

**DISTRICT SOCIAL SERVICES ADMINISTRATION BOARDS
(DSSABs)**

KEY STAKEHOLDER CONSULTATION

***REPORT OF THE EXPERT ADVISER TO
THE MINISTRY OF CHILDREN, COMMUNITY
AND SOCIAL SERVICES (MCCSS)***

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Introduction

I have been retained by the Ministry to:

- Provide expert advice to MCCSS in the development of potential approaches with respect to:
 - Embedding collective responsibility in the method of establishing an alternate apportionment formula to the prescribed method (e.g. prescribing individual municipal impact parameters)
 - Establishing a prescribed conflict resolution method
 - Optimizing Board effectiveness and communication
- Facilitate focused-solution-oriented discussions with NOSDA, NOMA and FONOM on potential approaches in the areas noted above; and
- Provide a final report that includes a summary and analysis of discussions and recommendations on workable options for change.

A Discussion Guide (**Appendix A**) was developed in collaboration with Ministry officials, and was provided in advance to the membership of the above-noted organizations in advance of 3 scheduled face-to-face consultations, to seek DSSAB advice and input on the issues included in my mandate.

A list of attendees at those 3 consultations is attached as **Appendix B**. I would like to express my appreciation to those who took the time to travel to meet with me, and to provide their thoughtful input and advice. That input was diverse, and very helpful to me in dealing with what can only be described as a complex set of interlocking issues.

I also appreciate having two written submissions, one from the Lakehead Rural Municipal Coalition (LRMC) which is attached as **Appendix C** and a second from FONOM, **Appendix D**.

Context

The legislation which created DSSABs was introduced in Ontario some 20 years ago, as a part of a larger set of changes in the roles played by the Ontario government and the array of local government organizations involved. The legislation and its associated regulations addressed the governance structure of the new DSSABs, and how the costs associated with the various programs were to be allocated amongst the constituent municipalities.

That governance framework provided a default approach to the apportionment of costs, along with a prescribed process for how fine-tuning to that default formula could be developed, approved and implemented by each respective DSSAB, as the need arose.

In the intervening years, much has changed, notably:

- All 10 DSSABs have approved and implemented changes to their own unique application of the apportionment formula
- The population of the various communities, municipalities and unorganized areas across the north and the distribution of it, on which the original representation on DSSABs was based, has changed at least in some areas;
- The economic circumstances in numerous communities have changed, and in some cases continue to change
- There have been significant changes in the program offerings of individual DSSABs, duly approved by the Boards in each case, in some instances for programs not mandated under Provincial legislation
- There have been, and are currently, related or unrelated changes made by the Province of Ontario, in terms of both program mandates and criteria, and funding approaches and formulae. This can be particularly onerous when 'in year' budget changes are announced.

In sum, over that 20 year period, the governance framework has been successful in creating mechanisms that enabled 8 of the 10 DSSABs to reach agreement on program delivery and cost apportionment approaches. The remaining 2, however, as a result of some or all of the circumstances outlined above, have not yet been entirely successful in gaining the support of all the constituent communities who are, by levy, required to contribute. Several attempts at mediation and a consultant review have not been successful in finding complete solutions, although it came clear to me in my consultations that there are indeed improvements being observed, and a note of some optimism about next steps.

It's also worthwhile to point out that some of the above changes that have occurred over time may well have exacerbated the issues here; other changes may now have superseded to some extent the original problems I am to address.

My approach

In the introduction to this final report, I point out that there are numerous interlocking factors at play in this matter. While my mandate from the Ministry was quite clear as to what was "in scope" for me to address, and by definition what was "out of scope" I will on occasion in my analysis, comments, conclusions and recommendations point to areas which technically are out of scope but fall within that "interlocking" nature, and need to be considered.

I should also comment that some of my observations and recommendations in this report did not directly flow from the content of the consultations, rather from my thinking about the interlocking nature of related issues.

I was regularly reminded by numerous representatives with whom I met to be very careful in how I approached the issues in contention.....with a view to not disturbing the 8 organizations that are "working well." In other words, 'do your best to do no harm in what you propose.'

TASK ONE: The Apportionment Formula

The Act and its Regulations provide that apportionment of levied costs, across the constituent municipalities and unorganized areas (Territories without Municipal Organization or TWOMO) is to be based on weighted property assessment. The Regulations under the Act provide for a DSSAB to vary that approach, provided that:

1. The DSSAB Board approves a revised approach
2. A 'double majority' approval process follows, by which
 - a. A majority of the constituent municipal councils and members representing territory without municipal organization in the District consent to the amended approach
 - b. Those who have consented represent a majority of the electors in the Board's District.

The disputes in the 2 Districts where there is not yet agreement have centred primarily on allocated cost. Some would hold that there is not proportional benefit gained for levied cost incurred; some would argue that the levied cost is simply beyond their ability to pay; others would argue that the balance of votes in establishing new approaches simply doesn't favour their community. Finally, particularly more recently, some are deeply concerned that decisions have been made by the DSSAB Board to introduce non-mandatory programs, with no mechanism to raise, beyond the Board table, concerns about the impact on their levied share of the cost.

It was made clear to me that the Ministry has the view that the status quo in respect to apportionment represents the concept of *collective* responsibility and is a workable proxy for 'ability to pay' and therefore will not be departing from the current default formula. I have as a result consulted on whether there might be adjustments made to the way in which that formula works, while keeping within the current regulatory regime.

We discussed whether there could be **limits** to locally established alternate apportionment formulae, as permitted under the Regulations, so as to ease the impact of change, and allow municipalities to better plan for increases in cost. Such limits could include:

- A limit on the cost impact to each constituent municipality. For example, a policy could be implemented to limit the cost impact to any municipality in any fiscal year of no more than X percent
- A limit on the length of time over which such changes could continue. For example, an impact could not extend without agreement beyond the term of the Board making the amendment
- A limit on the number of times during its term a Board could introduce amendments to the apportionment formula

Concerns were expressed by some that such limits were not seen to be a useful resolution of the problem. At the core of the issue, there is resistance to paying more, with existing pressures on municipal resources. Additionally, recalling the 'do no harm' approach, concern was expressed that the stability of some of the settled DSSAB environments might be put at risk by opening this additional avenue for adjustments.

While the following idea may introduce more complexity at the DSSAB level, one potential option for some relief at the municipal level, has to do with the approval of non-mandatory programs at a time when municipal resources are under increasing pressure. At least one DSSAB raised this concern with me.

For clarity, it's important to understand that non-mandatory refers to a program initiative that falls outside of what is required or permitted under the existing statutes and regulations that apply.

A new approach to addressing this expressed concern, from at least one consultation voice, would be to consider widening the applicability of the double majority approval provision to address the cost of non-mandated programs. There are numerous examples where such programs have been introduced in the past, on some occasions with pilot funding from senior levels of government, without sustained funding. There are certainly examples in mental health and addictions programming.

I hasten to add that I fully understand that this issue is a complex one, and one on which I do not have in depth understanding of the scope and scale of such programs being introduced in recent years. Having heard, though, the concern that such initiatives have raised in the minds of some, I believe it would be

beneficial for the Ministry to undertake a review of the scope and scale of such initiatives, and following that whether any policy adjustments to the apportionment approval process might be merited.

Our consultation Discussion Guide featured prominently the concept underlying this service delivery scheme in the North, and beyond, that relies on the **collective responsibility** of the partners. If we extend that concept to the newer issues in the DSSAB regime, and if a review of the scope and scale of the issue indicates a serious issue, I believe it might be reasonable to consider the double majority test whether, when there is a dispute from a constituent municipality, the cost of such non-mandated initiatives should be added to the levy.

With all that in mind, **I recommend that the Ministry undertake a review of recent DSSAB decisions to introduce non-mandated programs, in order to determine whether greater clarity in respect of the ability of a DSSAB to levy for the costs associated with non-mandatory programs is needed.**

Beyond that, I am satisfied that there is not a superior method for cost apportionment beyond the current default formula, with its structured approval mechanism as prescribed by Regulation.

TASK TWO: CONFLICT RESOLUTION

As noted earlier, there have been several attempts at resolving the outstanding issues in 2 DSSABs. I hasten to add that my consultations have made clear to me that there has been progress made in respect to some of the issues at hand. Where there have been efforts to find resolution, through mediation in both cases there appear to have been some improvements. At present, there is still in place a freeze imposed on changes to apportionment formulae by the Province, with that freeze due to expire Dec. 31, 2019.

A comprehensive review undertaken by the Ministry during 2017 did not generate successful resolution.

Our Discussion Guide opened the conflict resolution issue for comment, with binding arbitration suggested as one possible alternative. I heard considerable concern about binding arbitration for a variety of reasons, including:

- The cost of both the process itself, and the associated costs to each of the parties, with no guarantee of Provincial cost sharing of those costs
- The difficulty of defining who would be the parties to such a process
- The risk that, without a 'threshold' as to who could trigger an arbitration, repeated, successive requests for arbitration could occur
- The simple fact that the winner/loser approach may well create long lasting tensions, within an atmosphere designed to reflect 'collective responsibility.'
- And finally, the fact that many municipalities have not had positive experience with arbitration, especially in the labour sector, with regard to ability to pay: a core problem here.

I have reached the conclusion that binding arbitration is not a preferred solution, and **I do not recommend that amendments to introduce binding arbitration be pursued.**

Thus began the search for other solutions. What follows is a discussion as to other means of achieving agreement at the DSSAB level. I must note that at this juncture my report will begin to introduce commentary that may lie somewhat outside the defined scope of my work, but I do so because of the interlocking factors, and how better approaches might be created.

Options to consider

1. While in many respects the first option could be addressed under Task Three, optimizing Board effectiveness, I choose to first address it here where it has most relevance. I heard almost universal comment on the matter of *fiduciary responsibility*, a cornerstone of good governance and at the same time one of the most challenging issues faced by municipal councillors who are also appointees to DSSAB Boards. Simply put, should they in the best

interest of the whole District, the DSSAB and the concept of collective responsibility, vote to support a decision that increases the cost to their appointing municipality, they will be held politically accountable for that vote “at home.” It’s also worthy of note that in many of the decisions that DSSABs are required to make, there is not a great deal of flexibility, given the fact that those Boards, and their executive managers, are essentially ‘statutory agents’ and required to follow the requirements of the relevant statutes, regulations and directives of the Province.

Nevertheless, unless they feel free or are directed to properly exercise their fiduciary responsibility at the DSSAB Board table, that cornerstone will not be firmly in place.

Three ideas have been presented to me.

- I. The first is *training*. Most agree that DSSAB Board members should be *required* to take basic governance training, training that is specifically geared to their DSSAB role. While there are similarities between the legal requirements between the municipal and DSSAB roles, there are differences and DSSAB members must become familiar with the specifics of those differences.
- II. The second is about *mandated requirements*. To the best of my knowledge, the Not for Profit Corporations legislation does not apply here, that legislation of course addressing fiduciary responsibility. The DSSAB Act makes no provision regarding the fiduciary role. There is, then, no real and compelling guidance on this important governance requirement.

I recommend that the Ministry take steps to establish a clear expectation that persons appointed to the Board of a DSSAB will properly understand and execute their fiduciary role while undertaking DSSAB decision making, whether that be through mandatory training or a regulated requirement, or both.

- III. The third is an *innovative approach*, and applies more directly to the matter of facilitated conflict resolution.

It was suggested to me that there might be value in considering a peer mentoring approach to resolving conflicts in individual DSSABs. This concept would be based on the combined assumptions that the majority of Boards have currently found and/or created solutions to apportionment issues, and a second assumption that there is a body of experience and expertise across all DSSABs. A DSSAB struggling to find consensus could ask a coordinating body (perhaps the CAOs collectively) to respond to a request to empanel a group of colleague DSSAB Chairs and/or CAOs to analyze the issues based on their successful experience and recommend solutions.

While there are clearly some limitations to such an idea, not the least of which is the enforceability of recommended solutions, this may be a lower cost option than arbitration or perhaps even mediation. On the spectrum that ranges from mediation to full-on arbitration, I believe that such an approach might well merit consideration.

Regardless, of all the approaches outlined above, central is the premise from which I started: the Province wants solutions that do not require the intervention, case by case, by the government in resolving what have to be considered *local government disputes*.

Instead of ‘external’ resources, calling on peers to work with a colleague DSSAB to find solutions may well be worth considering.

I recommend that the Ministry turn its mind to creating such a local facilitation option as one means of enhancing local capacity, i.e. within the North, to resolve issues, rather than resorting to Provincial intervention, when local discussions reach an impasse.

Final resolve

Collectively, all of the measures in this report should help in resolving impasses that have been intractable to date. I have not recommended binding arbitration, for the reasons stated.

With the assumption clearly in place that the Province does not have, nor does it wish to create an authority for itself to intervene, there are only two final measures available. The first, recourse to the courts, has not proven to be an efficient or effective measure to date, and the second is by means of financial sanctions.

While these measures did not arise in my consultation meetings, I am well aware of the fact that the most drastic measure available to a municipality in disputes over cost apportionment is a refusal to pay its levy to the DSSAB. In parallel fashion, the Province of Ontario has numerous financial levers available to it, i.e. withholding fiscal transfers to municipalities that are not compliant with the Act and Regulations.

It's my sincere hope that the other measures proposed in this report will obviate the need for any party to resort to such extreme solutions.

TASK THREE: OPTIMIZING BOARD EFFECTIVENESS

Good Governance and Transparency, Communication:

Good governance is now almost universally regarded as a non-negotiable requirement in virtually every aspect of public and private corporate oversight. Internally, the Province of Ontario has made quantum steps forward in requiring good governance, and the requisite training for it, across the spectrum of agencies, boards, commissions and other bodies who implement and deliver, in one way or another, the vast majority of government initiatives.

There are instances where the overall governance practices of DSSABs have been reassessed, and significant progress made. Such concepts as communication of and transparency in decision-making and due attention to appropriate codified procedure and accountable practices at the Board level are important. I have earlier made note of the matter of fiduciary responsibility, and certainly reflect those concerns again here.

I am also conscious of the Government's intention to pay careful attention to the regulatory burden in this sector.

Several points I recommend that the Ministry consider, in this context:

- Timely and effective training of DSSAB Board members is of critical importance. It is not for me to determine how best that should be addressed but I do believe and therefore **recommend that DSSAB Board member training should be mandatory, and that such training be specifically focused on the unique requirements of the Act, as well as all other applicable statutes, including the Municipal Act and the Municipal Conflict of Interest Act**
- There are a series of Interim Policy Guidelines that are intended to guide the work of the DSSABs. It is my understanding that those Guidelines have had "Interim" status for an extended period, and I **recommend that a process be launched, in concert with the relevant stakeholders, to review and update those Guidelines.** Suggestions have been provided earlier to the Ministry by way of priority Guidelines for attention; that documentation is attached as **Appendix E.**
- I do not see any compelling reason to upgrade the status of those Guidelines to that of Regulations, unless there is an identified need to do so by the Ministry, in keeping with some other aspects of my recommendations.
- I am well aware that there are some areas of ambiguity as between the requirements of the DSSAB Act, and legislation of several other Ministries that need attention. They create some confusion and potential dissension to the matters at hand, and the parties would benefit from clarity.

Representation and Board Composition

While my mandate did not specifically include any reference to either the matter of representation or composition, I am compelled to comment on conclusions I have drawn that involve those subjects, if for no other reason than the impacts of the interlocking nature of the issues, as outlined at the beginning of this report.

There are three proposals in this regard:

1. Clarity on voting by TWOMO representatives

It became clear to me in my consultations that not all TWOMO representatives have equal status at all DSSAB Board tables. Some Districts have determined on their own, as I understand it, within their Procedure By-Laws, to permit TWOMO representatives a vote on only certain matters.

I do not believe that setting such a policy would be in compliance with the Act and Regulations, and therefore **recommend that the Ministry issue clear direction to all DSSAB Boards on this matter, requiring compliance with the Act and Regulations**

2. Fair representation by population

I have addressed above the changes in population demographics, used at the time of creation of the DSSAB legislation and Regulations. Population data at the time of inception of DSSABs in large measure determined the composition of each Board. I am aware of only one change that has been made to that part of the Regulations under the Act in the intervening period.

In light of what I understand to be determinative population changes since, I think it only fair that an up to date review of the data to verify appropriate representation be undertaken, as is in fact required by the Act.

Therefore, I recommend that the Ministry review the current population profile of each District, in accordance with the Act, and determine whether adjustments to the current Board composition remains appropriate.

3. Balanced voting

Population size and the quite large differences between the very large and the very small municipal populations have a distinct impact on the setting of DSSAB Board policy. Simply put, the representation accorded to a very large community can result in a significant level of control at the Board table.

I have given careful consideration to this, and concluded two things;

- Large urban centres in these structures often carry a significant burden, because of the tendency for secondary, and sometimes primary, services to be located in this larger centres. There are costs that go with that role that should be considered.
- On the other hand, there is the potential for imbalance if by virtue of size, those municipalities have what is essentially veto power or significant control at the Board table.

As a means of fairly addressing this issue I believe that setting by Regulation a threshold of voting rights at DSSAB Boards to avoid such control is worthy of consideration, in the interest of supporting further the concept of collective responsibility. I point out that this matter did not arise during my consultations, and raise it now as a result of my own thinking, considering the interlocking nature referenced in this report.

With that in mind, **I recommend that consideration be given to amending the Regulations under the Act to require that no municipality in a District have more seats on the Board than one vote less than 50% of the total seats on the Board.**

4. Selection of municipal appointees

The framework, at present, mandates the municipal councils to appoint a sitting councillor to the Board of the DSSAB. There are varying approaches to how these appointees are selected; in some cases it is by local policy the prerogative of the Mayor; in others the choice is somewhat more complicated when there are several municipal councils who, among them, are to choose one representative to the Board.

Experience in other sectors has proven that developing and following clear protocols for such appointments can assist in building good governance and accountability.

I asked during our consultation meetings whether there would be value in removing the criterion in the Regulations that make it clear that only an elected councillor can be appointed, in favour of the flexibility for the council to appoint a citizen Board member or an elected official. Opinion on that possible option was mixed. I believe that in certain circumstances it may well be beneficial for a local council or group of councils to have such an option available, especially in those instances where specific skills and experience would enhance the effectiveness of the Board.

Therefore **I recommend that the Ministry:**

- **Work with stakeholders to develop protocols for the selection of municipal appointees to DSSAB Boards**
- **Give consideration to rewriting the applicable Regulations for each District to the effect that municipal councils may choose either an elected member or an appropriate elector in the municipality.**

Conclusion

I trust that my findings and recommendations will assist the Ministry in bringing substantive closure to the outstanding issues pertaining to the District Social Services Administration Boards across Ontario's North. There are, of course, no 'silver bullets' in dealing with such complex issues as these.

If I were asked to point out the strongest potential for improvement in this entire matter, it would have to be that of addressing the **fiduciary responsibility** of appointed Boards. As much as that core aspect of good governance is challenging for elected municipal officials, ways must be found to more solidly embed that responsibility in the way the governance of DSSABs is conducted.

If I learned nothing else in my consultation meetings, two other things emerged in a most cogent way:

- Do nothing that will disturb a system that is, in large measure, working well
- Act on these issues and recommendations in a most timely way.

There is much to be done in this field as other policies and directions of the Government unfold. Those charged with responsibility for addressing the many needs of northern communities, large and small, deserve clarity as they move forward.

All of which is respectfully submitted

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