



SOCIETY *of*
UNITED PROFESSIONALS
IFPTE 160

PUBLIC SECTOR CONSULTATION SUBMISSION LEGAL AID LAWYERS



INTRODUCTION:

In preparation for this consultation, the government provided us with a series of questions. The Society of United Professionals (the Society) has prepared a response to each of these questions, and is also submitting a series of questions in return, to which we seek further clarification. At the meeting held on May 14, 2019 the Society presented these questions, some of which were taken under advisement by legal counsel representing the Government, and some of which legal counsel committed to answering. Hours before the submission deadline, the Government provided a response to some of these questions. It is the Society's view that the Government's response to the questions presented at the May 14 meeting are inadequate and do not further any dialogue, due to the content of the answers provided as well as the questions they failed to address.

The Society is of the view that the matters that the government wishes to discuss are matters for collective bargaining under the Labour Relations Act. The Society's participation in these discussions should not be viewed as a waiver of the rights of the Society and/or its members to challenge the legality of any government decisions and/or actions which may prejudice or infringe upon our statutory or constitutional rights. Any government decisions and/or actions resulting from the consultation process which affect the Society and/or its members will be viewed as circumvention of our statutory rights and a violation of our constitutional rights.

THE SOCIETY OF UNITED PROFESSIONALS LEGAL AID ONTARIO MEMBERSHIP:

The Society of United Professionals represents approximately 375 lawyers working at Legal Aid Ontario (LAO). Our bargaining unit consists of duty counsel, research counsel, policy counsel, and counsel at the Refugee Law Office, Major Case Management, and criminal defense counsel – all of whom provide a much needed service to some of the province's most vulnerable people. The Society's Legal Aid Lawyer's bargaining unit recently concluded bargaining on a first collective agreement with Legal Aid Ontario – a four year deal set to expire in March 2022.

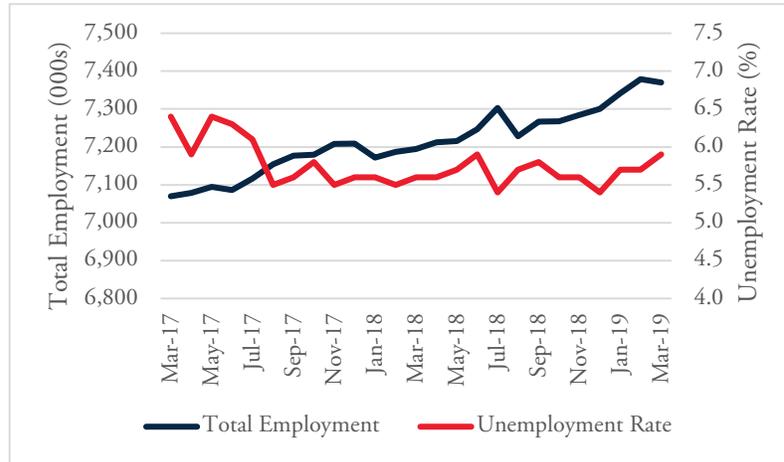
GENERAL ECONOMIC CONDITIONS:

Ontario is currently experiencing the strongest labour market in recent memory. Over the last twelve months, the province has added over 185,000 net-new jobs, and the unemployment rate has remained consistently below the 6 per cent mark since August of 2017. The tightness in the labour market recently led RBC Economic Research to declare that the province is "effectively at full employment"¹.

¹ RBC Economic Research. Provincial Outlook. September, 2018.



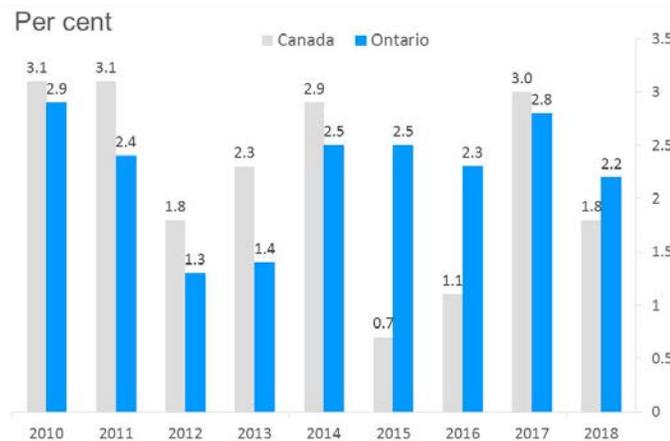
FIGURE 1: ONTARIO TOTAL EMPLOYMENT AND UNEMPLOYMENT RATE



Source: Statcan Table 14-10-0287-01

Additionally, the province has averaged 2.5 per cent real GDP growth over the last five years², far surpassing the average national real GDP growth rate during the same time period.

FIGURE 2: ONTARIO AND CANADA ANNUAL REAL GDP GROWTH



Source: Ontario Ministry of Finance. Ontario Economic Accounts, Fourth Quarter 2018.

² Source: Ontario Ministry of Finance. Ontario Economic Accounts, Fourth Quarter 2018. <https://www.fin.gov.on.ca/en/economy/ecacct/>



In fact, the Financial Accountability Office of Ontario recently issued a report stating that “given Ontario’s tight labour markets, public sector employers will likely need to continue offering higher wages to compete for available workers.”³

Which brings us to our first question: By all accounts, Ontario’s economy and labour market are the strongest they have been in years. The collective bargaining process is working as intended, providing fair wage settlements that reflect the strength of the provincial economy, as well as the employer’s ability to pay. Given the current economic climate, and the fact that the collective bargaining process continues to work, what is the purpose of these consultations?

THE SOCIETY QUESTION 1:

By all accounts, Ontario’s economy and labour market are the strongest they have been in years. What is the purpose of this consultation?

RESPONSE TO GOVERNMENT QUESTIONS:

The Government provided us with a series of questions in preparation for the consultation process. The Society has prepared a response to each of the questions presented by the Government, and has also posed a series of questions of our own, to which we seek a response from the Government.

GOVERNMENT QUESTION 1:

Elements of collective agreements could help or hinder our overall ability to achieve sustainable levels of compensation growth; and collective agreement provisions that work well in one sector may have unintended consequences in another. Are there any aspects of the collective agreement(s) in your organization(s) that affect the ability to manage overall compensation costs?

THE SOCIETY RESPONSE:

On the Issue of Sustainability:

It is unclear what the government means when it refers to “sustainable levels of compensation growth”, and the Society is seeking further clarification on this statement.

As mentioned, the Society has recently concluded bargaining our first collective agreement with Legal Aid Ontario, a four year deal set to expire in 2022. This deal was negotiated with the very people we are meant to be consulting with, the Treasury Board Secretariat.

During the course of the four year term, we negotiated average annual wage increases of 1.5 per cent. This includes a 0 per cent economic wage increase for the year 2018 – at a time when the Ontario CPI inflation rate was 2.4 per cent. Future years of the agreement also include wage increases below the CPI inflation forecast.

³ Financial Accountability Office of Ontario. Assessing Ontario Government Employment and Wage Expense. July, 2018. <https://www.fao-on.org/en/Blog/Publications/Gov-Employment-and-Wage-Expense>



And, while lawyers at Legal Aid Ontario have a similar range of work as Law Officers of the Crown, in many cases our members are paid significantly less than their Crown Lawyer counterparts.

The reality is the wages we bargained with Legal Aid Ontario are both reasonable and sustainable.

TABLE 1: THE SOCIETY NEGOTIATED WAGE INCREASES, 2018 - 2022

Year	The Society Wage Increase	Ontario CPI Forecast
2018	0.0%	2.4%
2019	1.8%	1.6%
2020	1.8%	2.0%
2021	1.8%	2.1%
Average Growth Rate	1.5%	2.0%

Source: The Society Calculations based on Collective Agreements, Conference Board of Canada Provincial Economic Outlook: Winter 2019

The only real threat to the sustainability posed by recent compensation growth would be if wage growth continues to lag behind the private sector and CPI inflation. Any definition of sustainable compensation growth needs to reflect the need for employers in the broader public sector to recruit and retain qualified workers. The aforementioned Financial Accountability Office of Ontario report identified the difficulty the broader public sector faces in recruitment and retention given Ontario's tight labour market.

In short, compensation growth that does not remain competitive with employers in the private sector will make it difficult for broader public sector employers to recruit and retain qualified workers.

Furthermore, the compensation of the Society's members at Legal Aid Ontario amount to approximately one-tenth of the organizations operating budget. Restraining compensation growth of the Society's membership would have little impact on the financial position of Legal Aid Ontario, and an insignificant impact on the fiscal position of the province as a whole. Any future wage increases would be counted at a fraction of a percent of the total LAO operating budget.

TABLE 2: THE SOCIETY COMPENSATION AS SHARE OF LAO BUDGET

Total Society Salaries	\$39,129,080
Benefits Estimate (20%)	\$7,825,816
Salary and Benefits (S&B)	\$46,954,896
2019/20 LAO Approved Budget	\$460,000,000
Society S& B as % of Budget	10.2%

Source: Legal Aid Ontario



THE SOCIETY QUESTION 2:

What does the government mean when it refers to “sustainable levels of compensation growth”?

GOVERNMENT QUESTION 2:

Potential opportunities to manage compensation growth could take different forms, for example, growth-sharing or gains-sharing, as identified in the September 2018 line-by-line review of government spending. Are there any tools to manage compensation costs that you believe the government should consider?

THE SOCIETY RESPONSE:

Concerns with Identified Tools:

Growth-sharing and gains-sharing, which was mentioned in the September 2018 line-by-line review, have both been used to limit public sector negotiations in British Columbia, and the Society believes neither tool would be acceptable to impose on collective bargaining in Ontario.

Both tools start by mandating a base wage increase, with additional wage increases coming as a result of various productivity metrics, or economic growth metrics. The “economic stability dividend” growth-sharing in BC, for example, provides for an additional increase of 50 per cent of the difference between actual real GDP growth and forecast real GDP growth – meaning workers benefit from strong growth only if that growth rate was unpredictable.

More importantly, these models mandate low base wage increases. The Society is concerned that any such model would remove the primary tool both parties have to negotiate collective agreements that are mutually beneficial to both parties – namely, monetary bargaining.

It is the Society’s view that the government should allow free and fair collective bargaining to occur at the lowest level possible. This leads not only to fair and sustainable outcomes, but allows the parties closest to the work to make appropriate trade-offs to ensure efficient outcomes. Government interference in bargaining with imposed settlements shuts down creative problem solving by both labour and employers and leads to inefficient outcomes.

THE SOCIETY QUESTION 3:

What specific tools is the government considering? How will these tools impact the ability of both parties to reach fair, sustainable, and efficient agreements through the bargaining process?

GOVERNMENT QUESTION 3:

While no decisions have been yet made, the government is considering legislated caps on allowable compensation increases that can be negotiated in collective bargaining or imposed in binding arbitration. We wish to engage with you in good faith consultations on this option and invite your feedback. What are your thoughts on this approach?



THE SOCIETY RESPONSE:

Process and Charter Concerns:

At the meeting held on May 14, 2019 the bargaining agents in attendance, including the Society, asked a number of questions which were either taken under advisement by legal counsel representing the Government, or resulted in promises to provide certain requested information, including a summary of the meeting with the corresponding employers. Hours before the submission deadline, the Government provided a response to some of these questions. It is the Society's view that the Government's response to the questions presented at the May 14 meeting are inadequate and do not further any dialogue, due to the content of the answers provided as well as the questions they failed to address.

The Society was clear prior to the consultation process that it was not waiving its Charter and statutory rights, and reiterated this at the recent meeting with the Government. The Society is concerned that what the Government is contemplating will amount to substantial interference with the Society's ability to exert meaningful influence over the working conditions of the employees it represents in collective bargaining. The consultation process to which the Society was invited was presumably a step in that process. It is apparent that what was described as a "dialogue" by legal counsel to the Government was nothing of the sort. The Society answered each of the four questions posed by the Government. Following each answer there was no meaningful discussion with the Government and there was no response by the Government to any of the issues or questions raised by the Society. In particular, no explanations, questions, clarifications or reactions of any kind were put forward by the Government, with the exception of an email sent on May 23, 2019 which did not adequately address most of the questions put forward by the Society. In sum, what took place was not good faith consultation.

Impact on Competitiveness:

Legal Aid Lawyers are highly trained professionals, and any imposed wage cap would limit the employer's ability to remain competitive in the labour market, and would impact their ability to recruit and retain qualified employees.

The Society has already cited the recent Financial Accountability Office of Ontario's report which states the need for wage increases in the broader public sector to remain competitive in the current labour market.

Any attempt by the government to impose a mandated wage increase on the Society's members would hinder our employer's ability to remain competitive within such a highly qualified workforce, and would seriously limit their ability to recruit and retain qualified employees.

Further, as we stated previously, the Society believes that imposing outcomes at the government level destroys the ability for parties to find efficient and innovative outcomes specific to their corporate needs.

Finally, and most importantly, the Society does not believe that consultation of this nature replaces our members Charter rights to collective bargaining. We strongly assert our rights to bargain directly with our employers without a pre-determined outcome imposed upon both parties.



THE SOCIETY QUESTION 4:

How does imposing wage caps allow employers within the sector to compete with the private sector? What impact will this have on recruitment and retention? How is this sustainable?

GOVERNMENT QUESTION 4:

Many different approaches to managing compensation growth and overseeing collective bargaining are in place in other jurisdictions, including other Canadian provinces. Are there any tools applied in other jurisdictions which you think would work in Ontario? If so, what is the proposal and how would it work?

The Society does not believe there are tools from other jurisdictions that would work in Ontario.

As we have stated, we believe the best outcomes are completed through free and fair bargaining at the lowest level. While the current system under the Labour Relations Act is not perfect, it does represent a balance between competing interests and overall has served the people of Ontario well. The Society has participated in consultations on improvements to the LRA in the past, and we would be happy to do so again.

As we have stated throughout this consultation, there is little need for the government to interfere with the bargaining process.

The province is currently experience one of the strongest economies and labour markets in recent memory.

The process that is in place has allowed the Society and Legal Aid Ontario to negotiate a fair, sustainable, and efficient collective agreement that works for both parties. This agreement could have only been reached because of the ability to negotiate all aspects of the collective agreement, including wage settlements.

Finally, the ability to freely and fairly negotiate our collective agreements with our employers is a critical charter right of the Society's membership.

THE SOCIETY QUESTION 5:

Why does the government feel it is necessary to interfere with the free collective bargaining process?



SUMMARY OF THE SOCIETY'S QUESTIONS:

THE SOCIETY QUESTION 1:

By all accounts, Ontario's economy and labour market are the strongest they have been in years. What is the purpose of this consultation?

THE SOCIETY QUESTION 2:

What does the government mean when it refers to "sustainable levels of compensation growth"?

THE SOCIETY QUESTION 3:

What specific tools is the government considering? How will these tools impact the ability of both parties to reach fair, sustainable, and efficient agreements through the bargaining process?

THE SOCIETY QUESTION 4:

How does imposing wage caps allow employers within the sector to compete with the private sector? What impact will this have on recruitment and retention? How is this sustainable?

THE SOCIETY QUESTION 5:

Why does the government feel it is necessary to interfere with the free collective bargaining process?