FTR Now

The Drummond Report – Impact on the Broader Public Sector

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On February 15, 2012, the Commission on the Reform of Ontario's Public Services (the "Commission") released its long-awaited, 543-page report (the "Report", commonly referred to as the "Drummond Report") which identifies sweeping reform measures aimed at increasing efficiencies within the broader public service ("BPS"). In our companion *FTR Now, Drummond Commission Reports on Elementary and Secondary Education Reform*(distributed yesterday), we considered the Drummond Report as it applies to school boards.

In this *FTR Now*, we will focus on the Drummond Report more generally, considering a number of the Commission's recommendations that relate more particularly to human resources issues, including labour relations and pensions, and related recommendations related to the healthcare sector, colleges and universities, municipalities and social services.

While it remains to be seen which, if any, of these recommendations the Government will ultimately adopt and implement, it seems clear that significant changes for the BPS are on the horizon. All public sector employers are encouraged to review those portions of the Report that are relevant to your operations, and to consider providing input to the Government on the Commission's recommendations.

BACKGROUND OF THE COMMISSION

Building on commitments outlined in its 2011 Budget, "Turning the Corner," tabled on June 2, 2011, the Ontario Government tasked the Commission with the preparation of a comprehensive report examining its service delivery models, with a view to helping the Government identify:

- programs that were no longer serving their intended purpose and that could be eliminated or redesigned;
- areas of overlap and duplication that could be eliminated; and
- areas of value in the public sector that could be further enhanced.

There were five elements to the Commission's mandate that impacted on its conclusions and recommendations:

- advise on how to balance the budget earlier than 2017-18;
- once the budget is balanced, ensure a sustainable fiscal environment;
- ensure that the government is getting value for money in all its activities;
- do not recommend privatization of healthcare or education; and
- do not recommend tax increases.

The Commission's report, entitled *Public Service For Ontarians: A Path To Sustainability And Excellence*, was released on February 15, 2012, and is intended to provide the Minister of Finance with recommendations for the Government to consider in advance of its 2012 Budget.

OVERVIEW OF THE REPORT

The Drummond Report begins with a detailed discussion of the significant fiscal constraints facing the Government in its effort to eliminate its deficit over the next few years. Based on current growth rates and economic conditions, Ontario's deficit is projected to grow from $14 billion in 2010-11 to $30.2 billion in 2017-18. The Report also projects that, if the status quo is

maintained, the net debt-to-GDP ratio is expected to increase from today's level of approximately 35% to a much higher 50%.

The Report cites other factors that are contributing to the growing provincial deficit and that will preclude a simple reliance on "robust economic growth" as a solution to the province's financial situation – lagging economic growth, a strong dollar making Ontario's exports more expensive and a dwindling manufacturing sector being three such factors.

Having discussed the serious fiscal constraints facing the Government, the Report also notes that, in Ontario, "spending is neither out of control nor wildly excessive," with Ontario running one of the lowest cost governments in the country, relative to its GDP.

In light of the challenges facing the province, the Commission adopted an approach that does not emphasize quick fixes or band-aid type solutions. Thus, for example, simple recommendations to cut costs or implement hiring or wage freezes are not generally made. Rather, the focus is on a more fundamental restructuring of the delivery of public services, focusing on those services that will invest in the future, and not just preserve the status quo. Moreover, there is an emphasis on achieving greater flexibility within government to assign resources, including personnel, to where there is a demonstrated need and return on investment.

LABOUR RELATIONS AND COMPENSATION

Our analysis will begin with the Commission's recommendations related to Labour Relations and Compensation, which are found in Chapter 15 of the Report. We make this our starting point because many of the recommendations in this section intersect with recommendations made for various sectors of the BPS, which are discussed in subsequent sections of this *FTR Now*.

As noted by the Commission, labour costs account for about one-half of all Ontario Government spending. Moreover, approximately 70% of the one million BPS employees are unionized – a far greater percentage than the approximately 15% of private sector employees. This high rate of unionization creates unique challenges for significant restructuring of service delivery, including:

- successor employer provisions in the Labour Relations Act, 1995 ("LRA") and the *Public Sector Labour Relations Transition Act* ("PSLRTA");
- lay-off and contracting out restrictions in collective agreements; and
- potential limits on unilateral government action based on the "freedom of association" protections under the *Canadian Charter of Rights and Freedoms*.

The Commission outlined four principles to guide the transformation in labour relations that it sees as necessary for the delivery of public services in the future:

- the labour relations system should be balanced, effective and transparent, respecting the interests of both employers and employees;
- negotiated collective agreements are preferable to legislated or arbitrated outcomes;
- accountability for labour relations and service delivery should be distributed amongst all workplace parties; and
- broader system changes are part of a larger vision in which labour is not an end in itself.

Based on these general principles, the Commission makes a number of labour-specific recommendations, many of which would have particular resonance for certain sectors of the BPS.

ESSENTIAL SERVICES

It is a common feature of a labour relations regime that where parties cannot negotiate a collective agreement, they may resort to work stoppages to exert economic pressure on the other party. In the public sector, various statutes preclude work stoppages where the employees are providing essential services. In some cases, such as with firefighters, whole categories of employees are deemed essential, whereas in other cases, statutes establish mechanisms for the parties to negotiate essential services agreements (subject to oversight by the Ontario Labour Relations Board).

The Commission recommends that the Government establish an independent working group to better determine which BPS occupations and industries should be considered to be essential services, the appropriate designation process and the appropriate form of dispute resolution mechanism. It is not clear whether this would result in an expansion of existing categories of essential workers, or whether there might be a broader discussion through which existing categories would be found not to be essential.

INTEREST ARBITRATION

The Commission also recommends that improvements be made to the interest arbitration process, which is the typical way in which bargaining impasses are resolved for workers who cannot strike, or who have been legislated back to work.

Recommendations include the establishment of overall principles or outcomes necessary to reform the process, the requirement for mediation prior to arbitration, and a shift to more objective analysis, based on objective criteria and supported by systematic data and research.

With respect to this last recommendation, the Commission makes a number of further suggestions relating to the arbitration process intended to make it more transparent and accountable. The Commission is a little more equivocal on the question of “ability to pay,” and does not make a clear recommendation about how best to address this thorny issue.

INCREASED PRODUCTIVITY

The Commission makes a number of recommendations intended to result in increased productivity. First, the Commission recommends that the Government provide a zero budget increase for wage costs in the Ontario Government. Second, the Commission urges the Government and bargaining agents to explore options to modify restrictive seniority and bumping provisions. The Commission also states that successor rights provisions should not bar privatizations or amalgamations.

In this last respect, the Commission surmises that even where collective agreements would bind the successor employer, they could be renegotiated favourably in the future. This view does not seem to adequately account for the significant difficulties in negotiating seniority-protective provisions out of an existing collective agreement, nor does it contemplate that a failure to account for successor rights may ultimately increase unionization rates, drive up wages when collective agreements are rationalized in the new organization, and potentially result in additional pay equity costs.

The Commission also recommends several ways in which greater rationalization of bargaining structures and bargaining outcomes could be achieved, including:

- expanding the authority of the Labour Board to merge bargaining units in a wider variety of circumstances than at present;
- increasing the use of rationalized bargaining (e.g. centralized bargaining) in a wider variety of sectors than at present; and
- facilitating a voluntary movement to greater centralized bargaining in the municipal sector – especially for police and firefighters.

We will consider the question of centralized municipal bargaining further in the “Municipalities” section of this *FTR Now*.

TRANSPARENCY AND ACCOUNTABILITY

The final recommendations in this part of the Report relate to transparency and accountability initiatives.

The first recommendation is to establish a Labour Relations Information Bureau to collect and make available information to assist BPS employers and unions in their negotiations, especially relating to measures of productivity. In addition, the Commission recommends that there be a benchmarking system for compensation that would cost the full compensation packages of employees.

Accountability recommendations relate to establishing appropriate compensation and incentives to management employees, increasing flexibility in collective agreement provisions related to job descriptions and management's ability to organize work, and better development and communication of program expectations and objectives.

HEALTHCARE

Having considered the Commission's general labour relations and compensation recommendations, we will focus on several sector-specific issues, starting with healthcare.

Perhaps not surprisingly, healthcare receives a lot of attention in the Drummond Report, with over 100 sector-specific recommendations. This is a reflection of the costs associated with healthcare, the single biggest item on the province's budget. Many of the recommendations relate to service delivery, seeking to achieve efficiencies, reduce duplication and waste and increase quality of service. For example, a number of recommendations relate to placing more authority for the delivery of coordinated healthcare services in the hands of Local Health Integration Networks ("LHINs").

It is beyond the scope of this *FTR Now* to consider the full range of healthcare recommendations. Rather, we will focus our comments on four broad observations.

CONSOLIDATION OF HEALTH SERVICE PROVIDERS AND AGENCIES

Sprinkled throughout the healthcare sections of the Report are numerous recommendations relating to the consolidation of health service providers and agencies. For example, the Commission recommends that Community Care Access Centres and LHINs be "tightly integrated," with the integration possibly taking on the form of cooperation or of a more complete merger.

As discussed in the general labour relations sections, above, both the LRA and PSLRTA contain successor provisions that would likely apply to any consolidation efforts. Despite the Commission's confidence that successor rights issues are manageable, there is a real risk that consolidations would result in larger bargaining units, the potential unionization of non-union employees, upward pressure on wages, and additional pay equity costs. Moreover, where bargaining impasses are largely subject to interest arbitration, it is very difficult to achieve desired concessions in bargaining.

BACK-OFFICE SERVICES INTEGRATION

The Commission also calls for the integration of all back-office functions, such as information technology, human resources, finance and procurement across the entire health system. Many hospitals have already taken steps toward such integration, and efforts remain ongoing.

However, there are limits to savings that can be achieved in this regard, as many collective agreements contain provisions restricting contracting out, and a number of arbitration awards have found that employees affected by such initiatives can exercise their seniority rights, resulting in lay-offs, bumping, and early retirement and severance packages being triggered.

OPTIMIZING HUMAN RESOURCES CAPACITY

One of the key sets of recommendations relates to shifting the provision of healthcare services to other, lower-cost, caregivers. This would entail devolving activities or services currently performed by one category of caregiver (e.g. doctors) to other caregivers who are qualified to perform the same service (e.g. nurse practitioners, physician assistants or pharmacists). The Commission recommends that, among other things, LHINs use funding decisions to encourage hospitals and other providers to use the full scope of practice of their entire staff.

Should these recommendations be implemented by the Government, service providers will need to be mindful of collective agreement provisions that would impose restrictions on the reassignment of duties, staffing ratios (e.g. RN/RPN ratios), etc. Moreover, many collective agreements contain provisions protecting the work of the bargaining unit, which must also be taken into account. Finally, there may be upward cost pressures on wages if employees begin to perform a wider range of activities than is currently the case.

TRANSFER OF SERVICES TO THE COMMUNITY

The Commission also recommends a greater focus on community and home-based care. There is clearly much merit in a community health focus. However, in implementing such a transition, there is a risk that community service organizations will be bound by hospital collective agreements should the successor rights provisions of the LRA or PSLRTA apply to the transfer. This could significantly limit any cost savings associated with the transfer.

COLLEGES AND UNIVERSITIES

The Drummond Report addresses the delivery of education services at all levels. As noted at the outset, we discuss elementary and secondary education in a separate *FTR Now* for school boards, *Drummond Commission Reports on Elementary and Secondary Education Reform*. In this section, we will consider the recommendations related to post-secondary education.

The Commission frames its analysis by noting that post-secondary education plays a vital role in Ontario, and makes major contributions to the province's economic growth and competitiveness. Enrolment rates are increasing, and post-secondary institutions play a key role in research and development initiatives. Nevertheless, Ontario has the lowest levels of funding for post-secondary institutions in the entire country. The Report concludes that the status quo is unsustainable.

Against this background, the Commission makes numerous recommendations, grouped into several categories, which we will review in the sections that follow.

CONTAINMENT OF FUNDING AND EXPENSES

The Commission recommends that the Government limit funding increases for the sector to 1.5% annually. In order to offset the more limited funding, the Commission focuses on a number of ways by which institutions can limit their expenses. These include:

- a reduction of bargained compensation increases to be more in line with recent trends in the BPS; and
- the introduction of a rigorous performance system where one is not in place.

Clearly, these recommendations are highly dependent on institutions being able to negotiate these matters successfully with affected faculty associations and unions. Based on experiences to date, it is quite possible that employers will encounter resistance with respect to these sorts of initiatives, suggesting that significant trade-offs may need to be made to achieve them.

INCREASED DIFFERENTIATION

The Commission makes a number of recommendations to increase the degree of differentiation in the services and programs delivered by post-secondary institutions. These include a differentiation as between the role of colleges and universities, and within each sector itself – for example, within the university sector, some universities might emphasize research, others teaching, while still others might focus on regional development issues.

The Commission also recommends the development of multi-year mandate agreements for each institution, with the agreements playing a role in future funding decisions. Finally, the Commission recommends that colleges not be granted any new degree programs and that existing degree programs be grandfathered.

ENCOURAGING QUALITY AND RESEARCH FUNDING

The Commission recommends that institutions move away from an approach that favours research over teaching, which it views as reducing the overall educational experience. In this regard, it recommends that more resources and rewards be focused on teaching and the attainment of teaching excellence.

Related to this, the Commission further recommends that research funding be awarded more strategically and be managed more efficiently.

TUITION AND STUDENT ASSISTANCE

The Commission recommends against a tuition freeze, and suggests that the current 5% cap on tuition increases be maintained. However, it also recommends that institutions be given “greater flexibility to adjust tuition fees at the program level, within the ceiling.”

The Commission makes a number of recommendations relating to student assistance programs aimed at focusing the programs on lower income students whose access to post-secondary education is more likely to be compromised by financial considerations.

COST EFFICIENCY MEASURES

The Commission recommends that cost efficiencies be obtained through a number of initiatives, including:

- leveraging the current collective purchasing capacity through the Ontario Education Collaborative Marketplace and regional buying groups;
- optimization of existing space before new capital projects are undertaken;
- establishing a single pension fund administrator for all colleges and universities; and
- possible compression of four-year degrees into three years.

MUNICIPALITIES

The Commission makes numerous recommendations throughout the various sections of the Report that either directly or indirectly impact on municipalities – for example, the Commission makes numerous revenue-generation recommendations, such as full cost pricing for water and waste-water services. Municipalities would be well-served to carefully review the Report for the full range of recommendations that could impact your operations.

In this section of the *FTR Now*, we will focus generally on those areas that have a more direct human resources impact on municipalities. Several of the general Labour Relations recommendations discussed earlier in this *FTR Now* target municipal interests specifically. Indeed, much of what the Commission recommends in the Labour Relations section reflects some of the

work of the Emergency Services Steering Committee – a committee created by MARCO (Mayors and Chairs of Regions and Single Tier Cities), LUMCO (Large Urban Mayors Caucus of Ontario) and OAPSB (Ontario Association of Police Services Boards) – with whom Hicks Morley has worked over the years to analyse and highlight labour relations issues facing the municipal sector.

The Commission's recommendations on interest arbitration were discussed above, and it was noted that the Commission was somewhat equivocal on the "ability to pay" argument that is often advanced by municipalities and other BPS employers. However, the Commission also recognized that there are limits to wage moderation efforts, and concluded that "moderation in total compensation will require that wage restraint give way to a reduction in the size of the work force, supported by increased productivity and improved service delivery." That is, if total compensation cannot be sufficiently controlled, the alternative will be restructuring and a reduced work force.

The recommendation for increased centralized bargaining in the municipal sector is clearly of interest to municipalities and police services boards. There is some question as to whether a true centralized bargaining model could work in the absence of centralized funding and oversight, though this recommendation should support municipal initiatives for more coordinated bargaining strategies.

Another matter of municipal interest will be the Commission's discussion of transportation, and its focus on the need to develop a sustainable, efficient transportation strategy for the Greater Toronto and Hamilton areas. At some point in the development of such a strategy, affected municipalities will need to grapple with collective agreement restrictions and how they can be addressed as part of the bigger transportation picture.

SOCIAL SERVICES

The Report also addresses the delivery of social services to Ontarians. The Commission notes that spending in this area has increased at an average of 6% over the past ten years, and calls for future annual growth rates of 0.5%.

Most of the recommendations in this area focus on restructuring the manner in which social services are delivered. As we have noted throughout this *FTR Now*, restructuring service delivery often bumps up against seniority and job security provisions in collective agreements. Moreover, successor rights provisions can limit cost savings where collective agreements bind new organizations. In some cases, increased pay equity costs can result.

The Commission makes a number of recommendations related to increasing the employment rate of persons with disabilities, and recommends combining Ontario Works and the Ontario Disability Support Program with elements currently delivered by Employment Ontario to achieve this end.

The Commission also recommends that the Government continue to implement the reforms recommended by the Commission to Promote Sustainable Child Welfare, which may include the consolidation of existing agencies, the promotion of regional cooperation for the delivery of common services, and the development of a client outcome-based funding model.

With respect to child and youth mental health services, the Commission recommends the consolidation of agencies and increased integration with the health and education systems. Other areas of note include youth justice services and developmental services, each of which are the subject of recommendations designed to improve efficiencies within the sector.

PENSIONS

The final substantive area of discussion involves public sector pensions, which the Commission considers at various places throughout its Report.

The Ontario Government contributes to government and BPS pension plans in a variety of capacities – for example, as sponsor, co-sponsor or through the provision of funding to BPS organizations. The pension-related expense reflected in the province's financial statements has been growing over the past number of years, and is expected to grow even more in the future if the status quo is maintained. Because of this, the Commission makes a number of recommendations related to public sector pension plans, which we will briefly review below.

CONTRIBUTION RATES AND BENEFIT LEVELS

The Commission recommends that when faced with future funding shortfalls, the Government should focus on reducing future benefit levels instead of continuing to raise employer contribution rates as it has historically. Many public sector employees are members of jointly sponsored pension plans ("JSPPs"), which require that both the employers and employees agree to any prospective benefit changes. The Commission recommends that, if the sponsors are unable to agree to reduce future benefit levels, the Government may need to consider legislative options to resolve the issue.

The Commission also recommends that reduction in ancillary benefits, such as indexation and early retirement subsidies, be negotiated. In the alternative, the Commission recommends that the Government explore the option of increasing member contributions – a recommendation that the Commission recognizes would require amendments to the Ontario *Pension Benefits Act* and the federal *Income Tax Act*, if the increase in the employees' share of contributions resulted in employee contributions in excess of 50% of the cost of benefits.

CONSOLIDATION OF PLAN ADMINISTRATION

The Report notes that most hospitals, colleges, municipalities and school boards operate as separate employers but participate in a single pension plan. However, the rest of the BPS, including the university and energy sectors, sponsor their own plans, which vary in size and the benefits they provide.

The Commission recommends that the Government look for opportunities to consolidate administrative processes across the BPS and pool assets for investment, thereby maximizing the economies of scale that would be realized from centralized administration.

IMPROVING TRANSPARENCY OF PENSION LIABILITIES AND STRATEGIC PLANNING

Citing the Government's "significant exposure to liabilities associated with" the Ontario public service and BPS pension plans, the Commission recommends that the Government conduct and publish its own "liability management assessment" of these plans and develop strategies to contain any fiscal risks identified by the assessment. The Report also recommends that the Government make the cost of public sector pension plans clearer in the Public Accounts and other financial statements, including the Budget, and clarify who has financial responsibility for funding pension deficits.

PENSION BENEFITS GUARANTEE FUND

The Commission makes recommendations regarding the future of the Pension Benefits Guarantee Fund ("PBGF"), a fund created in 1980 to fund promised benefits to Ontario pensioners and plan members where a pension plan is wound up with a funding deficit and the employer cannot fund the wind up deficit. Ontario is the only Canadian jurisdiction that provides such a guarantee fund.

The Report cites the first actuarial study for the PBGF released in 2010, which found that the PBGF as currently constituted is not sustainable. Currently only 1,600 plans are contributing to the PBGF. As significantly higher contributions and reserves would be required in order to protect the PBGF from catastrophic claims and to update coverage, the Commission recommends that the province either terminate the PBGF or consider the possibility of transferring it to a private insurer.

CONCLUDING DISCUSSION

As can be appreciated from this truncated discussion of the Drummond Report, its recommendations have the potential to greatly impact the delivery of public services and to greatly restructure employment relationships in the public sector.

One key theme that resonates throughout the Report is the need to try to negotiate resolutions to the fiscal problems facing the province, to ensure effective buy-in by all affected parties, and to allow the parties to best determine the solution for their own organizations and sectors. Clearly, many of the Commission's recommendations would require significant levels of cooperation and effort at the bargaining table if the needed concessions are to be achieved.

We will continue to monitor the Government's response to the Drummond Report as it develops the 2012 Budget, and will continue to assess its potential impact on public sector employers. In the meantime, if you have any questions about the Drummond report, please feel free to contact any of the following individuals who assisted in the preparation of this *FTR Now*: Brenda J. Bowlby, Glenn P. Christie at 519-883-3125, Sarah A. Eves at 416-864-7254, Michael J. Kennedy at 416-864-7305, Mark H. Mason at 416-864-7280, Susan L. Nickerson and Vincent M. Panetta at 613-541-4003.

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