

Multi-Year Funding: Expectations and Issues

President's
Message

2005/06 OASIS
Board Meeting
Dates &
Board Members

Mandatory
Retirement: The
End Is Near

Right-Sizing
the Board of
Directors

Tax Details for
Charitable
Bequests

Investment
Accounting

Suspension
of
Non-Union
Employees

Typically, multi-year base funding is stable, base funding on which broader public sector partners can depend. Any additional funding is often subject to factors such as economic growth, level of federal government support received by the provincial government and the results to be achieved through greater accountability.

From an organization's viewpoint, multi-year funding is considered to provide more stability and certainty about funding over a three year time horizon.

From the government's viewpoint, multi-year funding is said to "size" the system using information on the volume, price and quality of service. In the hospital sector, a multi-year funding agreement is made between the provincial government and a broader public serve organization that outlines performance objectives and measures for the sector as a whole along with risk mitigation strategies. Individual delivery organizations also have individual measures and objectives within the context of the sectoral objectives and measures.

OASIS will press for multi-year funding for the Developmental Services sector as one of its strategic priorities this year. As such, this article is meant to provide information on multi-year funding and issues for consideration.

However, one of the issues that has surfaced is the accounting for the government's recognition of expenditures. The existing standard is not clear. Some have interpreted the rules as requiring these transfers to be recognized in full once the transfer is authorized. Others argue that multi-

year funding expenditures need to be recognized over the period the funded services are delivered by treating the funding as a prepaid asset. This issue is important to the funder and ultimately to the service organization to determine how multi-year funding will be recognized. Guidance on this issue is at hand. It is anticipated that an exposure draft will be approved in November of 2005.

In another issue related to portability of funding, the Manitoba education system has provided a protocol for individual multi-year funding that follows a student in Manitoba schools. This is important in consideration of the current system transformation underway.

What are issues for OASIS and its members to consider?

(continued on page 3)

President's Message

Transformation

The Ministry of Community and Social services is developing the Developmental Services Transformation Plan over the summer and expects to be ready to brief cabinet by late September/early October. This will be followed by a period of public consultation which will probably occur during late autumn and winter. The well informed voices of your members will be important if we are to achieve a constructive and balanced articulation of interests.

The OASIS Board of Directors

We have a good team in place which works diligently to further the interests of our members. However, like many organizations, we have not always presented a choice of candidates for your approval at the AGM. The Board would very much like to field a slate of viable 'keepers' that will generate a real decision from you. We would like the members to consider nominating their 'stars'; people who have a sense of mission and who are also prepared to take the risk of being defeated in a real election.

OASIS Priorities

The Board of Directors has given considerable thought to a range of issues that we hope will improve our effectiveness. Many of you will know that the board has had a work plan for managing of our workload. We will replace the work plan with a more strategic set of priorities that will be set annually in June.

As such, the board has approved the following priorities for 2005/06;

1. Transformation

There is no single issue that demands more attention. The sector is challenged to make changes. Agencies are capable of making that leap. Consequently, OASIS must evolve by strengthening its already good relations with the Minister and the senior members of the bureaucracy.



George Braithwaite,
President,
OASIS

Our MPP bulletin, meetings with Ministers, local MPPs and members of the opposition must not only continue but intensify.

2. Funding

Agencies have been on a starvation diet for at least a decade. Many are faced with ugly options of cutting services, incurring additional risks, and serving fewer people; absolutely the wrong direction in every case. OASIS will press for multi-year funding, a review of the service contract system, greater financial stability in the face of the unmistakable trend towards individualized funding and a budgeting process that recognizes the real world of inflation, rising salaries and the unwelcome effects of government regulation that affects bottom line.

3. Member Services

OASIS will continue to focus on serving the members. Our current initiatives include inter alia; labour relations, administrative enhancement of the operations of OASIS, revitalization of the board nomination and election process and newly formed business resources committee. It is also our intention to conduct a salary survey in 2006.

Conclusion

That's it folks; thanks for reading this far! I hope you have enjoyed the past summer, that your air conditioning worked. I hope you are ready and rejuvenated for the struggles that will confront us in the months ahead.

George Braithwaite,
President,
OASIS

Upcoming
OASIS Board
Meetings

Nov. 9, 10/05
Toronto

Jan. 18, 19/06
Toronto

Mar. 22, 23/06
Toronto

May 2, 3/06
Pre-AGM
Grand Bend

All

Invited

To Attend

2006 OASIS
Conference

Grand Bend

May 4, 5/06

Currently, financial arrangements between ministries and community agencies are carried out in accordance with a funding agreement based on a five element business cycle consisting of budgeting, service contracting, payments to service providers, year-to-date reporting and monitoring and year-end reporting and reconciliation.

Multi-Year Funding: Expectations and Issues (continued from page 1)

As the government bases multi-year funding on system data using information on the volume, price and quality of service, there will be an ever increasing need to have information on service volumes and costs readily available and based on consistent information. This issue will be further complicated by the impact of policy changes during the time frame of the multi-year funding agreement. OASIS has in past collected and analyzed service and cost information to assist members. Data collection, analysis and system administrative advocacy will be an important issue going forward if multi-year funding should go forward.

In the hospital sector, a broader public sector organization has an agreement with the provincial government for overall provincial objectives and measures. Will our developmental services sector need to parallel the hospital sector's infrastructure with a sector agreement or will individual agency agreements serve the sector well?

Likewise, will the accounting standards on multi-year funding provide challenges for OASIS members? In addition, will the provincial government consider the accounting standards to be advantageous and continue to support multi-year funding approaches following the approval of the standards?

In addition, if the developmental service sector is able to move towards increased individual funding, will individual funding also be approved on a multi-year basis and will the portability of the funds be covered in a protocol that is clearly understood by individuals, families and organizations?

While multi-year funding is considered to provide more stability and certainty about funding for operations, are organizations and their Boards of Directors ready to also meet the accompanying challenges? OASIS may be able to provide provincial leadership for its members in a way that will deliver stability and certainty for our service delivery system.

2005/2006 OASIS Board of Directors (and Officers)

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Director	Judy Reid	Niagara Training & Employment Agency and Niagara Support Services
Director	Dick Todd	Middlesex Community Living

Mandatory Retirement: The End is Near

For member agencies that have not had mandatory retirement policies, your experiences on working with older workers will be valuable to other OASIS members who have had mandatory retirement policies, if the proposed legislation is enacted.

Older workers can not only be a mentor for younger workers, but their life experience is often extremely valuable to your team as a whole.

On June 7th, 2005, the provincial government introduced Bill 211, the Ending Mandatory Retirement Statute Law Amendment Act, 2005. If Bill 211 is passed, the use of mandatory retirement policies will no longer be lawful in most Ontario workplaces. The key element of the proposed legislation is the revision of the definition of “age” in the Human Rights Code and applicable statutes. The legislation, if passed, would amend the Human Rights Code (and other statutes).

Currently, the Code permits age-based discrimination in employment against employees who are under the age of 18 or who are 65 years of age or older. Bill 211 would amend the Code to prohibit age-based discrimination against employees 65 years of age or older. This change will effectively eliminate an employer’s ability to use age 65 as a factor in employment decision-making, unless it can establish that being under the age of 65 (or any other age limit) is a bona fide occupational requirement.

The amendments to the legislation will come into force one year after Bill 211 receives Royal Assent. Nevertheless, employers will want to turn their minds to any impact this change will have on their employees, their pension and benefit plans, and their workplace policies.

Bill 211 does not contain any grandparenting provisions for mandatory retirement policies in unionized workplaces, even if the policies are incorporated into collective agreements.

These policies, like any other, will cease to have effect when the provisions of the Bill comes into force, unless an employer can establish a bona fide occupational requirement to support the policy.

If Bill 211 is passed, employers who wish to terminate employees age 65 or older will have to comply with relevant statutory, common law or collective agreement requirements.

Employers will have to justify a decision to terminate an employee age 65 or older based on the same criteria that would apply to younger employees. Accordingly, employers will need to ensure that they are actively monitoring and managing employee performance and workplace conduct up to and beyond age 65.

The gradual aging of the population, coupled with the elimination of mandatory retirement, will mean that many employers will find that they are dealing with a larger population of older workers. One practical implication is that employers can expect to be faced with a significant increase in the number of requests for accommodation of special needs associated with age. Employers will need to ensure that they have appropriate policies and procedures in place to deal with accommodation issues affecting older workers.

(continued on page 5)

Mandatory Retirement

(continued from page 4)

Ann Kenney, OASIS Board Secretary reports that she does not have a mandatory retirement policy and in fact, has several employees over the age of 70 years working for South Muskoka.

However, many individuals predict that the elimination of mandatory retirement will not lead to a significant increase in the number of employees working past age 65.

In certain occupations, employers may wish to argue that mandatory retirement at age 65 (or some other age) is a bona fide occupational requirement. The employer will be expected to engage in individualized assessment and accommodation before terminating the employment relationship.

The Bill would not amend the Pension Benefits Act (PBA). Therefore, employees will still have the right to retire with a full unreduced pension on the “normal retirement date” (defined in the PBA as no later than one year after employees turn 65).

Further, the Income Tax Act (Canada) prevents a member of a pension plan, RRSP, RRIF, etc., from deferring receipt of retirement income from these plans beyond the end of the year in which the member attains age 69. Consequently, absent legislative change, those who continue to be employed past age 69 will collect both a salary and a pension at the same time; however, further pension accrual would stop when payments under the pension plan begin.

Employers will want to review the provisions of pension plans which are related to age 65 to determine the impact of the proposed changes.

Employers will want to review the provisions of pension plans which are related to age 65 - for example, provisions that do not allow employees hired on or after age 65 to enrol in a pension plan- to determine the impact of Bill 211.

It will also be necessary to consider the impact of the proposed changes on insured benefit plans, including long term disability plans (which typically cease benefit payments at age 65), life insurance and prescription drug benefits. In some cases these changes may result in employees receiving benefits beyond age 65, with a corresponding cost increase to employers.

Bill 211 would amend the Workplace Safety and Insurance Act to exempt its age-based provisions from the Human Rights Code. Thus, for example, employees who are injured after age 63 will continue to be eligible to receive Loss of Earnings benefits for a two-year period only, while employees who are injured before age 63 will continue to be eligible for Loss of Earnings benefits until age 65 only.

While Bill 211 may appear to represent a significant departure from established employment practices, the reality is that mandatory retirement has been under attack for several years. Moreover many commentators predict that the elimination of mandatory retirement will not lead to a significant increase in the number of employees working past age 65. Nevertheless, employers are well advised to review current management practices to ensure that you will not be exposed to liability.

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Right-Sizing the Board of Directors

by Mary Lynn McPherson
Senior Consultant, STRIVE!

When we invite guests for dinner at our house, we discuss the purpose of the evening. Will we invite one family so we can develop a deeper relationship with them; will we catch up with two or three families amidst a diverse conversation; or will we have a party of 30 or more so we and others can touch base with several people? Likewise, organizations are well-served by asking what the purpose of their board is and then selecting an appropriate number of board members. We have seen boards with as few as 3 members and organizations with as many as 385 directors. On this continuum, what is ideal?

The purpose of all boards with decision-making responsibility is to direct the organization and protect the interests of owners. Since the interests of owners are diverse and the environment in which we live is complex, organizations benefit from having board members that bring a variety of experience and insight to the table.

It is healthy to have a large enough group that varied perspectives can be shared before the board members vote on big issues. However, it is a poor use of resources to have a group so large that not everyone has an opportunity to contribute. In this case, talented people can get frustrated sitting on the bench feeling like their time has been wasted; and from the organizational view, resources required to accommodate these silent bodies might be better utilized in other ways.



Mary Lynn McPherson,
Senior Consultant,
STRIVE!

Group think is too common in groups of 3 or 4. Too often one person's strong personality results in him getting his way most of the time, even if others are uncomfortable with the outcome. When a group has between 5 and 8 members, differences of

opinion are more likely to be expressed and decisions will be influenced by the diversity of knowledge. With a group larger than 13, most people feel less comfortable expressing their opinions. When the group size rises to 20, board meetings aren't long enough to allow everyone to express their views. And there are rarely more than 20 perspectives worth sharing.

Since it is the responsibility of every member of the board to be informed on the issues at hand and participate in the decision-making, the right-sized board has enough members to represent the diversity of the owners and no more members than can engage in the discussion on each agenda item.

What is the right size of board for your organization? Can fewer than 5 board members reasonably represent the diversity of your membership? Can more than 10 board members add value to the discussion on most issues? Many organizations find that the balance point between multiple perspectives and effective group dynamics is within this 5 to 10 person range.

The right-sized board has enough members to represent the diversity of the owners and no more members than can engage in the discussion on each agenda item.

STRIVE! is a private company devoted to helping maximize the effectiveness of people and organizations with proven governance and leadership principles for continuous improvement. For more information, visit www.strive.com or call their office at 888-752-3330.

Tax Details For Charitable Bequests

by Rachel L. Blumenfeld
Miller Thomson LLP



Rachel L. Blumenfeld,
Associate,
Miller Thomson
LLP

As planned giving becomes more popular in Canada, an increasing number of charities are beneficiaries of estates. Where the charity is a beneficiary of some or all of the residue of an estate (as opposed to a set amount), questions regarding the receipting of the gift often arise.

Assets of an estate are generally not distributed for at least a year following someone's death – longer if the assets are complex or if disputes arise. In the meantime, some of the assets may continue to accumulate income or to increase in value. In such cases, what should be the value of the donation receipt issued by the charity? How should the charity treat the income that arises on the assets of the estate for the period following the death but prior to the transfer of the assets to the charity?

The donation receipt is issued for the fair market value of the property donated on the date the donation was made. In the context of an estate, this generally means that the receipt should be issued for the value of the property on the date of death of the donor. Where the residue of an estate includes, for example, a principal residence valued at \$500,000, GICs worth \$350,000 and some mutual funds valued at \$85,000 on the date of death, the amount of the receipt would be based on these values, less the amounts paid for taxes, probate fees, amounts paid to legatees, and other debts and expenses of the estate.

Following the date of death, the interest that accrues on the GIC, and any income and gains on the mutual funds "belong" to the charity (again, less certain expenses), and should be paid or transferred to the charity. The estate should issue a T-3 slip allocating these amounts out to the charity. The amounts are thereby not taxed in the hands of the estate. The charity should not issue donation receipts for these amounts, as they are income to the charity, not a further donation.

Originally published in the July 2005 edition of Miller Thomson Charities & Not-For-Profit Newsletter, which may be found at <http://www.millerthomson.com>. Rachel Blumenfeld is a lawyer at Miller Thomson LLP practising in the areas of estates & trusts, charities and not-for-profit law and can be reached at 416.596.2105 or rblumenfeld@millerthomson.com.

Investment Accounting

New non-profit accounting standards for investments will take effect for the fiscal years beginning on or after October 1, 2006.

While most non-profit organizations record investments at market value on the balance sheet, and recognize investment income including unrealized gains on the income statement, some do not. There will be a few exceptions such as real estate and bonds held to maturity.

The donation receipt is issued for the fair market value of the property donated on the date the donation was made.

In the context of an estate, this generally means that the receipt should be issued for the value of the property on the date of death of the donor.

Following the date of death, the interest that accrues on the funds "belong" to the charity (again, less certain expenses), and should be paid or transferred to the charity.

Suspension of Non-Union Employees

by **Shane Smith**
Miller Thomson LLP

A suspension without pay is a key element of the progressive discipline process in a unionized workplace. But what of a non-union environment? Can an employer suspend an employee not covered by a collective agreement without pay as a form of discipline?

The general rule is that an employer does not have the power to suspend a non-union employee. An employer who does suspend an employee may be exposing itself to a claim for constructive dismissal. There is, however, a large exception to this general rule.

A suspension can be used as a form of discipline where the right to suspend is an implied or express term of the employment contract. An express term is one which is specifically set out in the employment contract.

Therefore, in order to have the express power to suspend an employee, the employment contract would have to actually state that the employer held such a power. In practice, very few employment contracts contain specific language giving the employer the right to suspend the employee.

The more common situation is where the right to suspend is an implied term of the employment contract. Terms may be implied into a contract based on custom and usage, or on the presumed intention of the parties to the contract.

Thus, in workplaces where there is a history of suspending employees as a disciplinary tool, or where policies exist which indicate that suspensions may be used, the Courts have been inclined to find an implied power to suspend.

Terms may also be implied into a contract by law. Terms are implied by law where they are deemed necessary to the fair functioning of an agreement. Terms implied by law do not depend upon any agreement or understanding of the parties for their existence. For example, the right to reasonable notice of termination is a term implied by law into employment contracts.

While to date, the power to suspend has not been implied into employment contracts by law, the Courts have hinted that this may be a possibility in the future.

In any event, it should be remembered that even in workplaces where there is an express or implied right to suspend an employee, a constructive dismissal can still arise where the suspension imposed is not reasonable in the circumstances.

We suggest that suspension not be used to discipline a non-union employee (particularly suspension based on an implied contractual term) without the employer first obtaining legal advice.

Shane Smith is a lawyer with Miller Thomson LLP. This article is reprinted with permission and was originally published in the July 2005 edition of Miller Thomson Charities & Not-For-Profit Newsletter.

Check Us Out

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OASIS mission:

To facilitate the sharing of ideas, resources, systems and information, OASIS will liaise with government on behalf of member organizations with the goal of improving the development of cost effective quality supports for individuals with developmental disabilities.

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Ideas and articles are welcomed for FOCUS. Contact the Editorial Committee.

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