CBA/OBA 2008 NATIONAL CHARITY LAW SYMPOSIUM

DEVELOPING TRENDS AND PRACTICE TIPS

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Taking the Government’s Shilling: Legal and Practical Issues

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The Government’s Shilling can be given out as:
• Operating grants
• Capital grants
• Project grants
• Sponsorships
• Contracts for service

The Government’s Shilling can be given by:
• Ministry or department – Heritage Canada, Ministry of Health and Long Term Care
  – Legislative allocation
  – Discretionary
• Agency – Ontario Trillium Foundation, Ontario Arts Council
  – Allocations
  – Discretionary
• Operating agency – Hydro One
  – Community sponsorships or support
  – Partnerships
The process for the giving of the Government’s Shilling can vary:

- Grant application
  - Annual
  - Specific
- Sponsorship application
- Request for Proposal or other tendering process
- Existing contractual relationship

Need to understand the process – what drives the decision? Who is the decision-maker? Who and what influences the decision?

The processes in place reflect public policy objectives for expenditure of public monies:

- Accountability
- Transparency
- Consistency
- Value for money
- Public interest

Need to understand these objectives – what causes the “bells and whistles”?

Broader public law context

- Criminal Code
- Federal Accountability Act
- Lobbying Act
- Lobbyists Registration Act
- Management Board Directives
- Auditor General Act – Federal and Ontario
- Income Tax Act
- Charities Accounting Act

The public law context should shape strategy and tactics
A charitable or not-for-profit organization will encounter a number of practical and legal issues in the overall process:

- Legal capacity
- Governance
- Resource capacity
- Compliance
- Relations

Legal Capacity

- Review of letters patent and supplementary letters patent
- Review of by-laws
- Contractual or other legal restrictions
- Eligibility for the grant, sponsorship or contract
- Special statutory requirements, i.e., health care, education, children’s services
- “Business model” to be used

Governance

- Does the application or activity fall within the “mission” or strategic plan of the organization?
- Who has authority to make application?
- Are there any restrictions or concerns?
- Is the organization chasing the money? Or the dream?
Resource Capacity
• Can the organization carry out its obligations?
• What additional resources are required?
• Does the organization have the “right” resources?
• Management resources?
• Should another legal entity be used?

• Are there appropriate partnerships?
  Opportunities for collaboration?
• Is dependency being fostered?
• What is the cost/benefit analysis?
• Who is bearing the risk?
• Contingencies?

Compliance
• Record-keeping
• Reporting requirements
• Auditing – financial and compliance
• Lines of accountability
Relations
• Government
• Public
• Community
• Organizational
• What are the “politics”?

Contract Law
• Applications are contractual in nature – are there any “representations” or “covenants” inherent in the information provided by organization?
• Critical to know and understand funding criteria
• Process for applying for and reviewing applications, which will vary in depth and sophistication
• Processes may require expenditures
• What contractual terms are necessary? Deal breakers?

Directors
• Details of role will vary from organization to organization, by type of funding and by funding entity
• Need to ensure alignment with strategic plan, business plans and operational plans
• Need to ensure consistent with letters patent and other legal requirements
• Accountability structures need to be in place with appropriate reporting:
  – Financial
  – Achieving contractual objectives
  – Meeting needs of organization
  – Compliance

• What is success?

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