment, resignation or removal of the members of the board of directors, including the chair of the board, of WWCs, including requirements respecting conflicts of interest, the independence and competencies of directors, the composition of the board of directors and the board's quorum;
 - c. governing the proceedings of the meetings of shareholders and directors, including the quorum of shareholders;
 - d. requiring WWCs and shareholders to enter into agreements, prescribing the content of the agreements and requiring the corporation to modify, terminate or suspend the agreements;
 - e. governing the transfer, issuance, redemption or purchase of shares and dividends of a WWC, including,
 - i. determining the number, classes and series of shares of a WWC and their rights, privileges, conditions and restrictions, and prescribing their initial issuance and subsequent issuances,
 - ii. determining the consideration received in an exchange for shares in a WWC, and
 - iii. prescribing a formula for the redistribution, redemption or purchase of the shares of a WWC and specifying a frequency of such redistribution, redemption or purchase and the manner in which it is to be conducted;
 - f. governing the amalgamation, continuance, winding up and dissolution of a WWC or other changes affecting the organization, reorganization, structure, assets or undertakings of the corporation, including any acts or transactions that require the approval of shareholders; and
 - g. imposing conditions and limitations on the power of a WWC to invest money or to incur debt, whether by borrowing money or in any other way.⁸
22. Put simply, once they are created the Minister retains powers to exercise significant control over the ownership, governance, management and operations of WWCs.
23. Given these extensive powers of the Minister, the Bradford Proposal statements that the WWC will be 100% owned and controlled by "Toronto taxpayers", and bylaws will

⁸ *Water and Wastewater Public Corporations Act, 2025*, SO 2025, c 14, Sch 16, s. 2(1).

“permanently bar” private ownership is not necessarily true. The Ontario Government may significantly intervene in who owns and controls a WWC.

B. *The Minister May Set Rates, Fees or Charges*

24. The WWPCA also gives the Minister broad discretionary control over the rates, fees and charges for water and wastewater services through regulations governing the power of a WWC to impose and collect fees or charges and specifying what services, activities and costs for which the fees or charges are imposed and collected.⁹
25. The Minister may pass a regulation to mandate that a WWC submit a rate plans for fees or charges. The Minister has the power to approve, refuse or require amendment and resubmission of the rate plan.¹⁰
26. There is no independent board established in Toronto or Ontario to set rates for water and wastewater services. It simply doesn't exist.
27. Given these powers of the Minister and Ontario government, the Bradford Proposal's statements that “rates will be set by an independent board, not politicians” is misleading, as no independent board exists and the Minister may intervene to set rates.
28. Similarly, the statement that water service rates “will be lower than today's” is also not certain and possibly misleading. The Bradford Proposal does not state how much the WWC will be required to borrow to renew and improve existing infrastructure. It does not set out what the costs of the water and wastewater services will be, including interest on any debt. In any event, the Minister may intervene to set rates.

C. *Ministerial Powers over Transfers of Assets and Liabilities to WWCs*

29. Section 10 of the WWPCA provides that water and wastewater assets of a municipality may be transferred to a WWC by a by-law.
30. The WWPCA also prohibits the transfer of debentures (debts) of municipalities (i.e., debts that may have been used to finance the assets being transferred). It further provides that the Minister has the power to make regulations in respect of “imposing requirements, limitations or conditions on a municipality and a [WWC] with respect to the debt of a [municipality] incurred for the financing of capital works that are transferred under a transfer by-law ..., including requiring a [WWC] to make payments of a specified amount to the municipality in relation to the debt.”
31. The Minister may also make regulations to require parties to enter into agreements and may prescribe the content of those agreements. The Minister may also intervene and

⁹ WWPCA, ss 5(1); 20(5)(a), (c).

¹⁰ WWPCA, ss 7(1), (3)-(4).

- modify, terminate, extend or suspend any existing agreements now transferred or assigned to the WWC.¹¹
32. Again, the purpose of these powers is to enable the Minister to closely control the terms on which debt is repaid and the terms on which WWCs will themselves seek capital and generate revenues.
33. The Bradford Proposal suggests that the new WWC will borrow in order to pay for current renewal and future improvements of water and wastewater infrastructure, and will limit the amount borrowed to 4 cents per dollar of revenue earned.
34. It does not state how much the WWC is projected to borrow or what the interest on the debt will be, and what size or effect debt interest payments will have on rates charged to residents.
35. If the Ontario Government disagrees with elements of this proposal, including limits on interest payments, it can over-ride them and impose ones it deems appropriate.

D. *Development Charges Not Addressed*

36. The Bradford Proposal does not state whether development charges relating to water infrastructure will continue to be charged or any other details of financing of the proposed WWC. There are few details to compare to existing Water Toronto financial accounts.
37. Development charges are only one source of revenue used to pay for infrastructure needs through the City of Toronto's capital plans. We do note that the majority of the capital plan is funded through reserves, which are generated in part through the fees described above.

E. *A WWC Does Not Guarantee Public Ownership In the Long Term*

38. WWCs are required by the WWPCA to be owned by "a municipality, the Province of Ontario, the Government of Canada or an agent of any of them".
39. The Bradford Proposal states that the new WWC will be 100% owned by Toronto taxpayers. The new WWC can issue its ownership shares to the City of Toronto, which can be the 100% owner.
40. Current restrictions on ownership are not at all a guarantee of future public ownership. A future city government or Ontario government can always, through the council or legislative processes, remove or alter ownership. For example, when municipal assets in the delivery of electricity were corporatized in the 2000s, they were initially wholly

¹¹ Bill 98, s 10.1(7).

owned by municipalities, and eventually permitted to transfer shares to private investors.

41. We also note that “agents of governments” are permitted to own WWCs under the WWPCA. These agents are likely to include government-sponsored investment funds. There are many ways in which government sponsored investment funds are intended to create co-investment opportunities with private investors.
42. Ontario municipalities have stated that they expect capital needs over \$250 billion to maintain and expand water and wastewater services.¹² While user fees, development charges, grants, reserves and municipal debt issuance will provide some of this capital, municipalities have stated that they will require further sources of financing. There is likely to be significant pressure on WWCs to raise capital. Other sources of financing could include agents of government entities such as infrastructure investment funds. These funds typically provide capital and seek co-investments from institutional investors.
43. The specific ways in which these funds may be used to finance WWCs is not yet known. To the extent that these funds are used to attract private co-investment they will put pressure on the Minister to permit WWCs to directly issue private share capital or to create models of co-investment that indirectly permit private investors to have interests in WWCs.
44. Given the Ministerial powers described above, and these examples, the Bradford Proposal’s statement “[t]he utility will always be 100% owned by Toronto taxpayers. No private investment, ever. The bylaws will permanently bar it” is highly misleading, as the City of Toronto does not have the power to over-ride the powers of the Minister or to prohibit legislative change.

F. WWCs Corporatize Public Service Delivery and Diminish Accountability to Residents

45. The mere fact of the City of Toronto’s whole ownership of a WWC does not guarantee that it is operated exclusively in the public interest or is democratically accountable to residents and rate-payers in the same way it is if the service was delivered directly by a municipality.
46. “Corporatization” is service delivery that adopts many features of private sector financing and operational management, often through the use of for-profit corporations as entities, to which apply the norms of private sector corporate and commercial activities.

¹² AMO, Prosperity Review,, https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Pre-Budget%20Submissions/2024/Pre-Budget_Submission_V7.pdf.

47. Some commentators view the use of a business corporation model to delivery publicly owned and operated services as a form of “privatization by stealth”, in part because corporate law norms of governance and operation typically prioritize profit-making as the guiding purpose of the business corporation and other governance norms that prioritize corporate-commercial practices and interests.
48. There are examples of how this corporatization works to affect day-to-day accountability to residents and ratepayers.
49. The Collingwood Judicial Inquiry (2020) made recommendations about the governance of local distribution corporations (the equivalent of WWCs in the electricity distribution sector) in the context of the sale of interests in a municipal LDC, among other things. Justice Frank Marrocco made findings and recommendations on the blurring of corporate and municipal duties created, and reinforced a strict fiduciary duty of LDC directors **to act only in the best interest of the corporation, a duty that must be prioritized over any conflicting municipal or shareholder interests.**
50. In simpler terms, standard legal advice is that a municipal councillor must recuse themselves from decisions where the interests of the WWC (i.e. making profits) conflicts with the municipal councillor’s representing residents or ratepayer interests (e.g., better or cheaper service delivery).
51. This is standard legal advice that municipal councillors and WWCs will receive in the management of the WWCs business.

G. *Trade Agreement Implications*

52. Above we have stated that, although initially publicly owned, there is likely to be great pressure to permit private investors into WWCs over time, as sources of capital to renew and upgrade infrastructure.
53. A related concern with a potential private sector role in the delivery of water and wastewater services is compliance with applicable trade agreement requirements for procurement, and/or the availability of investor-state dispute resolution mechanisms to private entities.
54. To the extent that water and wastewater services are considered “commercial uses”, the investor-state dispute resolution mechanism under trade agreements applies. Prior cases under prior trade agreements (i.e. NAFTA) have awarded investors compensation where water rights were terminated by provincial governments.¹³ ISDS tribunals (and not domestic courts) have tended to favour the perspective of claimant

¹³ *AbitibiBowater Inc., v. Government of Canada*, ICSID Case No. UNCT/10/1.

investors when interpreting ambiguity in the treaty language, and so this raises the risks of water and wastewater services involving private investors or partners in P3s having foreign investor rights and protections from regulatory activity that are available through ISDS. These are not insignificant concerns.

55. As Scott Sinclair of the Canadian Centre for Policy Alternatives summarizes:

“[i]n other words, once water leaves its natural state and enters into commerce it is covered by CETA. This means that while a government might be able to reverse a decision to allow the commercial use of water, if it did so it would be fully exposed to a CETA challenge from a foreign investor that was negatively affected. The state would then be potentially liable to pay monetary damages set by an investment tribunal beyond the reach of domestic legislatures or courts. In water policy, as in other important areas, CETA forces governments to “pay to regulate.”¹⁴

We trust the forgoing is of assistance.

Sincerely,



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¹⁴ <https://www.policyalternatives.ca/news-research/flimsy-ceta-declaration-leaves-public-services-water-policy-vulnerable-in-canada-eu-deal/>