



**CUPE Ontario Submission on Bill 77  
The Services for Persons with  
Disabilities Act**



## Introduction

The Canadian Union of Public Employees (CUPE) represents more than 210,000 members in Ontario. CUPE is Canada's biggest union with more than 570,000 members countrywide. We are also Canada's community union. CUPE members deliver public services on the front lines in communities across the country. Our members include developmental service workers, child welfare workers, childcare workers, social workers and social service workers, municipal workers, post-secondary education workers, health care workers, paramedics, emergency medical workers, library workers, school board workers, water and wastewater workers, and electrical utility workers.

CUPE and the 8,000 Ontario members we represent in the developmental service sector have a vision for the delivery of services and supports to persons with developmental disabilities and their families. It is our vision that quality supports for persons with developmental disabilities can only be sustained through public, not-for-profit, mandated services via an adequately funded community agency system, where workers are compensated fairly and provided training and skills enhancement opportunities. In addition, supports must be tailored to meet the needs of individuals – that is, individualized planning, not individualized funding.

Only a properly funded public system, where all people with disabilities have the right to access the supports they need, can provide redress to such inequities as long wait lists for programs and services, limited capacity to respond to changing needs, deteriorating infrastructure, staff recruitment and retention challenges, and low and disparate wages.

Bill 77, the *Services for Persons with Disabilities Act*, seeks to entrench individualized funding, also known as direct funding, in legislation; this is a move that we adamantly oppose. The proposed legislation is based, to a large extent, on the purchase of services and supports through an expanded provision of individualized funding to individuals with developmental disabilities and their families, and away from service and support provision through public sector, community-based transfer payment agencies. This, despite the fact that on average only ten per cent of persons with developmental disabilities and their families avail of individualized funding, and some choose to abandon this funding arrangement in favour of agency delivered supports and services.

It is our contention that Bill 77 will do nothing to build a cohesive network of community-based services and enhance the quality of supports for people who have a developmental disability and their families; however, it will do much to fragment services and lessen standards of care. We believe the government's proposed legislation could ultimately shift the delivery of programs and services away from community-based agencies. The interests of persons with developmental disabilities and their families are best served through the current system of publicly funded transfer payment agencies.

## The Downside of Individualized Funding

For some people with developmental disabilities, individualized funding is a feature of basic human rights, a citizenship issue, an issue of self-determination and autonomy. Persons with developmental disabilities want the right to be the primary decision-makers over matters that affect them directly such as the provision of personal services and supports. However, for most people, full citizenship and societal participation is not dependent on being able to hire, supervise and pay workers. By analogy, education is a fundamental right, but Canadians are neither permitted nor required to choose individual teachers in our school systems.

CUPE supports the right of people with disabilities to exercise control over the services they receive. But, the means by which governments can provide services must be done in a way that respects both the rights of persons with developmental disabilities and their families *and* workers,

through an enhanced community-based and public agency system that has the appropriate accountability mechanisms and ensures consistent, high quality care and support for individuals within communities and across the province.

There are many weaknesses with Bill 77 and its emphasis on individualized funding arrangements. The pitfalls include:

### **Consumer as Employer**

Consumers of individualized funding are put in the position of being the employer, which has now gained legal precedence. The Supreme Court of Newfoundland has ruled that two individuals with severe mental disabilities could be considered as employers for the purposes of certification within an individual living arrangement. This scenario drastically changes the employer-worker relationship for the purposes of certification and collective bargaining. Labour argued that the government was the primary source of funds and therefore was the employer. The Court found otherwise. The consequence of the ruling was that the two individuals would be the employer for the purposes of collective bargaining. However, because the two individuals were incapable of negotiating a collective agreement due to their intellectual disabilities, negotiations would have to take place with the individuals' legal guardians.

Being the employer is a burden that many individuals and families are unable to carry. Individuals requiring assistance could be left vulnerable if, for example, their attendant becomes ill; finding suitable back-up care poses an additional dilemma and jeopardizes the continuity of care. Participants of individualized funding programs must recruit, hire, train, supervise, discipline, make payroll deductions, and pay their workers. The vast majority of workers do not have access to coverage under workers' compensation. There are huge liability issues for consumers of individualized funding arrangements. For example, in case of injury the worker might have no recourse but to sue their employer, which in this scenario is the consumer, namely the person with the developmental disability and/or their family. Employers have many obligations and are potentially liable for a great many risks, obligations and liabilities which would be wrongfully placed upon society's most vulnerable citizens.

### **Lack of Supply**

Persons with developmental disabilities often find it difficult to obtain personal supports, especially in rural and Northern communities, because such supports might not exist. And even when supports are available, they are always in short supply due to high demand. New services don't appear just because they're in demand; it could take months or even years for a community to develop suitable supports (Torjman, 1996). A lack of supply for supports and services becomes of even greater concern given that the Bill seeks to entrench wait lists in new legislation.

### **Standards and Accountability – Brokers**

Bill 77 provides for the creation of third party, private brokers. The majority of working families do not have the capacity to hire, train and manage the many different types of developmental supports and services, which would leave them no alternative but to hire a private broker. However, there are no accountability or qualification mechanisms in the new legislation specific to brokers. To whom would these individuals be accountable? Would they receive proper training? Would persons with disabilities and their families be charged a fee for service?

The introduction of unaccountable entities, namely brokers, would open the provision of services and funds to systemic abuses. Public funding that should be going directly to the provision of quality services and supports would instead be siphoned off as remuneration for brokers as payment for their services. It is our contention that funding provided by governments should only be made available to the non-profit sector, and not to private interests for profit. The introduction of private

brokers amounts to no more than a duplication of services because agencies already provide individual program planners who are trained and supported by the community agency system.

There are no accountability mechanisms in the Bill for individuals and families receiving individualized funding. Individuals and/or families in receipt of individualized funding would be required to submit reports and receipts however the proposed legislation is noticeably silent regarding the requirement of accountability on the care provided.

Concern about the lack of standards and the quality of services provided is a weakness of individualized funding arrangements because there are typically very few checks and balances (see Torjman, 1996). Who will decide what level and quality of services will be provided? Can there be a guarantee that standards will be met in all cases? Who will enforce any standards that are in place? Accountability is a prime consideration because it is difficult and time-consuming to monitor the use of public funds that are given directly to individuals and their families (see Torjman, 1996). The monitoring of public funds under an individualized funding scheme would likely result in a huge resource strain and an additional burden on families.

Accountability and quality service can only be achieved if government commits to providing adequate levels of funding. And yet the proposed legislation provides for the expansion of individualized funding and the purchase of services and supports from independent caregivers who may have no relevant qualifications, experience or actual dedication to a quality service. How will this enhance quality?

There are strong indications that an individualized funding regime would more likely transfer the administration of employee payment from the public sector to private sector companies. Most individualized funding programs in Canada provide for, and in many cases actively encourage, the service-user to utilize third party organizations for managing their workers. And there is evidence of difficulties in recruiting workers in all regions of the country based on the low wages and poor benefits that individualized funding programs offer, which in turn has a negative impact on the quality of care provided (NUPGE, 2000: 7).

The creation of private brokers opens the door to privatization in the developmental services sector because it allows for the proliferation of private brokerages to manage independent workers. Introducing the profit motive into the sector will reduce service provision to the lowest common denominator as brokerages seek to maximize profits by reducing and/or cutting services. Quality services and supports will suffer as will supported individuals and their families

Individualized funding is ultimately a replacement for public investment in the provision of disability-related goods and services (Torjman, 1996; see also NUPGE, 2000). One of the effects of individualized funding is that it downloads the responsibility for the provision of services and supports to individuals and their families. Such a proposal creates the potential for a two-tiered system of supports that is characterized by the “haves” and the “have nots”.

### **Destabilization – Application Centres and Competitive Bidding**

Bill 77 will potentially destabilize the current community-based network of supports and services. The legislation provides for the creation of single points of access, known as application centres, which are responsible for assessing individuals for direct funding eligibility and for flowing direct funding dollars. Individual community agencies may find themselves in the position of having to competitively “bid” amongst themselves for individualized funding contracts held by individuals and families seeking support. Agencies will receive the individualized funding that comes with supported individuals but will not receive funding for administrative costs. This will lead to an erosion of the quality of services that agencies are able to provide.

This approach is somewhat similar to the Community Care Access Centre (CCAC) model in home care. Currently, CCACs administer and ration home care services through a competitive bidding process that has resulted in less care, poorer quality care and low-wages, and “casual” work arrangements for workers.

The direct funding arrangement proposed in Bill 77 would impose a market model on the community-based developmental services sector and increase competition amongst agencies for scarce funding dollars. The move to a single point of access in Ontario's home care sector through the CCACs has resulted in service reductions for many recipients. Costs have increased as for-profit providers have usurped non-profit, community-based providers under a competitive bidding system in which agencies are forced to compete for scarce funding dollars. Less care, poorer quality care (as providers seek to reduce costs and increase profits), low wages, casualization of the workforce, high rates of staff turnover and service reductions are the hallmark of the home care system today.

CCACs purchase homecare services via contracts established through a competitive bidding system. The results have been extremely negative. As contracts come up for renewal, homecare providers regularly lose contracts and workers who have no successor rights are laid off. In Cornwall, some homecare workers have lost their jobs at least three times since competitive bidding was introduced. One study identified *over 1,000* home care workers in Ontario who were laid off due to contract losses over an eight-month period (OHC, 2005).

Faced with this uncertainty, many workers naturally decide to work in other, more secure sectors. A recent report on home care to the Ministry of Health and Long Term Care found that fully 57% of the home care workers surveyed had changed jobs in the past 12 months (Caplan, 2005: 23). No industry can sustain this sort of turnover and provide excellent service. The report also noted that 40% of home care workers surveyed indicated that they felt “not too secure” or “not at all secure” in their jobs.

Despite all these problems, the price to the province for home care services actually went up after competitive bidding was introduced (Caplan, 2005: 35). The effect of price increases on the amount of home care services provided was a sharp reduction in the services provided. Here is what a government review notes:

As prices went up and funding levels remained constant, CCAC had to discontinue certain services in order to maintain balanced budgets. These changes occurred independently without provincial co-ordination and clear communication (Caplan, 2005: 59).

The problems with competitive bidding became so severe that the government has suspended the bidding process for some time now.

Staff retention is already a major concern in the developmental service sector. Moving to a model similar to the CCACs would create further labour force instability and severely impact on the quality and continuity of care for individuals receiving supports. Individualized funding would impact negatively on services and would have disastrous results for workers, who are mostly women and predominantly women of colour in large urban centres, because they would be forced into precarious low-wage work arrangements.

### **Destabilization – Portability of Funding**

The Bill also provides for funding portability to allow recipients of direct funding to purchase services - some through community agencies, some through brokers. When the individual leaves, the funding goes with them and when that happens agencies are left without funding dollars until such time as they are able to negotiate another individualized funding contract with an individual requiring supports.

Portability of funding will do nothing to enhance and build a cohesive community-based system. Agencies rely on stable funding resources to do long-term planning for programs to meet the needs of individuals accessing care. Funding portability is a recipe for instability for community-based agencies, as they are forced into precarious short-term funding arrangements for supports and services.

### **Additional Family Responsibilities**

Parents and families caring for a loved one with a developmental disability already carry overwhelming responsibilities. Maintaining and monitoring services purchased through individualized funding adds to those. Rigorous commitment to the administration of individualized funding, including human resource management, is crucial to the success of such funding programs and represents an additional stressor for families. "One father noted, 'We have control over the funds, but you have to be really involved for it to work effectively.'" (IFCO, 2006: 4).

Many families report that the stress of managing individualized funding programs and services, coupled with the social isolation that can accompany such arrangements (see Torjman, 1996), has forced them to abandon individualized funding in favor of agency provided supports and services. Developing a system in which individualized funding is one of the pillars of service delivery is unfair to persons with developmental disabilities, their families, and the workers who provide services and supports.

### **Individualized Funding = Inadequate Funding**

Research of individualized funding programs conducted by the Individualized Funding Coalition for Ontario (IFCO) reveals a huge gap between the amount of individualized funding requested by individuals and families, and what they actually received from the province. IFCO reports that on average, individuals received \$16,692 less than requested. The funding gap proved to be quite challenging for families. Those interviewed "described how they had to be creative to "make do," such as seeking subsidies for housing support, providing their own resources, and family members having to provide "extra support"" (IFCO, 2006: 9). Parents report that they often do without.

### **Cost Savings?**

Through Bill 77, the ministry seems intent on increasing equity in accessing services. However, we are concerned that the new legislation would translate into taking existing but scarce resources and spreading them across the province. Where we have seen this play out in other sectors, services and supports have often been rolled back to the lowest common denominator. How can this be good for service? Equitable access to supports and services can only be attained through the provision of adequate levels of funding.

Individualized funding does not result in cost-savings when compared to services and supports provided by community agencies. CUPE's position, based on our own experience, is that the public sector can provide quality services in a much more cost efficient, accountable, and transparent manner when compared to any other alternative service delivery model, including individualized funding. A strong and healthy publicly funded and administered system is the optimal method for delivering services and supports to parents and families of persons with developmental disabilities.

### **Sector Wide Underfunding**

The general thrust of Bill 77 is to provide more supports and services to persons with disabilities and their families without investing additional funding into the system. It is our belief that the ministry would not need to consider alternative service delivery models, such as individualized

funding, if it chose instead to properly fund the sector; positive system change will not occur for persons with developmental disabilities and their families until government chooses to do so.

The sector's ability to provide and maintain quality services has been undermined by the 5.0% across the board budget cuts of 1994-95, and subsequent years of 0% increases to base budgets. Even with the small funding increases during the period 2000-06, such as revitalization monies, agencies still found it difficult to balance budgets and maintain service levels (see Eakin and Thelander, 2005). In short, underfunding is a threat to the provision of quality public services.

The 2007 provincial budget provided for \$200 million in new monies to the developmental services sector, which included a 2.0% increase to agencies' base budgets and approximately \$80 million in funding to increase workers' wages. This was a much needed infusion of funding that came after several years of intense lobbying by CUPE, OPSEU, parents, Community Living Ontario (CLO), Ontario Agencies Supporting Individuals with Special Needs (OASIS), agencies and other stakeholders.

Although the 2007-08 wage gap dollars have helped to close the wage gap *within* agencies, it has not addressed the wage gap that exists *across* the entire sector. Wages are disparate across the sector; in some cases there is a ten dollar an hour wage gap for the same job.

Developmental service workers, who earn 25 % less than other comparable social service workers (KPMG 2000), are by virtue of their low-wages subsidizing the services. In this sector, below market wages for workers have many detrimental consequences. Staff turnover rates are high, which adversely impacts the continuity and quality of care.

Sector underfunding has increased the numbers of part-time, casual and relief workers in the sector by approximately 25% over the last decade. An estimated two-thirds of workers in the sector are employed on a part-time, casual or relief basis.

Individualized funding would increase the number of part time workers at the expense of full time jobs. In addition, workers report heavy workloads and high stress levels. Some workers burn out and leave the sector, never to return. Again, the result is reduced quality and continuity of service to persons with developmental disabilities and their families.

### **Additional Impacts of Government Underfunding**

Program and service cuts are but one of the fallouts of a sector that is chronically under-funded. Agencies have reduced specialized services, cut the number of out of home activities and community outings, and increased the number of residents living in home settings (Eakin and Thelander, 2005). Group homes of three or four persons with developmental disabilities living together have become mini-institutions of eight or nine individuals living in cramped quarters. Agencies are holding the line on spending on the necessities of life. There is reduced or stagnant spending on food and household supplies (Eakin and Thelander, 2005). This is especially problematic for individuals who have special diets, including persons with diabetes.

Another key indicator of sector underfunding is the number of wait lists. For the very first time, Bill 77 will enshrine wait lists in legislation. This is an unprecedented move that will continue to deprive the thousands of persons with developmental disabilities the services and supports they need. In Ontario there are approximately 13,400 people with developmental disabilities waiting for residential services, day supports and other supports and services. Many families are waiting five or more years for 24-hour residential services. The problem of wait lists is so severe that the Provincial Network on Developmental Disabilities estimates it will cost the province \$325 million over four years to tackle the dilemma.

Insufficient staffing resources have diminished the sector's ability to respond to changing needs. For example, elder services are not fully developed in the sector. There is a growing number of

older persons with developmental disabilities who will require increased levels of care as they age. The reasons for this are twofold: first, parents of individuals with developmental disabilities are themselves aging and cannot provide the same levels of care; second, individuals with developmental disabilities experience a higher incidence and earlier onset of cognitive impairment and other health problems, such as cancer (Eakin and Thelander, 2005).

Sector underfunding means there is also an increased reliance on families to do more. However, Bill 77 makes no mention of the need for funding to ensure a specific level of service for those in need or for specific funding to support programs such as transportation so that individuals receiving community-based services have access to programs.

Government's underfunding of the sector means that cash-strapped agencies face growing pay equity obligations and huge challenges with their ability to pay. It has also resulted in reduced agency spending on repairs, replacements and maintenance that has led to deteriorating infrastructure and furnishings. Agencies have also experienced increased compliance requirements (e.g., health inspections, fire inspections, health and safety requirements, staff training requirements, residential standards, serious occurrence reporting, financial reporting), which require valuable staff time and resources. These requirements are either underfunded or not funded at all (Eakin and Thelander, 2005).

## **Conclusion**

CUPE has several recommendations that we believe will improve Bill 77 and contribute to the improvement of developmental services in Ontario. They are:

1. Add a preamble to the Bill that acknowledges the inclusion of all residents of Ontario as the foundation of a strong Ontario, including persons with a developmental disability. "Inclusion moves from being an ideal to becoming a reality when we acknowledge the entitlement of persons with a developmental disability to support services that are available consistently across the province and are based on person-centred planning."
2. Add a section to the Bill that mandates supports and services for adults with a developmental disability at a consistent level across the province.
3. Replace proposed application centres with a requirement that community-based agencies within a geographic area develop and implement a coordinated strategy to meet the goals of the proposed legislation.
4. Require that any new, stand-alone central intake services that agencies may agree to implement are not-for-profit and do not provide any direct service. Rather, they would accept applications and, through the relevant agency(s), help develop person-centred support plans on which funding would be based and facilitate referrals to not-for-profit service agency supports.
5. Require development of a common assessment tool to ensure consistency across the province.
6. Require that any re-assessment be based on changes in individual need and not on lack of resources and include a definition of changes in individual need.
7. Amend Section 40 (1) (b) to ensure no person receiving service as of the day the section comes into force will have service levels decreased as a result of a reassessment.
8. Define the "third party" described in Section 11 (4) as a community-based, not-for-profit agency covered by accountability requirements described in the Bill in order to prevent a proliferation of private brokers.



9. Delete Section 19 (3), allowing the creation of waiting lists, and amend Section 19 (4) to permit agencies to apply for additional funds to meet the needs of applicants, similar to way Children's Aid Societies are able to request additional funds in order to provide mandated services.
10. Expand Parts VI (Rules Governing Service Agencies) and VII (Enforcement) of the Bill to include any third parties involved in direct funding.
11. Require that a person with a developmental disability or their representative who chooses to go beyond immediate family to provide services purchased through direct funding use the support of a community-based service agency to purchase those services in order to ensure quality compliance and safeguard the individual.
12. Ensure that any public monies go only to not-for-profit service providers.

Finally, we are seeking a commitment from the ministry that there will be open, transparent and comprehensive consultation on the regulations to be developed to support this legislation

CUPE's vision for a transformed and healthy developmental service sector includes a number of key elements. To reiterate, quality supports for persons with developmental disabilities can only be sustained through public, not-for-profit, mandated services via an adequately funded public sector, community agency system, where workers are compensated fairly and provided training and skills enhancement opportunities. In addition, supports must be tailored to meet the needs of individuals – that is, individualized planning, not direct funding. Direct funding “can never replace a solid, publicly-funded infrastructure of personal supports” (Torjman, 1996).

Only a properly funded public system can provide redress to such inequities as long wait lists for programs and services, service cuts, limited capacity to respond to changing needs, deteriorating infrastructure, staff recruitment and retention challenges, and low and disparate wages.

The establishment of a parallel system of service duplication based on the provision of individualized funding with the assistance of independent planners and brokers will create sector instability, including labour instability as agencies attempt to restructure their workforces to accommodate the ministry's proposed transformation plan. Ontario's developmental services sector needs to be strengthened through the provision of adequate multi-year funding, not weakened by siphoning off already scarce funding and resources to an individualized funding regime of services and supports.

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