



# O.D.S.P. ACTION COALITION

C/O PARKDALE COMMUNITY LEGAL SERVICES, 1266 Queen St W, Toronto ON M6K 1L3

## Positive or Punitive: What Will Reform Mean for People with Disabilities?

Response to "Approaches for Reform", the 2<sup>nd</sup> Discussion Paper of the  
Commission for the Review of Social Assistance in Ontario

### INTRODUCTION

The ODSP Action Coalition submitted two papers to the Commission during the first phase of consultation. *Dignity, Adequacy, Inclusion* outlines our comprehensive vision for an income and employment supports program that implements the principles of the UN Convention on the Rights of People with Disabilities, and *An Activation Agenda for People with Disabilities* focuses on key questions related to employment. Both papers are posted on the Commission's web site.

The income and employment support program that we asked for in our previous submissions is one that reflects an understanding of disability that is rooted in the realities of the lives of people with disabilities. This reality is deeply embedded in the UN Convention on the Rights of Person with Disabilities, which recognizes that disability is not just something "wrong" with an individual but also arises from the societal, attitudinal, and environmental barriers that hinder that individual's full participation in society. Taking an approach to disability support that is based on this reality means not blaming the individual needing income support for their own poverty, but instead addressing those social and systemic barriers.

We must state at the outset that this kind of understanding of the needs and reality of life for people with disabilities did not come through in "Approaches for Reform". We know from the companion document, "What We Heard", that the Commission was told a lot about the barriers and stresses of dealing with disability and poverty. But most of the suggested changes discussed in the Commission's second discussion paper do not reflect that understanding. Instead, they seem to put the burden of dealing with disability and health concerns, as well as with coping with societal, attitudinal, and environmental barriers, on people with disabilities themselves.

"Approaches for Reform" does not present a clear picture of what the Commission is actually suggesting. There is no statement of the key vision and goals of the proposed changes. There is no overall plan for a new income security system, with indications of how it would be designed and structured, who would be covered by what portions of the program(s), and what the key rules would be. Instead, there are a series of possible changes to various aspects of the present system, with very few details and little indication of how those options would fit together.

This lack of clarity and focus forces people with lived experience and organizations who work with them to speculate on what these changes might mean. Will these options provide any improvement in people's ability to feed, shelter, clothe themselves and participate in the community? Or will their incomes be cut? Will they be offered quality training, education and supports to find employment? Or will they be forced into some form of workfare? Will their interactions with the system really become easier, or will there just be more programs and more rules to deal with?

And we are left with a bigger question as well. What is the fundamental goal of these reforms? Is it reducing the poverty of people in Ontario? Or is it reducing the ODSP caseload and saving money for government? Our most important message is to remind you that the review of social assistance was originally part of the Poverty Reduction Strategy. The recommendations you make, therefore, should have lifting people out of poverty as their primary focus. The design of a new income support system for both people with disabilities and those in need for other reasons must recognize the value to our society of investing in people.

In this response, we will briefly reference the Coalition's first two submissions to the Commission where they deal with issues raised in "Approaches to Reform" but will concentrate mainly on issues that we did not deal with before. In addition, we will follow the format of the Commission's discussion paper but will not necessarily answer all of the questions for discussion.

## Chapter 1: Reasonable Expectations and Necessary Supports to Employment

**Question:** What should be considered appropriate employment-related activity participation requirements for people with disabilities? Should participation requirements for people with disabilities be different from those for other people receiving social assistance?

**Recommendation #1: Neither participation requirements – nor mandatory treatment or rehabilitation – for people with disabilities should be recommended in the Commission’s final report.**

Both of our earlier submissions advocated improved training, employment supports, administrative processes and better incentives to assist and encourage people with disabilities who might be able to work or would like to try. If these positive approaches are taken, many recipients with disabilities will seek employment both for increased income and because they wish to participate in the community to the best of their ability.

Punitive measures that would decrease income for some people deemed able to work, or punish those who are unable to cope with the participation rules and actions required of them, not only run counter to the goals of meeting income adequacy and treating recipients with dignity, they will also be counter-productive. Measures like these would require hiring additional staff to meet with, assess and impose changing requirements on recipients. They would require creating exemptions and deferrals to account for temporary or prolonged health or other barriers to work or work-related activities. A monitoring process and an appeal process would have to be created. All of these additional requirements would be contrary to the aims of simplifying the system and reducing surveillance and complexity.

Another issue which must be addressed, if participation requirements are considered, is the possibility of people with disabilities being placed in unpaid employment alongside paid workers. This is already occurring far too often, according to the Ontario Disability Employment Network (ODEN). One example we know of occurred this past year at an employment agency that had for years arranged paid seasonal work for people with disabilities with a local employer. When the job developer went to the employer recently to ask how many people they needed, she was told: “We don’t hire ‘those’ people anymore – we get them for free.” As such, an additional danger with participation requirements is that service providers will be so hard pressed to find suitable participation activities for people with disabilities that these types of situations would occur even more often.

We note that “Approaches for Reform” does not mention the issue of mandatory treatment or rehabilitation. However we are aware that such a requirement could be “hidden” in participation requirements. For example, if a recipient provides evidence of a mental health problem that is preventing them from working, will their “participation requirement” be to follow a mandated form of treatment or rehabilitation? We discussed this issue at length in *Dignity, Adequacy, Inclusion* (see p.26) and in *An Activation Agenda* (see p.13-14). As addressing this issue is part of its Terms of Reference, the Commission should take a clear position that any and all health treatment or rehabilitation plans should be considered

solely the responsibility of the recipient and their health provider, not the social assistance system, and should not have any bearing on eligibility for income or other supports.

**Question:** Should a tool be developed to assess the work capacity of people with disabilities? If so, how should the tool be developed and how should it be used?

***Recommendation #2: The government should not adopt a work capacity assessment tool to be used to determine eligibility for any disability income support program or supplement.***

“Approaches to Reform” discusses creating assessment tools as a possible way to “identify where people are in the continuum of preparing for employment”, and possibly to refer them to the most appropriate employment services. There *might* be a place for assessments as part of a voluntary employment supports plan, as we discuss further below. However, there is also reference in the Commission’s paper to work capacity assessment tools being used in the UK and Australia as part of major changes to income support for people with disabilities, which reclassified people into those who “can work” and those who “can’t work”. Those people with disabilities re-classified as being able to work lost some of their income support as a result.

We must ask, what would be the purpose of implementing work capacity assessment tools in Ontario? In light of suggestions about how to restructure benefits for people with disabilities that include combining ODSP with OW and implementing mandatory participation requirements for people with disabilities, we can only conclude that these tools are being contemplated as a way to determine who might get more or less income support, or who might be required to look for work or be exempted from work requirements.

We rejected the proposal for mandatory participation requirements discussed in the Commission’s first discussion paper because coercion should not and does not need to be used to get people with disabilities to seek employment or participation in the community to the extent they are able. We instead advocate providing a full range of employment supports and implementing a labour market strategy for people with disabilities. And, as we argued in “An Activation Agenda”, people with disabilities cannot be divided into those who “can work” and those who “can’t”. Employability and disability are not synonymous; they are both complex issues that depend on a range of factors both personal to the individual as well as societal and environmental. A computerized assessment tool or formula cannot capture that complexity. Formulaic tools do not deal well with episodic or recurrent disabilities, since a person may be assessed as “capable” one month and then be very much unable to do any work the next month. And assessors, who do not know the person with a disability as well as their own health provider does, should not have the power to overrule the health providers’ assessment of their patient’s impairments and restrictions.

Introducing participation requirements and work capacity assessment tools will make the ODSP system more complex and require much more administration and staffing

than the present system. There will need to be rules about who is required to have capacity assessments done, how often they are done, and what types of employment preparation, training, workfare placement or job search is required. Caseworkers will have to monitor the compliance of people with disabilities with all of these rules. All of this flies in the face of the Commission's goals of a simplified, less intrusive system.

As noted on p. 11 of the Commission's discussion paper, "in the UK, issues have arisen regarding the validity of the tool and the way in which it is implemented." This is a vast understatement, as a perusal of media reports about the work capacity assessments done in England shows:

The work capability assessment programme, which assesses benefit claimants to see whether they are fit for work is "teetering on the brink of collapse" as the system becomes clogged up with appeals.<sup>1</sup>

It is clear from this independent review that the WCA in its current form is flawed and that it is not a fair or effective tool to determine whether or not someone is capable of working.<sup>2</sup>

We ask the Commission to reject any concept of a "work capacity assessment tool" to be used to test individuals who receive disability income support in order to identify those who are considered to be able to work full- or part-time, and denying or decreasing their income support as a result.

***Recommendation #3: An advisory group of people with disabilities and employment supports providers should be established to research employment-related assessment tools and share best practices on using assessments as part of the spectrum of employment supports that are offered to people with disabilities. Employment-related assessments should only be done as part of an employment plan voluntarily entered into by the recipient.***

Using assessments of a person's capacity and skills as part of a voluntary employment support plan are a very different matter than using them to identify people who might be subject to mandatory job seeking or a lower level of income. If people are seeking employment or training, testing of their abilities, aptitudes, barriers, etc. may provide them and their employment service workers some useful information and guidance, but such testing must not be used as a tool for determining eligibility.

No clear consensus exists among employment service providers or people with disabilities who have used various assessment tools as to which ones, if any, may actually help people prepare for and obtain employment. Some people have found assessments useful in pointing people in the right direction or affirming their sense of what is possible for them. Others have said many assessments have been a waste of time and resources.

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<sup>1</sup> <http://www.guardian.co.uk/politics/2011/nov/21/benefits-appeals-system-near-collapse>

<sup>2</sup> [http://www.mind.org.uk/news/4237\\_mind\\_responds\\_to\\_harrington\\_review\\_of\\_the\\_work\\_capability\\_assessment](http://www.mind.org.uk/news/4237_mind_responds_to_harrington_review_of_the_work_capability_assessment)

More research should therefore be done on the use of such tools for people with disabilities around the world, and which type of tools actually assist people in finding gainful employment, before any move to implement them in any context is contemplated. The answers to questions such as these should be used to direct the research: What is the evidence that these tools succeed in helping people with disabilities find employment? Is the income level of people with disabilities dependent on “passing” or “failing” the test of work capacity? What are the best practices on using assessments as part of the spectrum of employment supports that are offered to those wishing to participate? Such research should only be undertaken with the participation of people with disabilities and service providers involved in piloting and evaluating the use of such tools.

**Question:** Should Ontario wait to adopt assessments of work capacity and participation requirements for people with disabilities until substantial progress has been made on removing barriers to employment?<sup>3</sup>

**Recommendation #4: Government should assume responsibility for enforcing the human rights of people with disabilities to access employment that accommodates their needs, and must develop a labour market strategy to develop more jobs for people with disabilities.**

The Commission acknowledges in numerous places in “Approaches for Reform” the number and range of barriers that confront people with disabilities, as well as the difficult realities of today’s job market. With that understanding, the answer to this question is self-evident:

Given this context, the Commission is seeking input on whether Ontario should adopt a means to better assess work capacity and set participation requirements for people with some capacity for employment, or **whether the Province should wait to introduce such requirements until substantial progress has been made on removing barriers** to employment for people with disabilities, including the full implementation of the AODA. (emphasis added)

Waiting for full implementation of the AODA is not the only effort that needs to be made to reduce barriers before imposing punitive requirements on people with disabilities. The AODA will do little to substantially improve employment prospects because of the weaknesses of the standards and enforcement provisions, as summarized in our previous submission, *An Activation Agenda*, (see pp. 17-19). The Human Rights code contains protection for people with disabilities in employment that is stronger than the AODA, and government should more pro-actively promote and enforce those rights to accommodation in employment.

Another point that we stressed in “An Activation Agenda” is the need for government to create a provincial labour market strategy. In today’s job market, with such precarious jobs and fewer opportunities for careers that can actually lift people out of poverty, there is even less opportunity for people with disabilities. Many ODSP recipients are doing

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<sup>3</sup> This question appears on page 11 of the Commission’s discussion paper, but not in the questions for discussion.

everything they can to find jobs, but are still unable to. It is unthinkable that government would contemplate denying or reducing income support for people with disabilities when there is such little real prospect of suitable employment for them.

People with disabilities themselves should not be forced to bear the full burden of responsibility to cope with all the societal barriers to work. Implementing work capacity assessments and coercive participation rules implies that the problem is with people with disabilities, not with the lack of accessible jobs and meaningful employment supports.

**Question:** What kinds of engagement strategies and incentives would be most effective in encouraging and supporting employers to hire more social assistance recipients?

***Recommendation # 5: Businesses should have the responsibility of hiring more people with disabilities.***

Employers should be educated about and supported in offering employment to people with disabilities. A number of ways to do so have been discussed in previous submissions to the Commission, including approaches like ODEN's Champion's League, and better coordination and communication between employers and service providers. However, education and voluntary approaches alone may not be enough to develop more jobs that accommodate people with disabilities.

Employer incentives in the form of wage subsidies have been the most popular strategy to encourage employers to hire persons with disabilities. However, wage subsidies have achieved mixed success and do not ensure long-term job retention. By contrast, more aggressive government measures – such as instituting employer quotas – have shown positive results. A 2010 employment discussion paper<sup>4</sup> recommended that mental health, social service and other public sector systems must become “exemplary employers.” These practices should be extended to Canadian private sector businesses as well.

The Commission should consider proposals similar to these in other jurisdictions:

Quebec has taken a positive step regarding employment equity by implementing *An Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms* as of April 1, 2001. This Act applies to all public bodies with 100 or more employees in the municipal sector and in the education, health and social service systems. It also applies to other organizations, such as Crown corporations, and the *Sûreté du Québec* with regard to its police force.

The US Department's Office of Federal Contract Compliance Programs, on December 9, 2011, proposed a rule that would require federal contractors to establish a hiring goal of 7 percent of the employer's workforce for persons with disabilities. The proposal represents a

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<sup>4</sup> Canadian Mental Health Association Ontario and Centre for Addiction and Mental Health. Employment and Education for People with Mental Illness. Discussion Paper. Toronto: January 2010.

change from over forty years of OFCCP policy requiring contractors to make a "good faith effort" to recruit and hire people with disabilities.<sup>5</sup>

"In 2003, Serbia recognized for the first time that people with disabilities are a vulnerable group requiring extra assistance, and in 2010, an employment quota system was brought into effect. This system required employers to hire at least one person with disabilities for every 20-50 employees, and to hire another person with disabilities for every 50 additional employees. Almost 3,700 people with disabilities found employment, up from only 600 in 2009."<sup>6</sup>

**Question:** Which approach would be most effective in improving the delivery of employment services? (i.e., having all employment supports including OW and ODSP delivered by Employment Ontario, having them delivered by municipalities, or keeping the current system with better coordination).

***Recommendation #6: Government should develop and implement a coordinated employment services strategy that focuses on services for people with disabilities, with the participation and advice of people with disabilities and non-profit service providers.***

Currently, neither Employment Ontario nor municipal OW delivery agents have sufficient expertise in delivering employment supports to people with disabilities. There is no strategy, either within Employment Ontario or for municipalities, for how to effectively support people with disabilities' access to appropriate training, education, and pre-and-post employment supports. ODSP Employment Supports are limited to job-ready participants with very specific outcomes that do not support the full range of needs or the variety of skills, abilities and barriers that different people with disabilities have. And ODSP Employment Supports are not effectively coordinated and linked with training, education, or other programs offered to other populations. As such, we cannot support any of the options put forward in the Commission's discussion paper.

Instead, the Coalition believes that the Commission should focus on ensuring that the full range of employment supports services are available and truly accessible. Determining the level of government at which Employment Supports are provided is less important than is creating a coordinated strategy that focuses on services for people with disabilities, with the participation and advice of people with disabilities and non-profit service providers.

We recognize that there may be advantages to providing all employment services for both people with disabilities and those without disabilities at a local level, where services could be closely attuned to the local labour market. However, if it is decided to recommend moving the administration of employment supports for everyone to municipalities, the Commission must also recommend mechanisms through which the province would be able

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<sup>5</sup><http://www.mondaq.com/unitedstates/x/159438/Discrimination+Disability+Sexual+Harassment/OFCCP+Propose+s+Rule+Requiring+Federal+Contractors+To+Set+Hiring+Goal+For+Persons+With+Disabilities>

<sup>6</sup>[http://www.beta.undp.org/content/undp/en/home/ourwork/povertyreduction/projects\\_and\\_initiatives/serbia\\_creating\\_opportunitiesforpeoplewithdisabilities.html](http://www.beta.undp.org/content/undp/en/home/ourwork/povertyreduction/projects_and_initiatives/serbia_creating_opportunitiesforpeoplewithdisabilities.html)

to ensure accountability. These would include the creation of standard service provision principles as well as mechanisms to evaluate the effectiveness of the delivery of programs in meeting the needs of people with disabilities. In addition, the Coalition feels strongly that, regardless of which level of government is tasked with administering employment supports, the services themselves should be provided by non-profit agencies with expertise in meeting the needs of people with disabilities.

### **What is missing from Chapter 1?**

***Recommendation #7: The range of supports provided to people with disabilities to realize their full potential should include supports for post-secondary education, for volunteering in the community, and for engaging in self-employment and social enterprises.***

We appreciate that the Commission emphasizes that a full range of pre-and post-employment services and supports need to be offered to people with disabilities. But the emphasis still seems to be on finding the quickest route to a job, in traditional employment. People with disabilities which limit their options in employment, or for whom accessible employment cannot be found, need more.

Many people with disabilities need post-secondary education to find a job that is suitable for their disability or health issues, while providing a level of income that can pay for their disability-related needs. This education should not put them into very high levels of debt when there is a risk that they may never be able to repay that because of disability. Some people with disabilities have had to leave post-secondary education because of health concerns and cannot access it later in life because of OSAP rules. These barriers should be removed by providing a system of grants to make post-secondary education affordable for all people with disabilities, including older adults.

As we recommended in our two previous submissions, people who cannot currently take on the responsibilities of paid employment should be encouraged to be engaged in their community while learning new skills by providing them with an allowance for transportation or other costs. We were struck by the Commission's statement on p. 7,

the Ontario Native Welfare Administrator's Association (ONWAA) recommended that taking part in cultural or community development activities should be recognized as part of a range of participation requirements under Ontario Works. In their view, these activities contribute to improving job readiness and can help people who may be dealing with mental health issues, trauma, or addictions that need to be addressed before employment.

We commend the Commission for recognizing alternate forms of participation for aboriginal people and certainly support such a recommendation – but we remind the Commission that many people with disabilities have also been affected by abuse, trauma and discrimination. As such, people with disabilities – and from other disadvantaged groups – should also have their efforts to participate in volunteering recognized and supported. Volunteering should

never, of course, be converted into mandatory community participation or a requirement to accept unpaid work placements.

Finally, as we also discussed in our previous submissions, self-employment is sometimes the most viable employment option for people with disabilities because of both the precarious nature of jobs available in the labour market as well as the health limitations that disabilities can create. Joining together to form social enterprises is another, more appropriate option for some people with disabilities. But the rules of ODSP income and employment supports do not effectively support these options, and should be reformed with input from people with disabilities<sup>7</sup>.

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<sup>7</sup> Recommendation 15, *Dignity, Adequacy, Inclusion*, p. 30.

## Chapter 2: Appropriate Benefit Structure

**Question:** Which adequacy and wage benchmarks should be used to set rates? Are there other measures that should be considered?

**Recommendation #8: Create an independent board of experts and people with lived experience to develop criteria for setting rates<sup>8</sup>.**

The Coalition reiterates our recommendations on adequacy from our two previous briefs. We have long advocated for an independent board of experts and people with lived experience to develop criteria for setting rates. This approach is similar to a market basket approach since it involves looking at what people need and setting rates based on those costs. However, it is important that the costs used are realistic and actually cover the shelter and other living expenses – including the additional costs borne by people with disabilities. The Market Basket Measure as revised by Statistics Canada should not be used – it has recently been criticized by social policy experts because the revisions to the housing costs means that families in most cities would never find an apartment at those rents<sup>9</sup>.

**Question:** In a methodology for setting rates, what proportions would balance adequacy, fairness and incentives?

**Recommendation #9: the Commission should recognize the right of people with disabilities to an adequate standard of living, as expressed in the UN Convention on the Rights of People with Disabilities, without qualification. The needs of low income working people should be addressed by better labour market strategies, higher minimum wages, and enforcement of employment standards.**

We do not accept the reasoning about the need to balance adequacy with both “fairness” for low income people in the workforce and the creation of work incentives. Low income working people are not more fairly treated if people with disabilities are deprived of adequate incomes to be able to eat nutritiously, live in safe accessible housing, travel for medical reasons or to participate in the community, and meet all of their other needs. And, as we have discussed at length in our other submissions, eliminating the work disincentives built into the system and building a better quality, accessible employment supports system – not reducing income to levels below those in the most precarious sectors of the labour market – is the way to encourage people with disabilities to work, to whatever degree they are able.

The Coalition endorses the response of Poverty Free Ontario to the Commission’s analysis, which divides people on assistance from low income working people instead of advocating to lift both groups out of poverty.

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<sup>8</sup> Recommendation 8, *Dignity, Adequacy, Inclusion*, p. 21.

<sup>9</sup> Goldberg, Kerstetter and Klein, *Toronto Star*, “Ottawa Twists New Poverty Line”, February 20, 2012.

Framing the adequacy discussion as an issue of fairness within the low income community is divisive and misleading. Rather, their interests are joined in expecting a significantly raised bar for all low income people and demanding fairness and justice from a society that has structured the economy and social provision in a way that excludes and contains people struggling in the bottom third of the income scale. This is the constructive approach that the Commissioners could champion in their reform proposals rather than reinforcing past and current policy frameworks that pit social assistance recipients against working poor Ontarians.<sup>10</sup>

And the Coalition is disappointed that the Commission's discussion of adequacy contains no recognition of the human rights of persons with disabilities as recognized in the UN Convention on the Rights of People with Disabilities. Article 28 of the Convention – ratified by Canada on March 11, 2010 – requires States Parties to recognize the right of persons with disabilities to an adequate standard of living for themselves and their families. This means that people with disabilities should be able to count on a level of income support to meet their needs and live a life of full participation in the community. This obligation should be at the core of any program for people with disabilities, and must not be qualified by notions that adequacy must be adjusted to relate to the lowest level of income available in today's precarious labour market.

**Question:** Should health benefits be provided to all eligible low-income Ontarians? If so, how should the cost be covered?

***Recommendation #10: Extend all extended medical benefits currently available to people on social assistance to all low-income Ontarians, without reducing the current level of coverage for anyone receiving these benefits, and with the proviso that the level of coverage is expanded in future.***

We agree that providing health benefits for all low income people would help to remove one of the disincentives for people on social assistance in seeking employment. OW recipients now get coverage for only 6 months after leaving social assistance, and even though ODSP recipients are eligible to continue getting them after starting full time work, many people do not know that. People on Employment Insurance or Canada Pension Disability, as well as low income workers, do not get these benefits.

Similar recommendations have also been made by many people who have studied the health system; it has been argued, for example, that if more people had access to extended medical benefits such as medication coverage, their diseases might not progress as seriously, thus avoiding higher health care costs in the future.

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<sup>10</sup> PFO Bulletin #9, <http://www.povertyfreeontario.ca/2012/02/06/social-assistance-review-discussion-paper-2-missed-opportunity-even-backsliding-as-austerity-agenda-looms/>

Because benefits such as these are essentially necessary health care items, the government should cover the cost. However, the government may consider ways for employers to contribute to the cost.

**Question:** Would an earned income supplement be a good mechanism to increase the incentive to work?

***Recommendation #11: Allow a flat rate earnings exemption of \$500 per month, equal to the amount people are allowed to receive in help from family or friends.***

For a number of years, groups of people with disabilities, their families, and others have been advocating for increased earnings exemptions for ODSP recipients. Indeed, MPP Toby Barrett's private members bill introduced in the last session, which dealt in part with this issue, had support from all parties. Our Coalition has argued that allowing people to keep up to \$500 per month in earnings would be fair because recipients are allowed to get that much support from family with no reduction in ODSP. Shouldn't people who work be allowed to increase their incomes just as much as someone who is lucky enough to have family that can help?

Increasing the earnings exemption for both OW and ODSP would be the simplest, most straightforward way to make work pay for social assistance recipients. Designing a completely new wage supplement program outside of social assistance will take time and further research to plan, pass into legislation and implement. We suggest there is no reason to wait to address this issue, which so many people agree should be remedied quickly.

The Commission's discussion paper provides insufficient details about the earned income supplement – and about other possible, income-tax delivered benefits such as a housing benefit – for us to comment in detail on these proposals. As such, the Coalition strongly recommends that further research and discussion of design, eligibility rules, amounts of income provided, etc. be conducted before any of these new programs are recommended or adopted (as noted below). There must be clarity on how any new program would be funded, and what the effect would be on the rate structure and other rules of OW and ODSP if such a new program were introduced. Many people who supported the concept of the Ontario Child Benefit were shocked when the introduction of that program resulted in a reduction in social assistance basic needs rates as well as the elimination of Winter Clothing and Back to School Allowances. Meaningful consultations with people with lived experience and other stakeholders on the details and design of any new program so that the effects are clearly understood must be held.

## Design of Income for People with Disabilities

**Question:** How should income supplements for low-income people with disabilities be designed and delivered? Should such supplements be provided outside the social assistance system?

**Recommendation #12:** *Do not replace ODSP with a new program of income for people with disabilities without further research, clear proposals concerning eligibility rules, income levels, and consideration for how special needs and circumstances would be dealt with. This must be done in full consultation on the specific proposals with people with disabilities.*

The important issue is that adequate income that meets the needs of all people with disabilities and respects their rights and dignity must be the goal and outcome of the system. There is no reason to assume that starting over to design a completely different program, legislation and administration will result in a better system than would simply addressing the areas where the current ODSP system is inadequate.

It is quite difficult to understand the suggestions in “Approaches for Reform” for “income supplements for low-income people with disabilities” to be provided outside the social assistance system, because very few details about eligibility, design, benefit rates or projections of numbers of people to be covered are provided. Essentially, two possibilities are discussed: creating a new disability supplement delivered through the tax system, or a new income program for people with “severe” disabilities (possibly funded and delivered by the federal government as the Caledon proposal suggests).

The first approach would amalgamate OW and ODSP and pay everyone on social assistance the same rate, but there would be an additional supplement for people with disabilities outside the social assistance system that would be provided to all low income people with disabilities, whether working or not working. We have a number of questions and concerns about this proposal:

- What would the eligibility criteria be to be considered “disabled” for this supplement?
- Would employability have to be assessed using some kind of work capacity tool as part of determining eligibility? It is not clear from the discussion paper how a supplement for people with disabilities aligns with the Commission’s consistent division of people with disabilities into those who “can” work and those who “cannot” work.
- What would be the level of benefits provided?
- If the supplement is delivered through the tax system, how would it be responsive to the changing needs of people with disabilities, many of whom deal with periodic or episodic inability to function well with many aspects of daily living?
- How would such a supplement support people whose disabilities make it hard for them to deal with impersonal bureaucracies? The tax system does not have caseworkers who know their clients and can respond to their needs.

- How would exceptional situations and extraordinary or emergency needs be handled?
- How would disputes over eligibility or benefit levels and appeals of decisions be handled?
- If this new “supplement” is only meant to be an addition to either earned income or social assistance, then you would still have the eligibility rules, structure and bureaucracy of the social assistance system in addition to the new eligibility criteria and rules of the new supplement. It would make the package of income supports for people with disabilities more complex, not less.

The second approach discussed is a new program for people who are determined to be “severely” disabled, with several possible models listed. We note that we discussed our concerns with the Caledon Institute model in *An Activation Agenda* (see pp. 6-8).

We have similar questions about this possible new “severe” disability program as we listed above about an income tax delivered supplement. Our main concerns about moving to a separate program for people with “severe” disabilities are that doing so equates “severe” disability with “unemployability”. We see this as a move to return to the old “permanently unemployable” category that people with disabilities fought to have abolished because of the implications it carries for societal understandings of what disability means, and for the rights of people with disabilities to obtain supports and services related to social inclusion activities, which include but are not limited to undertaking paid work.

That said, some people with disabilities are very interested in exploring further the possibility of truly removing people with disabilities from social assistance, and delivering income support in a less intrusive way, either through the tax system or as a pension. They see the goal as a guaranteed annual income that would not need intrusive eligibility rules or a costly bureaucracy to administer. In such a vision, everyone who has a disability would be supported as long as societal barriers to full participation cease to exist. The first principle of such a program would have to be a level of benefits that fully provides for all of the needs of people with disabilities.

Thus there might be value in looking at new programs, but we cannot support the suggestions in “Approaches for Reform” due to so many unanswered questions. Development of any new program must be evidence-based, and new models must be presented with a basis for evaluation by clearly spelling out the adequacy levels, eligibility criteria, delivery model, target caseload, costs, etc spelled out. Planning, research, design and evaluation of new models must include meaningful consultation with people with lived experience, social policy experts and other stakeholders. The limited ability to respond to the vague suggestions in “Approaches for Reform” does not constitute adequate consultation on such fundamental and far-reaching change to crucial supports for people with disabilities.

In the meantime, we must be clear that tearing down the current income support program or making cuts to levels of benefits, or restricting access to the program for only those with “severe” disabilities, before a new, less intrusive and more adequate program is developed, is not acceptable. No persons with disabilities in Ontario should suffer a loss of income as a result of any recommendations of this Commission.

***Recommendation #13: Any changes made to ODSP cannot result in a loss of income for current ODSP recipients.***

One of our most pressing concerns is that recommendations made by the Commission could be used to reduce government expenditures, rather than improve income adequacy. As such, we urge the Commission to be very clear in any recommendations around changes to ODSP or the creation of new income support programs for people with disabilities that current recipients be protected from any moves by government to decrease their incomes due to changes in eligibility for disability-related programs.

***Recommendation #14: A strict medical definition of disability should not be used to create a new program for people with “severe” disabilities.***

Any new program for people with disabilities must not be restricted to people who are considered to be “severely” disabled according to a strict medical definition, or to those who are considered to be permanently unable to work. Any new program must recognize the reality of what having a disability means for income, employment and participation in society.<sup>11</sup>

### **Dealing with the Complexity of Benefits**

**Question:** How should the current rate structure be changed to reduce complexity?

***Recommendation #15: Recognizing the inadequacy of all current social assistance rates to meet the real needs of people on OW and ODSP, any changes to the benefit structure must ensure that no one suffers a loss of income.***

Many people have complained for years about the complex system and the 800 rules in OW and ODSP. Prior to our two submissions last year, the Coalition submitted a paper to the Social Assistance Review Advisory Committee recommending a number of changes to many of the “stupid rules”<sup>12</sup> inherent in the system.

We have concerns with the Commission’s discussion of the issue of complexity. The focus here is only on the “complexity” of the rate structure, and not on the countless eligibility rules that contribute not only to complexity but also to surveillance and policing (although we do note the later section on assets). The key problem is that in discussing “simplifying”

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<sup>11</sup> See our discussion of the definition of disability in “Dignity, Adequacy Inclusion”, pp. 9-11

<sup>12</sup> “Stupid Rules Have Dire Consequences” found at:

<http://www.odspaction.ca/story/stupid-rules-create-dire-consequences>

the rate structure, there is no discussion at all of how the amount of the new simplified rates would be determined as the discussion in this section is independent of the discussion on “adequacy”.

In the current climate of fiscal austerity, it is unlikely that the provincial government would simplify the rate structure by giving all recipients the maximum rates for OW or ODSP. Therefore, if the Commission proposes simplification of benefit rates as discussed here, they should specify exactly what those rates should be for all categories of recipients.

The Coalition has criticized the “board and lodging” rate, since it is often interpreted by caseworkers in a way which hurts the most severely disabled people – i.e., those unable to shop for and prepare their own meals. We therefore would welcome the repeal of this rule, provided that no other people in need have their incomes cut in order to achieve a simplified structure.

In addition, many people would welcome not having to provide rent receipts or leases, but obviously would not accept this as an “improvement” if simplifying the rate structure by amalgamating basic needs and shelter amounts would result in receiving less money.

**Question:** Should some special benefits be rolled into a standard rate? If so, which ones?

***Recommendation #16: Special needs benefits (such as those currently provided for medical transportation, diabetic and surgical supplies, and for emergencies such as those met by the Community Start Up and Maintenance Benefit) should not be “rolled in” to a basic standard rate until the levels of income support have been raised sufficiently that the need for special benefits no longer exists.***

Merging “special benefits” into the standard rate involves some of the same issues and produces some of the same questions as the discussion of simplifying the rate structure. For example: what are the specifics of any potential changes? What special benefits would be abolished? How much would that raise the basic rates?

But this issue produces another and more basic and important question—what would happen to those who desperately need these special benefits? At the current levels of income support, which are so far below any possible “poverty line” or anybody’s definition of adequacy, people on OW and ODSP are barely subsisting. These special purpose benefits are necessary to meet real needs. Some people – those who do not currently need very many “special benefits” – might be better off if their income support rises slightly by the average amount of all the special benefits rolled together. But people with the most serious needs would be very seriously hurt.

For example, if medical transportation were “rolled in” to the standard rate, people in rural areas with serious medical conditions might be unable to travel to get the medical attention they need. People who need diabetic supplies or surgical supplies would have to choose between paying their rent and eating properly, or go without these necessary supplies.

Another key special benefit is the Community Start Up and Maintenance Benefit. Because of the deep poverty of recipients, they have no resources to deal with an emergency such as fire, domestic assault, arrears of rent, bedbugs. If their circumstances have led them to live in an institution, or if they have to leave an unsafe and/or high rent apartment, they need assistance with moving and furnishing a new household.

The best way to reduce the complexity of benefits is to give people adequate incomes. Recent changes have removed almost every “lump sum” or larger occasional payment that recipients used to receive. When the Ontario Child Benefit was created, the Back-to-School and Winter Clothing Allowances were cancelled. This year, the tax credits that people used to get in a lump sum once per year have been rolled into a new monthly benefit. Many people are upset about these developments because they relied on the once per year amounts that were separate from their monthly needs to purchase needed items that they could not otherwise afford. Telling them to save for larger purchases, when increases to the allowances have not kept pace with the cost of food, shelter and other needs, is insulting.

The government has just admitted that they were too hasty in implementing the property and sales tax credit delivery changes without adequate consultation and communication with low income people. The far more sweeping changes suggested throughout “Approaches for Reform” will certainly upset and hurt people if they are done hastily and without a clear understanding of their actual effects on vulnerable people.

And we note that the Special Diet Allowance is not a “special benefit” but rather part of the basic benefit package and eligibility calculation. The Coalition strongly reiterates our recommendation from “Dignity, Adequacy, Inclusion” that the Special Diet Allowance should continue to be provided in social assistance, as the need for special diets for particular medical conditions will still exist even if levels of income support are raised. “Rolling in” this benefit is unacceptable.

### Chapter 3: Making the System Easier to Understand

**Question:** Should the social assistance system move from a surveillance approach toward an audit-based system of verification and monitoring?

***Recommendation #17: Establish an alternative system of reconciliation of income, and simplify eligibility rules so that there is less need for an intrusive verification system.***

***Recommendation #18: There should be no imposition of harsh financial or other penalties for people who make mistakes in reporting income or keeping all their receipts or paperwork. If any auditing system is adopted there should be a limitation period (such as two years) after which government can not audit someone.***

The Coalition appreciates the Commission's recognition that the vast majority of social assistance recipients do not cheat and deserve to be treated with respect and dignity. We also can understand the appeal of moving to a system where workers would not have to spend such enormous amounts of time to constantly verify eligibility.

However, the discussion about moving to an auditing system does not recognize that most overpayments to recipients are not caused by recipients who are cheating, but by the administrative rules and procedures inherent in the system. John Stapleton has noted that overpayments are often caused by a person unexpectedly working a few extra hours, getting an unexpected cheque from another income program, or fluctuating child support. Two key problems he identifies are the monthly reconciliation of income, and the complexity of the rules<sup>13</sup>.

As such, the Commission's suggestion of an auditing system does not address the main problems that cause overpayments. The Commission suggests keeping the requirement for monthly reporting. People would not need to send in receipts, but would have to keep them in case they are audited later. This would not do anything to reduce the amount of overpayments caused by fluctuating income, but would likely create even more and larger overpayments as recipients would not be aware that changes to income could be reducing their entitlement.

Instead, recipients should be given a choice about whether to **report** their income monthly or yearly, and yearly **reconciliation** of income should be implemented. The gas and hydro companies give customers a choice about whether to go on equal billing or to pay monthly as their bills go up and down. The social assistance system should give people the same choice. People with income that fluctuates greatly might choose to report monthly and have their benefits adjusted monthly. But for most people it would be advantageous to

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<sup>13</sup> Stapleton, John, "Zero Dollar Linda", Metcalf Foundation, November 2010, p. 21—24. See also "What Stops Us From Working", prepared for the Dream Team, Houselink and CAMH, May 2011, p. 17, where choice in **reporting** income monthly or yearly is proposed, but accounts would be reconciled yearly. (p. 29).

average income over the course of a year, as long as adjustments can be made if there are large increases or decreases in income during the year.

Another problem with the Commission's discussion on the audit system is that they do not propose simplifying the complex eligibility requirements that few people understand. For example, they suggest keeping the current definition of "spouse" – which is different than the Family Law definition or the federal income tax definition – and having recipients self-declare their status. However, this would not solve the problem of people who believe they are not spouses, but might be considered by the social assistance system to be spouses. It certainly does not get at the key problem for people with disabilities who want to form a relationship without becoming completely financially dependent on their spouse.

The most serious concern with an auditing system is that it fails to take into account the real lives of people on social assistance. At least one-half of ODSP recipients have mental health or developmental disabilities; many others have language and literacy problems. Due to the below-subsistence level of income provided by the system, housing is unstable and many recipients have to move frequently, or have spent time being homeless. Putting the onus on them for both accurate monthly reporting and for keeping organized receipts, potentially for years, would result in people being penalized for failing to understand the procedures, or for failing to keep all of their paperwork and receipts.

In this context, even asking the question about a level of penalties that could be imposed that are strong enough to "deter misuse" is horrifying. Harsh financial or other penalties for mistakes in reporting should not be considered. The government must provide support for people who need assistance with record keeping.

Thus, while we welcome the Commission's attempts to resolve the problems of surveillance and complexity and support the goal of moving to a less invasive system that spends less time verifying eligibility, we would be very cautious about moving to an audit approach in the context of a system as complex and with as many confusing eligibility rules as the current social assistance system.

**Question:** Should asset limits be changed? If so, how?

***Recommendation #19 : Raise allowable asset levels, but do not remove the current exemptions that recognize special circumstances. Allow RRSP's to be retained by people on social assistance.***

Many groups and social policy experts have made the case for raising OW asset levels so that people do not have to deplete all of their savings to access social assistance. We agree that this simply perpetuates and deepens poverty by making it even harder for people to prepare for and find employment when all their time is needed just to find or maintain housing and deal with their families' basic needs.

People on ODSP are also concerned that even at their slightly more generous level of allowable assets, they still have little ability to save for major purchases or for retirement years. People have argued for some time that RRSP's should be exempt for everyone on social assistance, since government should be encouraging retirement savings rather than penalizing it.

We are very concerned, therefore, that the Commission appears to be proposing removing exemptions that people with disabilities get for particular reasons – such as pain and suffering awards, special awards for victims of situations like institutional abuse, having a trust or an RDSP to recognize the need for some sort of long term savings for people with little prospect of getting out of poverty. We strongly oppose removing such exemptions. These have been put into the legislation in recognition of the fact that people with disabilities should actually benefit from the settlements intended to compensate their pain and suffering, and should be able to participate in the federal government's Registered Disability Savings Plan. These exemptions need to be continued.

#### Chapter 4: Viable for the Long Term

**Question:** What are the strengths and weaknesses of these three approaches to the delivery of Ontario Works and ODSP? Are there other approaches that should be considered?

Here, the Commission has proposed either:

- 1) Keeping OW and ODSP income support as separate programs, but moving ODSP employment supports to municipalities and First Nations;
- 2) Combining OW and ODSP into one program delivered by municipalities and First Nations;
- 3) Combine the two programs into one, but have municipalities and First Nations deliver “human services” and have the province send out the cheques.

***Recommendation #20: The provincial government should maintain responsibility for both funding and delivering income support<sup>14</sup> for persons with disabilities.***

There is a good reason that ODSP is a separate program from Ontario Works. At the time of its inception, the government stated that they were “taking people with disabilities off social assistance.” Of course they did not actually do that, but the program’s slightly more generous income and asset rules and lack of a mandatory employment requirement recognizes the many barriers that people with disabilities have to being able to participate fully in society and adequately support themselves through employment.

Our province and our society are nowhere near to having dismantled the many environmental, attitudinal, societal and other barriers that people with disabilities face. Given the continuing problems in the economy and the worsening state of the labour market, this is not the time to destroy the only program that supports people with disabilities who have no other resources in this province.

Municipalities have no particular expertise in working with people with disabilities. They would need additional training, support and accountability mechanisms in place to ensure that appropriate consideration is given to the employment and income needs as well as the special disability needs such as assistive devices. The discussion about delivery should focus more on improving customer service – treating people with respect, providing needed accommodations, understanding of and sensitivity to different disabilities. This will not automatically happen by downloading the ODSP program to the local level.

Municipalities would also have concerns about funding; clearly they would only accept responsibility for people with disabilities if all of their costs were fully covered. Would this include the major staff retraining and other administrative costs involved?

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<sup>14</sup> See our Recommendation 6 with respect to delivery of employment supports.

Our OW and ODSP programs necessarily have a lot of discretion built in to them due to the variety of different circumstances of people in need. But as we have seen with municipal delivery of OW, and with some limited forms of special assistance that are also provided to ODSP recipients by municipalities, the major problem is not discretion itself but rather the very inconsistent application of policies across the province. This results in different and unequal treatment of recipients depending on where they live. If municipalities were completely responsible for the full delivery of the disability income system, the inequity for people with disabilities living in different regions could increase.

Equitable access to income support services, special and emergency benefits, and sensitive understanding, communication and treatment of people with the full range of disabilities is better accomplished with a provincial system, where staff are directly responsible to the policy and law makers.

If the concept of delivering OW and ODSP together is intended primarily to find efficiencies and reduce administrative costs (i.e. labour costs), then there needs to be discussion of the appropriate number of clients per caseworker in the combined system. Currently, ODSP caseworkers deal with an average of 230-380 clients, while OW staff have much smaller caseloads. For example, in the City of Hamilton the average caseload was about 155 in 2011<sup>15</sup>. If ODSP and OW are combined and everyone on the program has participation requirements, many more staff would be required to interact with clients much more frequently than ODSP recipients are currently contacted, and to support and monitor participation agreements.

We do not believe that amalgamating ODSP and OW will make social assistance any more viable for the long run. Viability of the program depends on government and public choices about supporting people in need, including those with disabilities. The government should actively combat the stigma and discrimination that so many people with disabilities face. They should also promote the value of investing in the human potential of people with disabilities. Active messages on these themes would go a long way to develop a deeper understanding which will sustain support for a better income and employment support program in the future.

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<sup>15</sup> City of Hamilton, Emergency & Community Services Committee, November 23, 2011

## CONCLUSION

Taken together, the Commission's various proposals outlined in the second discussion paper – to combine the rates of income support for OW and ODSP, to have municipal social services deliver income supports and employment supports for people with disabilities as well those on OW, to set up a test to decide which people with disabilities are to be considered “employable” and which are “unemployable”, and to introduce participation requirements for people with disabilities that mirror the workfare requirements in OW – these ideas amount to dismantling the program that people with disabilities currently rely on, in a society that still is filled with barriers to employment and full participation in the community.

Obviously the first concern for people with disabilities is that changing ODSP in the ways that seem to be suggested will result in a loss of income, thus increasing stresses on their health and making it even harder for them to become employed or participate in their community.

We also fear that many of the proposed changes, taken together, would not actually result in a simpler, easier to understand system. The creation of a variety of new income supplements like a housing benefit, working income tax credit, disability supplement, and possibly others in addition to the Ontario Child benefit, will require people to learn about a whole new set of entitlements and the rules of all of these supplements.

Adding work capacity assessments to ODSP, or whatever income support program replaces it, would be adding new rules and complexity to the system. More paperwork and staff would be required to administer and monitor. If, as has happened in the UK, these tests are used to decrease benefits and force people with disabilities and serious health conditions to try to get a job, many people will naturally focus on the most serious aspects of their disability and what they can't do. This will result in the opposite of “a culture shift away from a focus on disability and toward a focus on ability”<sup>16</sup>

These changes would actually discourage people from working rather than supporting attempts, because any successful periods of time in which they have been able to engage in part- or full-time employment could jeopardize their future status as someone who is deserving of a level of income support better than the OW rate.

Perhaps we have misunderstood some of the concepts and proposals in “Approaches for Reform.” If that is the case, it is because they are not presented clearly, not backed by evidence, nor sufficiently detailed to understand exactly what they would mean for the level of income and kind of supports people would receive. Our understanding of what these proposals could very likely mean is informed by our experience with such recent changes as the

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<sup>16</sup> Approaches to Reform, p. 30

introduction of the OCB (when social assistance benefits were decreased), the recent discussions about Special Diet, and by the government's clearly stated concerns about the "high" number of people coming onto ODSP, the high costs associated with increasing caseloads, and the "low" number of people with employment income. It is also reasonable to understand these proposals and how the government might implement them in light of the Drummond report and the government's commitment to an austerity agenda.

A group of people with disabilities in the UK stated, about the changes to their income support system: "Reforms that do not have a strong base in the needs of disabled people will fail."<sup>17</sup> We make the same assertion about the present discussion in Ontario. We cannot see a clear understanding of the needs of people with disabilities in "Approaches for Reform."

We therefore ask the Commission to insist that any specific changes to ODSP or any new income supports be developed, planned and implemented only with the direct involvement of people with disabilities and other marginalized groups.

Naomi Ives Peak (ivesn2@lao.on.ca)  
Kyle Vose (cayocito@hotmail.com)  
co-chairs, ODSP Action Coalition

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<sup>17</sup> Responsible Reform: A Report on the proposed changes to Disability Living Allowance" in the United Kingdom, <https://skydrive.live.com/view.aspx/Responsible%20Reform%20for%20screen%20readers.doc?cid=cba86408918c-aa9e> p. 5.

## RECOMMENDATIONS

- 1: Neither participation requirements – nor mandatory treatment or rehabilitation – for people with disabilities should be recommended in the Commission’s final report.**
- 2: The government should not adopt a work capacity assessment tool to be used to determine eligibility for any disability income support program or supplement.**
- 3: An advisory group of people with disabilities and employment supports providers should be established to research employment-related assessment tools and share best practices on using assessments as part of the spectrum of employment supports that are offered to people with disabilities. Employment-related assessments should only be done as part of an employment plan voluntarily entered into by the recipient.**
- 4: Government should assume responsibility for enforcing the human rights of people with disabilities to access employment that accommodates their needs, and must develop a labour market strategy to develop more jobs for people with disabilities.**
- 5: Businesses should have the responsibility of hiring more people with disabilities.**
- 6: Government should develop and implement a coordinated employment services strategy that focuses on services for people with disabilities, with the participation and advice of people with disabilities and non-profit service providers.**
- 7: The range of supports provided to people with disabilities to realize their full potential should include supports for post-secondary education, for volunteering in the community, and for engaging in self-employment and social enterprises.**
- 8: Create an independent board of experts and people with lived experience to develop criteria for setting rates.**
- 9: the Commission should recognize the right of people with disabilities to an adequate standard of living, as expressed in the UN Convention on the Rights of People with Disabilities, without qualification. The needs of low income working people should be addressed by better labour market strategies, higher minimum wages, and enforcement of employment standards.**
- 10: Extend all extended medical benefits currently available to people on social assistance to all low-income Ontarians, without reducing the current level of coverage for anyone receiving these benefits, and with the proviso that the level of coverage is expanded in future.**
- 11: Allow a flat rate earnings exemption of \$500 per month, equal to the amount people are allowed to receive in help from family or friends.**
- 12: Do not replace ODSP with a new program of income for people with disabilities without further research, clear proposals concerning eligibility rules, income levels, and consideration**

***for how special needs and circumstances would be dealt with. This must be done in full consultation on the specific proposals with people with disabilities.***

***13: Any changes made to ODSP cannot result in a loss of income for current ODSP recipients.***

***14: A strict medical definition of disability should not be used to create a new program for people with “severe” disabilities.***

***15: Recognizing the inadequacy of all current social assistance rates to meet the real needs of people on OW and ODSP, any changes to the benefit structure must ensure that no one suffers a loss of income.***

***16: Special needs benefits (such as those currently provided for medical transportation, diabetic and surgical supplies, and for emergencies such as those met by the Community Start Up and Maintenance Benefit) should not be “rolled in” to a basic standard rate until the levels of income support have been raised sufficiently that the need for special benefits no longer exists.***

***17: Establish an alternative system of reconciliation of income, and simplify eligibility rules so that there is less need for an intrusive verification system.***

***18: There should be no imposition of harsh financial or other penalties for people who make mistakes in reporting income or keeping all their receipts or paperwork. If any auditing system is adopted there should be a limitation period (such as two years) after which government can not audit someone.***

***19 : Raise allowable asset levels, but do not remove the current exemptions that recognize special circumstances. Allow RRSP’s to be retained by people on social assistance.***

***20: The provincial government should maintain responsibility for both funding and delivering income support<sup>18</sup> for persons with disabilities.***

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<sup>18</sup> See our Recommendation 6 with respect to delivery of employment supports.