The Dark Side of Contracting with Government: The Case of VHA Hamilton and the Province of Ontario

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Introduction

This article examines the dark side of the contracting relationship between governments and the nonprofit sector that provides services on their behalf. It demonstrates how governments, as monopsonic purchasers or single buyers of these services, sometimes use their power to off-load the costs of care and risk management to service providers. It illustrates that nonprofit organizations, which think of themselves as public purpose organizations, are often treated as merely economic actors when they are under contract to provide health or social services on behalf of government and not as partners, as much of the rhetoric claims. Not only does this put service providers at risk of drifting from their missions, but it can also threaten their very existence.

In 1996, the Government of Ontario redesigned its public home care sector as a quasi-market, ostensibly to introduce competition and efficiency to the sector. This article focuses on the experience of VHA Hamilton[1] within this redesigned sector. VHA Hamilton's experience is not an anomaly. Two years after VHA Hamilton declared bankruptcy in 2002, and after a change in government, a new round of contract competitions left approximately 900 home care workers and more than 12,000 home care clients displaced by changes in agencies across the province.[2]

This is a complex story, and the devil is in the details, which are presented in the next section. Following that is an analysis of the fall-out experienced by workers and clients as a result of the closing of VHA Hamilton. The article concludes by presenting four important lessons that can be learned from this case.

Background

On August 27, 2002, VHA Hamilton, a 73-year-old, not-for-profit agency with 450 employees that provided 58% of homemaking services to 2,500 clients in Hamilton, Ontario, closed its doors after declaring bankruptcy. VHA Hamilton was under contract with the Hamilton Community Care Access Centre (CCAC), one of 43 statutory government agencies charged with tendering and managing home care contracts with service providers (both nonprofit and for-profit) in the province. In Ontario, certain home care services are provided

free to eligible clients, and CCACs serve as the gatekeeper to the system. They ascertain potential clients' eligibility, determine how much care clients will receive, and ration services accordingly.

Homemaking includes an array of services performed by unregulated workers, from light housekeeping to complex care, including tasks formerly performed only by regulated health professionals (Canada, 1999). CCACs remunerate agencies that provide homemaking services on an hourly, fee-for-service basis.[3] There are four levels of skilled worker that each agency must be able to provide, but the CCAC remunerates each at the same rate. A component of the labour cost is travel time and associated transportation costs, as workers must travel from one client to the next to provide service. These costs are not reimbursed by CCACs and so must either be built into the contract price or absorbed by the worker. There are statutory obligations that regulate an employer's obligation with respect to travel time, but not travel costs. Anticipating the cost of providing the "average" service when bidding for a contract is a highly complex exercise, and agencies must rely on historical experience with case mixes and travel costs in order to arrive at a reasonable estimate.

This contracting regime was introduced in 1996 (Williams, Barnsley, et al. 1998), and the contract in place in 2001 between VHA Hamilton and the Hamilton CCAC was the first four-year contract period following the full implementation of the model in Hamilton. The provincial government had mandated some conditions that must appear in CCAC contracts; these conditions were unusual when compared to business contracts. For example, there were no price adjustments for the first three years of four-year contracts; contracts across the province did not guarantee service providers any level of service volume, only a "market share"; the price that the CCAC paid for the service was the same regardless of volume or complexity or the location of the client (i.e., rural or urban); there was no clear mechanism for arbitration in case of a dispute between parties to the contract; and, in some contracts, agencies were financially penalized if they were unable to provide an appropriate worker to a new client.[4] VHA Hamilton did not sign off on this final clause.

In the second year of the four-year contract, the Hamilton CCAC, under orders from the province to balance its budget, started to reduce the amount of service it provided. Although service providers had been forewarned of this change, it came quite abruptly in December 2001. It began to discharge clients receiving only light housekeeping services – the service that cost providers the least, as it required the least qualified workers – and put a priority on clients receiving complex personal care The results of the changes were immediate and dramatic: fewer people were eligible for services and the basic support (i.e., light housekeeping services) that helps keep the frail elderly out of institutions was all but eliminated.[5] For home care providers, the changes led to an increase in the cost of delivering service. A greater proportion of the service requested now required more highly paid workers. Visits were shorter because they

involved personal care tasks rather than laundry and light housecleaning. All of these changes had immediate implications for the organization's cost of providing service. Shorter visits means workers must provide more visits per day to earn a day's pay.

Each visit is bridged by travel time unremunerated by the CCAC and minimally remunerated by the employer. There is a fixed administration cost for every visit, regardless of its length. The technical and administrative infrastructure was developed to support one level of volume and this could not be shed as quickly as the business volume fell. However, the CCACs would not acknowledge that the changes in the case mix presented a material change to the terms of the contract and the contract award was for market share, not market volume. They would not open the contract.

With volume down and complexity up, VHA Hamilton's labour costs rose and began to exceed the rate the CCAC paid.[6] In addition, the reduction in service volume meant that it had to lay-off staff and undergo internal restructuring, with all the associated costs. In November 2001, VHA Hamilton had been generating a small operating surplus. Between November 2001 and June 2002, its monthly volume declined from 40,000 hours of service to 28,000 hours. All of these factors put upward pressure on the cost of providing service. Moreover, the CCAC was not able to estimate service volumes accurately during the ensuing months. This instability and unpredictability compounded the problems. By January 2002, VHA Hamilton was in serious trouble. Its reserves were being depleted quickly, and the situation was unpredictable.

Representatives of VHA Hamilton's board and executive met with CCAC management on March 20, 2002; with the CCAC's board chair on May 16, 2002; and with the CCAC's board of directors on May 23, 2002, each time presenting a case for reopening its contract. The CCAC turned down VHA Hamilton's requests. Between March and May, VHA Hamilton and the CCAC had explored "non-monetary solutions" to the problem. None were viable from VHA Hamilton's perspective. VHA Hamilton underwent more internal restructuring and went to its workers' union to request wage concessions. The union turned it down. VHA Hamilton then appealed to its local Member of Provincial Parliament for assistance, wrote to the Minister of Health, made an appeal to the Ministry of Health, and pleaded with the Premier. All stood firm on the position that the integrity of the contracting process was paramount and that the contract could not be reopened.

The government and its representatives were willing to risk the consequences of the loss of a significant portion of service capacity and of a recognized leader in the sector. The CCAC would not reopen the contract to renegotiate the price of providing service, claiming such a move would compromise the "integrity of the RFP [request for proposal] process" (Frketich, 2002). The contract, with all its flaws, was more important than the care, the workers, or the clients. This

sentiment is evidenced by the statement of the chair of the CCAC's board who was quoted as saying, "I'm feeling good about what we're doing as an agency. We're following the guidelines to a T" (Frketich, 2002, July 31).

Hamilton's CCAC pursued this course despite the fact that contracts had been reopened in other jurisdictions, most notably between VHA Ottawa and the Ottawa CCAC, as well as in Niagara. Other service providers told VHA Hamilton in confidence that they had had contracts reopened but were sworn to secrecy by their CCACs. It has been suggested that the government was responding to these renegotiations by clamping down on CCACs and insisting that they adhere to the process (Interview-k, 2004). While VHA Hamilton's crisis was unfolding, CCACs were converted from local nonprofits to statutory bodies. The Cabinet now appointed boards of directors and executive directors, making CCACs accountable solely to the Cabinet. Around the province, CCAC boards and executive directors had been fired and replaced. The Hamilton CCAC's board had only begun to meet as a group, and only the chair had served on a previous CCAC board. He was a senior administrator in the local police force and had no previous background in this sector.

VHA Hamilton was a local single-purpose agency facing losses that were unfundable even in the short term, let alone the balance of the contract. It lacked the resources to pursue legal action, and on July 29, 2002, VHA Hamilton issued termination notices to its 450 employees and gave notice to the CCAC that it must withdraw from the contract. The timing was chosen carefully as it was important to the board to maximize the amount of time the clients had to make the transition to new home care providers and to ensure that there would be some money left to pay employees a decent portion of the severance owed them.[7] This drastic decision was not made until the board felt that it had exhausted all possibilities.

There was an uproar over the wrong-headedness of this situation in Hamilton, an outpouring of support for VHA Hamilton and widespread condemnation of the CCAC (Campbell, 2002 August 7; Frketich 2002, August 24; Frketich, 2002, July 30; Frketich, 2002). Clients and workers, among others, showed up at a rallies at the CCAC (Morrison, 2002, August 3) and at the local MPP's office (Muhtadie, 2002, August 15). Following VHA Hamilton's announcement, another home care nursing agency announced the lay-off of 15% of its staff because of the reduction in volumes (Frketich, 2002, July 31). This issue went unreported in the rest of the province, despite efforts by VHA Hamilton and its umbrella association, the Ontario Community Support Association, to get the media interested. The process had unfolded differently in different places across the province, and it may have seemed this was simply a local story.

The Fallout From the Crisis

Continuity of care is a critical piece of a successful client-worker interaction (Abelson, Woodward, et al., 2004). The CCAC claimed to have a plan for the transition of VHA Hamilton clients and assured the community that there would be "no disruption to clients" (Campbell, 2002, August 7). The CCAC's plan hinged on VHA Hamilton's workers moving to other agencies when VHA first made its announcement.[8] This would have helped ensure continuity of care for clients, who were also being moved to other agencies. But changing agencies means that workers experience a change in compensation (salary and benefits) and a loss of seniority. The biggest problem with the CCAC's plan was that it assumed that the workers had no choice and were captured by their profession. This problem is followed by the logistical challenges of such a transition of both workers and clients (Abelson, Woodward, et al., 2004). How do you reallocate clients and workers from one agency to another? Do workers, service providers, clients, or CCACs get to choose how this unfolds?

VHA Hamilton offered the best salary and benefits package in the area. The surviving home care agencies were offering workers $1.50–$3.00 less per hour than they had been receiving from VHA Hamilton. At the time, anecdotal evidence suggested that many VHA Hamilton workers were considering leaving home care completely (Frketich, 2002, August 24). This was in keeping with historic trends: in the past, workers would leave VHA Hamilton to seek more predictable and lucrative jobs in nursing homes, in retail, or in meat processing plants (VHA internal tracking); they seldom moved within the home care sector. A follow-up study by Aronson, Denton, et al. (2004) found that six months after VHA Hamilton closed, 62% of its employees had left the home care profession.

The sector lost a leading agency; workers and clients lost an advocate. As one former employee put it:

> Hamilton should be mourning the loss of this non-profit agency. VHA not only lobbied the government on behalf of the vulnerable population it served, but advocated constantly for better pay and improved working conditions for its staff, which translates into excellence of care …
>
> VHA's commitment to elevating the status of this essential workforce – through ongoing education, competitive benefits and retirement options … resulted in greater staff retention which equaled improved continuity and stability of care for clients.
>
> Now, I fear these employees will either leave the home-care sector completely due to disillusionment with the system, or will be forced into picking up casual hours with other agencies just to feed their families.
>
> Ultimately, residents of this area will feel the loss of these 450 employees through the resulting lack of skilled care for our growing, aging population.

> … I am angry with a government that would choose to euthanize one of the big 'watchdogs' that barked on behalf of all of us (Hill, 2002, August 1).

The dissolution of VHA Hamilton and a number of other nonprofit organizations that were unable to survive this contracting regime between 1996 and 2003 has meant a loss of voluntary and charitable capacity in the community. The contracting regime has led to the "commodification" of care in Ontario (Browne, 2000; Browne, 2003). It also contributed to the exodus of health care workers from the sector as they moved on to seek more predictable, better compensated, and less stressful work (O'Connor, 2003). Economic actors with a mandate to produce profit or surplus are replacing public purpose organizations with a mandate to fill the gaps left by government and improve society's well being.

Lessons for the Nonprofit Sector

The political party in power in Ontario from 1995 to 2003 was a particularly hard-line, dogmatically right-wing group that sought market solutions to the "problems" of government. This was in marked contrast with the social democratic government that it had replaced. The Conservative government did not value the historic role that the nonprofit sector had played in Ontario as service providers, experts, and advocates and perceived a "conflict of interest" when advocates provide service. The expertise of service communities was summarily dismissed and the market mechanism considered a better mode of regulation. Institutions were rearranged so that commissioning and service provision were separated. Advocacy was left to consumer groups. With problems framed in such a way, the nonprofit sector and government simply did not speak the same language, and the government was not open to other viewpoints. People in the voluntary sector often seemed like deer caught in headlights in this new regime.

Organizations that provide health and social services need a strong collective voice to articulate their interests and concerns to government. In a competitive environment, the government's strategy is to fragment the sector in order to weaken its capacity to mobilize. During VHA Hamilton's crisis, its umbrella organization was just beginning to find its stride as political advocates. The umbrella group has subsequently become better and more strategic at this. The first lesson is, therefore, that politics matters and that the sector needs to be more politically savvy.

In Ontario, the nonprofit sector's hand was strengthened when it entered into a strategic alliance with the umbrella organization of for-profit service providers, the Ontario Home Health Care Association (Interview-b, 2003). Speaking with one voice, they were able to get the government to address some of the problems identified above in a revised request for proposal template introduced in 2003.[9] The second lesson, therefore, is to seek and be open to opportunities that present themselves that can strengthen your negotiating hand.

It is absolutely mandatory that nonprofit boards and management understand the full implications of any contract. Make no assumptions about the reasonableness of the other party; the person in charge today, whom you may trust, may be gone tomorrow. Government and the electorate are fickle. Ensure that your organization's rights are protected. On a 2004 research trip to Britain, I interviewed the director of a home care agency who was dedicating the year to making sure that all the informal arrangements it had with government were formalized, in the event that the government changed in the 2005 election. The third lesson is, therefore, a sad one: do not trust that the government will always look upon you beneficently.

Organizations have to be prepared to stand up collectively to government and to refuse to sign contracts that are blatantly one-sided and that put agencies at undue risk. Again, this can only happen when service organizations are united and some good poker players are at the helm. Government is a behemoth. The fourth lesson is, therefore, don't let the government roll over you.

Conclusion

The challenge that VHA Hamilton found insurmountable was the way in which its work changed without any corresponding change in compensation. With no right to reopen its contract, a service that was too broadly defined, and no negotiation dispute mechanism in place, VHA Hamilton was in an impossible spot. Agencies in England have had a similar experience of government downloading costs to agencies. The British government is demanding higher quality home care, but local governments are capping the price they will pay. Hence, costs are variable, but revenue is fixed – a recipe for disaster for any organization that has to survive as an economic actor (O'Connor, forthcoming 2005).

Being beholden to government can be dangerous to the health of an organization that does not have a variety of revenue streams. In VHA Hamilton's case, it resulted in its demise. In an era of permanent austerity, governments demand that nonprofit organizations become lean and mean, which means behaving primarily as economic actors. This can have a transformative effect on organizational behaviour and values (Jiwani, 2003).

This also translates into the need to have a low-cost, flexible labour force. Given that health and social services are largely human services, this approach to human resources will eventually affect the quality of the service delivered and, in turn, the efficient deployment of the money spent. This is already being seen in high attrition rates in the health care workforce across the country. Governments everywhere seem to be "penny wise and pound foolish."

Treating service as a commodity belies the value-added the nonprofit sector brings to communities. The ability to attract philanthropy, both volunteers and funds, is undermined. As public or civic institutions, nonprofits contribute to

the local community in a number of ways. They provide local accountability through their membership and boards, develop skills among volunteers, supplement service by filling in the cracks left by government programs in innovative ways, and build on local knowledge. They have institutional memories that contribute to sectoral learning. These things cannot be measured.

The nonprofit sector has given rise to long-established relationships of trust – government to organization, organization to organization, and organization to citizen – that assist in the development of social capital. The strain on the trust relationship between government and the sector is not conducive to the type of collaboration that many perceive as the cornerstone of creativity, innovation, and problem solving. It puts everyone on the defensive. Competition is not compatible with collaboration.

These attributes of the nonprofit sector are neither measured nor valued in Ontario's quasi-market process,[10] which evaluates agencies' capacity to deliver particular services "objectively" on paper. If, as a society, we value these things, we must find a way to name them and account for them as we develop new modes of governance. We must deem this quasi-market model of contracting home care an abject failure.

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NOTES

1. I sat on the board of VHA (formerly Visiting Homemakers Association) Hamilton beginning in 1996 and served as Board Chair from 2000–02. Some of what I write is my first-hand knowledge, which is supplemented by research I am doing for my forthcoming doctoral thesis, "Governing Home Care in Ontario and England: Markets, Contracts and the Effects on Service Providers."
2. At the time of writing, a review of the process has been ordered by the Minister of Health, but it is not clear that this will affect the recent round of contract awards.
3. Nursing visits are paid for on the basis of an average visit.
4. This was during a period of labour shortages. See O'Connor, D. (2003). Offloading the cost of home care: The impact on front line workers and agencies. In P.L. Browne (Ed.), *The Commodity of Care: Assessing Ontario's Experiment with Managed Competition in Home Care.* Ottawa: Canadian Centre for Policy Alternatives.
5. This corresponded to a time when thousands of new long-term care beds that the province had contracted to be built came on stream.
6. VHA Hamilton provided service for the lowest price locally, in line with its values as a nonprofit.
7. In the end, employees received about $.50 on the dollar.
8. This conclusion is supported by the fact that representatives of the CCAC admonished representatives of VHA Hamilton in meetings because so few VHA Hamilton workers were applying to work at the remaining agencies. Moreover, the CCAC ran an advertisement encouraging VHA Hamilton workers to apply to other agencies in the *Hamilton Spectator* (A2) on August 16, 2002. Yet when VHA Hamilton closed, it had only received 50 resignations.

9. However, the changes that the sector was able to effect were constrained by the model. The revised RFP template remains problematic; in its effort to capture quality more accurately, it has become more complex. Smaller, boutique agencies do not have the sophistication to deal with such an RFP and will be crowded out of the sector. Interview-g (2003). Official – 120203. D. O'Connor.

10 The new Liberal government ordered a review of the CCAC procurement process and appointed former federal Minister of Health, Elinor Caplan, to conduct it. The recently published recommendations of this report acknowledge many of these problems. If the recommendations are adopted, it is unlikely that what happened to VHA would happen again. See Caplan, E. (2005). *Realizing the potential of home care: Competing for excellence by rewarding results*. Toronto: Ministry of Health.