

November 17, 2017

Recommendations:

- That a process and methodology be developed for benchmarking service costs in the amended Blue Box Program Plan (a-BBPP) as follows:
 - Municipality presents its price for service compensation to Stewardship Ontario.
 - If the parties agree, commercial agreement between the parties reflects that pricing.
 - If parties do not agree:
 - Municipality provides evidence, based on key criteria, to demonstrate how their prices compare to other similar programs.
 - If Stewardship Ontario agrees to the pricing, commercial agreement between the parties is developed based on that pricing.
 - If parties still do not agree:
 - Resource Productivity and Recovery Authority (RPRA) retains a mediator/arbitrator (Med-Arb)¹ that both parties agree to.
 - If parties cannot agree on a mediator/arbitrator, RPRA chooses from a roster of Ontario mediator/arbitrators that they develop.
 - If the parties are not successful in arriving at a settlement in the mediated portion of the process, then the parties have agreed to have binding arbitration with the Med-Arb official.
- That a dispute resolution process also be incorporated into the a-BBPP as follows, if the parties still do not agree to the above process:
 - Each party presents their case to the mediator/arbitrator who makes a binding decision in a reasonable timeframe.

The proposed recommendations ensure that there is a clear and transparent methodology on how inevitable disputes will be resolved between the parties in both non-transitioned and transitioned municipalities.

¹ Harvard Law School Library. "Alternative Dispute Resolution: Mediator/Arbitrator." Available online: <https://guides.library.harvard.edu/c.php?g=310591&p=2078484>.

Background:

- On August 14, 2017 the Minister of Environment & Climate Change sent a [letter to Stewardship Ontario and the Resource Productivity and Recovery Authority](#) requesting them to formally initiate a consultation and bring forth a proposal on amending the Blue Box Program Plan (a-BBPP). It specifically states that the proposal shall “*develop a protocol for managing issues raised in a fair, effective, efficient and equitable manner during the implementation of the amended plan...*” (p.7).

Service Compensation:

In the consultation materials presented by Stewardship Ontario in Module 1 and 2 there are numerous occasions where they have recommended a process of benchmarking to establish/verify servicing costs:²

1. If a municipality is acting as an agent for Stewardship Ontario for curbside and multi-family paper products and packaging (PPP) collection:
 - Where a municipality incorporates Stewardship Ontario’s performance standards and bid requirements into their competitive procurement, Stewardship Ontario will pay the price charged by the successful proponent for services.
 - Where a municipality deviates from Stewardship Ontario’s performance standards and bid requirements (e.g. bundled services, additional service requirements ...), Stewardship Ontario will pay based on benchmarking.

If a municipality is acting as an agent for Stewardship Ontario for depot services:

 - Depots would be paid on a per tonne basis (using historic cost as a basis) to collect PPP that meets a quality standard.
2. If a municipality is self-delivering for curbside and multi-family PPP collection:
 - Stewardship Ontario will pay a price based on benchmarking.

If a municipality is self-delivering for depots:

 - Depots would be paid on a per tonne basis (using historic cost as a basis) to collect PPP that meets a quality standard.
3. Where a community does not wish to collect, Stewardship Ontario will issue a collection tender
 - Private depots will be paid to collect PPP that meets a quality standard.

² Based on Stewardship Ontario’s Presentation. “Developing a Proposal for an Amended Blue Box Program Plan – Module 1: The Proposed Transition Process” (October 12, 2017). Available [online](#).

4B) Where a municipality amends a collection contract to enter into agreement with Stewardship Ontario to act as contract manager based on prescribed performance standards (referred to as Transition Support Mechanism 4B) in Stewardship Ontario Consultation material)

Payments for collection services based on:

- Payment to cover unit pricing (e.g. per household) charged by service provider or benchmarked by comparable municipalities if self-delivered...

We agree with the notion of benchmarking to gauge 'value-for-money' and ensuring services are being provided cost effectively; however, a clear methodology needs to be included in the a-BBPP to ensure any disputes between the parties can be resolved fairly and expeditiously.

Benchmarking collection costs requires analysis of various criteria, some of which include:

- Collection approach (single or two stream);
- Risk allocation, penalty application, etc.;
- Population density;
- Average distance between homes;
- Frequency of servicing;
- Average tonnage of materials collected annually;
- Percentage of homes by type; and,
- Geographic context (rural vs. urban).

The benchmarking methodology should be:

- Municipality presents its price for service compensation to Stewardship Ontario
 - If the parties agree, commercial agreement between the parties reflects that pricing.
- If parties still do not agree:
 - Municipality provides evidence, based on key criteria, to demonstrate how their prices compare to other similar programs.
 - If Stewardship Ontario agrees to the pricing, commercial agreement between the parties is developed based on that pricing.
 - If the parties are not successful in arriving at a settlement in the mediated portion of the process, then the parties have agreed to have binding arbitration with the Med-Arb official

Dispute Resolution Mechanism

No dispute resolution process has been put forward by Stewardship Ontario as part of the consultation on the a-BBPP.

Municipalities feel that a process is required to ensure inevitable disputes get resolved in a fair and expeditious manner.

We suggest that the process outlined above for benchmarking of servicing costs could serve as the basis for dispute resolution, namely that if the parties are not successful in arriving at a settlement in the mediated portion of the process, then the parties have agreed to have binding arbitration with the Med-Arb official.

Each party would present their cases to the mediator/arbitrator who makes a binding decision in a reasonable timeframe.

There should also be a mechanism to deal with multiple municipalities collectively (especially small municipalities).

Granted the pace at which the process is moving, we will likely provide additional comments on this issue.