Appendix 1

Recommendations

The regulatory framework

Scope and mandate of the federal regulator

1. The primary role of the regulator should continue to be to administer the charity provisions of the *Income Tax Act*.

2. To enhance public trust and confidence in both the regulator and in charities, four fundamental principles should guide federal regulatory reform:

   2.1 the regulatory framework that governs charities should facilitate public trust in the work of charities in Canada;

   2.2 the regulatory framework should uphold the integrity of the provisions in the *Income Tax Act* that govern charities;

   2.3 the regulatory framework should ensure fair application of the law and transparency in regulatory decision-making processes; and

   2.4 the regulatory process should be as simple, non-duplicative and cost-effective as possible.

Guiding values

3. As a foundation for meeting the challenges of the future, the regulator should have four enduring values to guide it:

   3.1 **Integrity.** The regulator should treat people fairly and apply the law fairly.

   3.2 **Openness.** The regulator should communicate openly about its decisions and performance.

   3.3 **Service Excellence.** The regulator should be committed to delivering consistent and timely decisions and information to its clients.

   3.4 **Knowledge and Innovation.** The regulator should have the means to continually improve its services by seeking to learn from both the things it does and does not do well. This means building partnerships and working with the sector and others toward common goals.

Educating the sector

4. The regulator should inform and assist its clients.

5. The regulator should find new, innovative ways of delivering education to charities by building partnerships with the sector.

6. The regulator should have responsibility for educating sector organizations specifically about:

   6.1 the *Income Tax Act* and common law rules affecting them;

   6.2 the criteria and process for attaining and maintainingfederally registered charitable status; and

   6.3 how to complete their annual returns.

7. The regulator should not assume responsibility for educating charities about:

   7.1 board governance and accountability issues (but the government and sector should explore other ways to enhance the professional capacity of individual charities and the sector as a whole to maintain public trust and confidence in the sector); or

   7.2 the rules affecting charities in other jurisdictions (but should refer clients to other sources for information on other federal laws affecting charities as well as provincial and municipal requirements).

Educating the public

8. The accounting profession, the sector and the regulator should work together to develop improved reporting standards of relevance to donors and charities.

9. The regulator should have responsibility to educate the public specifically about:

   9.1 charities, by releasing aggregate information on registered charities;

   9.2 issues to be aware of when giving to charity;

   9.3 the regulatory process including the review process used to determine charitable status;

   9.4 how to confirm the status of individual charities;

   9.5 how to file a complaint about a charity; and

   9.6 how to understand financial statements of charities.

Profile/visibility of the regulator

10. The regulator should make a determined effort to increase its national presence so the public is aware of what it does and whom to contact for information.

11. The regulator's name and contact information should be required on the official donation receipts that charities issue to donors.

Resources

12. The regulator should be appropriately resourced for the tasks which it must undertake, and specifically:

    12.1 a compensation study should be undertaken to ensure that classifications and levels of pay reflect the requirements of the job;

    12.2 senior management within the regulator should examine methods to encourage public servants to remain within the regulatory body and develop additional levels of expertise;

    12.3 resources should be made available for additional travel by the regulator's staff to events, including information sessions, conferences and seminars;

    12.4 senior management within the regulator should introduce professional-development opportunities such as secondments and exchanges with charities;

    12.5 the staff complement should be examined in light of the increased workload that will result from the Table's recommendations; and

    12.6 priority should be placed on development of information-technology systems that will meet the current and future needs of the regulator.

Legal principles and powers to determine charitable status

13. Clear policy guidelines should be developed on the nature and extent of the regulator's authority to identify new charitable purposes that flow from the application of the common law to organizations under the *Income Tax Act*.

14. The regulator should enhance the training examiners receive upon entry and on a continual basis.

15. The regulator should introduce better research tools for decision makers, such as electronic access to a searchable database on previous decisions of both the regulator and the courts, to allow examiners to better identify similar fact situations and more consistently interpret the law.

Coordinated regulation

16. The regulator should enter into discussions with the provinces to explore opportunities to reassure the public that charities are being effectively regulated and to reduce any conflicting demands and duplicative administrative burdens on charities.

17. Legislative amendments should be made to allow the regulator to share information with the relevant provincial authorities and with other federal regulatory agencies.

18. Provincial governments should be encouraged to make appropriate changes to their legislation to provide better coordination of compliance programs.

19. A forum should be established to allow regulators to come together to discuss issues of mutual interest and concern.

20. The appropriate federal minister should play a lead role in convening the first gathering of charity regulators.

The broader voluntary sector

21. The government and the sector should undertake a thorough review of regulatory issues affecting the broader voluntary sector.

Public consultation

22. The regulator should develop ways to engage the sector in regular dialogue to hear concerns and issues identified by voluntary sector organizations.

23. The regulator should draw on the full range of methods to engage in a dialogue with the voluntary sector at the various stages of the policy development process.

24. The regulator should continue to consult on its draft policies.

25. The regulator should use its website to provide information about current consultations on draft policies, recently closed consultations, the results of previously held consultations, and consultations scheduled to begin.

26. The regulator should conduct its consultations in accordance with the Voluntary Sector Initiative's Code of Good Practice on Policy Dialogue.

Annual reporting

27. The regulator should be required to publish an annual report to the public on its performance and activities, and the report should include aggregate information about registered charities.

Ministerial advisory group

28. A ministerial advisory group should be established to provide administrative policy advice to the minister responsible for the regulator; and

    28.1 the advisory group should consist of appointees with a broad range of experience and knowledge;

    28.2 funding support should be provided to reimburse appointees for the direct costs associated with their participation on the advisory group; and

    28.3 sufficient funding should be provided to allow the group to carry out the tasks assigned to it.

Accessibility and transparency

Documents related to an application

29. The identity of applicant organizations should remain confidential until the regulator either accepts or denies the application.

30. The regulator should publish on its website reasons for all its decisions on applications.

31. The same documents that the *Income Tax Act* allows to be disclosed for registered charities should also be available on request for organizations that have been denied registered status, plus the letter setting out the reasons for the denial.

32. Organizations should be made aware early in the registration process that they can withdraw their application after receiving an Administrative Fairness Letter, and that, if they choose this option, then no information about their application will be released.

33. The regulator should establish a policy of denying applications where applicants do not respond within 90 days to communications from the regulator.

Documents related to a compliance action

34. No organization-specific information about compliance audits should be released, including acknowledging whether an organization is or is not under audit, unless in connection with the imposition of a sanction.

35. The regulator should provide more education to the sector and the public about the audit function.

36. The regulator should provide an account in its annual report of its compliance audits, including the number conducted and the length of time taken to complete audits.

37. The question of transparency in the audit function should be reviewed in two years, by the ministerial advisory group.

38. The regulator should finalize audits more promptly.

Documents on a charity's file that do not relate to either the application for registration or a compliance action of the regulator

39. If requested, the regulator should provide a copy of information a charity is required by law or policy to file in seeking special status or exemptions allowed under the *Income Tax Act,* as well as any response from the regulator.

40. If requested, the regulator should provide a copy of the financial statements that charities are required to file with their annual information return.

41. The policy granting certain religious charities an exemption from public reporting of financial information should remain as currently formulated.

Information not dealing with any specific organization

42. The regulator should publish on its website (and make print copies available on request), subject to the provisions of the *Access to Information Act* and the *Privacy Act:*

    42.1 its policies and procedures;

    42.2 its research database (including copies of relevant court decisions, its own previous decisions on novel or unusual applications, relevant information from other charity regulators, and technical interpretation letters, as well as relevant letters issued by the CCRA's Rulings Directorate);

    42.3 draft policies ready for consultation;

42.4 impending legislative changes; and

42.5 operational guidance for charities.

Appeals

Internal reconsideration

43. An independent unit should be established within the regulator to provide internal reconsideration both of applications for registration that have been denied and of sanctions the regulator proposes to impose.

44. Organizations should be obliged to seek internal reconsideration before proceeding to court, unless the regulator and the organization agree otherwise.

45. Organizations should have 60 days to decide whether to seek a review of their case, and the review unit should have 60 days to complete the review, unless both the review officer and the organization agree to extend the time-frame.

46. The review unit should be staffed by officers experienced in charity law and in dealing with sector organizations.

47. The review unit should be centrally located, but adequately resourced to permit officers to travel.

48. The review unit should be bound by the regulator's existing policies.

49. The review unit should provide the organization seeking review with written reasons for its decision.

50. The decisions of the review unit should be reported in accordance with the applicable transparency recommendations of Chapter 4, and the regulator's annual report should provide a statistical profile of the unit's work.

Hearing *de novo*

51. Careful consideration should be given to making the Tax Court of Canada the site of appeals from decisions of the regulator, and such appeals should be held by way of hearing *de novo*.

Appeal on the record

52. An appeal on the record from the Tax Court should lie to the Federal Court of Appeal.

Judicial review of administrative decision making

53. The Federal Court Trial Division should continue to provide judicial review of administrative decisions.

Interveners

54. Existing court rules should apply in determining whether to allow interveners in a case.

Costs

55. Existing Tax Court rules on awarding costs should apply to charity cases heard before it but, in subsequent appeals, provision should be made that:

    55.1 regardless of the outcome of the appeal, the regulator would bear the costs of both parties, if it initiates the appeal from the lower-court decision;

    55.2 the regulator would bear the costs of both parties, if the organization initiates the appeal from the lower-court decision, and the appeal court overturns the lower-court decision in the organization's favour; and

    55.3 in all other cases, the regulator would bear its own costs, except that, if it considers an appeal frivolous or designed to delay, the regulator could ask the court to award it costs.

Appeal fund

56. An appeal fund to develop and present charity cases under the *Income Tax Act* should be established; and

    56.1 the fund should be administered by a body like the Court Challenges Program;

    56.2 cases should be selected for financial support on the basis of their potential to clarify charity law, for the benefit of the public at large, the sector and the regulatory authority;

    56.3 additional funding should be provided for the appeal fund, of sufficient size to obtain cumulatively the desired effect of clarifying charity law; and

    56.4 financial support should also be available for interveners.

Intermediate sanctions

Giving charities the means to comply

57. The regulator should undertake a program of continuing education designed to provide charities and their volunteers with the knowledge they need to comply with their legal requirements.

58. The regulator should review its website from the perspective of someone new to the field and design educational modules that convey essential information in language that is easy to understand.

59. The regulator should establish and publicize a policy that its role includes helping charities comply with their legal requirements and that it encourages voluntary compliance through working with charities to resolve problems that are disclosed to it.

Remedial agreements

60. The regulator should develop policies supporting the practice of seeking remedial agreements with non-compliant charities, but such agreements should not include a financial settlement.

61. The ministerial advisory group should monitor the fairness of the policies surrounding remedial agreements.

Handling charities that do not file their annual return

62. The regulator should publish on its website a list of charities that are under imminent threat of sanctions because they have not filed their annual return.

63. A fee of $500 should be charged to charities applying for re-registration after having been deregistered for failure to file their annual return, with the regulator having the power to waive the fee, in whole or in part, where appropriate.

Intermediate sanctions: penalties and inducing compliance

64. Assuming an adequate recourse system in the form we have recommended is in place, suspension of qualified donee status should be introduced as an intermediate sanction, with a requirement that a charity so suspended be obliged to notify donors and other charities of its status prior to accepting any gift from them.

65. The regulator should conduct research into the feasibility of a system to control the issuing of official donation receipts and report its findings to the ministerial advisory group within two years.

66. Assuming an adequate recourse system in the form we have recommended is in place, suspension of tax-exempt status should be introduced as an intermediate sanction, with the tax being set at up to 5% of the charity's previous year's revenue from all sources, or up to 10% of this amount for repeated cases of non-compliance, plus up to 100% of the revenue obtained from activities in breach of the requirements of the *Income Tax Act*.

67. Any monies raised from suspending tax-exempt status (amounting to more than $1,000) should be re-applied to charitable purposes, by being transferred from the regulator to another charity, as agreed upon by the regulator and the charity under suspension and in accordance with that charity's dissolution clause, or otherwise upon the direction of the court.

68. Financial penalties on individuals should not be introduced as an intermediate sanction at this time.

Deregistration

69. Deregistration should remain the ultimate sanction available to the regulator, but the revocation tax should be reformed in accordance with the principles set out in the Ontario Law Reform Commission's *Report on the Law of Charities*.

70. An additional ground for deregistration should be introduced: cases where the registration was obtained on the basis of false or misleading information supplied by the applicant.

Special case: annulments of registration

71. The legislation should specify the following grounds for annulment:
(a) where the registration was approved as a result of administrative error; and
(b) where the registration was obtained as a result of error on the part of the applicant.

72. The legislation should specify the grounds for terminating a registration, including the loss of charitable status as a result of changes to law or policy.

73. An organization under deregistration proceedings should be allowed to appeal on the grounds that its registration should be annulled or terminated rather than revoked.

Special case: orders

74. Where a judge of the Federal Court Trial Division has reasonable grounds to believe a registered charity is causing significant and irreversible public harm, he or she may issue an *ex parte* order to immediately suspend the charity's status as a qualified donee, impose such other measures to prevent the harm as are warranted by the circumstances, or both. "Public harm" should be defined to include using tax-subsidized donations for non-charitable purposes, and misleading the general public that they can use their contributions to claim a charitable tax benefit, or that their contributions will be used for a charitable purpose.

Spelling out the requirements in legislation

75. The *Income Tax Act* should be revised to more clearly state certain basic provisions (as described in the text of the report) for obtaining and retaining registered status.