



STAFF REPORT
THE CORPORATION OF THE TOWN OF COBOURG

**Corporate, Finance, and Legislative
Standing Committee**

Report to: Mayor, Deputy Mayor, and Councillors
From: Brian Geerts, Director of Community Services;
Standing Committee Date: 28 November 2024
Report Number: COMM-2024-027
Council Meeting Date: 18 December 2024
Subject: **Community Grants – Methods and Options for Grant Award, Performance Monitoring, and Accountability**

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1. Recommendation:

WHEREAS the Committee adopt the following recommendation and refer to Regular Council for final approval.

NOW THEREFORE BE IT RESOLVED THAT Council receive this report for information purposes; and

FURTHER THAT Council recognizes the value and importance of the Municipal Grants Program as a practical support to local agencies for community needs; and

FURTHER THAT Council directs staff to develop a Request for Proposal to locate a community foundation or other disbursement partner that can effectively administer the Community Grants program in 2026 and beyond acting as a Community Grants Task Force.

2. Executive Summary:

The Municipal Community Grant program is an annual grant program that provides modest financial support for non-profit and community-based organizations for projects and programs that directly improve the quality of life for the residents of Cobourg. At the April 2, 2024, Strategic Priorities and Policy Standing Committee meeting, Council directed staff to develop draft improvements to the Community Grant Program for 2025 that identifies a decision-making protocol for a task force to be appointed by Council.

3. Background

The Municipal Community Grant program is an annual grant program that provides modest financial support for non-profit and community-based organizations for projects and programs that directly improve the quality of life for the residents of Cobourg.

Non-profit and community-based organizations can request either financial support or in-kind support for community projects, operating expenses, special and community events, parking permits, and facilities.

Efforts are ongoing to streamline the Municipal Community Grant program to ensure the program is administered efficiently and equitably with transparency and consistency.

Under the existing policy, applicants are required to apply by the Oct. 31st deadline, Town Staff review each application to determine policy eligibility before being brought forward to council for their consideration.

In 2024, the total funding requests for the 2024 Municipal Community Grants program was \$81,347.46, split between in-kind and financial grant requests.

On the January 31, 2024, regular council meeting the following motion was carried:

FURTHER THAT Council only approve \$30,000 in Community Grants funding without specific grant allocations to community organizations in the 2024 Operating Budget.

As part of the efforts to streamline the Municipal Community Grant program and based on Council's direction, Town Staff have proposed a plan that will see the Town of Cobourg partner with a Community Foundation or other funding partner who can administer the Town of Cobourg's Municipal Community Grants program. This partnership aims to streamline the application process, improve efficiency, and ensure strategic allocation of resources with transparency and consistency.

During 2024, staff completed a series of meetings to convert long-standing in-kind grants to multi-year agreements. The details of this work will be detailed in a separate report.

4. Discussion:

There are several approaches a Task Force could use to make decisions on distributing financial grant funding to applicants. Each method has different strengths and weaknesses, depending on the priorities of the grant program and the dynamics of the Task Force itself. There are some different decision-making approaches:

1. Consensus Decision-Making

- **Process:** The Task Force discusses each application until all members agree on which projects to fund and how much funding to allocate.
- **Strengths:** Ensures broad buy-in from all members, reducing potential conflicts later.
- **Challenges:** Can be time-consuming if members have divergent opinions.

2. Majority Vote

- **Process:** Each Task Force member votes on how funds should be distributed, and the majority decision prevails.
- **Strengths:** Quicker decision-making and easier to implement.
- **Challenges:** May leave some members dissatisfied if their perspectives are consistently overruled by the majority.

3. Weighted Voting

- **Process:** Task Force members' votes are weighted based on predefined criteria (e.g., expertise, seniority, or stakeholder representation).
- **Strengths:** Gives more influence to members with relevant expertise, balancing out potential knowledge gaps.
- **Challenges:** Can create perceptions of unfairness or inequity if not well-justified.

4. Ranked-Choice Voting

- **Process:** Members rank the applications in order of preference, and the funding is distributed according to these rankings, often in a multi-round process where the lowest-ranked projects are eliminated.
- **Strengths:** Helps ensure that the most broadly acceptable projects are funded.

- Challenges: Requires more time and effort for members to assess and rank each application.

5. Scoring System

- Process: Members individually score each application based on set criteria (e.g., community impact, feasibility, alignment with strategic goals), and funding decisions are based on the average scores.
- Strengths: Objective and transparent; helps ensure that decisions are based on clear criteria.
- Challenges: The scoring criteria must be comprehensive and well-calibrated to ensure fair evaluation.

6. Delphi Method

- Process: Members submit anonymous opinions on funding decisions, which are aggregated and shared with the group. This process is repeated until a consensus is reached.
- Strengths: Allows for diverse perspectives without pressure from group dynamics; encourages independent thinking.
- Challenges: Can be slow due to multiple rounds of feedback and refinement.

7. Proportional Allocation

- Process: Each Task Force member is allocated a portion of the total funding, which they can assign to applicants based on their individual priorities. The total funding for each applicant is the sum of allocations from all members.
- Strengths: Ensures that each member has influence over the distribution process.
- Challenges: Could lead to unequal or fragmented funding unless guidelines are established for minimum and maximum funding amounts.

8. Expert Panel Review

- Process: The Task Force delegates decision-making to a panel of subject-matter experts who evaluate and recommend how funds should be distributed.
- Strengths: Provides a high level of expertise in the decision-making process.
- Challenges: Reduces direct control of the Task Force; decisions may feel disconnected from the group's priorities.

9. Lottery System (Random Allocation)

- Process: All eligible applications are entered into a lottery, and grants are distributed randomly.
- Strengths: Fully transparent and unbiased process; can be used for smaller amounts or when all applications are equally deserving.
- Challenges: Lacks a merit-based or needs-based approach, which could lead to poor outcomes for the community.

10. Hybrid Model

- Process: A combination of different methods, such as using a scoring system to narrow down top applications and then using consensus or majority vote for final decisions.
- Strengths: Can balance fairness, transparency, and efficiency.
- Challenges: More complex to manage and may require strong facilitation to keep the process efficient.

The method chosen should align with the goals of the grant program, the complexity of the applications, and the dynamics of the Task Force itself.

Other Options: Community Foundations

A Town Community Grants Task force would be completing a similar process to what Community Foundations do. Community foundations typically have well-defined processes and structures in place for deciding how to disburse funding, often aimed at ensuring that funds are distributed equitably and in alignment with their mission and the needs of the community. Here are some common approaches community foundations use:

1. Strategic Priorities Alignment

- Process: Community foundations often prioritize funding projects that align with specific strategic goals or areas of focus (e.g., education, healthcare, arts and culture, social justice). Grant applications are evaluated based on how well they match the foundation's mission and funding priorities.
- How It Works: The foundation sets specific focus areas, and projects that align with those goals are prioritized during the decision-making process.
- Examples: A foundation may focus on poverty reduction, youth development, or environmental sustainability, and only fund projects that contribute directly to those areas.

2. Competitive Grant Programs

- Process: Many community foundations use competitive grant cycles, where organizations submit applications that are reviewed by committees,

staff, or experts. Decisions are made based on the strength of the application and how it meets community needs.

- How It Works: Applications are evaluated against specific criteria, such as the feasibility of the project, the potential impact on the community, and the financial health of the organization.
- Examples: Organizations compete for funding by submitting detailed proposals that are scored on factors like innovation, community involvement, and measurable outcomes.

3. Donor-Advised Funds

- Process: Some community foundations manage donor-advised funds, where individual donors or families recommend how their charitable funds should be distributed to nonprofits.
- How It Works: The donor provides advice or requests on where the money should go, and the foundation vets the recipient organizations to ensure they align with tax-exempt requirements. The foundation facilitates the disbursement but may have limited decision-making power.
- Examples: A donor might request that their fund supports local schools or environmental organizations, and the foundation ensures the donation is compliant with their policies.

4. Community-Led Decision-Making

- Process: Increasingly, some community foundations involve the community directly in decision-making by forming panels of local stakeholders to review applications and recommend funding allocations.
- How It Works: The foundation convenes community advisory committees, often made up of diverse voices representing various sectors, neighborhoods, or demographics, to ensure that funding decisions reflect community needs and priorities.
- Examples: A foundation might have a youth advisory council or neighborhood boards that decide on grants for specific local projects.

5. Field-of-Interest Funds

- Process: These are funds established by donors to support a specific cause or field, such as education, health, or the environment. The foundation uses these funds to make grants in the designated area, often based on competitive applications or partnerships.
- How It Works: Applicants apply for funding that is restricted to a certain area, and decisions are made by foundation staff or committees that specialize in that field.

- Examples: A donor might create a fund specifically to support mental health initiatives, and the foundation will allocate those resources to nonprofits working in mental health based on application evaluations.

6. Endowment Fund Distributions

- Process: Many community foundations manage endowments, where the earnings from the invested funds are used to support grantmaking. The foundation disburses a portion of the annual investment returns to support grants, with a focus on sustaining long-term community benefits.
- How It Works: Decisions are typically based on a combination of the foundation's mission, strategic priorities, and current community needs. Some may also use unrestricted funds that allow more flexibility in responding to emerging issues.
- Examples: A foundation might use its endowment income to address pressing issues like homelessness, or to fund initiatives that address long-term challenges in the community.

7. Collaborative Grantmaking

- Process: Some foundations collaborate with other local funders or government agencies to co-fund projects or leverage resources for greater community impact.
- How It Works: The foundation partners with other organizations to pool resources, align priorities, and collectively decide which projects to fund, ensuring a broader reach and impact.
- Examples: Multiple local foundations might work together to support a large-scale project, such as a community center or multi-year educational program.

8. Needs-Based or Emergency Funding

- Process: Foundations may set aside a portion of their funds to respond to urgent needs, such as natural disasters, public health crises, or other emergencies that affect the community.
- How It Works: The foundation may have a rapid-response process for disbursing funds, often based on immediate needs assessments or expedited grant applications.
- Examples: During the COVID-19 pandemic, many community foundations rapidly deployed emergency funds to support local nonprofits providing essential services like food distribution and health care.

9. Multi-Year Grants

- **Process:** Some foundations offer multi-year grants to support sustained impact over a longer period, focusing on organizations that demonstrate strong performance and the capacity for long-term project execution.
- **How It Works:** Organizations apply for funding that is distributed over several years, with annual or periodic evaluations to ensure ongoing progress and alignment with goals.
- **Examples:** A community foundation might support a multi-year affordable housing initiative, providing stable funding for project development and implementation.

10. Capacity-Building Grants

- **Process:** In addition to funding specific projects, community foundations sometimes provide capacity-building grants to help strengthen the operational abilities of nonprofits, such as improving leadership, technology, or infrastructure.
- **How It Works:** Nonprofits apply for funding to support organizational development rather than a specific project, with the goal of enhancing their ability to fulfill their missions.
- **Examples:** Grants might be given for training nonprofit staff, upgrading technology systems, or enhancing marketing and outreach capabilities.

Overall, community foundations often use a combination of these methods to ensure they are supporting projects that reflect both the immediate and long-term needs of the community, while also honoring donor intent and maintaining alignment with the foundation's strategic goals.

Deciding How to Decide

Deciding which decision-making method to use for distributing financial resources, such as grant funding, is a critical process that can influence the fairness, transparency, and efficiency of the process. Different groups, including task forces, community foundations, and other committees, typically consider several factors when choosing the most appropriate method for their specific context. Here's how groups usually decide which method to use:

1. Mission and Goals Alignment

- **Key Consideration:** The group will assess which method aligns best with the organization's mission, values, and goals. A community-led or consensus-based method may be chosen if the focus is on community engagement. If the goal is efficiency, a voting or scoring system might be preferred.

- Example: A community foundation with a mission to empower local residents might choose a community-led decision-making approach, while a task force focused on quick, strategic investment might opt for a majority vote or scoring system.

2. Size and Composition of the Group

- Key Consideration: The size of the group and its diversity (e.g., expertise, interests, stakeholder representation) often influence the decision-making method. Larger groups may prefer a method that can streamline discussions, like majority voting or scoring, while smaller groups might rely more on consensus.
- Example: A large, diverse task force with members representing different sectors may use weighted voting to balance input from experts and stakeholders, while a small panel might use consensus to ensure that everyone's input is thoroughly considered.

3. Nature and Volume of Applications

- Key Consideration: If the group is reviewing a large volume of grant applications, a method that allows for efficient filtering, such as a scoring system or ranked-choice voting, might be preferred. For smaller volumes, more deliberative methods like consensus or community-led decision-making might be feasible.
- Example: A foundation that receives hundreds of applications might use a scoring system to create an initial shortlist, while a smaller group with 10-15 applications might be able to discuss each one in-depth and use a majority vote.

4. Expertise and Knowledge within the Group

- Key Consideration: The group's expertise level can shape the decision. Groups with access to subject-matter experts might prefer a panel review or weighted voting, where the experts have more influence. If the group's members are generalists, a more democratic process like consensus or majority vote may be used.
- Example: If the group includes financial experts, they might play a key role in evaluating project sustainability, leading to a Delphi method where expert input is gathered anonymously.

5. Need for Transparency and Accountability

- Key Consideration: Some groups prioritize transparency in decision-making to build trust with stakeholders or the broader community. In such cases, methods that involve clear documentation and rationale, like scoring systems or ranked-choice voting, are often preferred.

- Example: A municipal task force distributing public funds might opt for a scoring system with predefined criteria to ensure transparency and accountability in decision-making.

6. Time Constraints

- Key Consideration: Time available for making decisions often dictates whether a quick, straightforward process like majority vote or scoring system is used, or whether there's time for more involved processes like consensus or the Delphi method.
- Example: If the group has a tight deadline, a majority vote or simple scoring process may be preferred to avoid prolonged deliberations. In contrast, if there's ample time, they might use consensus to explore all perspectives thoroughly.

7. Complexity of the Decision

- Key Consideration: The complexity of the applications and the issues at hand will influence the choice. Complex decisions involving trade-offs or diverse factors may benefit from more nuanced approaches like ranked-choice voting or the Delphi method, while simpler decisions might use a majority vote.
- Example: A task force deciding between highly varied projects (e.g., one involving infrastructure, another in education) might use ranked-choice voting to handle the complexity, while a simpler decision on a single type of project might only need a majority vote.

8. Stakeholder Involvement and Input

- Key Consideration: If the group values broad stakeholder engagement or is required to incorporate community input, they might choose community-led decision-making or participatory processes. These methods can reflect the broader community's needs and priorities.
- Example: A foundation aiming to reflect the diversity of community voices might create advisory panels or engage in community-based participatory grantmaking, where local stakeholders directly influence decisions.

9. Level of Conflict or Contention

- Key Consideration: If there are known disagreements or opposing viewpoints within the group, consensus might be difficult to achieve, so a more structured method like majority vote or scoring system could be used to avoid deadlock.
- Example: If a task force is divided on key issues, they might use ranked-choice voting to build consensus around a compromise solution, or a majority vote to ensure progress.

10. Legal and Regulatory Requirements

- Key Consideration: In some cases, the method chosen may be dictated by legal, regulatory, or organizational requirements. Public funding processes, for example, often require a transparent, documented, and objective process.
- Example: A municipality may be legally required to use a scoring system or other objective method to ensure compliance with public procurement practices or funding laws.

11. Desire for Flexibility

- Key Consideration: Some groups may want the flexibility to use different methods depending on the situation. They may decide to use a hybrid approach, where certain stages of the decision-making process (e.g., initial evaluation) use a scoring system, and final decisions are made using consensus or majority vote.
- Example: A task force might first narrow down applications using a scoring system and then have a more open consensus discussion about the final candidates.

Three Task Force Options

Option 1: Third Party

Beginning in 2025 (for the 2026 grant cycle), the Town of Cobourg may collaborate with a Community Foundation or similar agency to administer the Town's Municipal Community Grants program. This partnership aims to streamline the application process, improve efficiency, and ensure strategic allocation of resources. Annual municipal grant funds will be allocated to the partner during annual budget deliberations based on Council's priorities. The partner will carefully assess each applicant, and the evaluation of grant applications will remain focused on providing community value, aligning with the Town of Cobourg's priorities and grant policy requirements.

Option 2: Task Force or a Municipal Grants Review Committee is a short-term committee providing advice to the Town of Cobourg Council, consisting of a mix of representatives as determined in a Terms of Reference. The Task Force would not make final grant decisions, but refer final decision to Council will still decide what the final grant allocations will be. The Terms of Reference would be the guiding document to ensure practical recommendations are delivered to Council. Such a Terms of Reference would include:

[Town of Cobourg Community Grants Task Force
DRAFT Terms of Reference](#)

1. Purpose

The Community Grants Task Force is established to review and evaluate community grant applications submitted by local organizations, ensuring alignment with the Town's priorities and values. The task force will make recommendations to the Town Council for the final decision on the allocation of grant funds.

2. Scope

The task force will evaluate applications based on pre-established criteria, considering factors like community impact, financial need, feasibility, and alignment with the Town's strategic goals. The task force will also be responsible for providing feedback on the process for continuous improvement.

3. Authority

The task force is advisory in nature and does not hold decision-making power. Its recommendations will be submitted to the Town Council for consideration in the final grant approval process.

4. Composition and Membership

- Chairperson: Appointed by _____
- Members: Typically #-# members, which may include:
 - Representatives from various community sectors (e.g., arts, culture, sports, social services).
 - One or two Council members.
 - Community volunteers with expertise in grant-making, finance, or program evaluation.
 - Town staff member(s) serving as a liaison or support staff, with no voting rights.

5. Roles and Responsibilities

- Evaluate Applications: Review each application against established criteria.
- Site Visits (if applicable): Conduct site visits or meet with applicants as necessary to gain a deeper understanding of projects.
- Conflict of Interest: Members must disclose any personal or professional conflicts of interest and may be recused from evaluating applications in which they have a vested interest.
- Recommendations: Prepare and present a written report with funding recommendations to Town Council.

- Process Feedback: Provide feedback on the grant process for possible future enhancements.

6. Meetings

- Frequency: The task force will meet at least _____, with additional meetings as required during the grant application review period.
- Quorum: A quorum will consist of a simple majority of task force members.
- Decision-Making: Decisions on recommendations will be made by consensus or, if necessary, by majority vote.

7. Duration

The task force will be appointed annually or (other term), with the possibility for extension based on Council approval. Task force members will serve for a one-year term, with the option to reapply if reappointed by the Town Council.

8. Reporting

The task force will submit its recommendations to the Town Council after each grant review cycle is completed. Additionally, an annual report summarizing key findings, recommendations, and insights from the year's activities may be submitted.

9. Budget and Resources

The task force will operate within a specified budget, if allocated, and will have access to necessary resources (such as meeting space, staff support, and access to applications and data).

10. Amendments

The Terms of Reference may be reviewed and amended by Council as required to reflect the needs of the grants process and community feedback.

Option 3: Municipal Community Jury or Public Voting

The Municipal Grant Jury evaluates grant applications from local organizations aimed at supporting meaningful programs, services, and initiatives within the community. They are responsible for reviewing applications for The Municipal Community Grant program and ensuring that funding aligns with the needs of residents of the Town of Cobourg. The jury conducts its reviews fairly and equitably, utilizing a scoring system to assess applications and make funding recommendations/decisions. The Jury is composed of members selected through an open call for applications. The selection process aims to ensure a diverse representation of perspectives. The jury could contain a large pool of participants, our could even be as broad as a public voting and review system.

Contract Law

To maintain consistency and compliance with contract law (see Financial Section for more detail), a detailed review of this process would need to be completed prior to implementation, as the 2025 grant applicants were not notified of the decision-making criteria outside of the current Grants Policy, prior to the submission deadline.

5. Financial Impact and Budget

Grant application processes and disbursements typically form contracts under Canadian law, known as Contract A and Contract B. A grant proposal may form a contract like a bid contract, and the funding agreement forms a performance contract. The concepts of Contract A and Contract B come from Canadian contract law, particularly in the context of competitive bidding and procurement. These terms help clarify the rights and obligations of parties involved in the tendering process, especially in public procurement or service projects. The concepts were first established in the Supreme Court of Canada's decision in *Ron Engineering* in 1981, which introduced a new framework for understanding how contracts work during the bidding process.

1. Contract A (The Bid Contract)

Contract A is the "preliminary contract" that forms when a bidder submits a compliant bid in response to a call for bids (a Request for Proposal, or RFP). When the document is issued, and a bid is submitted, a contractual relationship, known as Contract A, is formed between the party that issued the bid (the owner) and each compliant bidder.

Key Features of Contract A:

- **Formation:** Contract A is created as soon as a bidder submits a compliant bid in response to a formal request. This means that once the tenderer accepts bids, each bidder forms an individual Contract A with the owner.
- **Binding Obligations:** Under Contract A, both the bidder and the owner are bound by specific obligations.
 - The owner must evaluate the bids fairly and in accordance with the terms of the tender document.
 - The bidder must not withdraw or modify its bid after submission.
- **Rights and Remedies:** If either party breaches the obligations under Contract A, the other party may have legal recourse. For example, if an owner does not fairly consider bids, they may be liable for damages.
- **Fairness:** Contract A ensures that the process is fair and competitive. It prevents the owner from awarding the contract to a non-compliant bidder or from changing the rules after the bids are submitted.

Example:

A government entity issues a request for bids for a grant program. Once an agency submits a bid that complies with the program requirements, Contract A is formed between the government entity and the bidder. The government must then evaluate all compliant bids according to the rules stated in the grand documentation, and the bidder may not be able to withdraw.

2. Contract B (The Performance Contract)

Contract B is the "performance contract" that arises when the owner formally accepts one of the bids submitted under Contract A. At this point, a separate contract—Contract B—is formed between the owner and the successful bidder. Contract B governs the actual performance of the work or services and details the specific terms of the project (such as scope of work, payment terms, timelines, etc.).

Key Features of Contract B:

- **Formation:** Contract B comes into existence only when the owner accepts one of the bids from Contract A. This creates a contract for the performance of the services or delivery of the goods outlined in the tender.
- **Terms and Conditions:** The terms of Contract B are usually laid out in the original tender document and the accepted bid. These terms govern the execution of the project, including price, timelines, deliverables, and penalties for non-performance.
- **Execution and Enforcement:** Once Contract B is formed, both parties must perform their obligations as specified. The granter must pay for the amounts stipulated, and the applicant or bidder must complete their project according to the specifications. If either party fails to perform, the other party can seek damages or enforce performance under Contract B.

Example:

Continuing from the earlier example, after evaluating all the compliant bids, the government entity selects one or more bids and awards the grants. At this point, Contract B is formed. The bidder is now responsible for completing the project as described in their bid, and the government is obligated to pay the agreed-upon amount.

Relationship Between Contract A and Contract B:

- **Sequential Relationship:** Contract A governs the bidding process, ensuring fairness and binding both parties to their obligations during the tendering phase. Once a bid is accepted, Contract A with that specific bidder evolves into Contract B, which governs the actual work or services.
- **Multiple Contract As, One Contract B:** While each compliant bidder forms a separate Contract A with the owner, only one bidder will ultimately enter into Contract B, which is the actual contract for the execution of the project.

- Breach of Contract A: If an owner fails to fairly evaluate the bids or awards the contract in a manner inconsistent with the tender terms, they could be found liable for breaching Contract A. This could result in damages to an unsuccessful bidder who followed all the rules but was treated unfairly.
- Breach of Contract B: If the successful bidder fails to deliver the project according to the terms of Contract B, the owner can seek remedies under that contract, such as compensation or performance enforcement.

In summary, Contract A ensures fairness and proper process during the tendering phase, while Contract B governs the performance of the contract once the winning bid(s) are selected.

Applying the concepts of Contract A and Contract B to a community grants application and decision-making process can be a useful way to structure the process, ensure fairness, and clearly define the obligations of both the grant-making organization and the applicants. Here's how the concepts could be adapted:

Contract A in the Community Grants Context: The Application Process

In the context of community grants, Contract A can be viewed as the contractual framework that governs the application process itself. When the grant-making body (such as a foundation or municipal organization) issues a call for grant proposals, it sets specific guidelines, eligibility criteria, and evaluation procedures. Each organization or applicant that submits a compliant grant application effectively enters into Contract A with the grant-making body.

Key Elements of Contract A in the Grant Process:

1. Fairness and Transparency
 - Grant-making body's obligations: The grant-making body must evaluate all applications according to the published criteria and process outlined in the call for proposals (e.g., eligibility requirements, deadlines, evaluation rubric). Any deviation from this process could lead to a breach of Contract A.
 - Example: If the call for applications states that funding will be awarded based on community impact and financial need, the grant-making body cannot change the criteria halfway through the process or favour applicants that do not meet the original criteria.
2. Applicant's Obligations
 - Applicants' commitments: By submitting an application, the applicants agree to follow the rules set forth in the grant call (e.g., submitting all required documents, adhering to deadlines, and providing accurate information).
 - No Withdrawal of Applications: Bidders cannot withdraw their bids after submission in many procurement-based scenarios under Contract A. In the context of grant applications, this principle could mean that applicants are bound to the terms of their proposals once submitted (e.g., they

cannot substantially change their project's goals or budget after submission).

3. Non-discriminatory Evaluation

- Evaluation process: The grant-making body is bound to evaluate all compliant applications fairly and consistently, using the criteria outlined in the grant guidelines. The body cannot favour one applicant over another based on criteria not disclosed to all participants.
- Example: A municipality that issues grants to support local nonprofits must evaluate each application based on the published scoring rubric, which might include project feasibility, impact on the community, and financial sustainability. A failure to do so could be seen as a breach of Contract A.

4. Legal and Ethical Protections

- Legal implications: If the grant-making body fails to follow the evaluation process as described, an applicant might have grounds to claim a breach of Contract A. Although grants are less formal than many procurement processes, the principles of fairness and transparency still apply.

Contract A & B in the Community Grants Context: The Funding Agreement

Once the grant-making body selects a successful applicant, Contract B forms. Contract B governs the grant's performance, setting out the specific terms under which the funds are to be disbursed, the project is to be completed, and reporting requirements are fulfilled. In this phase, both the grant-maker and the successful applicant are bound by a new, distinct set of obligations related to the execution and monitoring of the funded project.

Key Elements of Contract B in the Grant Process:

1. Execution of the Project

- Grant recipient's obligations: The grant recipient is now required to use the funds per the terms agreed upon in Contract B. This often includes adhering to the proposed budget, delivering the outcomes described in the original application, and submitting progress reports as required.
- Example: If a nonprofit organization is awarded funding to run a community arts program, the terms of Contract B will specify how the funds should be used, what milestones need to be achieved, and how success will be measured.

2. Grant-Maker's Obligations

- Disbursement of funds: The grant-making body is obligated to provide the funds according to the agreed schedule. Failure to do so could constitute a breach of Contract B.
- Example: A community foundation that promises to provide funds in quarterly installments must meet those deadlines as specified in the agreement.

3. Compliance and Reporting

- Monitoring and accountability: Contract B often includes provisions for monitoring the grant recipient's performance, such as requiring interim reports, financial statements, or progress updates. These requirements

ensure the funds are being used appropriately and the project is progressing as planned.

- Example: A grant recipient may be required to submit a mid-year report detailing how funds have been used and whether the project is on track to meet its goals. If the recipient fails to provide these reports, it could breach Contract B, potentially leading to a halt in funding or the requirement to return unused funds.

4. Termination Clauses

- Failure to perform: If either party fails to fulfill its obligations under Contract B, the agreement could be terminated. The grant-making body might require the recipient to return the funds if they are not used according to the terms, or the recipient could withdraw if the grant-making body fails to provide the promised support.
- Example: If the nonprofit fails to meet key project milestones or misuses the funds, the grant-maker may have grounds to terminate the agreement and request the return of the grant.

How Contract A and Contract B Work Together in the Grant Process:

1. Application Stage (Contract A)

- During the application stage, the grant-making body issues a call for proposals, setting forth criteria, timelines, and evaluation methods. Applicants who submit a compliant application enter into Contract A, which binds both the applicant and the grant-maker to the rules of the application process. The grant-making body must fairly evaluate each submission according to the outlined criteria, and applicants are bound to the terms of their submission.

2. Award and Execution Stage (Contract B)

- Once a decision is made, the grant-maker selects the successful applicant(s), and Contract B is formed. This governs the execution of the project, including the disbursement of funds, compliance with the agreed terms, and the reporting obligations of the grant recipient. At this stage, both parties are bound by the terms of Contract B to ensure the grant is executed effectively and transparently.

Benefits of Applying Contract A and Contract B to the Grant Process:

- Ensures Fairness and Transparency: By adhering to the principles of Contract A during the application phase, the grant-making body ensures that all applicants are treated fairly and that the selection process is transparent.
- Clarifies Expectations and Reduces Risk: Contract B clearly outlines the expectations for both the grant-maker and the recipient, reducing the risk of miscommunication and ensuring that both parties understand their obligations.
- Enforces Accountability: Both Contract A and Contract B help enforce accountability. Contract A holds the grant-maker accountable for a fair process, while Contract B holds the recipient accountable for delivering on the project's objectives.

In summary, the concept of Contract A and Contract B can be applied to community grants by treating the application process as Contract A, where both the grant-maker and applicants are bound by the rules of the submission and evaluation process. Once a grant is awarded, Contract B governs the performance and execution of the project, ensuring that both parties meet their obligations in terms of funding, project delivery, and reporting.

Legal Considerations

When developing a grants system and the associated decision-making process, there are several legal considerations to ensure that the process is fair, transparent, and compliant with legal and regulatory frameworks. These considerations help protect both the grant-making organization and the applicants, reducing the risk of legal disputes, and ensuring that funds are distributed in accordance with the law.

1. Compliance with Charitable and Tax Laws

- **Key Consideration:** Grant-making bodies, especially charitable organizations and foundations, must ensure that the grants they distribute are in line with the purposes stated in their governing documents and applicable charitable and tax laws.
- **Example:** In Canada and the U.S., charitable foundations must ensure that grants are distributed to organizations that qualify as charitable under the law. If grants are made to non-eligible organizations or for purposes outside the foundation's charitable mandate, it could jeopardize the foundation's tax-exempt status.
- **Best Practice:** Have clear guidelines and vetting processes to ensure that grant recipients meet legal eligibility requirements, such as being registered charities or nonprofits.

2. Anti-Discrimination and Equal Opportunity

- **Key Consideration:** The grant-making process must comply with anti-discrimination laws. In many jurisdictions, it is illegal to discriminate against applicants based on race, gender, disability, religion, age, or other protected characteristics.
- **Example:** A municipal grant program must ensure that the evaluation criteria do not inadvertently favor or exclude certain groups. Any perception of bias or exclusion based on protected characteristics could result in legal challenges.
- **Best Practice:** Ensure that grant guidelines are clear, objective, and neutral, and establish transparent evaluation criteria to prevent discrimination.

3. Data Privacy and Protection

- **Key Consideration:** Grants systems often collect sensitive information from applicants, such as financial data, project details, and personal information about staff or participants. Organizations must comply with applicable data protection and privacy laws (such as GDPR in the EU or PIPEDA in Canada) to protect this information.
- **Example:** If a grant system collects personal data from applicants (e.g., contact details, financial statements), the grant-making body must have procedures in place to store, use, and disclose that data in compliance with data protection regulations.
- **Best Practice:** Implement robust data protection measures, including consent forms for data collection, secure storage of information, and clear policies on how applicant data will be used and retained.

4. Conflict of Interest Management

- **Key Consideration:** It is important to have policies in place to prevent conflicts of interest, where individuals involved in the decision-making process may have a personal or financial interest in the outcome.
- **Example:** A member of a grant review panel may have ties to an organization applying for funding. If this conflict is not disclosed or managed, it could compromise the fairness of the decision-making process and expose the grant-maker to legal challenges.
- **Best Practice:** Develop a conflict of interest policy that requires disclosure of any potential conflicts and outlines how they will be managed, such as recusal from decision-making on certain applications.

5. Contractual Obligations and Enforceability

- **Key Consideration:** The terms and conditions of the grant (Contract B, in the framework discussed earlier) must be legally binding and enforceable. This includes ensuring that the grant agreement clearly defines the obligations of both parties and outlines remedies for breach or non-compliance.
- **Example:** A grant recipient fails to meet the agreed-upon project milestones or uses the funds for purposes not stated in the grant agreement. If the grant agreement is unclear or lacks enforceable terms, the grant-making body may struggle to recover the funds or take legal action.
- **Best Practice:** Draft clear grant agreements that specify the scope of work, payment terms, reporting requirements, and consequences for non-compliance, including provisions for termination or the recovery of funds.

6. Transparency and Accountability

- **Key Consideration:** Many jurisdictions have laws that require public entities or organizations receiving public funds to be transparent and accountable in their grant-making processes. Failure to meet these requirements could lead to legal or reputational consequences.
- **Example:** In municipal or government-funded grant programs, the grant-maker must often provide documentation showing how decisions were made, how funds were spent, and whether recipients met the required deliverables. This could be subject to public records laws or audits.
- **Best Practice:** Maintain detailed records of all decision-making processes, including the scoring and evaluation of applications, and ensure that grant recipients provide regular reports on the use of funds.

7. Procurement and Competitive Bidding Laws

- **Key Consideration:** In some cases, grant programs may be subject to procurement laws or competitive bidding regulations. This is particularly true for public-sector grant programs or grants tied to large-scale projects (e.g., construction, infrastructure development).
- **Example:** A government entity issuing a grant for the development of a community center may need to follow strict procurement rules for awarding the grant, such as advertising the opportunity, accepting bids from multiple contractors, and ensuring fair competition.
- **Best Practice:** Ensure that the grant-making process complies with procurement laws, including competitive bidding requirements where applicable, and document compliance with these regulations.

8. Intellectual Property (IP) Considerations

- **Key Consideration:** If the grant involves the development of intellectual property (e.g., software, research, publications), it's important to clarify ownership of IP developed through grant-funded projects.
- **Example:** A nonprofit organization receiving a grant to develop educational materials might produce new content that has value beyond the grant project. Without clear IP provisions, there may be disputes over who owns the rights to the materials and whether the grant-maker can use them.
- **Best Practice:** Include clear IP clauses in the grant agreement that outline who will own the intellectual property created during the project and how it can be used by both parties.

9. Grant Fraud Prevention

- **Key Consideration:** Grants systems should be designed to prevent and detect fraud, misuse of funds, or misrepresentation by applicants. Misuse of grant funds can have legal consequences for both the recipient and the grant-making body.

- Example: An organization might misrepresent its financial health or use grant funds for purposes other than those outlined in the grant agreement. If the grant-maker does not have adequate fraud prevention measures, it may face challenges in recovering funds or holding recipients accountable.
- Best Practice: Implement measures such as background checks, audit provisions, and clear reporting and monitoring requirements to reduce the risk of fraud. Provide a clear mechanism for addressing potential misuse of funds.

10. Dispute Resolution Mechanisms

- Key Consideration: There should be provisions for resolving disputes that may arise between the grant-maker and the recipient, whether related to the application process (Contract A) or the performance of the grant (Contract B).
- Example: A dispute might arise if a grant recipient believes they were unfairly evaluated during the application process or if there is disagreement over the interpretation of the grant agreement. Without clear dispute resolution mechanisms, this could lead to legal action.
- Best Practice: Include clauses in the grant agreement that outline the process for resolving disputes, such as mediation, arbitration, or recourse to the courts if necessary.

11. Regulatory Compliance for Specialized Grants

- Key Consideration: Some grants may be subject to additional regulatory oversight, depending on the sector they support (e.g., healthcare, education, or environmental grants).
- Example: A grant program providing funds for medical research may need to comply with ethical standards and regulatory approvals, such as Institutional Review Board (IRB) approval for studies involving human subjects.
- Best Practice: Ensure that applicants and the grant-making body understand and comply with any sector-specific regulations and include compliance requirements in the grant agreement.

By addressing these legal considerations, a grant-making organization can create a robust system that ensures legal compliance, promotes fairness, and minimizes the risk of legal challenges throughout the grant application and decision-making process.

Additional Legal and Financial Considerations:

These considerations can help further refine the system and ensure that it operates efficiently and meets both legal and operational standards.

1. Communication and Transparency with Applicants

- **Key Consideration:** Clear communication with applicants throughout the grant process is essential to avoid misunderstandings or disputes. This includes how decisions are communicated, timelines for decisions, and any feedback offered to unsuccessful applicants.
- **Example:** If an applicant is denied a grant, the grant-making body should have a clear and respectful process for notifying the applicant and, where appropriate, providing feedback or the reasons for the decision.
- **Best Practice:** Develop standardized templates for communication at various stages of the grant process (e.g., application receipt, decision notification, feedback), and provide applicants with clear guidelines on what to expect in terms of timelines and decision-making.

2. Audit and Financial Oversight

- **Key Consideration:** Establishing robust audit and oversight procedures is critical to ensuring that grant funds are used appropriately and that recipients meet their financial and reporting obligations. This is particularly important for government-funded programs or large-scale grants.
- **Example:** A grant recipient mismanages funds or fails to provide adequate financial reports. Without proper auditing procedures, this could go undetected, leading to financial risk for the grant-making body.
- **Best Practice:** Implement internal and external audit mechanisms that periodically review the use of grant funds, financial reporting, and compliance with grant agreements.

3. Clarity in Eligible Expenses

- **Key Consideration:** Ensure that the guidelines for what constitutes an eligible expense under the grant are clear and unambiguous. Unclear guidelines can lead to disputes or misuse of funds.
- **Example:** A nonprofit uses grant funds for an expense not explicitly outlined in the agreement, leading to disputes over whether the expense was legitimate.
- **Best Practice:** Clearly define eligible and ineligible expenses in the grant agreement and provide examples. This can help prevent misunderstandings and make the grant process smoother for both the recipient and the grant-maker.

4. Use of Technology and Grant Management Systems

- **Key Consideration:** The use of grant management software can streamline the process, but legal considerations related to data storage, security, and

access to the system must be addressed. Ensuring the system is secure and compliant with relevant laws is critical.

- Example: A cloud-based grant management platform might store sensitive applicant data. Ensuring that this platform complies with data protection laws is crucial to avoiding legal risk.
- Best Practice: Implement secure, user-friendly grant management systems that comply with data privacy laws and that ensure both applicants and reviewers have access to necessary resources without compromising security.

5. Ongoing Monitoring and Evaluation

- Key Consideration: Beyond the initial disbursement of funds, grant-making bodies must monitor and evaluate the ongoing impact of the funded projects. This ensures that the funds are being used effectively and for their intended purpose.
- Example: A grant program supports several community development projects, but without regular monitoring, the grant-maker may not be aware if the projects are achieving their intended impact.
- Best Practice: Develop a framework for ongoing monitoring and evaluation, including periodic reporting, site visits, or third-party assessments to ensure accountability and measure the impact of grant-funded projects.

6. Force Majeure and Contingency Planning

- Key Consideration: In light of unpredictable events like natural disasters, pandemics, or political instability, it's important to include force majeure clauses in grant agreements to address what happens if circumstances outside the recipient's control prevent them from fulfilling their obligations.
- Example: A community organization that receives grant funding to run in-person events may be unable to do so due to a pandemic-related lockdown.
- Best Practice: Include clear force majeure provisions in the grant agreement that outline what happens if performance is delayed or made impossible by unforeseen events. Also, allow for flexibility in timelines and deliverables under such circumstances.

7. Sustainability and Long-Term Outcomes

- Key Consideration: Grant-making bodies may need to consider the long-term sustainability of the projects they fund. Ensuring that the impact of the grant will continue beyond the funding period can enhance the value and success of the grant program.

- Example: A foundation provides a grant to a nonprofit for a one-year project, but after the grant period, the nonprofit is unable to continue the project without further funding, reducing the long-term impact.
- Best Practice: Encourage applicants to include sustainability plans in their proposals and evaluate whether the projects will have lasting benefits beyond the initial funding period.

8. Legal Considerations for Cross-Border Grants

- Key Consideration: If grants are being awarded to organizations in different countries, there are additional legal considerations regarding currency exchange, tax obligations, and compliance with international laws.
- Example: A grant-making body in Canada provides funds to an international nonprofit. They must ensure compliance with both Canadian tax law and the legal requirements in the recipient's country.
- Best Practice: Work with legal counsel to ensure that cross-border grants comply with all relevant tax, regulatory, and legal frameworks, and clarify how currency fluctuations, tax liabilities, and compliance issues will be handled.

9. Diversity, Equity, and Inclusion (DEI) Considerations

- Key Consideration: Increasingly, organizations are embedding diversity, equity, and inclusion principles into their grant-making processes. This involves ensuring that the grant system is accessible to a diverse range of applicants and that decision-making processes account for equity.
- Example: A grant program may unintentionally favor well-established organizations over smaller, grassroots groups with fewer resources to prepare professional applications.
- Best Practice: Review grant guidelines and evaluation criteria to ensure they are accessible and inclusive. Consider offering technical assistance to underrepresented groups to help level the playing field during the application process.

10. Legal Review and Ongoing Policy Updates

- Key Consideration: The legal landscape can change, and grant-making bodies must regularly review their processes, policies, and agreements to ensure ongoing legal compliance and relevance.
- Example: Changes in data protection laws or tax regulations might affect how grants are administered, requiring updates to grant agreements and application processes.

- Best Practice: Conduct regular legal reviews of the grants system and policies, and ensure that any updates are communicated to both staff and applicants.

Considering the complexity of administering high-quality grant programs, staff recommend exploring options with local funding agencies to distribute and monitor grant funding.

6. Relationship to Council's Strategic Plan Priorities 2023 to 2027 and beyond:

Thriving Community

Maintain resiliency and competitiveness through investments in people and resources in collaboration with other public sector agencies and levels of government.

Service Excellence

Develop and implement Key Performance Indicators and Continuous Improvement Plans for municipal programs and services to measure Customer Satisfaction, Community Impact and Efficiency

Sustainability

Enhance our Financial and Asset Management Plans to provide appropriate levels of services and ensure long-term sustainability

7. Public Engagement:

This report was posted publicly as part of the Committee and Council agenda process.

8. Attachments:

- N/A