

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

More DAAs are Coming

Earlier this year, the *Commission on the Reform of Ontario's Public Services* (known as the "Drummond Commission") released its report.

The Commission was chaired by Donald Drummond. Mr. Drummond was formerly the Associate Deputy Minister of Finance (Federal) and the Senior Vice President and Chief Economist of TD Bank. Mr. Drummond was asked to review and analyze all government services and spending to determine, amongst other things, if the government is getting value for money in its activities.

Some of the recommendations relate to **Delegated Administrative Authorities** (DAA). A DAA is defined as a "private, not-for-profit corporation that administers legislation on behalf of the government under accountability and governance agreements with the government." Examples of current DAAs include the Ontario Motor Vehicle Industry Council (OMVIC), Real Estate Council of Ontario (RECO), Technical Safety and Standards Authority (TSSA), Electrical Safety Authority (ESA), Vintners Quality Alliance of Ontario (VQA), and the Board of Funeral Services.

The Drummond Report made several favourable comments on the efficacy and efficiencies of DAAs. It was found that a DAA:

- Reduced costs to government, because regulatory services are funded through fees collected from industry;
- Reduced size of government as service delivery was transferred to an external, not-for-profit service provider;
- Improved regulatory outcomes, as existing DAAs achieved significant gains across a number of measures, including increases in enforcement activities and decreases in incidents, injuries and fatalities;
- Improved efficiencies because as independent operations responsible for their own risk management and financial decisions, DAAs are well positioned to make efficient risk-based decisions on resource allocations;
- Maintained Government oversight because the overseeing ministry uses a number of accountability mechanisms, including administrative agreements, business plans and regular reporting on performance; and

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- Increased industry engagement through participation on boards and advisory committees, which allow regulated industries to directly voice their views.

In light of these identifiable advantages, the Drummond Report urges the Premier to create additional DAAs for the following:

- Motor Vehicle Inspection Station oversight;
- Clean Air Certification (Drive Clean);
- Commercial Vehicle Safety Enforcement;
- Work with Private Career Colleges to collect and publish the same performance indicators as public colleges and universities – perhaps through a DAA vehicle by enlisting the Ontario Association of Career Colleges; and
- Private Schools.

The Drummond Report confirmed that the Ontario Seniors' Secretariat is currently implementing a new DAA – the Retirement Homes Regulatory Authority established under the *Retirement Homes Act*.

It is important to note that a DAA is distinct from a self-regulated profession. A DAA is still somewhat tethered to its respective ministry (including by an administrative agreement and performance reporting duties) whereas a self-regulated profession is more autonomous. Further, a self-regulating profession usually has more leeway in initiating policies on its own.

However, there are clearly similarities between the two entities. Both DAAs and self-regulated professions discharge legislation in the interest of the public. They issue licences or certificates of registration,

manage complaints, conduct inspections and investigations, and discipline the licensees or registrants.

It is arguable that the endorsement of DAAs by the Drummond Report could be seen as not only a commendation of the existing DAAs, but also a validation of the efforts and outcomes of the numerous Ontario self-regulated professions.

As noted above, the Drummond Report recommends that the government should divest itself of several regulatory programs to DAAs. Mr. Drummond believes that not only would this save the Government money, as the funds to operate the DAA would be borne by the members or industry, it would also maintain and perhaps increase the standard currently provided. This is due to the specialization and knowledge that the DAA could employ and would avoid the “service erosion” that would likely occur should the program remain within the ambit of the Government.

Earlier this week, the Ontario budget indicated that the government would be implementing these recommendations. The budget stated: “Building on its record of efficiency and accountability, the government is proposing to move forward with more efficient delivery models for public services and expand the use of DAAs across government.”