



April 9, 2026

Political Action Coordinator, Ontario Region
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RE: ONTARIO BILL 98 “AN ACT TO ENACT THE FARE ALIGNMENT AND SEAMLESS TRANSIT ACT, 2026 AND TO AMEND VARIOUS ACTS” – REVIEW AND COMMENTARY

1. You have asked me to provide commentary on three related matters: 1) provisions of Bill 98; 2) features of water and wastewater corporations that may be created under Ontario’s new *Water and Wastewater Public Corporations Act, 2025*; and 3) implications of those corporations having legislative mandates to provide water and wastewater services in Ontario.

BACKGROUND

2. In a February 5, 2026 letter (“Letter”) to you Simon Archer of Goldblatt Partners described how Schedule 16 to Bill 60 enacted a new statute, the *Water and Wastewater Public Corporations Act, 2025* (“WCA”), that, among other things: 1) authorized the Minister of Municipal Affairs and Housing to designate business corporations as “water and wastewater public corporations” (“WWCs”); 2) required lower-tier municipalities to deliver water and sewage services to residents through these entities, and to transfer “employees, assets, liabilities, rights and obligations of the municipality, or other body through which the municipality provides water and sewage services” to those entities; and 3) prescribed that WWCs take the form of share capital corporations incorporated under the *Ontario Business Corporations Act* (“OBCA”).
3. The Letter further described how opposition MPPs and others criticized Bill 60 for effectively privatizing water and wastewater services by permitting private ownership of water and wastewater assets. As well, the Letter described how, in response to that criticism, Ministers and spokespersons insisted Bill 60 would not privatize services

because shareholders in WWCs would be restricted to public entities, thus ensuring that ownership remained in public hands.

4. The Letter went on to criticize the Government's response, elaborating how the WCA did not *legally* bar private persons or entities from owning shares in WWCs. As the Letter stated: "the term 'public' in the WWC name is meaningless.... There are no terms of the WCA itself that require WWCs to be owned by municipalities or public sector entities. The WCA itself does not limit ownership in WWCs at all."¹
5. Bill 98 is the Government's response to that criticism. It amends the WCA explicitly to prescribe that no shares of a WWC can be held, issued to, or sold or transferred to "a person other than a municipality, the Province of Ontario, the Government of Canada or an agent of any of them."² Bill 98 thus purports to meet the concern expressed about the WCA by critics, including Simon Archer in his Letter, that the WAC regime proposed by Bill 60 would privatize water and wastewater services.

ANALYSIS AND DISCUSSION

6. Despite Bill 98's amendments to the WCA the legislation creates a regime for water and wastewater services in Ontario that is effectively privatized. That is for two reasons. First, the WCA continues to permit private entities to own shares in WWCs; and second, the WCA continues to prescribe a corporate structure for WWCs that effectively privatizes services regardless of whether shareholders are public or private entities.
7. Because Bill 98 attempts to obscure that the WCA regime privatizes water and wastewater services it constitutes an example of what is often described as 'stealth privatization'.³

A. The WCA continues to permit private entities to own shares in WWCs

8. The language used in Bill 98 to describe which entities are permitted to hold shares in WWCs does not exclude private entities. Because it states that "a municipality, the Province of Ontario, the Government of Canada *or an agent of any of them*"

¹ Letter, para. 25.

² Bill 98, *An Act to enact the Fare Alignment and Seamless Transit Act, 2026*.

and to amend various Acts, 1ST SESSION, 44TH LEGISLATURE, ONTARIO, 4 CHARLES III, 2026, Schedule 9, sections 1,2. Online: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2026/2026-03/b098_e.pdf

³ 'Stealth privatization' is a term used to describe policy shifts that governments claim are not intended to privatize but that deploy market mechanisms in ways that effectively privatize. See examples: Noah Schulz, '[Health care privatization by stealth](#)', *Winnipeg Free Press*, January 29, 2026; Pat Armstrong and Hugh Armstrong, 'How privatization infects the Canadian health care system', *New Labour Forum*, Volume 32, Issue 3, September 2023, Pages 42-49; Melanie G. Wiber, Murray A. Rudd, Evelyn Pinkerton, Anthony T. Charles, Arthur Bull, 'Coastal management challenges from a community perspective: The problem of 'stealth privatization' in a Canadian fishery', *Marine Policy* 34 (2010) 598-605.

(emphasis added) may own shares in a WWC, it permits municipalities, the province, and the federal Government to designate existing private entities or newly-created ones as ‘agents’ and thus enable those private entities to own shares in WWCs.

9. Entities like the Canada Infrastructure Bank (CIB) and the Build Ontario Fund (BOF) already operate as agents of the federal and Ontario governments to initiate and facilitate private investment in infrastructure projects. Public-private partnerships among these entities, governments, and private actors could enable the latter to own shares in and control the operations of WWCs, thus fully privatizing water and wastewater services.
 10. In that regard it is notable that the BOF’s mandate includes authority to “negotiate agreements with investors...to invest in revenue-generating infrastructure projects across the BOF’s priority areas defined by the Government including...*municipal and community infrastructure*” (emphasis added).⁴
 11. In summary, the term “any agent of them” in the WAC as amended by Bill 98 opens the door to private entities owning shares in WWCs, and therefore to full-blown privatization of water and wastewater services in Ontario.
- B. *The WCA continues to prescribe a corporate structure for WWCs that privatizes services regardless of whether shareholders are public or private entities*
12. Because the WCA (as amended by Bill 98) requires WWCs to be incorporated as for-profit corporations under the OBCA, the regime commercializes services in ways that risk the well-known pitfalls, ills and failures of privatization even if a shareholder in a WWC is a public entity.
 13. The WAC requires WWCs to be “incorporated under the *Business Corporations Act*.”⁵ The latter legislation requires, in turn, that officers and directors of corporations incorporated under it – including prospective WWCs – “act honestly and in good faith with a view to the best interests of the corporation.”⁶
 14. The legislative phrase “best interests of the corporation” is a staple of corporate law regimes across Canada. Its judicially-affirmed purpose and effect is, as explained by corporate law expert Paul Martel in *Business Corporations in Canada*, to ensure that “the interest of [corporations’] shareholders remains their purpose, the inescapable

⁴ Brian J. Porter, Minister of Finance, [‘BOF letter of 2025-2026 priorities’](#)

⁵ Bill 98, s. 1(2)(a).

⁶ *Ontario Business Corporations Act* s. 134 (1)(a).

- focus of their directors and the top priority over any social concern.”⁷ That purpose and effect has been consistently affirmed by Ontario courts in relation to the OBCA.⁸
15. Though in *BCE Inc. v. 1976 Debentureholders* (“BCE”) the Supreme Court of Canada held that “in considering what is in the best interests of the corporation, directors may look to the interests of, *inter alia*, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions,” consideration of non-shareholder interests is discretionary, not mandatory, and it must ultimately be tied to what is most financially beneficial to a corporation and its shareholders.⁹ As the Ontario Court of Appeal held in a case after *BCE*, directors and officers of corporations must pursue a “legitimate business purpose” when making their decisions,¹⁰ meaning that, as one commentator observed, *BCE* does not weaken the core corporate law principle that “directors...have a primary mandate to ensure a corporation is profitable.”¹¹
 16. The officers and directors of WWCs, constituted under the OBCA, will be legally required to prioritize the “best interests” of WWCs in their decisions and actions. Every decision they make and action they take will have to be justified as serving a “legitimate *business purpose*” – in other words, as promoting profitability and related corporate interests.
 17. By corollary, all other interests – including the interests of local communities in quality services, equity, health, working conditions and the natural environment – will be subordinated to profitability and related corporate interests of the WWC. Such prioritizing of corporate interests over local communities’ interests is precisely the reason privatization of water and wastewater services results in ills and failures like those discussed in the Letter.¹²
 18. The fundamental problem – and this is true of the regime proposed by the WCA as amended by Bill 98 – is that when water and wastewater services are delivered by for-

⁷ Martel, Paul, *Business Corporations in Canada* (Toronto: Thomson Reuters, 2022), 23-90. Expansive discussion of this point can be found in various of my works, including Bakan, J *The New Corporation: How “Good” Corporations are Bad for Democracy* (Toronto: Penguin, 2020), pp. 31-34; Bakan J, *The Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin, 2004); Bakan J. ‘[Reflection: Corporate Capitalism’s Moral Lack](#)’. *Business History Review*. 2024; 98(1):301-324; Joel Bakan, ‘[The Invisible Hand of Law: Private Regulation and the Rule of Law](#)’, *Cornell International Law Journal* 48, no. 2 (2015): 279–300. See also: Bebhuk, Lucian A. and Tallarita, Roberto, ‘Will Corporations Deliver Value to All Stakeholders?’ *Vanderbilt Law Review*, 75: 2022, pp. 1031-1091; Steven L. Schwarcz, “Misalignment: Corporate Risk-Taking and Public Duty,” *Notre Dame Law Review* 92 (2016): 1–50; Leo E. Strine, Jr., “Our Continuing Struggle with the Idea That For-Profit Corporations Seek Profit,” *Wake Forest Law Review* 45 (2012): 135; Aaron Chatterji and Barak D. Richman, ‘Understanding the ‘corporate’ in corporate social responsibility’, *Harvard Law & Policy Rev* 2 (2008), 33-52.

⁸ *Unique Broadband Systems, Inc. (Re)*, 2014 ONCA 538 (CanLII), <<https://canlii.ca/t/g8003>>

⁹ *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560, [2008] S.C.J. No. 37, [2008 SCC 69](#), para. 40

¹⁰ *Unique Broadband Systems, Inc. (Re)*, para. 72.

¹¹ Jeffrey Bone, ‘The Supreme Court Revisiting Corporate Accountability: BCE Inc. in Search of a Legal Construct Known as the ‘Good Corporate Citizen,’ *Alberta Law Review* (2010). More generally, see works cited *supra* note 5.

¹² Letter, paras. 46-61.

- profit corporations, like the proposed WWCs, service providers' legal obligations shift from prioritizing the public interests of communities – in, for example, quality services, equity, health, working conditions, and environmental protection – to prioritizing corporate profit and related interests.¹³
19. That is why organizations traditionally used to deliver water and wastewater services in Ontario and elsewhere – such as municipalities, crown corporations, joint supervisory boards, and public commissions – can be and are legally mandated to prioritize public interests of communities. For-profit corporations, like the WCA's WWCs, cannot be and are not legally mandated to prioritize those public interests. Their exclusive legislative mandate under the OBCA is to prioritize *their* and their *shareholders'* business interests by prioritizing profit and other corporate interests.
 20. Therefore, for the directors and officers of a WWC, key decisions – about who gets service, what kind of service they get, how much they pay for it, what kinds of infrastructure needs to be built, how that infrastructure should be maintained, whether and to what extent environmental interests are protected, and how to comply with regulations – must be made on the basis of what is in the best business interests of the WWC, not what is in the best public interests of the community it serves.
 21. As some of the examples in the Letter demonstrate, that dynamic – prioritizing corporate interests over local community interests – can lead to neglect of and harm to local communities, whether as a result of maintenance failures (sometimes with serious public health consequences), service fee increases, lay-offs and contracting out, inadequate environmental protection, refusals to serve regions that are costly to service, or combinations of all of these.¹⁴
 22. When water and wastewater services are delivered by for-profit WWCs the public interests of communities in quality services, equity, health, working conditions, and environmental protection, are legally subordinated to the pecuniary interests of WWCs. *Who* owns shares is immaterial to that dynamic. Whether shareholders are private or public entities, WWCs are legally obligated by the OBCA to prioritize their own and their shareholders' pecuniary interests over all other interests, including the public interests of the communities they serve.
 23. In summary, the WCA as amended by Bill 98 continues to permit private ownership of shares in WWCs, as revealed by part 'A'. Moreover, as part 'B' explains, the corporate structure of WWCs effectively privatizes water and wastewater services regardless of whether shareholders are public or private entities, thereby subjecting local communities to privatization's harms. In short, the WCA prescribes a privatized regime for water and wastewater services in Ontario, and because the Government has sought to deny that (through Bill 98 and more generally) the WCA regime is best understood as 'stealth privatization'.

¹³ See discussion of water privatization in Bakan, *The New Corporation*, supra note 5, c. 5.

¹⁴ Letter, paras. 46-61. See also, Bakan, *The New Corporation*, supra note 5, c. 5 for discussion of privatization of water services.

Other comments

24. The scheme proposed by Bill 98 raises several related and ancillary concerns to those already discussed.
25. First, when compared to municipal ownership and operation of water and waste systems, the Bill 98 regime denies citizens rights and opportunities to participate democratically in decisions concerning water and wastewater services in their communities. Unlike a municipal government, which is accountable to and representative of local electorates, in the kinds of WWCs proposed by Bill 98 only shareholders have votes.
26. Second, unlike crown corporations, public commissions, joint supervisory boards, and municipal governments, the WWCs proposed by Bill 98 would be exempt from the *Canadian Charter of Rights and Freedoms*. Various *Charter* rights that might be relevant in relation to provision of water and wastewater services – such as rights to equality, security of the person, life, and the freedoms of expression, association, and assembly – bind public providers but not the for-profit WWCs proposed by Bill 98.
27. Third, shares in Bill 98 WWCs might be partly or entirely owned by the federal Government or an agent thereof, meaning federal pecuniary interests would take precedence over a local communities' needs and interests. That would represent a federal intrusion into provincial jurisdiction that is at odds with the spirit, if not the letter, of the division of powers between federal and provincial jurisdictions in the *Constitution Act 1867*.
28. Fourth, once for-profit WWCs are in place, the Ontario Government is just a step away from direct and immediate privatization of water and wastewater services. It need only repeal Bill 98's restrictions on shareholding to make that happen. It is indisputable that the WAC signals a normative and practical shift from a *public good* conception of water and wastewater services to a *market-driven* conception. As such, it establishes a foundation for direct and immediate privatization of water and wastewater services and there is good reason to be concerned that that will happen.
29. I trust the forgoing is of assistance.

Sincerely,



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