
CBA/OBA 2008 NATIONAL CHARITY LAW SYMPOSIUM

DEVELOPING TRENDS AND PRACTICE TIPS

Toronto – May 7, 2008

**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

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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

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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?

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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”?

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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

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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**

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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**

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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?**

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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?

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

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Compliance

- Record-keeping
- Reporting requirements
- Auditing – financial and compliance
- Lines of accountability

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Relations

- Government
- Public
- Community
- Organizational
- What are the “politics”?

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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?

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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

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- 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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